

**Submission from the National Disability Authority**  
**to the**  
**Future of Media Commission's Public Consultation**  
**January 2021**



## Introduction

The National Disability Authority (NDA) would like to thank the Future of Media Commission for the opportunity to make this submission.

The NDA was established in 2000 to provide independent and evidence-informed advice to the relevant Minister on matters of policy and practice relevant to the lives of persons with disabilities. The NDA is now under the remit of the Minister for Children, Equality, Disability, Integration and Youth. Since 2007 the NDA has operated a statutory Centre for Excellence in Universal Design. Universal Design promotes the design of the built environment, products, services and ICT, so that they can be accessed, understood and used by everyone, regardless of age, size, ability or disability.

Our role means we cover a very wide range of policy areas, including the accessibility of all forms of media to persons with disabilities and the representation and portrayal of persons with disabilities in Irish broadcasting. We have worked closely with both the former Broadcasting Commission of Ireland and the Broadcasting Authority of Ireland, on these matters. We have also advised the Department of Communications on various related matters such as the accessibility of digital television receiver equipment. That Department recently designated the NDA as the national monitoring body for the implementation of the EU's Web Accessibility Directive (WAD) in Ireland. The WAD is not applicable to public service broadcasters

We offer the following input in areas within our competency.

## Policy context

The material set out below is most relevant to the question below, in red, which is asked under Question 1 of the public consultation document:

**Question 1. How should Government develop and support the concept and role of public service media and what should its role in relation to public service content in the wider media be?**

**How might public service media better respond to the needs and expectations of the public?**

**UN Convention on the Rights of Persons with Disabilities**

Ireland formally ratified the Convention in April 2018.

Under Article 8 of the Convention (Awareness raising) ratifying States are asked to adopt immediate, appropriate and effective measures with a view to:

To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

Ratifying States are also asked to adopt immediate, appropriate and effective measures with a view to:

Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention.

In 2009, the NDA and the BCI published a substantial report on the Representation and Portrayal of Persons with Disabilities in Irish Broadcasting. The NDA has worked with the BAI since then to try and develop a set of commitments and resources for broadcasters that will allow them provide more opportunities for persons with disabilities to be seen and heard on screen and on the radio. The NDA would like to continue this work with the new Media Commission.

Under Article 21 of the Convention (Freedom of expression and opinion, and access to information) ratifying States are asked to adopt immediate, appropriate and effective measures with a view to:

Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities

Under Article 30 of the Convention (Participation in cultural life, recreation, leisure and sport) ratifying States are asked to adopt immediate, appropriate and effective measures with a view to allowing persons with disabilities to:

Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats

Some of these issues have been dealt with, in the past and in part, under the **Broadcasting Act 2009**. For example, the NDA has made submissions to the BAI on successive iterations of their Access Rules.

As you will be aware this Act is due to be replaced by the **Online Safety Media Regulation Bill** when it is enacted. This Bill is also due to transpose the EU's **Audio Visual Media Services Directive**. The relevant sections of that Directive are set out below in Appendix A. The NDA would like the work of the

new Media Commission to reflect the provisions of the Convention in terms of the positive representation of person with disabilities and in terms of the accessibility of broadcasting to persons with disabilities. We would be happy to discuss these issues further.

### **Audio Visual Media Services Directive**

As mentioned above the Directive will be transposed into Irish law, in due course. The table in Appendix A maps the relevant articles in the Directive to the relevant Heads of the General Scheme of the **Online Safety Media Regulation Bill**.

Ensuring the accessibility of audio-visual content is an essential requirement in the context of the commitments taken under the United Nations Convention on the Rights of Persons with Disabilities. In the context of the Directive, the term 'persons with disabilities' should be interpreted in light of the nature of the services covered by that Directive, which are audio-visual media services.

The right of persons with disabilities to participate and be integrated in the social and cultural life of the EU is linked to the provision of accessible audio-visual media services. Therefore, Ireland, as a Member State, should, without undue delay, ensure that media service providers under its jurisdiction actively seek to make content accessible to persons with disabilities, in particular with a vision or hearing impairment. Accessibility requirements should be met through a progressive and continuous process, while taking into account the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time. In order to measure the progress that media service providers have made in making their services progressively accessible to people with visual or hearing disabilities, Ireland should require media service providers to report to them on a regular basis.

The means to achieve the accessibility of audio-visual media services under the Directive should include, but need not be limited to, Irish Sign Language, subtitling for the deaf and hard of hearing, spoken subtitles, and audio description. However, the Directive does not cover features or services providing access to audio-visual media services, nor does it cover accessibility features of electronic programme guides (EPGs). These are covered by the European Accessibility Act, discussed below.

### **Irish Sign Language Act 2017**

This Act was fully commenced by the Minister for Children, Equality, Disability, Integration and Youth on 23 December 2020.

Section 8 of this Act references the Irish Sign Language targets set out under section 43 of the Broadcasting Act 2009 and asks that:

the Broadcasting Authority of Ireland shall adhere to principles of equality, dignity and respect in terms of the promotion and broadcasting of such programmes.

The provision of 'access services' is covered under the BAI's Access Rules.

A known issue is that the quality of access services, such as closed captions, varies across different platforms. Persons with disabilities have reported issues with how closed captions are transported and displayed by providers such as Virgin Media.

The BAI currently do not monitor the quality, only the quantity, of access services. It is important that the new Media Commission consider strengthening this aspect of the BAI's work. COVID-19 has highlighted the necessity to ensure all emergency broadcasts and public health information are provided in an accessible format, including live subtitling and Irish Sign Language. This should be continued across all Irish licensed broadcasters as a regular part of their broadcasting output.

### **European Accessibility Act**

This Act (Directive EU 2019/882) is a directive that aims to improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States. The Act covers products and services that have been identified as being most important for persons with disabilities while being most likely to have diverging accessibility requirements across EU countries. These products include equipment related to digital television services and access to audio-visual media services such as television broadcast and related consumer equipment.

The following services providing access to the actual audio-visual content will need to be accessible because of the **European Accessibility Act**:

- Websites and online applications
- Set-top box-based applications
- Downloadable applications
- Mobile device-based services including mobile applications and related media players and connected television services and electronic programme guides (EPGs).

## Funding public service broadcasting

The material set out below is most relevant to the question below, in red, which is asked under Question 2 of the public consultation document:

### **Question 2. How should public service media be financed sustainably?**

#### **What is the best model for future funding of public service media in Ireland?**

Public service broadcasting is now transmitted to and received on a variety of devices. This includes platforms such as the web and using media players such as the RTE Player.

This progressive view should also take into account that persons with disabilities have the same access needs in relation to content broadcast via these platforms as they do for content broadcast via the digital, satellite and cable platforms. The RTE Player is also available for use on mobile.

In recognition of the existing and projected convergence of broadcasting technologies, the NDA is aware of legislation in other regions, such as the **21st Century Communications & Video Accessibility Act**, in the USA, which requires that broadcasters that provide content with subtitles on TV must also ensure that the same content be subtitled when broadcast via the web.

<http://www.govtrack.us/congress/bills/111/hr3101/text>

As referenced elsewhere, the EU's **Audio Visual Media Services Directive** asks Member States to encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to persons with disabilities

Therefore the NDA asks the relevant Minister to consider that a portion of any new model for future funding of public service media be provided:

1. for the development of the RTE Player on all platforms and devices such that it can support subtitles
2. to ensure all programming that is currently provided by RTÉ with subtitles and Audio Description on TV is provided with subtitles and Audio Description via the web

We are aware that some stakeholders favour the development of a “device independent charge” rather than the current TV licencing model. The NDA

advises there may be potential benefits to same, and would welcome further consideration/consultation of the matter.

With all of this the NDA advises the importance of retaining current exemptions under the existing TV licence system. The economic and social circumstances of a many persons with disabilities means that they spend a large amount of their time at home. The television represents a vital source of entertainment and provides a link with society in general. It is essential that any possible new regime of charges to view television continues to be waived for those persons with disabilities who are eligible for same.

The ability to view TV content on mobile smart phones may require further discussion around a reassessment of how the Department of Social Protection's Household Benefits Package is structured as it currently has separate provisions for TV and phones. The Package helps with cost of a TV Licence and was received by 452,000 people at the end of 2019.

## Appendix A

| Provision of Revised Directive 2018 | Audio Visual Media Services directive Text of Article   | Change from Previous Directive (Y/N) or New | Key Point of Recital/Article | Head (Online safety media regulation bill) | Comment  |
|-------------------------------------|---|---|------------------------------|--|--|
| Article 7(1)                        | Member States shall ensure, without undue delay that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures. | Y   | Accessibility                | Heads 62(2)(j) & 70(4)                     | The previous version of this paragraph was transposed by reference by s. 42(2)(j) of the Broadcasting Act 2009 and s. 12 of S.I. 258.10, which is to be revoked, in respect of on demand audio visual media services. This revised paragraph will be transposed by reference by heads 62(2)(j) and 70(4) of the general scheme of the Online Safety and Media Regulation Bill. |
| Article 7(2)                        | Member States shall ensure that media service providers report on a regular basis to the national regulatory  | New   | Accessibility                | Heads 62(2)(j) & 70(4)                     | This paragraph will be transposed by reference by heads 62(2)(j) and 70(4) of the general scheme of the Online Safety and Media Regulation Bill.   |



| <b>Provision of Revised Directive 2018</b> | <b>Audio Visual Media Services directive Text of Article</b>   | <b>Change from Previous Directive (Y/N) or New</b> | <b>Key Point of Recital/Article</b> | <b>Head (Online safety media regulation bill)</b> | <b>Comment</b>   |
|--|--|--|-------------------------------------|---|--|
|  | authorities or bodies on the implementation of the measures referred to in paragraph 1. By 19 December 2022 and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.           |  |                                     |   |  |
| Article 7(3)                               | Member States shall encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible to persons with disabilities. Any such action plan shall be | New  | Accessibility                       | Heads 62(2)(j) & 70(4)                            | This paragraph will be transposed by reference by heads 62(2)(j) and 70(4) of the general scheme of the Online Safety and Media Regulation Bill. |

| <b>Provision of Revised Directive 2018</b> | <b>Audio Visual Media Services directive Text of Article</b>   | <b>Change from Previous Directive (Y/N) or New</b> | <b>Key Point of Recital/Article</b> | <b>Head (Online safety media regulation bill)</b> | <b>Comment</b>   |
|--|--|--|-------------------------------------|---|--|
|  | communicated to national regulatory authorities or bodies.   |  |                                     |   |  |
| Article 7(4)                               | Each Member State shall designate a single, easily accessible, including by persons with disabilities, and publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues referred to in this Article. | New  | Accessibility                       | Heads 62(2)(j) & 70(4)                            | This paragraph will be transposed by reference by heads 62(2)(j) and 70(4) of the general scheme of the Online Safety and Media Regulation Bill. Head 61(1)(c) of the Online Safety and Media Regulation Bill provides that the public may make complaints to the Media Commission regarding breaches of media rules made under Head 70. As media rules made under Head 70 will encompass Article 7 of the directive, Head 61(1)(c) fulfil this requirement of the Directive in relation to an online point of contact for complaints. |

| <b>Provision of Revised Directive 2018</b> | <b>Audio Visual Media Services directive Text of Article</b>  | <b>Change from Previous Directive (Y/N) or New</b> | <b>Key Point of Recital/Article</b> | <b>Head (Online safety media regulation bill)</b> | <b>Comment</b>   |
|--|---|--|-------------------------------------|---|--|
| Article 7(5)                               | Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audio-visual media services, is provided in a manner which is accessible to persons with disabilities. | New  | Accessibility                       | Heads 62(2)(j) & 70(4)                            | This paragraph will be transposed by reference by heads 62(2)(j) and 70(4) of the general scheme of the Online Safety and Media Regulation Bill. |