

Statement of Outcomes

Access Rules

Introduction

This document outlines the decisions taken by the Broadcasting Commission of Ireland, in relation to the Access Rules. The Access Rules refer to the rules that the Commission are obliged to produce under Section 19 (11) of the Broadcasting Act 2001.

These decisions were informed by a period of research, individual meetings with the stakeholder groups and two phases of consultation. The first phase of consultation was conducted through the Access Consultative Forum, chaired by Independent Chairperson Kieran Mulvey. The Forum drew together representatives from the key stakeholders, namely user groups and broadcasters. The Forum facilitated discussion and dialogue with and between these groups, over four meetings, held between October 2003 and January 2004. The second phase of consultation was a public consultation on the Draft Rules conducted between August 23rd and November 10th 2004. A total of 47 submissions were received in a variety of formats.

Consultation on the Access Rules is now complete and it is anticipated that the Access Rules will be launched in late February 2005. The Access Rules will apply to broadcasters in the jurisdiction of the Republic of Ireland. In practical terms, this means the four indigenous terrestrial services, namely, RTÉ 1, RTÉ 2, TG4 and TV3. The BCI reserves the right to extend the rules and their applicability to new services licensed by the BCI under the Broadcasting Act 2001. The BCI will make this assessment on a case-by-case basis.

This document outlines the decisions taken by the Commission in relation to the Rules.

1. Issues that pertain to the three forms of access provision

1.1 *The use of specific targets and timeframes*

The Draft Rules proposed that targets and timeframes would be used in the Access Rules to specify the levels of subtitling, sign language and audio description to be developed by each broadcaster. There was broad support within the submissions received, for the use of targets and timeframes.

Outcome

The Commission has agreed that the Access Rules will establish specific targets and timeframes for the development of access services. The rationale for the use of specific targets and timeframes is as follows:

- Targets clarify the expectations of user groups as to the progress that will be made in the development of subtitling, sign language and audio description provision and the timeframe in which this progress will be made.
- Targets and timeframes clarify the broadcasters' obligations and provide some certainty to broadcasters, in terms of the planning and development of these services.
- Targets and timeframes allow progress to be measured and evaluated.

1.2 *The use of differential targets for each broadcaster*

The Draft Rules proposed that differential targets be set for each broadcaster in relation to the level of subtitling, sign language and audio description required of each. There was considerable consensus among Forum members during the first phase of consultation, regarding the use of differential targets. However, in a number of the submissions received in the second phase of consultation, there was a move away from the consensus surrounding this issue. Many of the submissions received asked that a uniform target be set across all broadcasters. In some instances, it was cited that the use of differential targets would be contrary to the Commission's own principle of access, contained in the Access principles.

Outcomes

The Commission has agreed the use of differential targets for each broadcaster. The use of differential targets was based on a recognition by the majority of members of the Forum (and subsequently by the Commission) that one of the influencing factors in determining targets should be an acknowledgement of the differences between broadcasters. This differentiation between broadcasters is based on a number of identified criteria, namely:

- The stage of development of the broadcast provider
- The nature of the broadcast provider (public/private)
- The level of current provision of access services provided by the broadcaster
- The technical/human resource cost
- Technical capacity
- Type of programme schedule

In the submissions received in response to the second phase of consultation, the view was put forward that a uniform target should be established for all broadcasters. However, the submissions did not address, either why the agreed criteria for differentiating between services are deficient, or suggest an alternative basis for establishing targets.

One of the principles established by the Consultative Forum was a Principle of Access. This principle states that citizens should have the fullest possible access to the broadcast media and that all indigenous broadcasters will be required to develop access services. In the submissions received, it was asserted that the use of differential targets for broadcasters runs contrary to the Access Principle. It is the view of the Commission that the use of differential targets does not breach the Access Principle. The principle states that all indigenous broadcasters will be required to develop access services. It does not, however, state that all broadcasters must provide the 'same' level of access services. The Access principle, is concerned not with treating broadcasters **equally**, but **equitably**. The use of differential targets does not breach this principle, insofar as all broadcasters come within the scope of the rules.

The Access Rules will, therefore, use differential targets for each broadcaster based on the criteria outlined above. The Access Rules will be reviewed after three years, at which time the criteria by which differential targets have been established may be revisited.

1.3 *Specification of programme genres/ types and programme times*

The Draft Rules proposed that, at this time, specific programmes genres or types, would not be prioritised. This view was informed by discussions at the Access Forum, at which it emerged that there was no unanimity among user groups regarding what programme genres or

types should be prioritised, as each user group prioritised different types of programming. In many cases, the choice expressed reflected the dominant demographic among their membership. This is with the exception of children's programming, which is discussed in the next section.

Outcomes

The Commission has, on foot of the submissions received, decided to continue its approach of not specifying particular programme genres or types or programme times to be prioritised by broadcasters. The Commission is of the view that the deaf, hard of hearing and the visually impaired are not homogenous groups, but rather individuals with their own tastes and preferences in relation to their preferred viewing. A choice of viewing across a broad spectrum of programming and times is encouraged.

The Commission's rationale behind the non-specification of programme types and times was to ensure the broadest range of programming was available to users as the services develop. Rather than prescribe programme types at this initial stage, it was considered that periodic consultation between broadcasters and user groups would better facilitate choice of viewing in tandem with the development of services. In keeping with the principle of responsiveness, the Commission will introduce a rule whereby all broadcasters will be required to consult periodically with user groups to ascertain their preferred viewing. In the submissions received a number of broadcasters have indicated that they intend to prioritise peak-time viewing. This is not precluded under the rules.

The review mechanism will allow for this issue to be revisited in light of the experience of user groups and broadcasters to ascertain whether the non-specification of programme genres and programme times has delivered programme choice to user groups.

1.4 Requirement for RTÉ 1 and RTÉ 2 to include children's programming in the development of subtitling and sign language provision

The Draft Rules proposed that RTÉ would be required to include some children's programming in the development each year of subtitling and sign language provision. This was in response to the view of user groups, that in order for children to become familiar with using access services and to ensure that they have access to television programming, part of the percentage increase each year should cater for children's programming. User groups were unanimous in supporting the inclusion of this rule. Broadcasters raised a number of pertinent issues in relation to the appropriateness of subtitling speeds for certain age groups and to programming for children below reading age.

Outcome

The Commission has included a rule requiring that a reasonable proportion of the percentage increase each year in subtitling and sign language provision on RTÉ will include children's programming. This will be reviewed after three years.

2. Subtitling Rules

2.1 Use of Captioning

The consultation document asked whether broadcasters should be permitted to include some captioning in attaining their subtitling targets. This issue was addressed in recognition of the

fact that the on-screen text currently provided on indigenous services varies between captioning and subtitling.

There were a variety of views expressed in relation to this issue. Among user groups, it is considered that captioning is of an inferior standard to subtitling and therefore should not be permitted. User groups stated that captions do not convey all the necessary information and demand too much of the viewer. To allow captioning is to operate a dual standard within the rules. Broadcasters argued that captions provide a useful service and that resources should be directed towards subtitling of home-produced programmes or programmes for which no captioning or subtitling is currently available, rather than subtitling of programmes that are already captioned. They argued that a requirement to use only subtitles could see an initial reduction in the amount of accessible programming. They also cited the fact that user groups have referred positively to the service provided by TG4, despite the fact that this is predominantly captioned.

Outcome

The Commission in deliberating on this issue was conscious of the importance of not reducing the current level of accessible programming. It was also conscious of the differences between broadcasters in relation to the amount of captioning currently employed by each. However, the Commission also recognises that subtitling offers a more comprehensive form of access in terms of the manner in which it assists the viewer in interpreting what is happening on the screen. The Commission considers that the rules should aspire to provide subtitling where possible. In recognition of these views, the Commission has decided to permit the use of captioning in the attainment of targets in a period of transition. This transition period will be reviewed after three years.

The Commission will produce a set of guidelines on subtitling standards and quality and it is expected that broadcasters will adhere to these guidelines when preparing subtitles. However, during this transition period, broadcasters will also be permitted to supplement the levels of subtitling with captions, on programmes where captions are available for purchase. The emphasis is on 'supplementing' the levels of subtitling and the transition period is posited as an opportunity for broadcasters to acquire these skills, resources and expertise in subtitling practice.

2.2 The use of an 18-hour day as the basis for targets

There was substantial agreement at the Forum for the use of an 18-hour day as the basis for the setting and measuring of subtitling targets. The Draft Rules proposed that this would be the period of time between 7am and 1am. This stipulation was based on the experience of deaf groups in other jurisdictions who have argued that, if based on a 24-hour period, broadcasters have tended to subtitle programmes in off-peak hours, including overnight. The 18-hour day was proposed to ensure that broadcasters develop their subtitling provision within mainstream broadcasting hours, thereby maximising the number of people who have access to programming.

In response to the consultation, a number of respondents proposed that peak-time viewing should be prioritised, while others requested that a 24-hour broadcast day be employed as the basis for targets. There was no acknowledgement of the interplay between the percentage targets and the hours over which those targets are measured. The use of an 18-hour day does not preclude broadcasters from prioritising peak time viewing. A 24-hour day, however, would not guarantee that subtitling provision would be developed across mainstream viewing

hours. It was suggested that a specification of time blocks or programme genres would ensure that subtitling provision would be developed during mainstream hours within the 24-hour day. However, as discussed earlier in this document, in the absence of a consensus surrounding viewing preferences of users, there is no basis on which such specification can occur at this time.

Outcome

The Commission will use an 18-hour day as the basis for setting and measuring targets.

2.3 The use of a ten-year timeframe

A ten-year timeframe was proposed for each broadcaster with interim targets to be reached each year. The use of a ten-year timeframe is in keeping with the principle of incremental progression agreed at the Forum. It acknowledges that, while funding is a key consideration, so is the availability of trained personnel, expertise and experience, which are developed over time. This is in keeping with the practice in other jurisdictions. The ‘timeframe’, is in essence, a framework within which the services can be developed. It does not represent the optimum levels for each service but rather proposes that these are levels that can reasonably be expected within this timeframe. It does not preclude a review of the rules finding, that in light of technological and capacity improvements, higher targets can be set. Or indeed that at the end of this specified timeframe, additional higher targets can be set which would see those stations currently not required to reach 100% being required to do so.

Many of the submissions received called for a shorter timeframe. However, those who argued for a shorter timeframe, did not use the influencing factors, although these were agreed as the basis upon which the targets and timeframes would be developed. The submissions did not acknowledge the implications of a shorter timeframe for the targets set.

Outcome

The Commission will employ a ten-year timeframe as the basis for the development of subtitling targets.

2.4 Specific targets for each broadcast service

The Commission used the influencing factors and access principles to develop a set of targets for each broadcaster. The targets were outlined in the consultation document and views were sought. In the responses received, revisions were suggested. However, these were made without reference to the influencing factors or to any new arguments in support of the proposed revisions.

Outcome

The Commission has agreed the use of the current targets as set out in the consultation document. These targets are appended here and will be reviewed after three years.

3. Sign Language Rules

3.1 The use of a 24-hour day as the basis for targets

The 24-hour day was proposed based on a recognition of the technical limitations that currently exist, in the absence of a digital terrestrial platform. These limits mean that ‘closed’ signing, which gives the viewer the discretion on whether to have signing on the screen or not, is not possible. Because open signing is regarded as intrusive for those viewers who do not require it, it is sometimes broadcast during non-mainstream or overnight hours. This

allows the material to be recorded for viewing at another time, thus the requirement for a 24-hour period. There was considerable support across user groups and broadcasters for the use of a 24-hour day as the basis for sign language targets.

Outcome

The Commission will use a 24-hour day as the basis for sign language targets

3.2 *The use of a three-year timeframe*

There is uncertainty regarding the pace and nature of future technical developments in relation to digital terrestrial television and, therefore, it is difficult to predict the pace at which sign language services can develop. For that reason the Draft Rules proposed that an initial three-year timeframe be employed to develop sign language provision, after which time, a full review would be undertaken to determine future targets.

Within the submissions received, there were no objections to the use of a three-year timeframe.

Outcome

The Commission will use a three-year timeframe for the development of sign language provision.

3.3 *Setting of targets for RTÉ 1 and RTÉ 2 only*

The Draft Rules proposed a target of 1% sign language for RTÉ 1 and RTÉ 2. The draft rules did not propose any requirements for TG4 and TV3 at this time. The target was set in acknowledgment of the public service remit and funding of these stations. It is in keeping with the trend in other jurisdictions, whereby the development of sign language is undertaken, at least initially, by the public service broadcaster.

A number of respondents agreed with the proposal as reasonable at this time, while others asked that targets be set for all broadcasters.

Outcome

The Commission will set a target for Irish Sign Language provision for RTÉ 1 and RTÉ 2 only. The review period, after three years, will re-examine this position in respect of TV3 and TG4 at that time.

3.4 *Target of 1%*

A cumulative target of 1% has been set across RTÉ 1 and RTÉ 2. The target was set in acknowledgement of the current technical difficulties in providing 'closed' signing, with a view to it being reviewed after three years.

In response, a number of user groups stated that a target of 5% should be set, some requesting that it be achieved by 2010.

Outcome

The Commission will set a target of 1% at this time. It believes that a target of 5% does not reflect the principle of incremental progression or acknowledge the overall starting position of the services. This target will be reviewed after three years.

4. Audio Description Rules

4.1 The use of a 24-hour day as the basis for targets

As with sign language, there are technical limitations which mean that ‘closed’ audio description, whereby the viewer can turn the service off, is not possible at this time. For that reason, audio-described programming is broadcast during non-mainstream or overnight hours, when it can be video-recorded for viewing at another time.

There were no objections to the use of a 24-hour day as the basis for targets.

Outcome

The Commission will use a 24-hour day as the basis for the audio description targets.

4.2 The use of a three-year timeframe

A three-year timeframe was proposed for the development of audio description. There was almost unanimity with regard to the use of a three-year timeframe in light of technological change and the need to review this development.

Outcome

The Commission will use an initial three-year timeframe for the development of audio description.

4.3 Setting of targets for RTÉ 1 and RTÉ 2

As with sign language, the Draft Rules proposed that audio description targets be set, at least initially, for RTÉ 1 and RTÉ 2 only, in recognition of their public service remit, funding and in keeping with practice in other jurisdictions.

In response, the respondent stated that it believes that targets should be set for all broadcasters in order to encourage the development of the requisite skills and experience.

Outcome

The Commission will set targets for RTÉ 1 and RTÉ 2 only at this time. The audio description target will be reviewed after three years, at which time the Commission will also examine whether targets should be set for the remaining services.

4.4 Specification of programme genres and time blocks

As discussed earlier, the Forum discussions revealed that there was no unanimity as to the programme genres or time blocks that should be prioritised by broadcasters for the development of subtitling and sign language. In relation to audio description, a number of additional considerations present themselves. The respondent has asked that programme genres be specified for audio description. In particular, it asked that home-produced drama be prioritised. Audio description is only available in open format in Ireland. In recognition of this, the respondent asked that the service be developed with a view to establishing an archive of indigenous programming material that can be broadcast overnight for recording or in mainstream hours once the technology becomes available. The respondent is concerned that

if programme genres are not prescribed, broadcasters will not prioritise home-produced programming and subsequently this material will not be available for viewing at a later date, when the technology permits transmission during mainstream hours.

In contrast, it could be argued that specifying the programme genres precludes broadcasters, at this early stage of development, from acquiring audio described programming from abroad.

Outcome

The Commission will not specify the programme genres to be prioritised. However, it will require that a 'reasonable proportion' of the material which is audio described each year will be home-produced material. In this way, the broadcaster will be required to develop the capacity to generate audio description on home produced programming, while also being able to use, at this early stage, acquired audio described programming to fulfil the targets.

4.5 Target of 1%

The Draft Rules proposed an initial target of 1% audio description for RTÉ 1 and RTÉ 2. This target was based on the fact that, at present, no audio described programming is produced in this country. It recognises that there is a need to build up skills and expertise. Coupled with this, is the fact that, currently, the transmission of closed audio description is not technically possible in this country.

There was much criticism of the target from blind and visually impaired contributors to the consultation. There was also some criticism from broadcasters as to the merits of requiring audio description at this time, when closed audio description cannot be broadcast.

Outcome

The Commission will require that RTÉ 1 and RTÉ 2 will reach a minimum target of 1% audio description across the two services, for the reasons outlined above.

5. Review of Rules

The Draft Rules proposed that a review of the Access Rules be carried out at years three and five. In principle, all parties who responded were supportive of regular reviews of the Rules. Views differed in relation to the time periods at which the reviews should be conducted.

Outcome

It is the intention of the Commission to measure progress on a yearly basis. However, a full review of the Rules will be carried out at years three and five. The rationale for this timeframe is based on an acknowledgement of the pace at which technology can change but also a need to allow sufficient time to pass to enable broadcasters to develop their experience and capacity in the provision of these services. It is the intention of the Commission that a review of the Rules will be conducted using a similar consultative ethos, as that used to develop the Rules.

6. Guidelines

The Commission will produce a set of guidelines in relation to subtitling, sign language and audio description. These guidelines, which will be issued in tandem with the Access Rules, will relate to the standards and quality required in relation to each of the forms of provision.

7. Other Issues

7.1 Promotion of Access Services

A number of submissions made reference to the fact that there is a need for broadcasters to promote the existence and usage of access services. The Commission will include a rule in the Access Rules requiring broadcasters to promote the existence and usage of the access services available on their service.

7.2 Role of the BCI

Within the submissions received, both broadcasters and user groups called for the Commission to adopt a role in the development of access services. The type of role described included co-ordination of efforts across the sector to source and provide training, conduct research and monitor technical developments. The Commission's own training and development policy is premised on a principle of working in partnership with the industry to develop capacity. The approach taken is one whereby the Commission facilitates the sector to access the appropriate training, most usually by building an infrastructure through which this can be achieved. Most recent examples include the Learning Waves Network, Craol and Éist.

The Commission has already, as part of the Forum, given a commitment to monitor technical developments, e.g. in relation to audio description. The Commission will also explore what role would be most appropriate to its statutory remit. However, it is important to emphasise that broadcasters will be statutorily obliged to attain their targets regardless of whatever role the Commission subsequently decides to take and that attainment of targets is in no way contingent on that role.

Conclusion

As stated, two phases of consultation were undertaken to develop the Access Rules. The first was the Access Consultative Forum, held between October 2003 and January 2004, attended by representatives of all the stakeholder groups. The outcomes of this thorough process provided the basis for the Access Rules. The key principles and influencing factors that would underpin the rules were identified and there was agreement on the technical parameters. Arising from the discussions and recommendations of the Consultative Forum, the Commission produced a draft set of rules.

The Commission conducted a public consultation on the draft rules between August and November 2004. Within the 47 submissions received, no radical arguments regarding the principles, influencing factors or technical parameters emerged to cause the Commission to substantially change the draft rules.

The Rules will be reviewed after three years.

Appendix 1 Subtitling Targets

The following targets and timeframes will apply:

RTÉ 1

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
55%	65%	75%	85%	93%	95%	97%	98%	99%	100%

RTÉ Network 2

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
24%	33%	42%	51%	60%	67%	73%	80%	85%	90%

TG4

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
24%	30%	36%	42%	50%	56%	62%	68%	74%	80%

TV3

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
12%	19%	26%	33%	40%	44%	48%	52%	56%	60%