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Věc:

Různí poskytovatelé; Zpřístupňování televizního vysílání ve Velké Británii - informační materiál

Termín pro (vypravení) rozhodnutí Rady:

Návrh na usnesení Rady:

Rada se seznámila s informací o stavu zpřístupňování televizního vysílání pro osoby se zrakovým a sluchovým postižením za rok 2015 ve Velké Británii.

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Přílohy:

Dokument (text materiálu, 18.2.2016, text materiálu); Dokument (ostatní, 18.2.2016, Obecné zpřístupnění Ofcom); Dokument (ostatní, 18.2.2016, Titulkování živého vysílání Ofcom);

Lustrum:

Na tomto zasedání je Radě předkládána analýza zpřístupňování televizního vysílání dle § 32 odst. 2 zákona č. 231/2001 Sb. V návaznosti na tento materiál předkládá OATV rovněž informační materiál týkající se stavu zpřístupňování televizního vysílání osobám zrakově a sluchově postiženým ve Velké Británii.

Zpřístupnění pomocí titulkování, znakové řeči a audiopopisu

V říjnu 2015 vydal britský regulátor zprávu o zpřístupnění televizního vysílání za první pololetí 2015 (originál přiložen k tomuto materiálu)

Shrnutí:

Domácí provozovatelé televizního vysílání naplňují zákonem požadované kvóty bez jakýchkoliv problémů, ba dokonce je i převyšují.

Od roku 2014 jsou i zahraniční provozovatelé povinni plnit předem stanovené kvóty zpřístupňování televizního vysílání, přičemž většina rovněž nemá větší problémy tyto naplnit.

Pro Radu je zajímavá skutečnost týkající se programu Nickelodeon a Nickelodeon Junior, jež vysílají na území Francie. Tito neplnili zákonné požadavky na titulky a audiopopisy celé první pololetí kalendářního roku 2015. **Provozovatel toto vysvětlil jako technickou závadu a naplánoval si své vysílání tak, aby do konce kalendářního roku 2015 stihl naplnit zákonné kvóty. Samotný Ofcom k tomuto dále dodává, že podobné jednání očekává i od ostatních provozovatelů, kteří nestihnou v prvním pololetí naplnit zákonné kvóty.**

Další zpráva o naplňování kvót pro zpřístupnění televizního vysílání pomocí titulkování, znakové řeči a audiopopisu by měla být k dispozici v březnu 2016.

Vysvětlivka k níže uvedenému přehledu: Značka „alt“ znamená, že provozovatel přispívá do speciálního národního fondu znakové řeči („British Sign Language Broadcasting Trust“), který sám tvoří pořady se znakovou řečí a ty jsou poté umisťovány na program Film4 nebo Community Channel.

OATV doporučuje Radě si povšimnout žlutě zvýrazněné sekce hudebních programů. Program MTV je sice koncipován jako hudební, nicméně vzhledem k jeho nesčetným mutacím je tento původní program již spíše plněn mýdlovými operami, real life drama a podobnými – lze po něm tedy spravedlivě požadovat zpřístupňování na rozdíl od jeho více hudebních „kolegů“ jako Viva nebo MTV Music.

Program	titulky		Audiopopis		Znaková řeč	
	Požadované zpřístupnění	Dosažené zpřístupnění (2015 Q1-2)	Požadované zpřístupnění	Dosažené zpřístupnění (2015 Q1-2)	Požadované zpřístupnění	Dosažené zpřístupnění (2015 Q1-2)
LEVEL 1						
BBC 1 ⁽⁻¹⁾	100.0%	99.9%	10.0%	22.6%	5.0%	5.3%
BBC 2	100.0%	99.9%	10.0%	22.3%	5.0%	5.2%
BBC3	100.0%	100.0%	10.0%	32.0%	5.0%	5.6%
BBC4	100.0%	100.0%	10.0%	33.3%	5.0%	6.1%
BBC News	100.0%	99.9%	Exempt		5.0%	5.0%
CBBC	100.0%	100.0%	10.0%	30.0%	5.0%	5.9%

Cbeebies	100.0%	100.0%	10.0%	30.4%	5.0%	5.3%
ITV1	90.0%	90.5%	10.0%	16.0%	5.0%	9.9%
ITV2	80.0%	91.3%	10.0%	30.3%	5.0%	5.7%
ITV3	80.0%	96.5%	10.0%	46.3%	5.0%	5.1%
ITV4	72.0%	83.0%	10.0%	28.5%	4.0%	5.0%
CITV	70.0%	97.2%	10.0%	24.1%	30 min znakové řeči měsíčně	140 min znakové řeči měsíčně
Channel 4	90.0%	100.0%	10.0%	26.0%	5.0%	5.3%
E4	80.0%	100.0%	10.0%	48.0%	5.0%	5.4%
Film 4	70.0%	100.0%	10.0%	25.4%		Alt
More 4	70.0%	100.0%	10.0%	28.0%		Alt
4Seven	30.8%	100.0%	5.7%	21.9%		Alt
Channel 5	80.0%	88.6%	10.0%	16.2%	5.0%	10.3%
5*	70.0%	78.2%	10.0%	33.6%		Alt
5 USA	70.0%	81.4%	10.0%	18.5%		Alt
Challenge	80.0%	82.2%	10.0%	24.1%		Alt
Pick TV	72.5%	82.2%	10.0%	24.5%		Alt
Sky Arts	70.8%	92.1%	10.0%	13.0%		Alt
Sky Atlantic	35.0%	98.1%	7.7%	30.5%		Alt
Sky Living	80.0%	94.2%	10.0%	33.1%		Alt
Sky Movies Action	80.0%	90.0%	10.0%	39.1%		Alt
Sky Movies Comedy	80.0%	90.3%	10.0%	39.6%		Alt
Sky Movies Disney	10.0%	82.8%	3.5%	33.0%		Alt
Sky Movies Drama Romance	80.0%	90.2%	10.0%	28.9%		Alt
Sky Movies Family	80.0%	93.1%	10.0%	36.0%		Alt
Sky Movies Greats	80.0%	86.3%	10.0%	34.5%		Alt
Sky Movies Premiere	80.0%	84.9%	10.0%	29.4%		Alt
Sky Movies Sci-fi/Horror	80.0%	88.6%	10.0%	35.7%		Alt
Sky Movies Showcase	70.0%	96.1%	10.0%	54.8%		Alt
Sky Movies Thriller	70.0%	90.8%	10.0%	28.1%		Alt
Sky News	80.0%	81.4%	Výjimka			Alt
Sky One	80.0%	92.6%	10.0%	25.4%		Alt
Sky Sports 1	80.0%	82.8%	10.0%	18.4%		Alt
Sky Sports 2	80.0%	81.0%	10.0%	17.5%		Alt
Sky Sports 3	80.0%	82.1%	10%	15.1%		Alt
Sky Sports 4	80.0%	83.0%	10%	13.6%		Alt
Sky Sports F1	30.8%	81.2%	5.7%	14.6%		Alt

Sky Sports News	80.0%	80.6%	Výjimka			Alt
Sky Two	80.0%	98.4%	10.0%	36.0%		Alt
Disney Channel	80.0%	85.2%	10.0%	29.9%		Alt
Disney Junior	80.0%	91.2%	10.0%	25.8%		Alt
Disney XD	80.0%	86.2%	10.0%	23.4%		Alt
4Music	80.0%	89.0%	10.0%	22.0%		Alt
Dave	80.0%	87.4%	10.0%	31.4%		Alt
Watch	62.5%	75.6%	10.0%	30.9%		Alt
Yesterday	80.0%	88.6%	10.0%	28.0%		Alt
Alibi	80.0%	81.7%	10.0%	44.2%		Alt
Good Food	80.0%	90.6%	10.0%	22.6%		Alt
Home	80.0%	88.8%	10.0%	34.7%		Alt
GOLD	80.0%	86.6%	10.0%	36.2%		Alt
Eden	80.0%	85.2%	10.0%	29.2%		Alt
Really	60.0%	80.6%	10.0%	25.6%		Alt
Drama	10.0%	69.2%	3.0%	13.9%		Alt
Discovery	80.0%	82.4%	10.0%	14.1%		Alt
Animal Planet	80.0%	83.5%	10.0%	10.9%		Alt
Quest	60.0%	61.2%	10.0%	12.3%		Alt
TLC	10.0%	68.1%	3.5%	3.8%		Alt
Universal	80.0%	83.2%	10.0%	19.4%		Alt
BT Sport 1	10.0%	23.4%	3.0%	2.7%		Alt
S4C	53.0%	78.0%	10.0%	12.3%	5.0%	5.4%
MTV	52.8%	83.9%	10.0%	20.2%		Alt
MTV Music	23.1%	59.2%	Výjimka			Alt
Viva	52.8%	73.5%	Výjimka			Alt
Comedy Central	52.8%	73.7%	10.0%	24.8%		Alt
Comedy Central extra	52.8%	55.1%	10.0%	14.2%		Alt
Nick Jr	52.8%	39.3%	10.0%	20.0%		Alt
Nickelodeon	52.8%	67.6%	10.0%	15.2%		Alt
Nick Jr 2	46.2%	41.0%	10.0%	20.8%		Alt
Nicktoons	52.8%	60.4%	10.0%	7.9%		Alt
Boomerang	26.4%	26.7%	10.0%	26.7%	30 min znakové řeči za měsíc	45 min znakové řeči za měsíc
Cartoon Network	26.4%	33.8%	10.0%	33.9%	30 min znakové řeči za měsíc	45 min znakové řeči za měsíc

Členský stát	Program	titulkování		audiopopis	
		Požadované zpřístupnění	Dosažené zpřístupnění (2015 Q1-2)	Požadované zpřístupnění	Dosažené zpřístupnění (2015 Q1-2)
Dánsko	Kanal 4	15.0%	65.0%	4.0%	8.2%
	Kanal 5	15.0%	74.3%	4.0%	5.1%
	6'eren	15.0%	67.8%	4.0%	6.4%
	TV3	15.0%	72.1%	4.0%	3.9%
Francie	The Discovery Channel	15.0%	16.2%	4.0%	3.0%
	Discovery Science	15.0%	13.2%	4.0%	7.4%
	Cartoon Network	15.0%	19.7%	4.0%	1.9%
	Disney Cinemagic	15.0%	27.0%	4.0%	7.4%
	Nickelodeon	15.0%	0.0%	4.0%	0.0%
	Nickelodeon Junior	15.0%	0.0%	4.0%	0.0%
Nizozemí	The Discovery Channel	15.0%	100.0%	4.0%	4.6%
Irsko	BBC 1	100.0%	99.9%	Technická výjimka	
	BBC 2	100.0%	99.9%	Technická výjimka	
	Sky Living	80.0%	94.2%	Technická výjimka	
	Sky One	80.0%	92.6%	Technická výjimka	
	Channel 4	90.0%	100.0%	Technická výjimka	
Itálie	AXN	15.0%	18.0%	Technická výjimka	
	The Discovery Channel	15.0%	24.1%	4.0%	8.2%
	Discovery Science	15.0%	17.6%	4.0%	9.5%
Polsko ⁽⁻²⁻⁾	Discovery Life	15.0%	21.0%	Technická výjimka	
	AXN	15.0%	61.9%	Technická výjimka	
	The Discovery Channel	15.0%	21.7%	Technická výjimka	
	Discovery Science	15.0%	22.7%	Technická výjimka	
	Discovery Turbo Xtra	15.0%	19.9%	Technická výjimka	
	Investigation Discovery	15.0%	18.8%	4.0%	6.5%
	TLC	15.0%	20.0%	Technická výjimka	
Švédsko	The Discovery Channel	15.0%	100.0%	4.0%	4.1%
	Kanal 5	15.0%	97.7%	4.0%	7.1%
	Kanal 9	15.0%	99.0%	4.0%	5.4%
	TV3	15.0%	100.0%	4.0%	1.3%
	TV3 Puls	15.0%	85.1%	4.0%	4.1%
	TV6	15.0%	97.9%	4.0%	4.1%
	TV8	15.0%	98.6%	4.0%	3.8%
Dánsko	TLC	12.0%	100.0%	4.0%	5.2%

Titulky živého televizního vysílání

27. listopadu 2015 zveřejnil britský regulátor Ofcom zprávu o měření kvality **titulkování živého vysílání**. Regulátor provedl analýzu namátkou vybraného televizního vysílání a to z dubna a května 2015 na programech BBC, ITV, Channel 4, Channel 5 a Sky.

Kritéria pro posouzení kvality živého titulkování byla:

- Přesnost (počet a druh chyb)
- Zpoždění (průměrné zpoždění a rozsah od nejkratšího po nejdelší)
- Rychlost (průměrná rychlost)

Posouzení kvality titulkování bylo zadáno externímu zpracovateli „University of Roehampton“ a to z důvodu, aby byla provedena kontrola konzistence kvality (předchozí měření prováděli na žádost regulátora samotní provozovatelé).

Pokud OATV může materiál shrnout, lze říci, že

- Přesnost titulků byla vyšší než při předchozích měřeních provozovateli, tedy 98,55%. Takto vysoké přesnosti bylo docíleno směsí předpřipravených titulků a živých titulků. Nicméně je třeba říci, že značným přínosem byly i sporadickéjší technické problémy.
- Zpoždění titulkování se ve srovnání s předchozími analýzami provozovatelů udrželo na zhruba stejné úrovni a to 5.6 vteřin, přičemž metodika Ofcomu uvádí jako doporučené zpoždění max. 3 vteřiny.
- Rychlost titulků byla v akceptovatelné rovině a to 160-180 slov za minutu u předpřipravených titulků a u živého titulkování přesahovala i 200 slov za minutu .

K značnému rozdílu mezi reálným a doporučeným zpožděním titulkování Ofcom dodává, že ačkoliv provozovatelé konstatují značnou finanční a technickou náročnost snížení času k požadovaným 3 vteřinám, ve spolupráci Ofcomu s BBC, Channel 4 a Ericssonem bylo dosaženo alternativního technického řešení. Detaily tohoto návrhu, jež plánuje BBC uvést na svých HD programech lze nalézt v sekci 3 příloženého materiálu (originální znění zprávy o zpřístupnění).

K rychlosti titulkování, jež překračovala pro diváka užitnou hodnotu (200 slov za minutu) provozovatelé na dotaz regulátora uvedli, že přijmou softwarová limitující opatření nebo speciální tréninky pro osoby vytvářející titulky, aby k těmto chybám již nedocházelo.

Ofcom na závěr uvádí :

- Oceňuje předpřípravu titulkování, neboť tato činnost výrazně přispívá ke zkvalitnění přístupu k televiznímu vysílání
- Oceňuje sdílení příslušných a relevantních dokumentů za účelem zkvalitnění titulkování
- Je třeba pokračovat ve spolupráci všech subjektů, které se podílejí na technické podobě titulkování.
- Do budoucna se počítá se studií zaměřenou na možnosti a preference různých skupin diváků, kteří využívají zpřístupnění televizního vysílání.
- Zveřejnění dalšího specializovaného výzkumu na toto téma se očekává na začátku roku 2016, na což bude navazovat období projednávání zjištěných skutečností s provozovateli vysílání.

Pro podrobnosti je přiložen materiál o zpřístupnění v originálním znění se všemi přílohami.



Measuring live subtitling quality

Results from the fourth sampling exercise

Publication date: 27 November 2015

Contents

Section		Page
1	Summary	2
2	Accuracy	7
3	Latency	15
4	Speed of subtitling	19
5	Edition rates	26
6	Next steps	29
Annex		Page
1	External review of measurements	32

About this document

This document is the last of four reports on the quality of live subtitling of British television programmes, based on samples drawn from live-subtitled programming broadcast in April and May 2015 by the BBC, ITV, Channel 4, Channel 5 and Sky. In addition to setting out the results of measurements of accuracy, latency and speed for the samples, the report sets out the next steps that Ofcom intends to take. This includes research on how subtitle users would prefer trade-offs to be addressed.

Section 1

Summary

Introduction

1.1 This document is the last of four reports on the quality of live subtitling on British television programmes, based on samples drawn from live-subtitled programming broadcast in April and May¹ 2015 by the BBC, ITV, Channel 4, Channel 5 and Sky.

Background

1.2 Ofcom's statutory duties require it, among other things, to provide guidance to broadcasters on how they should promote the understanding and enjoyment of their services by people with sensory impairments, including people with hearing impairments.

1.3 In the light of our statutory duties and of continuing concerns about the quality of live subtitling, in 2013² Ofcom began a two-year project to measure the quality of live subtitling, in order to identify areas for improvement and encourage broadcasters to act upon these.

1.4 For this purpose, Ofcom asked five broadcasters³ to measure the following dimensions of quality on samples of their live-subtitled programmes selected by Ofcom every six months:

a) accuracy: the number and type of errors (i.e. minor spelling errors, major omissions or factually misleading subtitles), using the NER model⁴;

b) the average latency of the subtitling (the delay between speech and live subtitling), and the range of latencies; and

c) the average speed of the subtitling, measured in words-per-minute ('wpm') rates.

1.5 The first three reports were published between April 2014 and May 2015⁵. For the purpose of this project, we asked a team of experts from the University of Roehampton to check the broadcasters' measurements for consistency.

Fourth report

1.6 Sections 2, 3 and 4 of this document report on the three dimensions of live subtitling quality listed above, as well as on issues raised by the reviewers, such as the number of peaks in subtitling speed. Section 5 reports on the extent to which subtitles are edited down.

¹ With the exception of two samples of entertainment programmes shown on Channel 5, which were broadcast in June of the same year.

² *Measuring the quality of live subtitling*, Ofcom, 16 October 2013 (<http://stakeholders.ofcom.org.uk/consultations/subtitling/statement>)

³ The broadcasters involved in this project were: the BBC, ITV, Channel 4, Channel 5, and Sky.

⁴ For more about the NER Model, see: Ofcom, *Measuring live subtitling quality – Results from the first sampling exercise*, 30 April 2014; paragraphs 2.2-2.5.

⁵ All four reports on the quality of live subtitling can be found at the following link: <http://stakeholders.ofcom.org.uk/consultations/subtitling/>

- 1.7 Section 6 sets out the next steps that will follow this report.
- 1.8 The qualitative report by the external reviewers from the University of Roehampton, including a survey of the main findings from the four sampling exercises, can be found at Annex 1.
- 1.9 In particular, the external reviewers noted that, in the fourth round of sampling:
- a) the average **accuracy** rate was the highest of all four sampling rounds, at 98.55%. This was mostly due to the continued use of a mix of live subtitles and subtitles prepared in advance for scripted or pre-recorded segments; but it also reflected fewer technical faults. This round of measurements also saw the highest proportion (80%) of samples deemed to have subtitles of acceptable quality, with accuracy rates at or above 98%. However, these accuracy rates were not adjusted to take account of the impact of rapid subtitling (see paragraphs 1.16 to 1.19 below);
 - b) the average **latency** (5.6 seconds) was broadly in line with the first two reports (5.4 and 5.6 seconds respectively), but higher than the third report (5.1 seconds), and well above the 3 seconds recommended in Ofcom's Guidelines on the provision of television access services⁶. This is despite a reduction in the average latency in samples of news bulletins with respect to the first two reports; and
 - c) the average subtitling **speed** was below the range of 160-180 wpm recommended for pre-recorded subtitles in all but one sample and so acceptable. However, a very high proportion (92%) of samples featured short bursts of 'rapid subtitles' (i.e. instances of live subtitling at speeds exceeding 200 wpm), although smaller than in the third round (99%). This issue affected news bulletins more than other genres: 87% of the samples of news included at least one example of subtitles faster than 200 wpm, and in 20% of the samples at least half the subtitles were faster than this.

Tackling latency

- 1.10 Since our 2013 consultation⁷, we have had extensive discussions with broadcasters about whether the apparently intractable problems of latency could be addressed by inserting short delays in the transmission of certain programmes that are subtitled live. Broadcasters argued that the cost and complexity of inserting short delays would be disproportionate to the benefits that subtitle users would enjoy.
- 1.11 However, the BBC and Channel 4, working with their access service and playout provider, Ericsson, have identified an alternative technical solution that could reduce latency significantly – so-called 'switchable delays'. In brief, this would take advantage of delays that are inherent in the coding, multiplexing and playout processes for video, audio and subtitling. By allowing subtitles (but not audio or video) to short circuit these processes, it may be possible to reduce latency by 4-5 seconds in channels broadcast in high definition (HD).
- 1.12 Ofcom understands that the trials conducted in the BBC R&D lab have yielded some promising results. Unlike the proposal for short delays, the benefits would extend to all live subtitled programmes, including news and sports. More detail on this,

⁶ see *Ofcom's Code on Television Access Services*, 13 May 2015 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf>); Annex 4.

⁷ Ofcom, *The quality of live subtitling – Improving the viewer experience*, 17 May 2013 (<http://stakeholders.ofcom.org.uk/binaries/consultations/subtitling/summary/subtitling.pdf>)

including the BBC's plans to roll it out on their HD channels, is given in Section 3. Initially, this technical solution will only be available on HD channels, though there is the prospect of making it available on SD channels.

- 1.13 Channel 4 has told us that it is planning a proof-of-concept trial of a very similar approach. The BBC and Channel 4 have told us that they are willing to share the results of their trials, and we will seek to facilitate discussions with ITV, Channel 5 and Sky on the technical approach, so that they consider whether it would be feasible in their particular circumstances. But we recognise that broadcasters use different technical systems and that this approach may not work for all.
- 1.14 The reduction in latency resulting from these plans would not tackle the particular problem of lower subtitling accuracy scores for some popular entertainment and chat shows. Some of these, like Gogglebox, are pre-recorded, and Ofcom believes that broadcasters should make greater efforts to enable subtitles for such programmes to be prepared in advance, even if they have to be cued out live.
- 1.15 At a recent meeting of the Eurovision Access Services Experts Group⁸, the Flemish public service broadcaster (Vlaamse Radio- en Televisieomroeporganisatie, or VRT) demonstrated to Ofcom and others how it uses short delays to produce higher quality subtitles. VRT now produces about 20 hours a week of programmes with 'delayed live subtitling'. While we remain of the view that short delays in live transmissions would be technically feasible in the UK, we consider that it is likely to be more fruitful in the medium term for UK broadcasters to concentrate their efforts on using switchable delays to secure significant improvements in latency, where their transmission infrastructure allows.

Rapid subtitling

- 1.16 As with the third report, this report includes 'adjusted' accuracy measurements which treat subtitles shown at speeds above 200 wpm as standard errors for the purpose of accuracy measurements. This reflects research (see Section 4) which suggests that subtitles shown at speeds above 200 wpm are too fast for subtitle users.
- 1.17 The results are summarised in Section 2. In short, once the median scores are adjusted on that basis, the overall average accuracy falls slightly below the acceptability threshold, at 97.93%. At the same time, the proportion of samples with accuracy below 98% increases from 20% to 50%.
- 1.18 In our third report, we said that we would ask broadcasters to report on what measures they were taking or planning to avoid rapid subtitling. As explained in Section 4, all broadcasters have told us that they impose software-enabled limits on the speed at which subtitles are shown on screen, but that none of them uses a limit as low as 200 wpm out of a concern that this could result in higher latency.
- 1.19 Some broadcasters indicated that they are considering other approaches alongside speed limits, such as specific training for subtitlers, or the improvement of the broadcast infrastructure to lessen the impacts of 'bottlenecks' for the live subtitle data stream.

⁸ see: <https://www3.ebu.ch/contents/events/2015/10/eurovision-access-services-exper.html>

Next steps

- 1.20 In our 2013 Statement, we said that at the end of this project we would consider whether a review of the Guidelines was necessary, in the light of the evidence collected through the sampling exercises. Given the developments in subtitling approaches and understanding of quality issues since the Guidelines were first published, we consider that a review would be worthwhile, and we will also consider whether changes should be made to rules in the Code on Television Access Services.
- 1.21 However, before proposing any specific changes, we intend to discuss the main findings of the four rounds of sampling, as well as any additional research carried out in recent years, with groups representing subtitle users and with broadcasters and access service providers. For this reason, any conclusions that could be drawn at this stage are preliminary.
- 1.22 That said, it is clear from this exercise that:
- a) by making every effort to prepare subtitles in advance for pre-recorded programmes, broadcasters and access service providers can significantly improve the quality of the viewing experience for subtitle users. We hope that programme producers will recognise the value of giving subtitlers sufficient time to prepare subtitles in advance, as live subtitling impairs the quality of their product for subtitle users;
 - b) broadcasters have helped to improve the quality of live subtitling for news programmes by giving access service providers access to relevant material, including running orders, autocue scripts and live feeds from the newsroom;
 - c) when producing live subtitling, trade-offs need to be struck between different quality dimensions. For example, it would be possible to produce accurate, verbatim subtitles for a fast-paced programme, but only if viewers accepted significant delays in the subtitles appearing; and
 - d) technical problems occur along the subtitling supply chain relatively frequently, although they affect a very small proportion of output. Not all technical problems stem from consumer equipment. Ofcom will consider how best to encourage broadcasters to limit the number of technical problems to a low level.
- 1.23 How trade-offs between different dimensions of quality are struck can have a significant impact on the viewing experience for subtitle users. We understand that broadcasters and access service providers are aware of these trade-offs, and have discussed some of them with subtitle users and groups representing their interests.
- 1.24 Nevertheless, we consider that it would be worthwhile commissioning independent research on subtitle users' attitudes towards these trade-offs, as:
- a) it would shed light on the preferences of subtitle users with different levels of hearing loss, different ages and different educational attainments, so that we can see whether there any differences in how they view the trade-offs; and
 - b) the outcome will be published on Ofcom's website, so will be transparent to all interested parties.

- 1.25 We have invited broadcasters, access service providers and groups representing the interests of subtitle users to comment on the issues that the research should look at, so that we can take their views into account before we commission the work.
- 1.26 We expect to publish the outcome of the research in early 2016, and to discuss it with stakeholders thereafter. We will take account of their views, the independent research we will commission, as well as recent third party research, before consulting on any changes to Ofcom's Guidance and Code.

Acknowledgments

- 1.27 Ofcom would like to thank both broadcasters and subtitling providers for their collaboration in this project, as well as the external reviewers from the University of Roehampton.

Section 2

Accuracy

- 2.1 Live subtitling – especially when done through respeaking – is inevitably marred by mistakes, due to the complexity of the respeakers' task and to the limitations of recognition software⁹. These errors force viewers to spend time working out what was meant. In some situations, even tiny mistakes, such as the substitution of 'fifteen' for 'fifty', may cause confusion for the viewer and generate false but credible information.
- 2.2 Subtitling accuracy refers to the ability of the subtitles to correctly and fully convey the audible information that would not otherwise be accessible to subtitle users. A well-recognised method for the measurement of subtitling accuracy, which has been adopted by Ofcom for the purposes of this project, is the NER Model¹⁰. Throughout this project, the team of external reviewers identified 98% as the quality threshold above which the quality of subtitling can be considered as 'acceptable'.
- 2.3 As part of the research into subtitle users' attitudes towards live subtitling that we are planning to commission, we shall try to find out more about what accuracy levels, as measured by the NER Model, are considered acceptable by subtitle users.

Summary of results

- 2.4 The figures in this Section illustrate the results of measuring accuracy on both an 'unadjusted' and 'adjusted' basis. The unadjusted results show the accuracy of all subtitles on the same basis, regardless of whether they are displayed at or below 200 wpm.
- 2.5 Research suggests that subtitles above 200 wpm ('rapid subtitles') will be unreadable for many subtitle users¹¹ (although we note the BBC's latest research in this area – see section 4). In order to account for the detriment in the readability of the subtitles resulting from rapid subtitles, since the third round of sampling we have included 'adjusted accuracy measurements' in our reports. The adjusted measurements treat rapid subtitles as 'standard' errors, which results in the accuracy score being reduced. For the purpose of the application of the NER model, standard errors are defined as those errors that "result in the omission of an information unit from the original text"¹². Despite these errors do not actively create new misleading meaning, standard errors disrupt the flow/meaning of the original text and often cause surprise to the viewer¹³.
- 2.6 In both cases, 98% acceptable quality threshold is shown with a bold blue line.

⁹ For more information on how subtitles are produced, see: Ofcom, *The quality of live subtitling – improving the viewer experience*, 15 May 2013, section 4.

¹⁰ For more about the NER Model, see: Ofcom, *Measuring live subtitling quality – Results from the first sampling exercise*, 30 April 2014; paragraphs 2.2-2.5.

¹¹ Romero-Fresco, Pablo: *Quality in Live Subtitling: The Reception of Respoken Subtitles in the UK* (<http://connection.ebscohost.com/c/articles/78120106/quality-live-subtitling-reception-respoken-subtitles-uk>).

¹² Romero-Fresco, Pablo & Martinez, Juan: *Accuracy Rate in Live Subtitling – the NER Model* (2011), Roehampton University, UK

(<http://roehampton.openrepository.com/roehampton/bitstream/10142/141892/1/NER-English.pdf>)

¹³ *ibid.*

Unadjusted results

- 2.7 Figures 1, 2 and 3 below show the median unadjusted accuracy rates for all three sets of samples taken from news bulletins, chat shows and entertainment programmes in all four round of sampling.
- 2.8 This sampling exercise saw the highest proportion of samples with subtitling deemed as 'acceptable' or better since the beginning of this project (80%)¹⁴, and the highest proportion of samples with subtitling deemed as 'very good' or 'excellent' (29%)¹⁵. Furthermore, in the fourth round of measurements, two genres – news and chat shows – experienced their highest ever median accuracy rate, with samples of chat shows obtaining a median rate above 98% for the second time since the start of this project.
- 2.9 This round of measurements also recorded the highest median accuracy scores in samples chat shows and news bulletins. In the case of chat shows, the median accuracy (98.38%) was above the acceptability threshold for the first time since the first sampling exercise. As explained by the external reviewers, this was helped by a lower average speech rate (185 wpm) recorded in samples of chat shows than in the previous round of measurements (222 wpm).
- 2.10 The median accuracy in samples from entertainment shows was the lowest since the beginning of the exercise (98.44%). Almost one in three samples (30%) had an accuracy rate below the acceptability threshold, more than in the past two sampling rounds (respectively, 11% and 25%).
- 2.11 We note that, as the external reviewers pointed out, this is partially influenced by the different types of entertainment programming sampled over the course of this project. The reviewers note that some of the programmes selected in the later rounds of sampling, such as Game Changers (Sky) or Big Brother (Channel 5), share many traits with chat shows, such as higher average speech rates, or several people speaking at the same time.
- 2.12 One of the lessons learned from this exercise (see Section 6) is that providing subtitlers with scripts and pre-recorded material can make the difference in the quality of the live subtitling produced. For this reason, we concur with the external reviewers' recommendation to make as much material of this type available to subtitlers whenever possible, and in particular for popular entertainment programmes of the type included in our sample.

¹⁴ Respectively, the proportion of samples with accuracy rates higher than 98% in previous sampling rounds was: 76%, 74%, and 77%.

¹⁵ Respectively, the proportion of samples with accuracy rates higher than 99% in previous sampling rounds was: 26%, 24%, and 24%.

Figure 1: median accuracy rates in samples drawn from news bulletins
(higher bars represent a better viewing experience)

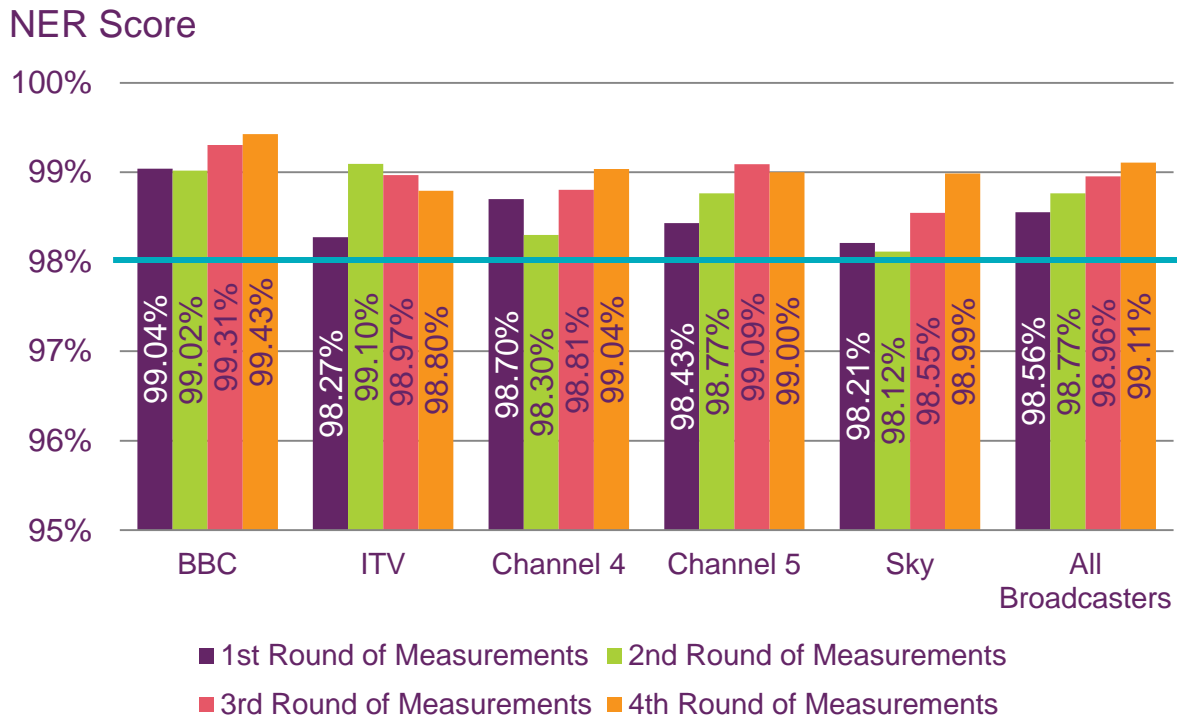


Figure 2: median accuracy rates in samples drawn from chat shows
(higher bars represent a better viewing experience)

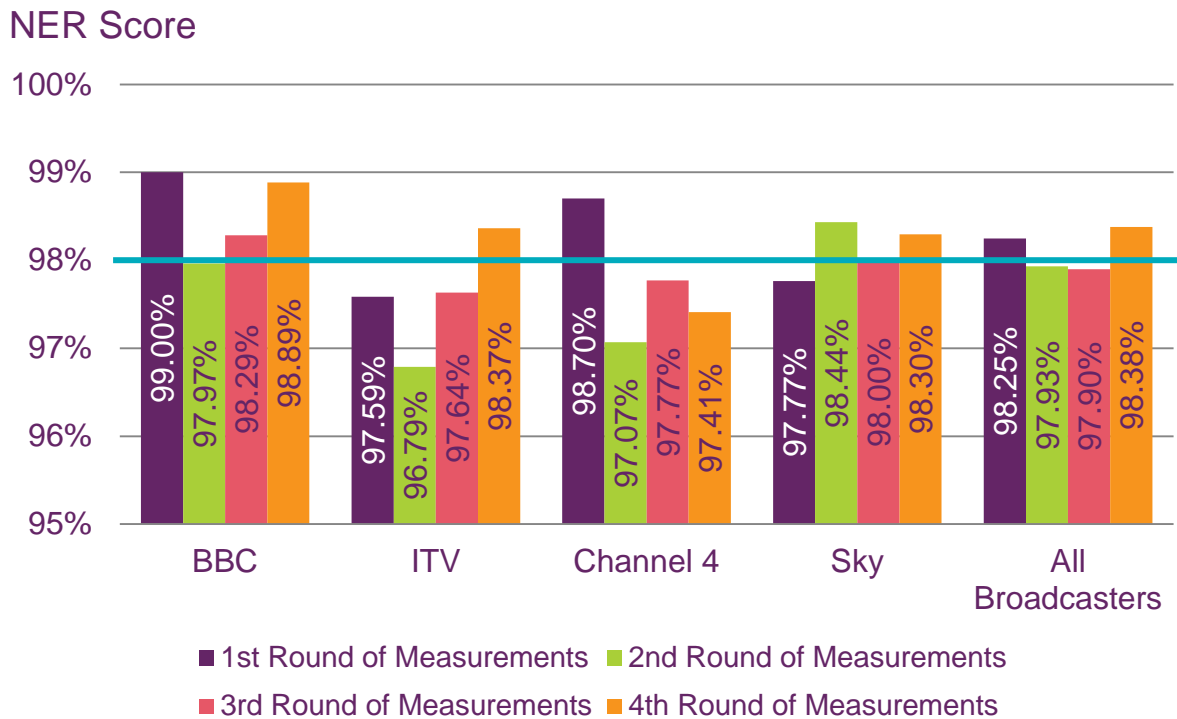
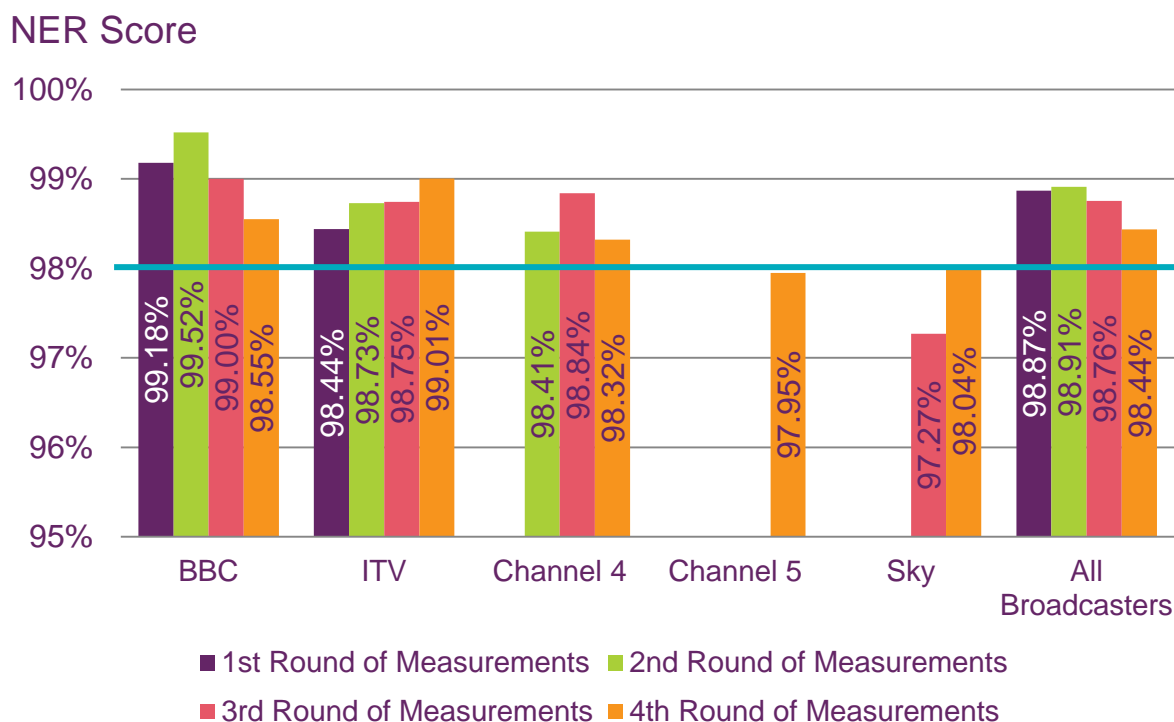


Figure 3: median accuracy rates in samples drawn from entertainment programmes
(higher bars represent a better viewing experience)



Note: the first round of measurements did not include samples of entertainment programming shown on Channel 4 and Sky; the first two rounds of measurements did not include samples of entertainment programming shown by Sky; the first three rounds of measurements did not include samples of entertainment programming shown on Channel 5

Adjusted results

- 2.13 Figures 4, 5 and 6 compare the unadjusted and adjusted accuracy rates in the fourth round of sampling. In this context, every accurate subtitle shown at a speed above 200 wpm has been treated as a standard error. Ofcom recognises that the adjusted results are an imprecise measure of the accuracy of subtitles that include incidences of rapid subtitling. However, we consider that adjusted measurements better represent the quality of the viewing experience of subtitle users than the unadjusted results. Research suggests that many subtitle users will not have enough time to read and comprehend rapid subtitles, and all of them will have much less time to view the images on screen as a result.
- 2.14 Once the median scores are adjusted to account for peaks in subtitling speed, the proportion of samples with accuracy rates above the acceptability threshold falls from 80% to 50%, while the proportion of samples with accuracy rates above 99% falls from 29% to 5%. These results are better than in the third round of measurements, when the proportion of samples with adjusted accuracy above 98% was 32%, and the proportion of very good or excellent adjusted accuracy was less than 3%.
- 2.15 Rapid subtitles frequently occur at the intersection between live scrolling subtitles and pre-recorded block subtitles that were prepared before transmission. For most news bulletins and for a number of entertainment programmes, subtitlers are often provided with pre-recorded material and scripts by the producers of such programmes, so that block subtitles can be prepared in advance and 'keyed out' live. Conversely, the lack of scripts or pre-recorded material means that pre-recorded subtitling is seldom used in chat shows.

2.16 For this reason, it is not surprising that the largest drop in the median accuracy rates measured in the fourth round of sampling – once these are adjusted to account for rapid subtitles – occurred in samples of news bulletins (-1.13 percentage points). As a result, the median adjusted accuracy score for news is 97.98%, just below the level deemed acceptable. By comparison, adjusting the accuracy measurements of samples of chat shows and entertainment programmes resulted in slightly smaller drops (respectively, -0.36 and -0.55 percentage points). The median adjusted accuracy rate remained above 98% for samples of chat shows (98.17%), while it dipped below the acceptability threshold for samples of entertainment programmes (97.83%).

Figure 4: median accuracy rates in samples drawn from news bulletins (unadjusted vs adjusted to account for rapid subtitles)

(higher bars represent a better viewing experience)

NER Score

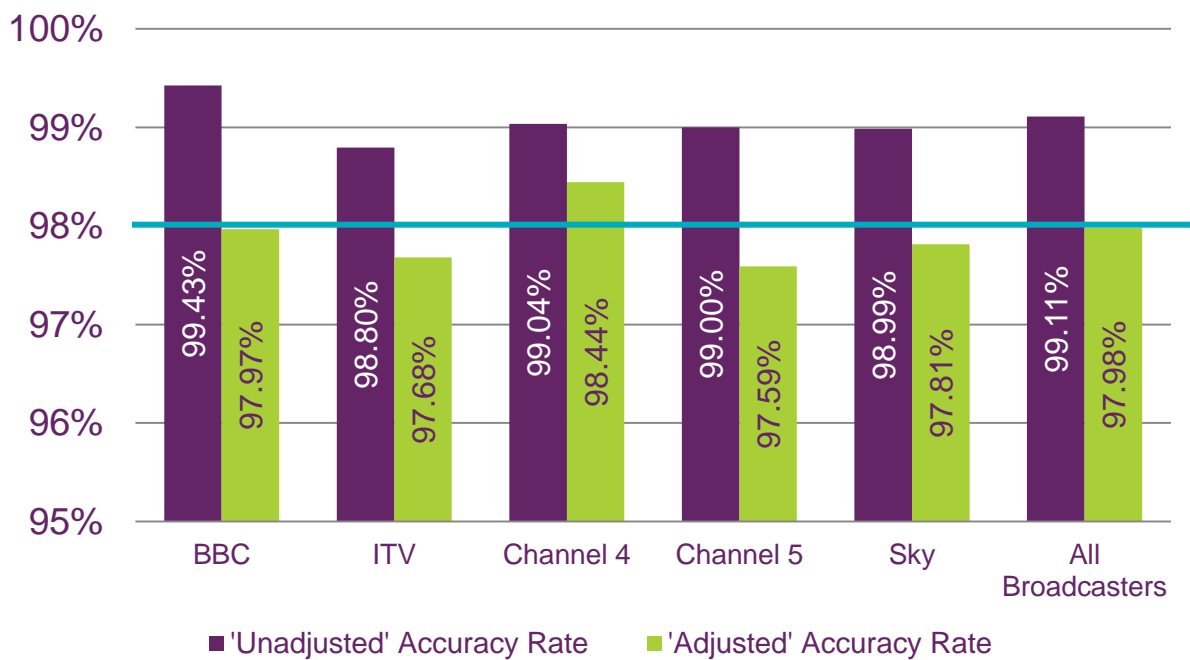


Figure 5: median accuracy rates in chat show samples (unadjusted vs adjusted to account for rapid subtitles)
 (higher bars represent a better viewing experience)

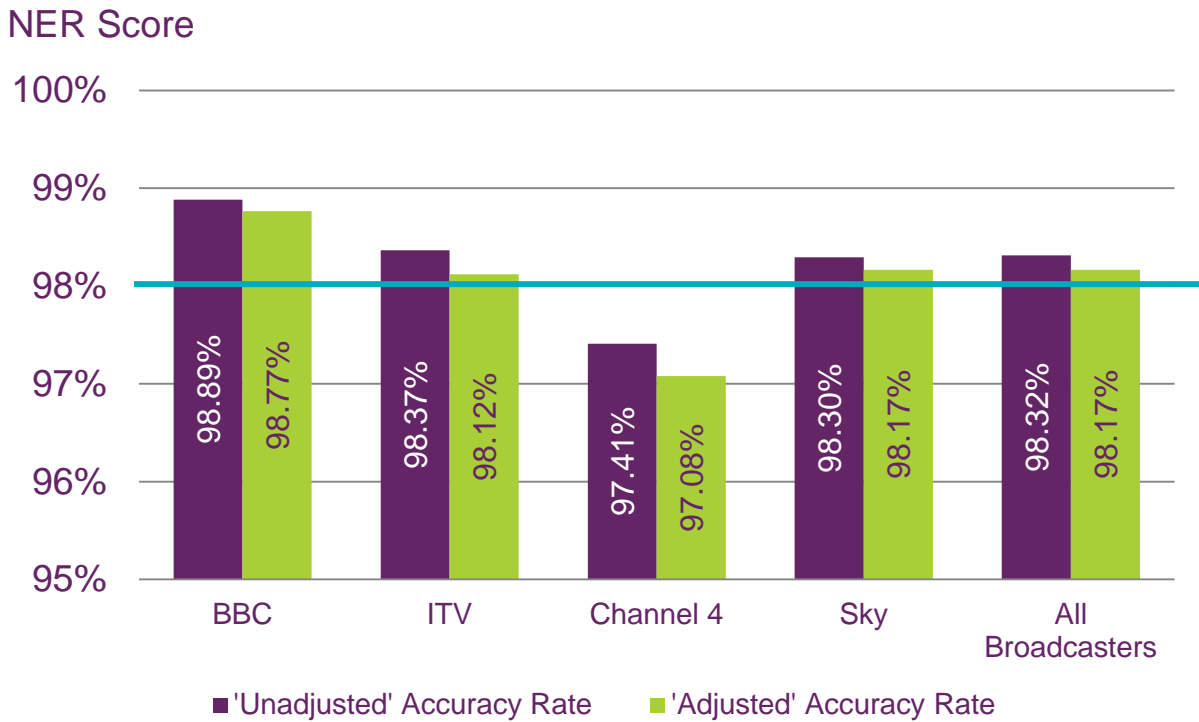
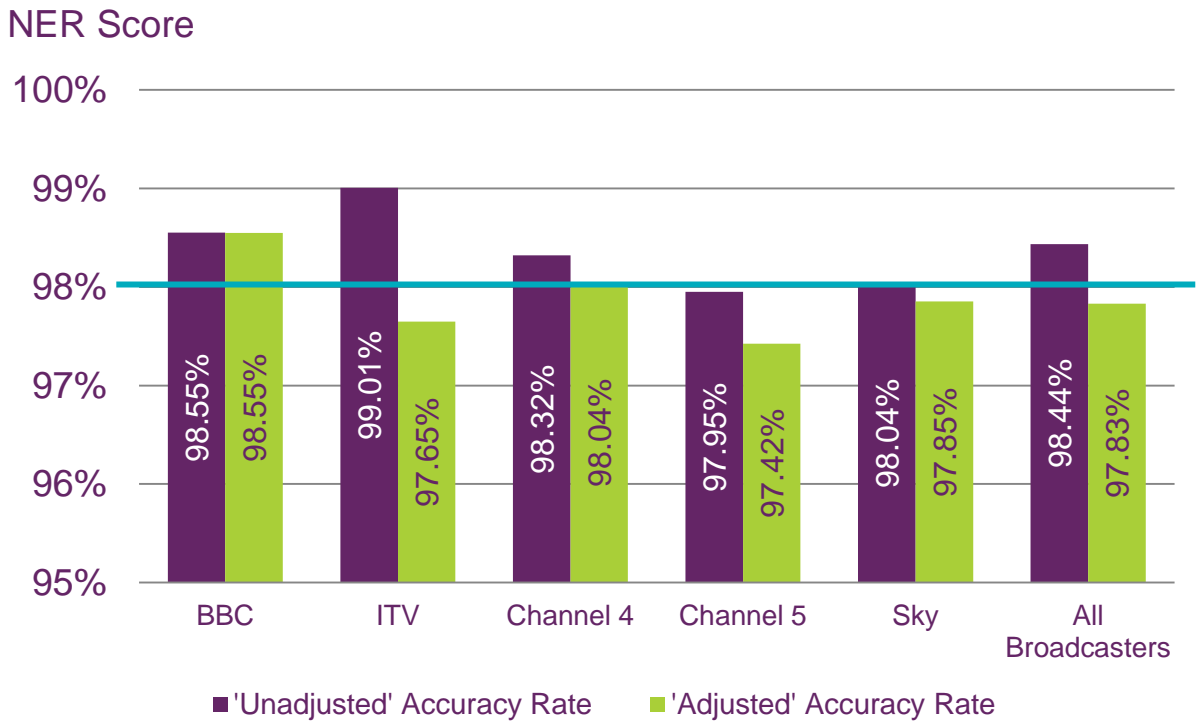


Figure 6: median accuracy rates in samples drawn from entertainment programmes (unadjusted vs adjusted to take account of rapid subtitles)
 (higher bars represent a better viewing experience)



2.17 Figures 7, 8 and 9 compare the adjusted accuracy rates measured in the third and fourth round of sampling. These show that for news bulletins the median adjusted accuracy rates in the fourth round (97.98%) were higher than in the third round (97.77%), although still below the acceptability threshold. The same was true for chat shows (97.64% in the third round, as opposed to 98.17% in the fourth). The median adjusted accuracy rate in samples of entertainment shows was lower in the fourth round (97.83%) than in the third round (98.20%).

2.18 Data on the incidence of subtitling peaks is provided in Section 4 of this document.

Figure 7: median adjusted accuracy rates in samples drawn from news bulletins
(higher bars represent a better viewing experience)

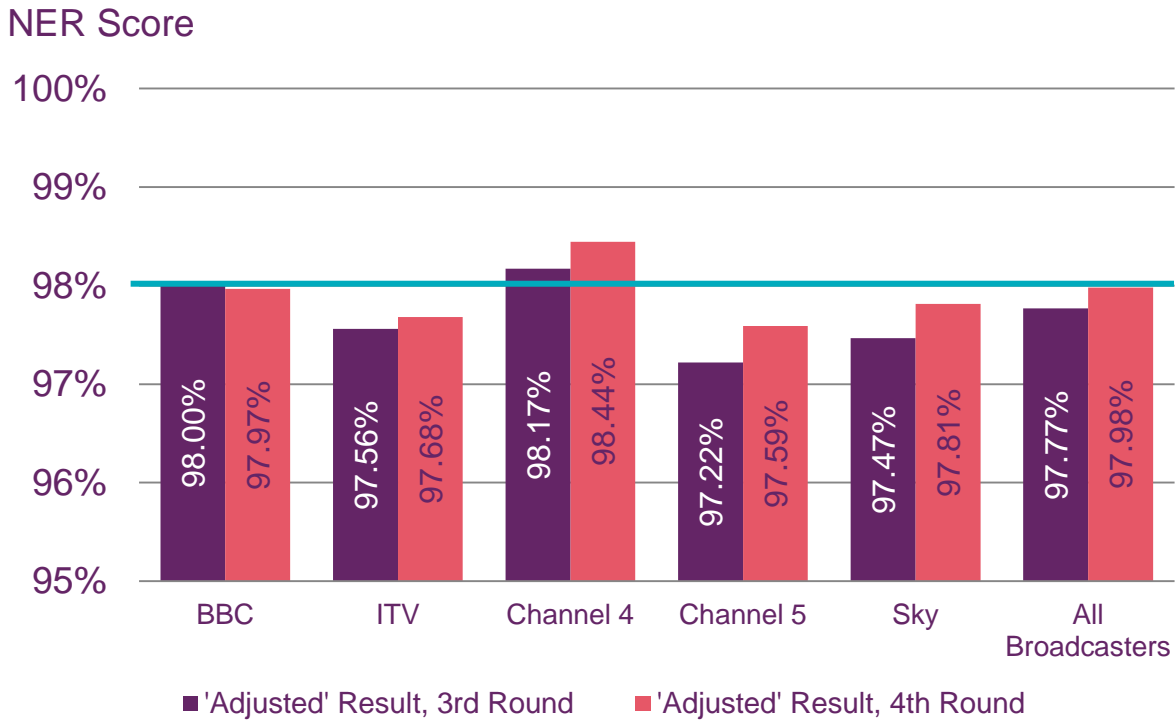


Figure 8: median adjusted accuracy rates in samples drawn from chat shows
(higher bars represent a better viewing experience)

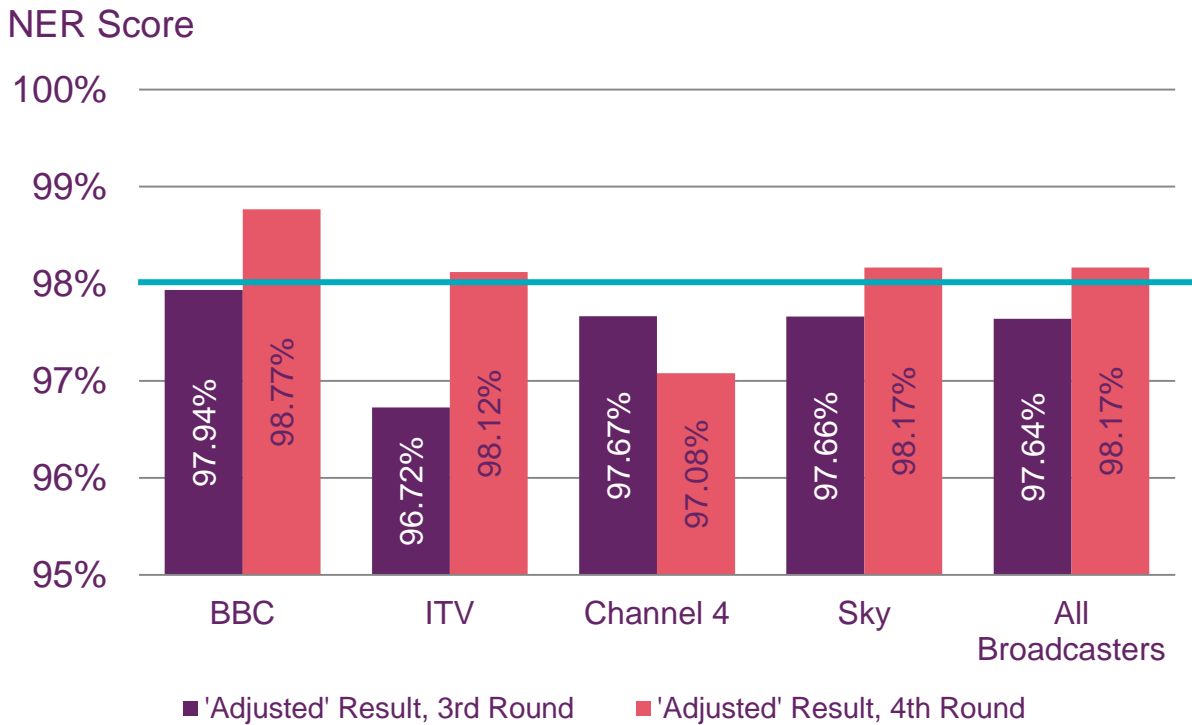
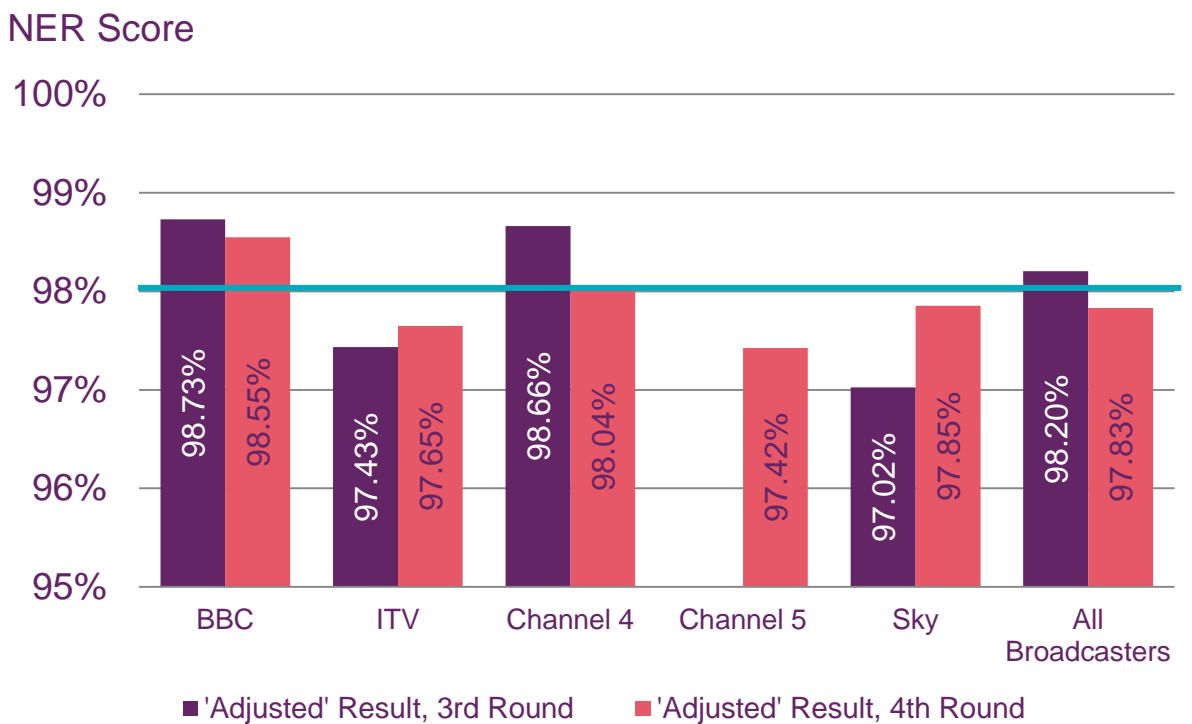


Figure 9: median adjusted accuracy rates in samples drawn from entertainment programmes
(higher bars represent a better viewing experience)



Note: the third round of measurements did not include samples of entertainment programming shown on Channel 5

Section 3

Latency

- 3.1 In the context of our work on the quality of live subtitling, we refer to 'latency' to denote the delay between speech and the corresponding subtitling. Many subtitle users consider latency as the most frustrating aspect of live subtitling, as it forces them to relate the subtitles to images that may have disappeared from the screen. The longer the delay, the less satisfactory is the viewing experience. Ofcom's Guidelines recommend a maximum latency of 3 seconds for live subtitling¹⁶.
- 3.2 For the purposes of this monitoring exercise, we have asked broadcasters to identify 2-3 words per minute in the audio at intervals of 20-30 seconds, and to measure the delay between the spoken word and the subtitles. As a result, each 10-minute sample considered for this report had numerous measurements of latency, and these were averaged in order to obtain a unique measure per sample. It should be noted however that the range of latency in most programmes was quite significant.

Summary of results

- 3.3 Figures 10, 11 and 12 below show median latency in the samples taken from news bulletins, chat shows and entertainment programmes. The maximum 3 second delay recommended in Ofcom's guidelines is shown with a bold blue line.
- 3.4 The overall average latency in the fourth round of measurements (5.6 seconds) was broadly in line with the first two reports (5.4s and 5.6s respectively), but higher than the third one (5.1 seconds), and well above the 3 seconds recommended in Ofcom's Guidelines.
- 3.5 In their report, the external reviewers noted that latency typically depends on a number of factors, such as the availability of pre-recorded subtitles, the subtitling techniques used, and specific technical issues during transmissions. Hence, when scripts were made available to subtitlers so they could prepare block subtitles in advance, the average latency was reduced, in a few cases (six) even below the recommended 3 seconds. Conversely, where subtitlers did not have the opportunity to produce block subtitles in advance, and 'key these out' in synchronicity with the original speech – i.e. in cases of 'pure' live subtitling – the average latency was around 7-8 seconds, with peaks of 10 to 21 seconds.
- 3.6 Looking at the individual genres, the median latency in news bulletin samples was slightly higher than in the third round of measurements (4.5 seconds versus 4.3 seconds), although still considerably lower than in the first two sampling rounds (respectively, 5.6 and 5.7 seconds). Chat shows typically feature many speakers, fast speech rates, overlapping voices and no advance scripts; as a result, the median latency on samples of this genre was somewhat higher, at 6.1 seconds, and broadly in line with previous sampling rounds. The median latency recorded in samples of entertainment programmes was the highest since the start of the monitoring exercise, at 6.1 seconds. This was partly due to the increased proportion in our sample of entertainment programmes with characteristics similar to chat shows (see paragraph 2.9).

¹⁶ Ofcom's Code on Television Access Services, 15 May 2015; Annex 4, paragraph A4.18 (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>).

Figure 10: median latency in samples drawn from news bulletins
 (higher bars represent an inferior viewing experience)

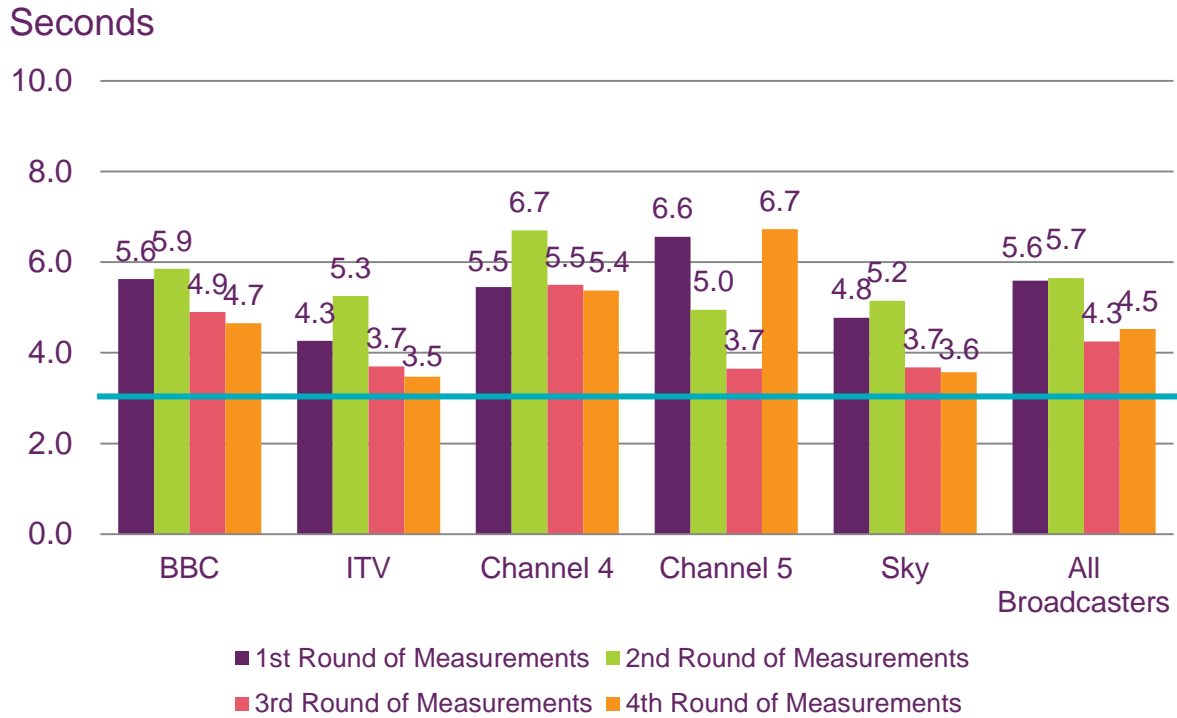


Figure 11: median latency in samples drawn from chat shows
 (higher bars represent an inferior viewing experience)

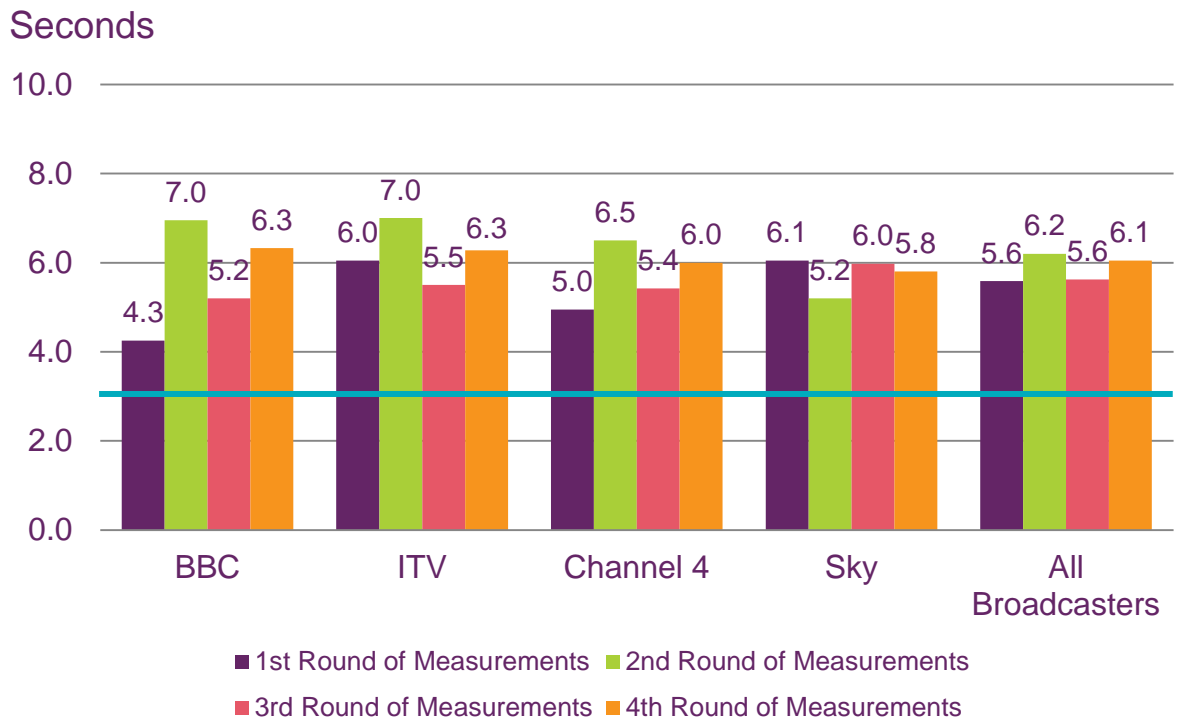
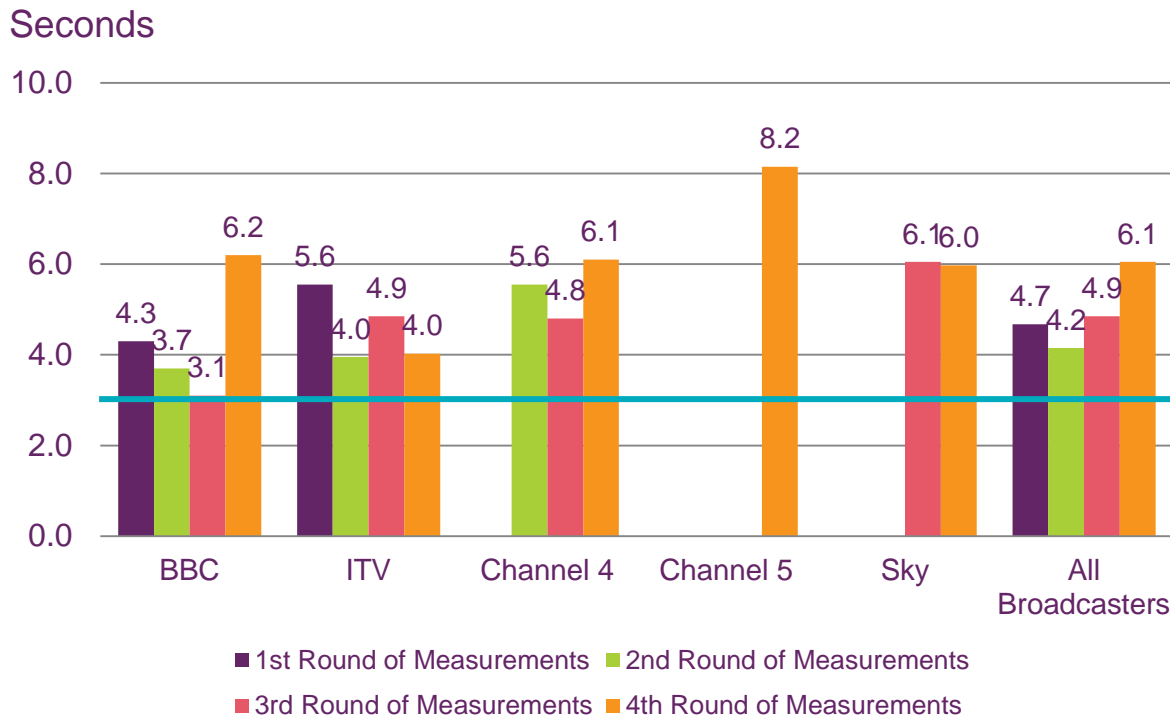


Figure 12: median latency in samples drawn from entertainment programmes
(higher bars represent an inferior viewing experience)



Note: the first round of measurements did not include samples of entertainment programming shown on Channel 4 and Sky; the first two rounds of measurements did not include samples of entertainment programming shown by Sky; the first three rounds of measurements did not include samples of entertainment programming shown on Channel 5

Tackling latency

- 3.7 Since our 2013 consultation¹⁷, we have had extensive discussions with broadcasters about whether the intractable problems of latency could be addressed by inserting short delays in the transmission of certain programmes that are subtitled live (excluding news and sports programming). While broadcasters argued that the cost and complexity of inserting short delays would be disproportionate to the benefits that subtitle users would enjoy, the BBC and Channel 4, working with their access service provider, Ericsson (formerly Red Bee Media), have identified an alternative approach that could reduce latency significantly – so-called ‘switchable delays’.
- 3.8 Specifically, this technical solution for latency takes advantage of the time it takes for the play-out system to encode a High Definition (‘HD’) picture ready for transmission (approximately 5 seconds). Encoding the data comprising the subtitles takes a much shorter time. At present, broadcasters therefore insert a short delay in the transmission of subtitling, in order for it to be synchronised with the speech. In order to address the problem of latency in live subtitling, the BBC has experimented with ‘re-timing’ the subtitle files on live-subtitled programmes separately from the HD picture to better align the subtitles with the picture and sound. Ofcom understands that the trials conducted in the BBC R&D lab have yielded some promising results. Channel 4 has told us that it is planning a proof-of-concept trial of a very similar approach. Both have agreed to share their findings with interested parties. We have invited ITV, Sky and Channel 5 to explore the potential of this approach, but we

¹⁷ Ofcom, *The quality of live subtitling – Improving the viewer experience*, 17 May 2013

recognise that broadcasters use different technical systems and that this approach may not work for all.

- 3.9 We understand that the timing of any implementation would be dependent in part on channels being equipped with up to date equipment, and that roll-out could take some years. In particular, the BBC has told us that this approach would be available only when its new playout system is rolled out on BBC 4, CBBC and CBeebies in early 2016, while it will be rolled out on BBC One and Two during 2017. Initially, the results will only be available on HD channels, though there is the prospect of making it available on SD channels later.
- 3.10 However, the reduction in latency resulting from these plans would not tackle the particular problem of poorer accuracy for some popular entertainment and chat shows. Subtitling on these is also typically more edited than on other programmes (see Section 5), something that some subtitle users consider problematic. Some of these programmes, like *Gogglebox*, are pre-recorded, and Ofcom believes that broadcasters should make greater efforts to enable subtitles for such programmes to be prepared in advance, even if they have to be cued out live.
- 3.11 For the time being, we remain unpersuaded that short delays in live transmissions would not be technically feasible. The Flemish public service broadcaster, Vlaamse Radio- en Televisieomroeporganisatie ('VRT'), has been introducing delays in the transmission of some of its programmes in order to improve the quality of the live subtitling for a number of years now¹⁸. Last month, VRT demonstrated to Ofcom and others how it uses short delays to produce higher quality subtitles. It now produces about 20 hours a week of programmes with 'delayed live subtitling'. VRT uses three subtitlers: one to produce the subtitles, one to edit them for accuracy, and one to cue them out at the correct time. While more expensive than the existing approach, this level of resourcing would only be required for relatively few programmes. However, we consider that it is likely to be more fruitful in the medium term for broadcasters to concentrate their efforts on using switchable delays to secure significant improvements in latency, where their technology allows.

¹⁸ See: Ofcom, *Measuring live subtitling quality: results from the third sampling exercise*, 20 May 2015 (http://stakeholders.ofcom.org.uk/binaries/consultations/subtitling/statement/QoS_3rd_Report.pdf); page 15.

Section 4

Speed of subtitling

- 4.1 Ofcom's guidelines recommend that "the speed should not normally exceed 160 to 180 wpm for pre-recorded programmes"¹⁹; however, there is no recommended maximum speed for live subtitling.
- 4.2 Research²⁰ suggests that the speed of subtitling has a direct impact both on subtitle users' ability to comprehend the subtitles, and on the amount of time viewers are able to watch what is happening on screen, as opposed to reading subtitles. Furthermore, people cannot typically read as fast as they can speak. At a rate of more than 180 wpm, deaf, hard-of-hearing and hearing readers found it difficult, and the optimum rate has been found to be lower than that²¹.
- 4.3 As discussed in Section 6, our review of the Guidelines on the provision of access services which will follow the publication of this report will take account of the views of external stakeholders, as well as lessons from the research we plan to commission, and other recent research.
- 4.4 Over the course of our work on the quality of live subtitling, there has been a visible increase in the use of block subtitles for scripted or pre-recorded segments in live programmes. These are usually prepared in advance, thanks to relevant material being provided to subtitlers in before transmission. From the second report, the external reviewers started noting that, at the junction between scrolling subtitles (always delayed) and pre-prepared subtitles (potentially synchronous), some subtitlers attempted to synchronise the pre-recorded subtitles to the audio as quickly as possible, when these followed a segment with naturally delayed live subtitles.²² As a result, some of the block subtitles at these intersections were shown at unreadable speeds.
- 4.5 In order to understand the impact of this practice, we decided to look in more detail at the issue of very fast subtitles in the third sample. For this purpose, we asked broadcasters to provide us with time-coded transcripts of both the original audio and the subtitles in order to identify all the 'rapid subtitles' (those faster than 200 wpm). We asked broadcasters to do the same for the purpose of the fourth report.
- 4.6 Below, we report first on average speeds (as we have from the beginning of the monitoring exercise), and then on the incidence of rapid subtitles in the fourth round of measurements.

Average speeds

- 4.7 The overall average subtitling speed measured in the fourth sampling round was 133 wpm, well below Ofcom's guidelines as in the case of the previous reports. Only one sample had an average speed above 180 wpm, and only less than 10% of the

¹⁹ Ofcom's Code on Television Access Services, 15 May 2015; Annex 4, paragraph A4.19

²⁰ Among others: Jensema, Carl: *Viewer Reaction to Different Captioned Television Speeds*, June 1997 (<https://www.dcmp.org/caai/nadh30.pdf>); Romero-Fresco, Pablo: *More haste less speed: Edited versus verbatim respoken subtitles* (<http://vialjournal.webs.uvigo.es/pdf/Vial-2009-Article6.pdf>)

²¹ *ibid*

²² Ofcom, *Measuring live subtitling quality – Results from the second sampling exercise*; paragraph 4.8.

samples showed an average subtitling speed higher than 160 wpm. The median average speed was highest during news bulletins (148.8 wpm) than in chat shows (127.1 wpm) and entertainment programmes (117.9 wpm), due to the higher speech rates and to comparatively low edition rates (i.e. the amount of original speech that is left out of the subtitles - see Section 5).

4.8 Figures 13, 14 and 15 below show the median wpm rates in the samples taken from news bulletins, chat shows and entertainment programmes. For reference purposes, the upper (180 wpm) and lower (160 wpm) boundaries of the maximum range recommended for pre-recorded subtitling is indicated on the graphs below with bold coloured lines.

Figure 13: median wpm rates in samples drawn from news bulletins

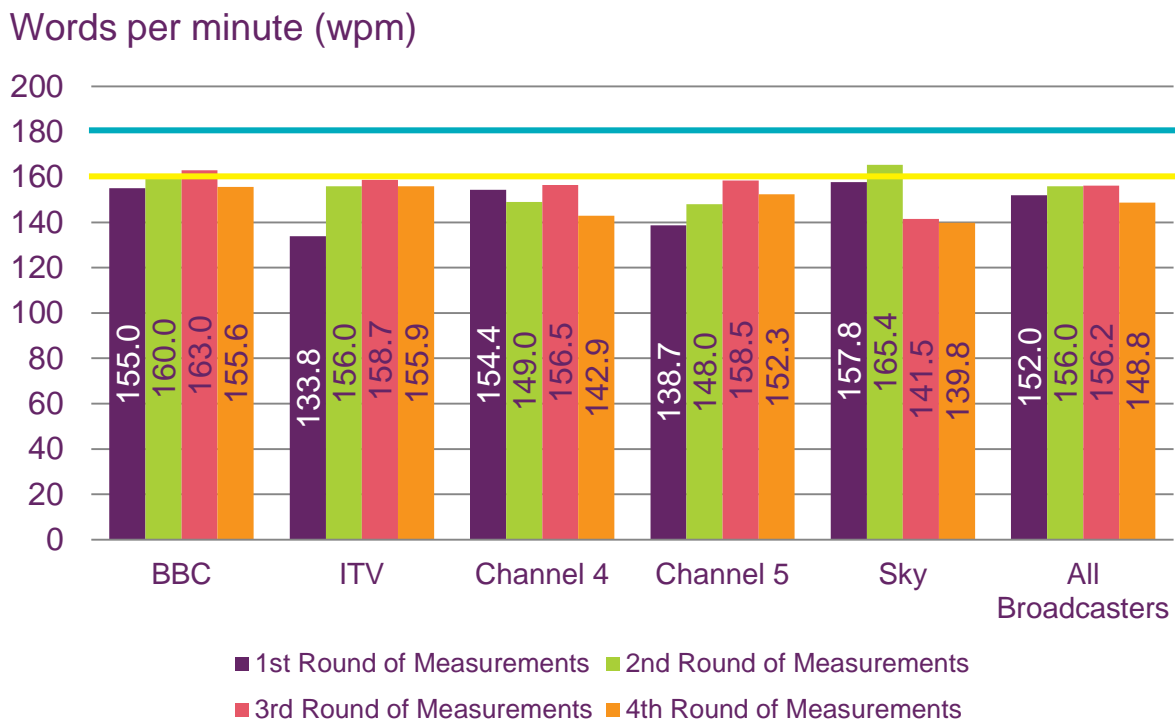


Figure 14: median wpm rates in samples drawn from chat shows

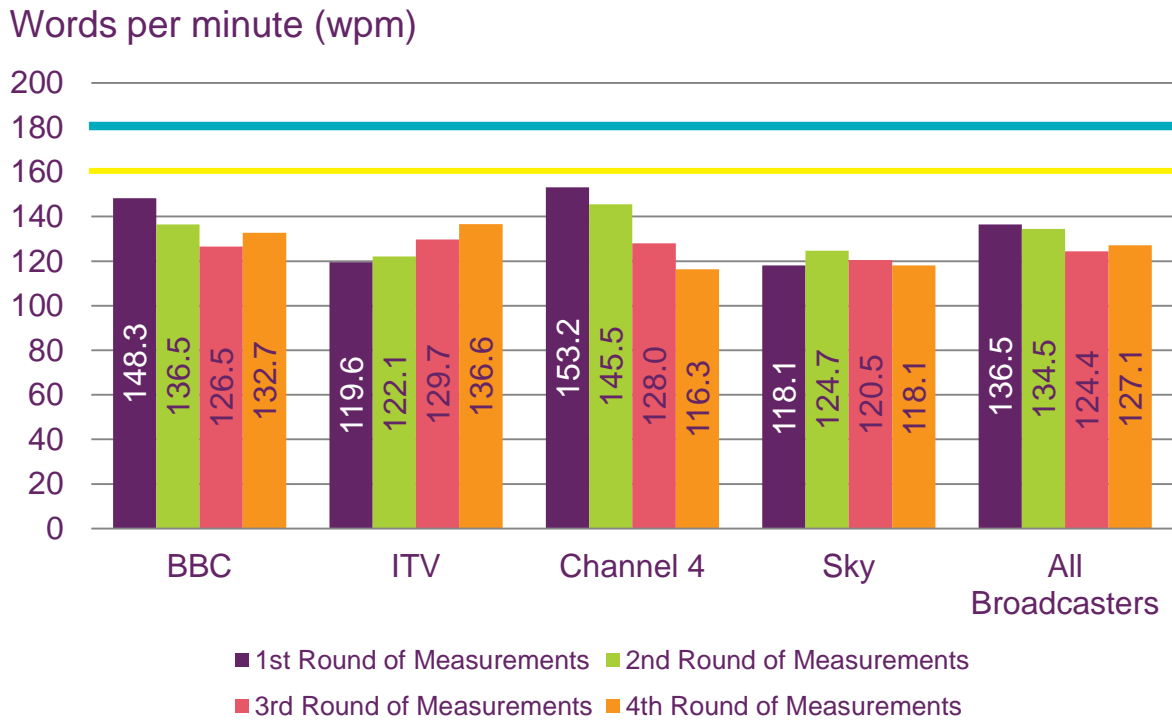
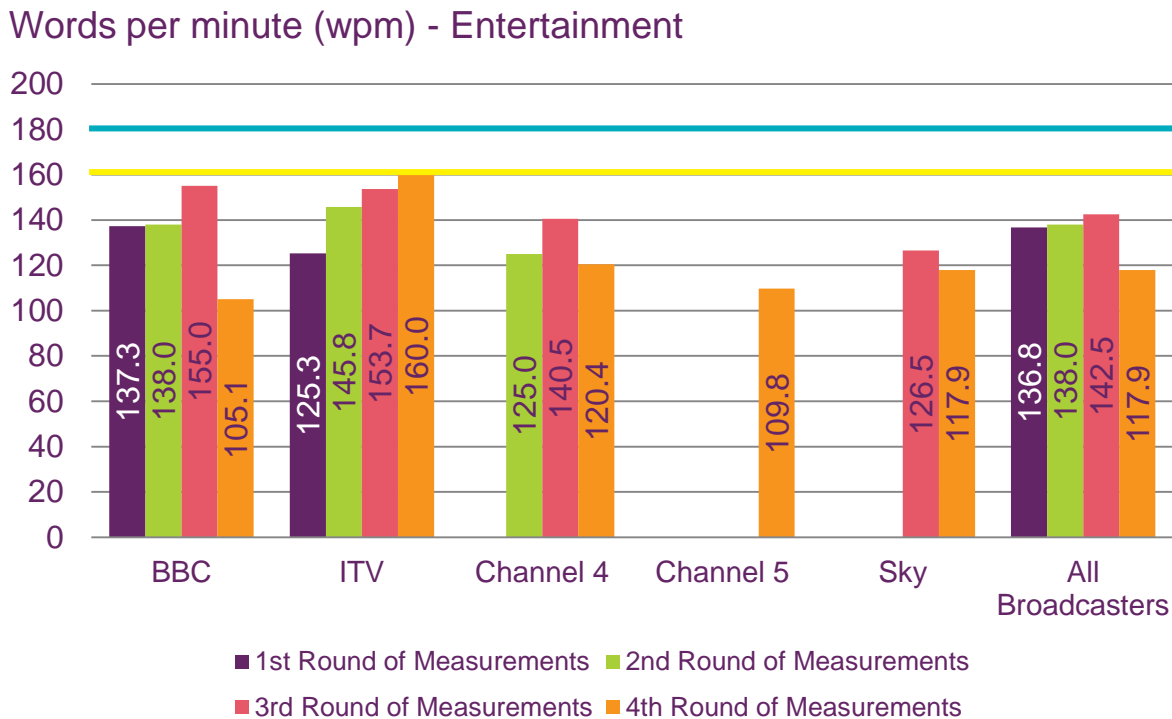


Figure 15: median wpm rates in samples drawn from entertainment programmes



Note: the first round of measurements did not include samples of entertainment programming shown on Channel 4 and Sky; the first two rounds of measurements did not include samples of entertainment programming shown by Sky; the first three rounds of measurements did not include samples of entertainment programming shown on Channel 5

Incidences of rapid subtitling

4.9 The aggregate speed measures reported above fail to illustrate the potential impact of sudden spikes in the speed of subtitles on the viewer experience. It appears that

instances of rapid subtitles have become more common as 'hybrid subtitling' – i.e. subtitling which combines pre-recorded, block subtitles and scrolling, live subtitles – has become commonplace on certain types of programmes, news in particular. In order to measure the extent of rapid subtitling, we asked broadcasters to provide us with time-coded transcripts of both the original audio and the subtitles, so that the external reviewers could identify all the instances where subtitling speed exceeded 200 wpm.

- 4.10 Figures 16, 17 and 18 show the incidence of rapid subtitles in all the samples taken from news bulletins, chat shows and entertainment programmes. Slightly more than 90% of the samples analysed for the fourth round of measurements included rapid subtitles, with an average of 21 rapid subtitles per sample, and a median of 12. In the third round of measurements, rapid subtitles were found in 99% of the samples, and the average number of rapid subtitles per sample was 26, while the median was 21.
- 4.11 Pre-recorded subtitles are used extensively for news bulletins, for which subtitlers are provided with running orders, scripts and pre-recorded material. They are also used for some entertainment programmes, particularly those with clearly pre-defined formats or with pre-recorded videos. Pre-recorded subtitling is seldom used in chat shows, as the conversation on these programmes tends not to follow a script. As discussed above, rapid subtitles feature more prominently at the intersection between pre-recorded and live subtitling.
- 4.12 So it is not surprising to find that the samples of chat shows were less affected by the problem of very fast subtitling, with an average of 6 rapid subtitles per sample, compared to an average of 11 in samples of chat shows from the third round of measurements. Rapid subtitles were more common in samples of news programmes, with an average of 35 instances of very fast subtitling per sample, slightly fewer than in the previous report (40). Samples of entertainment programmes were not as affected by rapid subtitles (an average of 14 per sample), with the exception of programmes shown on ITV, which featured more pre-recorded subtitles.

Figure 16: number of times in each 10-minute sample when subtitles exceeded 200 wpm, all samples (news bulletins)

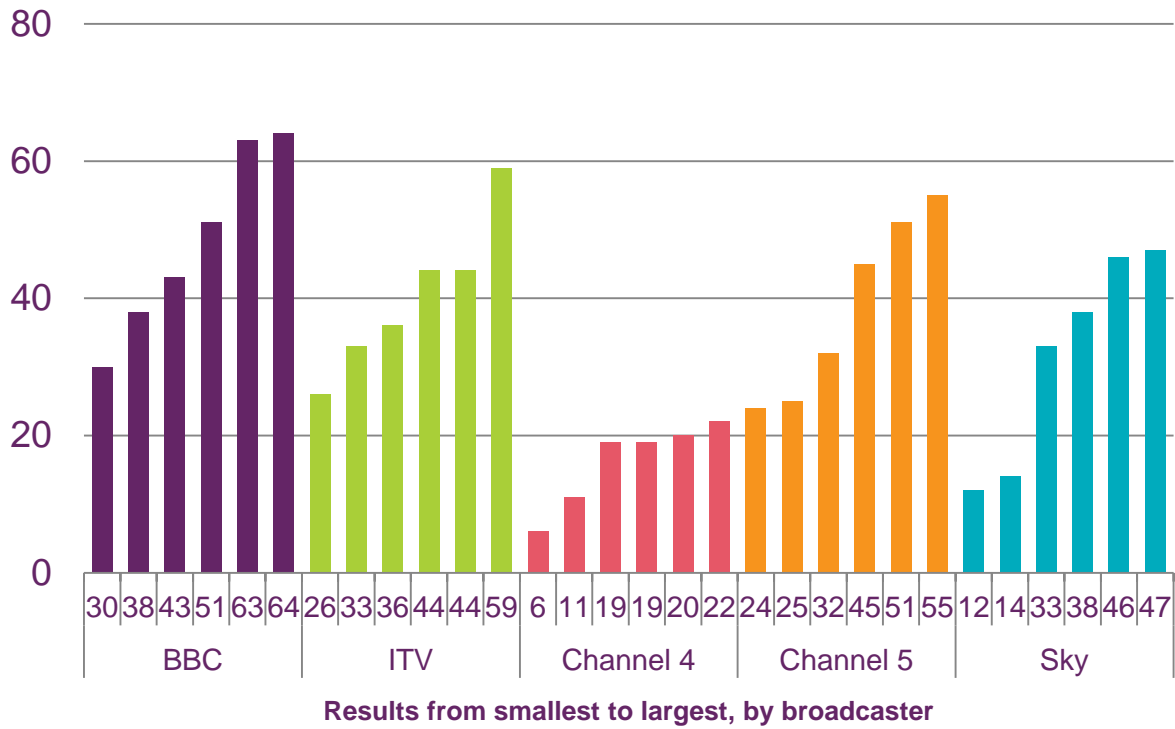


Figure 17: number of times in each 10 minute sample when subtitles exceeded 200 wpm, all samples (chat shows)

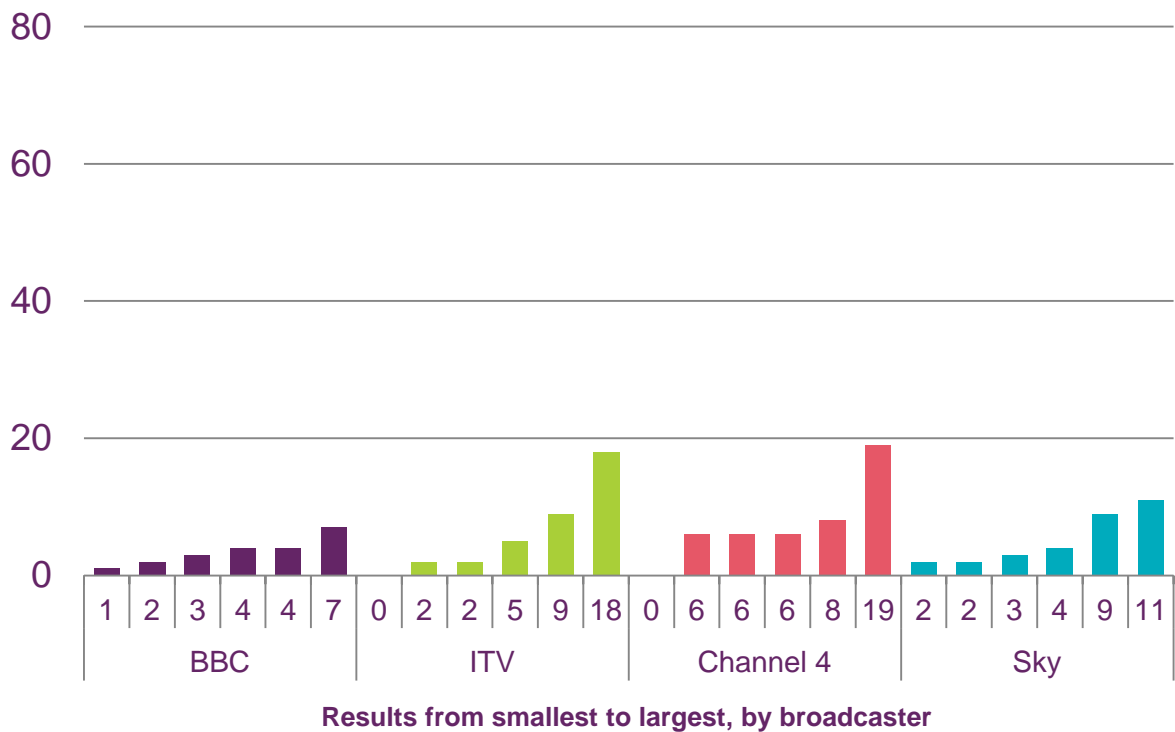
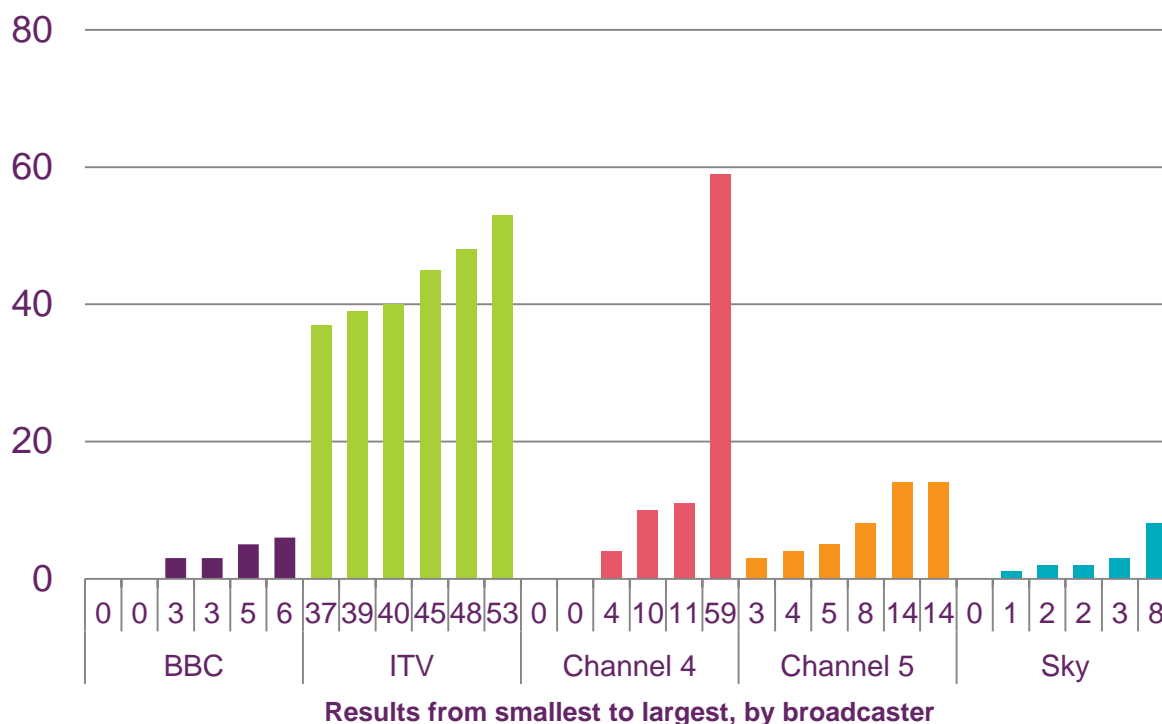


Figure 18: number of times in each 10 minute sample when subtitles exceeded 200 wpm, all samples (entertainment programmes)



Mechanisms for setting limits to the speed of subtitling

4.12 Ofcom welcomes the contribution that hybrid subtitling could make to increased accuracy; however, the data on rapid subtitles above, together with the data on adjusted accuracy rates reported in Section 2, indicates that there is a trade-off to be made between greater accuracy and slower, more readable subtitles. We consider this trade-off in greater detail in Section 6. In our previous report we encouraged broadcasters to address the problems that rapid subtitling created, and we said that we would ask broadcasters to report on what measures they were taking or planning to take to avoid rapid subtitling. We noted that the external reviewers from the University of Roehampton recommend “that the subtitling software is set to a maximum speed (ideally no higher than 180 wpm-200 wpm) for both pre-recorded and live scrolling subtitles”.

4.13 Below is a summary of the broadcasters’ responses:

- a) the BBC agreed with Ofcom’s assessment that incidence of rapid subtitling can result in the degradation of the viewing experience. However, the BBC also noted that there are programmes where the participants will talk at rates over 200 wpm, and that for this reason a maximum speed limit of 200 wpm might increase latency as well as edition rates. According to the BBC, more research in this area is required.

The BBC told Ofcom that it is currently working with its subtitling provider to identify the causes of high subtitle reading rate in order provider to improve the practices when live and block segments intersect, and it is also working to improve its network and broadcast infrastructure to reduce the impact of ‘bottlenecks’ – i.e. congestion in the delivery of subtitling due to a technical fault, resulting in subtitles

appearing for only fractions of a second on the screen – for the live subtitle data stream;

- b) ITV also agreed with Ofcom’s assessment that rapid subtitling is a problem that requires further attention. ITV’s subtitling provider has now updated its subtitling software in order to allow the setting of a maximum reading speed. This feature ensures that block subtitles remain on screen for a minimum length of time. The subtitling provider has experimented with various configurations of this limit, and it has noticed that there is a negative correlation between the maximum speed limit and the increase in latency of the subtitles. In the light of this, ITV’s subtitling provider told us that it has set the maximum speed limit set at 320 wpm for the time being;
 - c) Channel 4 noted that its subtitling provider operates maximum speed settings available through their subtitling software. The current speed limit is 250 wpm for block pre-recorded subtitles; we understand from Channel 4’s subtitling provider that there is also a limit of 300 wpm for scrolling live subtitles. However, Channel 4 noted that there are many examples where the real-world live speech on a programme will be above 200 wpm. Channel 4 considers that the aim of broadcasters should be to provide subtitling that is as accurate and relevant to the pictures on screen as possible, and that a 200 wpm speed limit would undermine their ability to achieve this;
 - d) Channel 5 noted that the problem of rapid subtitling is a consequence of the move towards hybrid subtitling, with block and scrolling subtitles both used in a programme. Channel 5’s subtitling provider has tested various speed limits, after which it has implemented a speed limit of 300 wpm which, in its view, addresses the incidence of very high speed subtitles without increasing latency; and
 - e) Sky also noted that the increased use of block pre-recorded subtitling is of the reason for the increased occurrence of rapid subtitles. Sky’s subtitling provider currently implements a limit to subtitling speed at 250 wpm, and it is also providing additional training to subtitlers to ensure that they do not ‘cue’ the block subtitles too quickly following sections subtitled live.
- 4.14 Ofcom recognises that there is a trade-off between latency and speed, and considers that the views of subtitle users should be sought on how best to balance the two factors. We consider that the research we plan to undertake should help to shed light on this (see Section 6).

Section 5

Edition rates

- 5.1 Edition rates refer to the proportion of the original speech that is left out (i.e. 'edited out') from the subtitles. In order to keep up with the pace of the original speech and to reduce subtitling speed, re-speakers commonly edit down the text that is subtitled. For the purpose of our reports, edition rates were calculated by dividing the total number of words in the subtitling by the total number of words in the transcript of the original speech from the same 10-minute fully-spoken segment.
- 5.2 In the context of our work on the quality of live subtitling, we have never referred to edition as a dimension of the quality of live subtitling. Sometimes the same idea can be expressed with fewer or different words. So correct editions are not counted against the measure of accuracy defined earlier in this document.
- 5.3 Nevertheless, we consider that the information on how much speech is edited out will help to inform the debate between those seeking near verbatim subtitling, even at the cost of faster subtitling, and those who advocate greater amounts of editing in order to keep the speed of subtitling down.

Summary of results

- 5.4 Figures 19, 20 and 21 summarise the median edition rates by genre and broadcaster.
- 5.5 Edition rates differ significantly across genres. In samples of news programmes, the median edition rate was relatively low in all sampling rounds, between 12% and 17%. This is due to two main factors:
- a) subtitlers seem to make a significant effort to avoid excessive editing, given the importance of accurate content in this genre;
 - b) the more extensive use of block pre-recorded subtitles, where subtitlers can condense more words, and which do not suffer from lags or errors.
- 5.6 Conversely, on chat shows and on some entertainment programmes, the level of edition is typically higher than on news. In these types of programming, edition is often necessary due to fast speech rates, overlapping speech and quick changes of subject. As a result, in the fourth round of measurements, the edition rate in samples chat shows was almost twice as high as in samples of news, at 27.5%, although slightly lower than in the third round (42.8%). The edition rate in samples of entertainment programmes was the highest since the beginning of the project (32.1%), partly due to a greater proportion of entertainment programmes with similar characteristics to chat shows being included in our sample.
- 5.7 As part of the research into subtitle users' attitudes towards live subtitling that we plan to commission, we also intend to seek an understanding of subtitle users' attitudes towards edition rates.

Figure 19: median edition rate in samples drawn from news bulletins

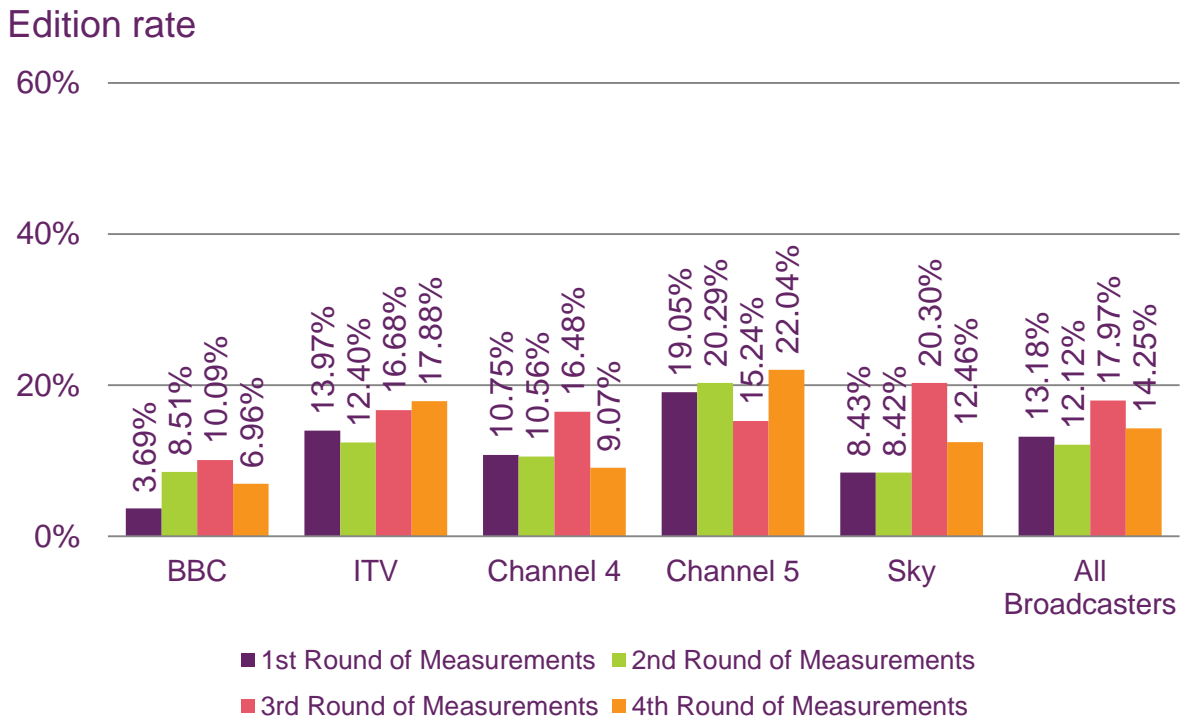


Figure 20: median edition rate in samples drawn from chat shows

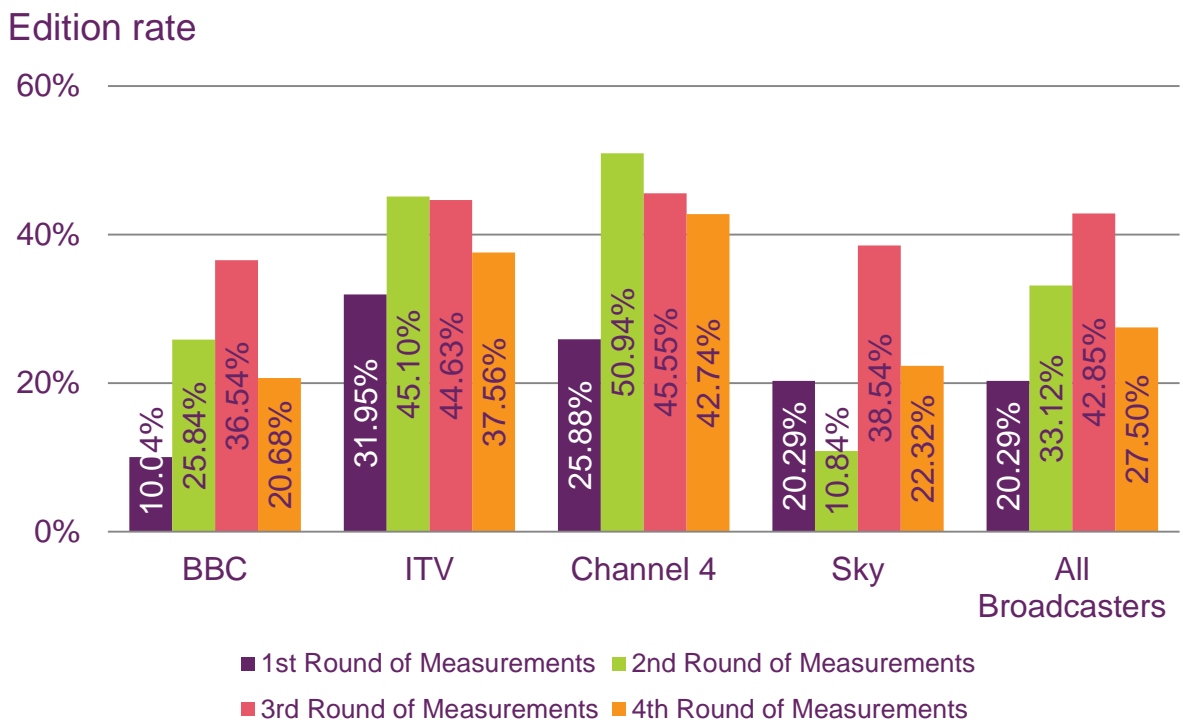
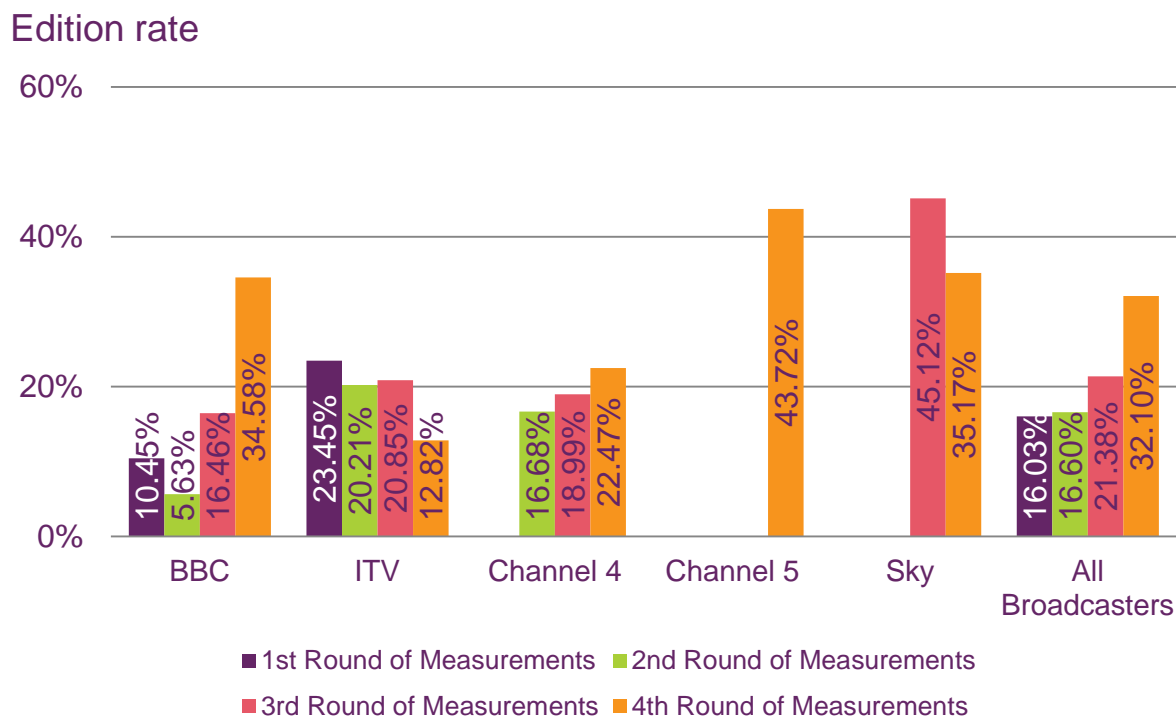


Figure 21: median edition rate in samples drawn from entertainment programmes



Note: the first round of measurements did not include samples of entertainment programming shown on Channel 4 and Sky; the first two rounds of measurements did not include samples of entertainment programming shown by Sky; the first three rounds of measurements did not include samples of entertainment programming shown on Channel 5

Section 6

Next steps

Introduction

6.1 The evidence gathered from the exercise to measure the quality of the live subtitling will need to be considered carefully alongside available research, and the views of subtitle users, broadcasters and access service providers. Ofcom aims to do this over the next few months. We set out the process we expect to follow below, under 'Next steps'. In the meantime, however, we consider that it would be helpful to publish some of Ofcom's preliminary conclusions, in order that they can inform debate.

Preliminary conclusions

6.2 We are keen to avoid drawing premature conclusions about the lessons to be learnt from this exercise, as we want to discuss the overall results with subtitle users and groups representing their interests, as well as broadcasters and access service providers. We also want to consider what additional lessons there are from research carried out in recent years.

6.3 Nevertheless, we do believe that some outcomes are clear:

- a) by making every effort to prepare subtitles in advance for pre-recorded programmes, broadcasters and access service providers can make a big contribution to the quality of the viewing experience for subtitle users. Ofcom is encouraged that broadcasters have sought to reduce the incidence of live subtitling for pre-recorded programmes, and will ask them to monitor the extent to which such programmes have to be subtitled live, so that they can report on this from time to time. We hope that programme producers will participate in this monitoring exercise;
- b) by helping access service providers prepare for live subtitling through the provision of running orders, autocue scripts and access to the newsroom, broadcasters have helped to improve the quality of live subtitling for news programmes;
- c) technical problems occur along the subtitling supply chain relatively frequently, although they affect a very small proportion of output. Ofcom will consider how best it can encourage broadcasters to minimise the number of technical problems.

6.4 But our main preliminary conclusion is that, when producing live subtitling, it is likely that trade-offs will need to be struck between different quality dimensions. For example, it would be possible to produce accurate, verbatim subtitles for a fast-paced programme, but only if viewers accepted significant delays in the subtitles appearing.

We'd like to find out what subtitle users think about likely trade-offs

6.5 While the necessity for trade-offs should always be tested, Ofcom considers that it would be helpful to explore the likely trade-offs with subtitle users, and to ensure that, so far as practicable, the balance struck by broadcasters and access service providers takes account of the preferences of subtitle users. With this in mind, Ofcom

intends to commission independent qualitative research amongst subtitle users on their attitudes to trade-offs.

- 6.6 We have invited the views of groups representing subtitle users, broadcasters and access service providers on our proposals to look at the issues described below.

Presentation of subtitles

- 6.7 Research suggests that viewers find block subtitles easier to read than scrolling subtitles, leaving more time to absorb visual information²³. There is now more scope for programme subtitling software to format subtitles in blocks automatically, but doing this rather than using scrolling subtitles may result in delays in subtitles appearing on screen. We would like to know which approach would suit most subtitle users.

Subtitling speeds in programmes with both live and pre-recorded subtitling

- 6.8 Live programmes often include pre-recorded segments. Broadcasters now often prepare subtitling in advance for these segments, offering better accuracy, presentation in easier-to-read subtitles, and the potential for synchronisation with speech. However, when a pre-recorded segment follows a live section, the inevitable lag in the live subtitles means that the subtitling for the pre-recorded segments is also delayed. To synchronise the subtitling and speech for pre-recorded segments as soon as possible, broadcasters sometimes speed up the subtitling at the start. We would like to know whether subtitle users prefer this, or whether they find that speeded up subtitles are difficult to follow.

Editing of subtitles

- 6.9 Truly verbatim subtitles are rare; almost all subtitles present an edited version of what is spoken. Natural human speech usually contains some redundant speech that can be dropped from subtitles. Sometimes speech can be paraphrased more economically, or less important details omitted, without losing the sense of what is being said. On occasions, the practical limits of how fast a subtitler can produce subtitles means that significant omissions have to be made, for example in chat shows, where people speak over others. You can get a flavour of this by looking at the figures in Section 5, which summarise the amount of editing by genres in the fourth set of samples. In some cases, it might be possible to provide more detail at the expense of longer lags in subtitling. We would like to know if subtitle users would prefer this, or not, and whether views differ among users with different levels of reading ability.

Maximum speeds of subtitling

- 6.10 Some programmes contain a great deal of speech, some of it quite rapid (such as chat shows), while in others, there is less speech and the pace of delivery is more measured (such as entertainment programmes). The amount that can be subtitled

²³ Among others: Dhevi Rajendran, Andrew Duchowski, Pilar Orero, Juan Martinex and Pablo Romero-Fresco (2012), *Effects of text chunking on subtitling: A quantitative and qualitative examination*, in *Perspectives: Studies in Translatology*. Routledge Taylor & Francis Group (<http://andrewd.ces.clemson.edu/research/vislab/docs/perspectives.pdf>); Romero-Fresco, Pablo (2012): *Quality in Live Subtitling: The Reception of Respoken Subtitles in the UK* (<http://connection.ebscohost.com/c/articles/78120106/quality-live-subtitling-reception-respoken-subtitles-uk>); Romero-Fresco, Pablo (2011) *Subtitling through Speech Recognition*, Manchester: Routledge.

can be limited by two factors: first, how fast a subtitler can work; second, by rules on the maximum speed of subtitling, expressed in words per minute (wpm), or sometimes characters per second. Ofcom's current guidance (and some research) suggests that when speeds go beyond 180-200 wpm, subtitle users find the subtitles difficult to follow. But there are different views. We'd like to know what subtitle users think, and whether opinions vary between those with different levels of reading ability.

Research

- 6.11 Ofcom intends to commission independent research on these issues, and any others that it identifies as significant in the light of comments from stakeholders. In the research we will aim to recruit subtitle users of different ages and reading ability, so that we can see whether there are any differences in how they view the trade-offs. As with other Ofcom-funded research, it will be carried out independently.
- 6.12 We have also begun to review third party research into issues that touch upon the experience of people using subtitles, so that we can take this into account.
- 6.13 Some issues, by their nature, do not readily lend themselves to qualitative research. For example, Action on Hearing Loss (AHL) has joined Ofcom in asking broadcasters to experiment with short delays in live programmes, so that this period could be used to produce synchronised 'live' subtitles, presented in blocks. While it is easy to imagine that this would benefit subtitle users, the negative trade-offs fall largely to the broadcasters, who argue that the cost and risks to them outweigh the benefits to the hearing-impaired. Qualitative research is not likely to shed much light on this, so Ofcom will continue with its efforts to persuade broadcasters to experiment with this proposition, so that more can be learnt about the actual drawbacks, and whether they can be managed and minimised.

Review of Ofcom's Code and Guidance

- 6.14 We intend to discuss the results of the research with subtitle users and groups representing their interests, as well as broadcasters and access service providers during the first few months of 2016.
- 6.15 In the light of these discussions and lessons from third party research and our own research, we will look again at Ofcom's Guidance to broadcasters²⁴, which has not been reviewed for ten years. We will also consider whether any changes to the Code on Television Access Services²⁵ may be appropriate – if made, these would be binding on broadcasters, as their licences (or in the case of the BBC, the BBC Agreement) require them to comply with the Code.
- 6.16 We would then invite views on any proposed changes, and take account of these in deciding whether to amend either document.
- 6.17 Finally, we will consider whether it would be helpful to carry out further monitoring exercises in future, whether in relation to the quality of live subtitling, or the number of pre-recorded programmes that have to be subtitled live, or the number of technical failures that have resulted in the loss or interruption of subtitling.

²⁴ Ofcom's Code on Television Access Services, 13 May 2015 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf>)

²⁵ *ibid*, Annex 4.

Annex 1

External review of measurements



Pablo Romero-Fresco

Inma Pedregosa

1 October 2015

Live Subtitling: A Qualitative Analysis of the Fourth Round of Measurements

1. Methodology

On 16th October 2013, Ofcom decided that broadcasters should be required to measure the following dimensions of quality, on the basis of samples of live subtitling selected by Ofcom:

- a) the average speed of the subtitling;
- b) the average latency of the subtitling (the delay between speech and live subtitling), and the range of latencies; and
- c) the number and type of errors (i.e. minor spelling errors, major omissions or factually misleading subtitles).

Ofcom identified samples of live subtitling in three genres of programming - news, entertainment and chat shows - and asked broadcasters to carry out measurements. Broadcasters were asked to collect data using the NER model, devised by Pablo Romero-Fresco (University of Roehampton) and currently used by regulators, broadcasters and subtitling companies in Australia, Spain, Germany, Switzerland, Italy and France, among other countries. In order to ensure consistency of measurements, a small team of experts at the University of Roehampton led by Pablo Romero-Fresco and Inma Pedregosa validated the measurements provided by broadcasters from a third-party standpoint, using the NER model. The results of the first, second and third round of measurements can be found on Ofcom's website²⁶.

For this fourth round of measurements, the external reviewers have analysed a **total of 84 ten-minute clips** from 84 programmes belonging to three genres (news, entertainment and chat shows) and broadcast on five channels, namely BBC1 News at Six, The National Lottery: In It to Win It and The One Show from the BBC, Channel 4 News, Gogglebox and Sunday Brunch from Channel 4, Five News and Big Brother from Channel 5, ITV News, Britain's Got Talent and Loose Women from ITV and Sky News at Six, Game Changers and Soccer AM from Sky. In total, the analysis comprises 14 hours of live TV material including approximately 145,000 words and almost 23,000 subtitles.

²⁶ See: Ofcom, *The Quality of Live Subtitling* (<http://stakeholders.ofcom.org.uk/consultations/subtitling/>)

The results of the individual evaluations of every programme are not restricted to a single figure, in this case the accuracy rate. Instead, the NER model provides **a short assessment** of the quality of the subtitles for every programme, including the accuracy rate and also issues related to the delay of the subtitles, their position, their speed, their flow, the types of errors they contain, the way in which the speakers have been identified and the challenges posed by every programme, among other factors.

As far as the **accuracy rate** is concerned, the four rounds of assessments conducted so far confirm the figure of **98%** as a valid threshold from which subtitles may be considered of acceptable quality for TV broadcast. In our sample, and taking into account also the above-mentioned factors related to overall quality, subtitles with 99%-99.5% accuracy rate ranged from very good to excellent, whereas those with 98.5%-99% ranged from good to very good. Below those rates, the closer to 98% accuracy rate the subtitles were, the more problems they presented. For only two out of the 84 programmes analysed, the quality of programmes with accuracy rates below 98% was found to be acceptable on the basis of the other elements in the subtitles. In the rest of the programmes, the accuracy rate (and the threshold of 98%) was found to be in line with the overall quality assessment of the subtitles, including delay, position, speed, flow, speaker identification, etc.

The application of the NER model has proved very consistent and comparable across the internal reviewers from the different subtitling companies (who were only given a few written instructions as to how to apply the model) and the external reviewers from the University of Roehampton. The **average discrepancy** with regard to the accuracy rates of the 84 programmes from five different broadcasters is **0.07 percentage points**.

2. Results and discussion

On the whole, the **quality of the live subtitles** analysed in this report may be regarded as good, with an average accuracy rate of 98.55%, higher than the average accuracy rates obtained in the first (98.28%), second (98.34%) and third (98.37%) rounds of measurements. This fourth round has produced the most significant increase in average accuracy, confirming an upward trend that yields an overall accuracy rate of 98.38% across all four assessments.

Around 80% of the programmes analysed in this fourth round managed to reach the required quality threshold, as compared to 76% in the first analysis, 74% in the second (which was marred by an unusually high number of technical issues) and 77% in the third. In one third of the programmes included in this fourth round, the subtitles were good and in more than one fourth they were very good or excellent. In the present round, only 15% of the programmes presented technical issues, most of which involved subtitle freezes.

In general, the greater use or **pre-recorded subtitles** witnessed in the last two rounds of measurements for news and entertainment samples has contributed to better subtitling quality. The average accuracy rate of news subtitles has increased steadily from 98.49% in the first analysis to 98.62% in the second, 98.86% in the third and 99.02% in the fourth, in other words, from acceptable to very good quality. Their latency has decreased from an average of 5.7s in the first two rounds to an average of 4.6s in the last two rounds.

However, one of the issues highlighted in the previous round of assessments as a result of the use of this hybrid mode, the occurrence of excessive **peaks of speed**, is still widespread and is having a negative impact on the viewers' comprehension. The average speed of the subtitles in this sample is 133wpm, which should allow viewers more than enough time to read the subtitles and watch the images on the screen (approximately 40% of the time on the

subtitles and 60% of the time on the images)²⁷ and which falls below the highest recommended subtitling speed (180wpm-200wpm)²⁸. However, in many news and entertainment programmes, the pre-recorded subtitles are often cued in too quickly in an attempt to catch up with the audio after a piece with delayed live subtitles. This issue, which affected 25% of the programmes in the second round and 99% of the programmes in the third round, has now been found in 92% of the programmes in this fourth analysis, including 92% of the chat shows, 83% of the entertainment programmes and all the news programmes in the sample. On average, chat shows have only 6 peaks of speed per programme (since they are mostly subtitled live without pre-recorded subtitles), whereas entertainment programmes have 14 peaks per programme and news programmes have 35 peaks per programme, roughly one third of the subtitles analysed in every programme. In 20% of the news programmes, at least half of the subtitles exceed 200wpm and news programmes in all channels have included subtitles over 300wpm. Although in some cases some subtitles have reached speeds over 350wpm, an effort has been made to keep these one-off peaks to a minimum, and thus the speeds over 500wpm found in the third sample have now been avoided.

At any rate, these fast subtitles cannot be processed by most viewers and normally correspond to the beginning of a news item as the programme goes back to the studio, which may also make it difficult for the viewers to understand the following subtitles for that particular item. We would recommend that the subtitling software is set to a maximum speed (ideally no higher than 180wpm-200wpm) for both pre-recorded and live scrolling subtitles. This will ensure that the subtitles can be read in full and that the subtitlers do not have to worry about measuring the time a subtitle must be on the screen, thus focusing on the other tasks they have to perform.

The increasing use of pre-recorded subtitles in live programmes also demands particular attention in cases in which there is **discrepancy** between what the presenters are saying and the information in the script that is used for the subtitles. This was found in twelve programmes in the sample analysed here (the previous round of assessment contained only four cases) and, depending on the seriousness of the error introduced in the subtitles, it may require a live correction by the subtitler, especially if it affects a figure that has been updated by the presenter.

In general, the combination of pre-recorded and live subtitles is very positive and has resulted in a significant increase in the overall quality of news and entertainment programmes. However, it is very important to solve these issues, especially the one related to speed, which has a serious impact on the viewers' comprehension and may end up defeating the purpose of introducing this hybrid mode.

As in the first three rounds of measurements, the overall subtitling quality of the programmes included in this sample varies greatly depending on the **genre** analysed, which is mainly due to the very different speech rates, content and the structure of the programmes.

The **news programmes** in the sample feature an average speech rate of 175wpm, as compared to 163wpm in the first round, 176wpm in the second and 184wpm in the third one. The content is more meaningful than that of entertainment programmes and chat shows, which makes these programmes particularly challenging to edit without losing important information. Moreover, some of the programmes included in this sample feature on-set interviews, which involve higher speech rates and overlapping dialogue, thus making the subtitlers' task considerably more difficult. Given the importance of content in this genre, subtitlers seem to be making a significant and commendable effort to avoid excessive editing. The average editing rate in this sample is 14%, very much in line with the average editing

²⁷ See Romero-Fresco, Pablo (2011) *Subtitling through Speech Recognition: Respeaking*, Manchester: St. Jerome.

²⁸ See Ofcom's "Subtitling –An Issue of Speed" (2005) and BBC's Subtitling Guidelines (2009).

rate of the first three samples (13.7%). This allows news subtitles to obtain a very good average accuracy rate of 99.02%, higher than in the first (98.49%), second (98.62%) and third (98.86%) samples. Whereas in the first three samples 33% of the news programmes analysed had very good subtitles and 10% did not meet the required quality threshold, in this last sample over 50% of the news programmes have very good subtitles and none of them falls below the threshold. As mentioned above, the only issues in these programmes are the above-mentioned peaks of speed, the discrepancies between the pre-recorded subtitles and the presenters' speech (in one in three programmes) and those cases where the subtitles obscure key information or the speakers' mouths on the screen (in 60% of the programmes).

As noted in the first two analyses, on average **entertainment programmes** normally have a lower speech rate than news and chat shows. They also combine live spontaneous dialogue with pre-recorded material and songs (thus providing much-needed breathers for subtitlers) and they lend themselves to a certain degree of editing without losing key content, since the spontaneous dialogue often features hesitations, false starts and redundant comments. The inclusion of Game Changers in the third sample and the addition of Big Brother in this fourth sample have altered this trend, since both programmes share many traits with a chat show. The average speech rate of the entertainment programmes in this sample (180wpm) is higher than in the first two samples (161wpm in and 156wpm, respectively). This has led to significant editing (an average of 30%) and to an average accuracy rate of 98.31%, lower than in the first (98.51%) and second (98.87%) analyses and very similar to the third analysis (98.34%). In order to improve the quality of the subtitles provided for these programmes, it is essential that broadcasters make available, whenever possible, the scripts for all pre-recorded material, which will result in higher accuracy rates and lower delays.

Once again, the **chat shows** are by far the most challenging programmes to subtitle live, not only because of the speakers' fast speech rates but also because of the presence of quick asides and overlapping speech that are essential to understand the humour in the programme. In the third sample, the average speech rate of the presenters and other people on screen was as high as 222wpm, thus triggering an editing rate of 41% and an average accuracy rate of 97.80%. In this fourth sample, the average speech rate is 185wpm. This has allowed for a more reasonable editing rate of 30% and an average accuracy rate of 98.26%, thus reaching for the first time the required threshold (in the first three analyses the accuracy rates for chat shows were 97.91%, 97.60% and 97.80%, respectively). Whereas in the third round of assessment, 40% of the chat shows did not reach the quality threshold, 50% had acceptable subtitles and 10% had good subtitles, in this last round, 33% of the chat shows do not reach the quality threshold, 25% have acceptable subtitles and 41% have good or very good subtitles. Be that as it may, the fact remains that one in three chat shows does not reach the required threshold, which means that despite the commendable effort made by the subtitlers, there seems to be no guarantee that the subtitles in these programmes can consistently provide good access to the viewers.

The average delay in this fourth sample is 5.6s, similar to the first and second samples (5.4s and 5.6s, respectively) and higher than the third one (5.1s). This increase is due to the above-mentioned inclusion of chat show-like entertainment programmes in the fourth sample (Game Changers and Big Brother), which has pushed up the average delay of the subtitles in entertainment programmes from 4.9s in the third sample to 5.9 in the fourth one. In contrast, the increasing use of pre-recorded subtitles in the news in the last two samples has enabled a significant reduction in the delay of the subtitles for these programmes, from 5.6s and 5.8s in the first and second assessments to 4.6s and 4.7s in the third and fourth.

As well as on the availability of pre-recorded subtitles, the delay of the subtitles also depends on the live subtitling technique used, the genre of the programmes and the occurrence of specific technical issues during transmission. When scripts are available and pre-prepared subtitles are combined with live subtitles, the delay has been reduced to 3-4s and for the first time some news programmes have average delays of 2-3s. In some cases, subtitles appear on screen slightly before or at the same time as the audio. The programmes or sections of programmes that only contain live subtitles produced by respeakers seem to have an average latency of 6s, with very good segments of 5s and even 4s but also peaks of 7s to 9s. In programmes or sections with many speakers, fast speech rates and overlapping speech, the average delay for these live subtitles is 7-8s, with good segments of 6s and peaks of up to 10s. Finally, regardless of the average delay of the subtitles and possibly due to specific technical problems, several programmes in the sample analysed feature peaks of 10-21-second delays and sometimes even higher, which should be avoided whenever possible.

As far as **errors** are concerned, the data obtained in this fourth analysis is very consistent with the first three. In the sample analysed, 69% of the errors included in the subtitles were editing errors, that is, those caused by incorrect omissions or additions made by the subtitlers, errors of speaker identification, spelling or punctuation mistakes, etc. The remaining 31% were recognition errors, those caused by the interaction between the subtitler and the steno machine or the speech recognition software. Once again, these percentages vary depending on the genres. In chat shows, which feature the highest speech rates, 74% of the errors are caused by incorrect editions and 26% by misrecognitions. Entertainment programmes, where speech rates are normally slower, contain 69% edition errors and 31% recognition errors. Finally, news programmes feature 65% edition errors and 35% recognition errors. This relative increase in recognition errors with regard to entertainment programmes and chat shows may be due to both the effort made by subtitlers to type/respeak fast in order to keep up with the audio without editing too much and to the very content of the news, which is likely to include more specialised terms or unexpected proper nouns than chat shows and entertainment programmes. This is one of the reasons why having access to the script before the programme – when one is available – can help improve accessibility for the viewers.

As far as the **seriousness of the errors** is concerned, in general 56% of the errors found in the sample are minor (i.e. they do not prevent the viewers from following the content of the programme), 39% are standard (they trigger confusion or cause full factual omissions) and 5% are serious (they introduce misleading information). These figures vary depending on whether they relate to edition errors (54% of which are minor, 42% are standard and 4% are serious) or recognition errors (61% of which are minor, 29% are standard and 10% are serious). In other words, not only are edition errors more numerous than recognition errors but they also tend to be more problematic, since it is more common to have standard edition errors (omissions of full sentences) than standard recognition errors (nonsensical misrecognitions). The different genres also play an important role here. As a result of the effort made by the subtitlers to improve the quality of the subtitles for the news, one third of the errors in these programmes is standard and two thirds are minor. In contrast, in chat shows (and in this sample in entertainments programmes too, especially due to the inclusion of Game Changers and Big Brother) the fast speech rates and the overlapping interventions of the speakers force the subtitlers to rush and to omit more information. As a result, 53% of the edition errors are minor and as many as 42% are standard. In other words, almost one in two errors found in chat shows and entertainment programmes involves the omission of a full sentence and may cause the viewers to lose the thread of the programme.

Other issues identified in this fourth analysis are:

- the presence of **subtitles that obscure** key information on the screen or the speakers' mouths, thus making it impossible for viewers to lip read. This was found in one in five programmes in the third sample and has increased to 50% of the programmes in the present sample. In contrast, some subtitlers have managed to place the subtitles on top or to change their position live so as not to obscure important information.
- the **omission of swearwords** in the subtitles of two programmes;
- the use of the **wrong colour** for character identification in a few programmes;
- a few cases of **bad segmentation**;
- a few excessively **late corrections**.

3. Conclusions of the last assessment

The quality of the live subtitles analysed in this report is good, with the highest accuracy rate obtained in all four rounds of assessment (98.55%). On the whole, 80% of the programmes analysed in this fourth round managed to reach the required quality threshold. In one third of the programmes, the subtitles were good and in more than one fourth they were very good or excellent. This may be explained by the fact that there were fewer technical issues than in the second round and especially by the increased use of the hybrid mode, i.e. the combination of live and pre-recorded subtitles for news and entertainment programmes. The most noticeable increase in quality can be seen in the subtitles for news programmes, whose accuracy has increased from 98.5% to more than 99% over the four rounds of assessment and whose average latency has decreased from 5.6s to 4.7s.

However, one of the issues highlighted in the previous round of assessments as a result of the use of this hybrid mode, the occurrence of excessive peaks of speed in the transition between live and pre-recorded subtitles, is still widespread and is likely to have a negative impact on the viewers' comprehension. In the present sample, 92% of all the programmes feature speeds over the recommended 200wpm, including 92% of the chat shows (which have an average of only 6 peaks per programme), 83% of the entertainment programmes (with an average of 14 peaks per programme) and all the news programmes (with an average of 35 peaks per programme). We would recommend that the subtitling software is set to a maximum speed (ideally no higher than 180wpm-200wpm) for both pre-recorded and live scrolling subtitles. This will ensure that the subtitles can be read in full and that the subtitlers do not have to worry about measuring the time a subtitle must be on the screen, thus focusing on the other tasks they have to perform.

For the first time since this project began, the subtitles produced for chat shows have managed to reach the required threshold, with an average accuracy rate of 98.26%. Around 25% of the chat shows in the sample have acceptable subtitles and 41% have good or very good subtitles. However, the fact remains that the subtitles in one in three chat shows do not reach the required threshold. Despite the subtitlers' best efforts, the characteristics of these shows and the absence of a script make it very difficult to guarantee consistently good subtitles for these programmes. The same goes for some pre-recorded entertainment programmes such as Game Changers and Big Brother (which share many traits with chat shows) and for Gogglebox, whose constant switching between scenarios and speakers, added to the unavoidable 5- or 6-second delay of the subtitles, makes it almost impossible for the viewers to identify who is speaking, no matter how good the subtitles are.

To conclude, this fourth round of measurements has confirmed the findings obtained in the third round, that is, the need to control the subtitling speed in the new hybrid mode and to make available, whenever possible, the scripts for chat shows, entertainment and news programmes. Last but not least, it has shown further evidence of great work by the subtitlers, who, despite the complexity of their task, have managed to improve the live subtitles they produce and to find solutions for the new issues that have arisen throughout these two years.

Television Access Services: Report for the first six months of 2015

Published 22|10|15

The first bi-annual report for 2015 on the provision of access services (subtitling, signing and audio-description) by broadcasters, under the Code on Television Access Services, shows the cumulative position from January to June 2015. An explanation of the obligations applying to broadcasters is given in the Code on Television Access Services and is available on the Ofcom website at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/>.

With regard to domestic broadcasters, many channels are continuing to comfortably exceed their requirements. In cases where broadcasters are not meeting their requirements, Ofcom will expect them to have met their obligations by the end of the year.

Domestic channels with an audience share of between 0.05% and 1% have the option to broadcast either 30 minutes of sign-presented programming each month or to participate in Ofcom-approved alternative arrangements that contribute to the availability of sign-presented programming. Where "Alt" is shown against a channel, this indicates that the broadcaster is contributing to the British Sign Language Broadcasting Trust (BSLBT), which commissions sign-presented programming and is broadcast on the Community Channel and Film4.

2015 marks the second year in which non-domestic channels licensed by Ofcom have been required to provide access services. The majority of these broadcasts have comfortably met their obligation.

In lieu of the signing arrangements set out in the Code, all non-domestic broadcasters elected to provide an additional 5% of content with subtitles. Ofcom will set out its long-term position regarding signing provision by non-domestic broadcasters in 2016.

We note that Nickelodeon and Nickelodeon Junior, broadcasting to France, failed to provide subtitling or audio-description during the first six months of 2015. The broadcaster has explained that this was as a result of technical and supply issues that have now been resolved. Both services began provision of access services in July and we expect their annual quotas to be met by the end of 2015.

Ofcom expects any broadcasters reporting an under-provision for the first six months of 2015 to have fulfilled their obligations by the end of the year.

We expect to publish the next report in March 2016, providing the data from the second half of 2015 to provide a cumulative figure for 2015.

Channel	Subtitling		Audio Description		Signing	Achieved (2015 Q1-2)
	Annual Quota	Achieved (2015 Q1-2)	Annual Quota	Achieved (2015 Q1-2)		
LEVEL 1						
BBC 1 ⁽⁻¹⁾	100.0%	99.9%	10.0%	22.6%	5.0%	5.3%
BBC 2	100.0%	99.9%	10.0%	22.3%	5.0%	5.2%
BBC3	100.0%	100.0%	10.0%	32.0%	5.0%	5.6%
BBC4	100.0%	100.0%	10.0%	33.3%	5.0%	6.1%
BBC News	100.0%	99.9%	Exempt		5.0%	5.0%
CBBC	100.0%	100.0%	10.0%	30.0%	5.0%	5.9%
Cbeebies	100.0%	100.0%	10.0%	30.4%	5.0%	5.3%
ITV1	90.0%	90.5%	10.0%	16.0%	5.0%	9.9%
ITV2	80.0%	91.3%	10.0%	30.3%	5.0%	5.7%
ITV3	80.0%	96.5%	10.0%	46.3%	5.0%	5.1%
ITV4	72.0%	83.0%	10.0%	28.5%	4.0%	5.0%
CITV	70.0%	97.2%	10.0%	24.1%	30 mins sign-presented a month	140 mins sign-presented a month
Channel 4	90.0%	100.0%	10.0%	26.0%	5.0%	5.3%

E4	80.0%	100.0%	10.0%	48.0%	5.0%		5.4%
Film 4	70.0%	100.0%	10.0%	25.4%		Alt	
More 4	70.0%	100.0%	10.0%	28.0%		Alt	
4Seven	30.8%	100.0%	5.7%	21.9%		Alt	
Channel 5	80.0%	88.6%	10.0%	16.2%	5.0%		10.3%
5*	70.0%	78.2%	10.0%	33.6%		Alt	
5 USA	70.0%	81.4%	10.0%	18.5%		Alt	
Challenge	80.0%	82.2%	10.0%	24.1%		Alt	
Pick TV	72.5%	82.2%	10.0%	24.5%		Alt	
Sky Arts	70.8%	92.1%	10.0%	13.0%		Alt	
Sky Atlantic	35.0%	98.1%	7.7%	30.5%		Alt	
Sky Living	80.0%	94.2%	10.0%	33.1%		Alt	
Sky Movies Action	80.0%	90.0%	10.0%	39.1%		Alt	
Sky Movies Comedy	80.0%	90.3%	10.0%	39.6%		Alt	
Sky Movies Disney	10.0%	82.8%	3.5%	33.0%		Alt	
Sky Movies Drama Romance	80.0%	90.2%	10.0%	28.9%		Alt	
Sky Movies Family	80.0%	93.1%	10.0%	36.0%		Alt	
Sky Movies Greats	80.0%	86.3%	10.0%	34.5%		Alt	
Sky Movies Premiere	80.0%	84.9%	10.0%	29.4%		Alt	
Sky Movies Sci-fi/Horror	80.0%	88.6%	10.0%	35.7%		Alt	
Sky Movies Showcase	70.0%	96.1%	10.0%	54.8%		Alt	
Sky Movies Thriller	70.0%	90.8%	10.0%	28.1%		Alt	
Sky News	80.0%	81.4%	Exempt			Alt	
Sky One	80.0%	92.6%	10.0%	25.4%		Alt	

Sky Sports 1	80.0%	82.8%	10.0%	18.4%	Alt
Sky Sports 2	80.0%	81.0%	10.0%	17.5%	Alt
Sky Sports 3	80.0%	82.1%	10%	15.1%	Alt
Sky Sports 4	80.0%	83.0%	10%	13.6%	Alt
Sky Sports F1	30.8%	81.2%	5.7%	14.6%	Alt
Sky Sports News	80.0%	80.6%	Exempt		Alt
Sky Two	80.0%	98.4%	10.0%	36.0%	Alt
Disney Channel	80.0%	85.2%	10.0%	29.9%	Alt
Disney Junior	80.0%	91.2%	10.0%	25.8%	Alt
Disney XD	80.0%	86.2%	10.0%	23.4%	Alt
4Music	80.0%	89.0%	10.0%	22.0%	Alt
Dave	80.0%	87.4%	10.0%	31.4%	Alt
Watch	62.5%	75.6%	10.0%	30.9%	Alt
Yesterday	80.0%	88.6%	10.0%	28.0%	Alt
Alibi	80.0%	81.7%	10.0%	44.2%	Alt
Good Food	80.0%	90.6%	10.0%	22.6%	Alt
Home	80.0%	88.8%	10.0%	34.7%	Alt
GOLD	80.0%	86.6%	10.0%	36.2%	Alt
Eden	80.0%	85.2%	10.0%	29.2%	Alt
Really	60.0%	80.6%	10.0%	25.6%	Alt
Drama	10.0%	69.2%	3.0%	13.9%	Alt

Discovery	80.0%	82.4%	10.0%	14.1%		Alt
Animal Planet	80.0%	83.5%	10.0%	10.9%		Alt
Quest	60.0%	61.2%	10.0%	12.3%		Alt
TLC	10.0%	68.1%	3.5%	3.8%		Alt
Universal	80.0%	83.2%	10.0%	19.4%		Alt
BT Sport 1	10.0%	23.4%	3.0%	2.7%		Alt
LEVEL 2						
S4C	53.0%	78.0%	10.0%	12.3%	5.0%	5.4%
MTV	52.8%	83.9%	10.0%	20.2%		Alt
MTV Music	23.1%	59.2%	Exempt			Alt
Viva	52.8%	73.5%	Exempt			Alt
Comedy Central	52.8%	73.7%	10.0%	24.8%		Alt
Comedy Central extra	52.8%	55.1%	10.0%	14.2%		Alt
Nick Jr	52.8%	39.3%	10.0%	20.0%		Alt
Nickelodeon	52.8%	67.6%	10.0%	15.2%		Alt
Nick Jr 2	46.2%	41.0%	10.0%	20.8%		Alt
Nicktoons	52.8%	60.4%	10.0%	7.9%		Alt
LEVEL 3						
Boomerang	26.4%	26.7%	10.0%	26.7%	30 mins sign- presented a month	45 mins sign- presented a month
Cartoon Network	26.4%	33.8%	10.0%	33.9%	30 mins sign- presented a month	45 mins sign- presented a month

Footnote

1.-Occasional technical and/or operational problems led to a small shortfall in delivering against the BBC's 100% subtitling target on some channels.

Member State	Channel	Subtitling		Audio Description	
		Annual Quota Achieved (2015 Q1-2)	Annual Quota Achieved (2015 Q1-2)	Annual Quota Achieved (2015 Q1-2)	Annual Quota Achieved (2015 Q1-2)
LEVEL 1					
Denmark	Kanal 4	15.0%	65.0%	4.0%	8.2%
	Kanal 5	15.0%	74.3%	4.0%	5.1%
	6'eren	15.0%	67.8%	4.0%	6.4%
	TV3	15.0%	72.1%	4.0%	3.9%
France	The Discovery Channel	15.0%	16.2%	4.0%	3.0%
	Discovery Science	15.0%	13.2%	4.0%	7.4%
	Cartoon Network	15.0%	19.7%	4.0%	1.9%
	Disney Cinemagic	15.0%	27.0%	4.0%	7.4%
	Nickelodeon	15.0%	0.0%	4.0%	0.0%
	Nickelodeon Junior	15.0%	0.0%	4.0%	0.0%
Netherlands	The Discovery Channel	15.0%	100.0%	4.0%	4.6%
Republic of Ireland	BBC 1	100.0%	99.9%	Technical Exemption	
	BBC 2	100.0%	99.9%	Technical Exemption	
	Sky Living	80.0%	94.2%	Technical Exemption	
	Sky One	80.0%	92.6%	Technical Exemption	
	Channel 4	90.0%	100.0%	Technical Exemption	
Italy	AXN	15.0%	18.0%	Technical Exemption	
	The Discovery Channel	15.0%	24.1%	4.0%	8.2%
	Discovery Science	15.0%	17.6%	4.0%	9.5%
Poland ⁽⁻²⁻⁾	Discovery Life	15.0%	21.0%	Technical Exemption	
	AXN	15.0%	61.9%	Technical Exemption	
	The Discovery Channel	15.0%	21.7%	Technical Exemption	
	Discovery Science	15.0%	22.7%	Technical Exemption	
	Discovery Turbo Xtra	15.0%	19.9%	Technical Exemption	
	Investigation Discovery	15.0%	18.8%	4.0%	6.5%
	TLC	15.0%	20.0%	Technical Exemption	
Sweden	The Discovery Channel	15.0%	100.0%	4.0%	4.1%
	Kanal 5	15.0%	97.7%	4.0%	7.1%
	Kanal 9	15.0%	99.0%	4.0%	5.4%
	TV3	15.0%	100.0%	4.0%	1.3%
	TV3 Puls	15.0%	85.1%	4.0%	4.1%
	TV6	15.0%	97.9%	4.0%	4.1%
	TV8	15.0%	98.6%	4.0%	3.8%
LEVEL 2					
Denmark	TLC	12.0%	100.0%	4.0%	5.2%
	The Discovery Channel	12.0%	100.0%	4.0%	4.5%
LEVEL 3					
NA	NA				

2.- Data for Travel Channel was not provided in time for publication but will be published in the full 2015 report.

Source: Ofcom - data provided by broadcasters

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Věc:

Různí poskytovatelé; novinky mediální sektor přelom 2015/2016

Termín pro (vypravení) rozhodnutí Rady:

Návrh na usnesení Rady:

Rada se seznámila s přehledem vývoje evropského mediálního prostoru za první čtvrtletí kalendářního roku 2016.

Usnesení Rady:

Rada se seznámila s přehledem vývoje evropského mediálního prostoru za první čtvrtletí kalendářního roku 2016.

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Přílohy:

Dokument (text materiálu, 10.2.2016, text materiálu); Dokument (ostatní, 10.2.2016, výšeč z bulletinu Ofcom);

Lustrum:

Přehled vývoje evropského mediálního prostoru za první čtvrtletí kalendářního roku 2016.

Německo:

Německé soudy se zabývaly bumperem/oddělením reklamy od ostatních částí vysílání. Provozovatel televizního vysílání Sat.1 odvysílal selfpromotion v rámci nebo těsně navazující na reklamní předěl. **Zmíněný předěl byl v hrubém nepoměru vůči selfpromotion** (zřejmě se v jeden okamžik ocitli na obrazovce společně – bohužel přesný popis nebo video nebylo možné z veřejně dostupných zdrojů dohledat) a z pohledu „reasonably attentive viewer“ tedy **nebylo zjevné, že budou následovat reklamy**, a to i když tam jakýsi předěl ve formě slova „reklama“ byl. Z veřejně dostupných zdrojů vyplývá, že provozovatel televizního vysílání se mohl snažit předěl jaksi schovat, upozadit, aby si ho divák moc nevšiml, a to právě v rámci upoutávek na vlastní pořady (selfpromotion).

- Rada zatím tento záměr ze strany provozovatelů televizního vysílání nezaznamenala. OATV se domnívá, že v českém prostředí takováto problematika nebude jednak průchozí před správními soudy (soudě podle zkušenosti OATV při ústních jednání před soudními senáty) a rovněž se OATV nedomnívá, že zákon č. 231/2001 Sb., konkrétně jeho ustanovení týkající se oddělenosti a rozeznatelnosti obchodních sdělení, poskytuje dostatečnou oporu pro případnou argumentaci ve stejném či podobném duchu, jež nastínil německý regulátor.

Ochrany dětí a mladistvých se v Německu týkalo prověřování údajného ohrožení dětí a mladistvých (propagování nezdravého životního stylu – tzv. body image) odvysíláním pořadu „Germany’s Next Top Model“ (jedná se o celosvětově rozšířený formát pořadu) moderovaný Heidi Klum. Pořad obsahuje rozhovory s 241 pacienty trpícími poruchou příjmu potravy, přičemž jedna třetina z nich vypověděla, že tento pořad měl značný vliv na vývoj této poruchy a další třetina vypověděla, že pořad částečně přispěl. Regulační orgány pořad prověřily a dospěly k závěru, že nedošlo k žádnému ohrožení dětí a mladistvých, neboť v rámci tohoto pořadu hlavní moderátorka Heidi Klum několikrát zdůrazňovala a opakovala, že pro profesi modelky je důležitá zdravá strava a sport.

Francie

Francouzský ekvivalent NSS rozhodl, že pakliže v televizním pořadu, kde různí lidé večerí, pijí, baví se, diskutují (diskuze známých tváří je jádrem daného televizního pořadu) a budou zobrazeny (tedy nevystřiženy) **momenty, kdy někteří lidé kouří cigaretu** (soud podotkl, že si jí **dokonce i vychutnávají**) lze považovat toto zobrazení za reklamu na tabákové výrobky. A to i přes naprostou absenci jakéhokoliv jiného momentu, který by mohl být **označen jako pobídka** (to zda přímá či nepřímá v tomto momentě ve Francii evidentně již nehraje roli).

- tento přístup je nutno hodnotit jako až příliš extenzivní, hraničící s cenzurou a neaplikovatelný v ČR.

Velká Británie:

Britský regulátor Ofcom vydal ke konci roku 2015 bulletin, v jehož rámci se převážně a značně podrobně zabýval britskou verzí deliktu neobjektivního a nevyváženého zpravodajství. Například popsal vysílání programů RT Europe (týkající se genocidy na Ukrajině) a RT (týkající se údajného lživého nařčení BBC, že odvysílal lživé reportáže o chemických útocích v Sýrii). Ofcom se těmito možnými delikty podrobně zabýval a došel k závěru, že došlo k porušení britského vysílacího zákona, co se týče objektivity a vyváženosti.

Je třeba zdůraznit snahu Ofcomu brát v potaz proaktivní chování provozovatelů televizního vysílání v rámci probíhajícího vyšetřování.

Dále lze pro zajímavost odkázat na podrobné zkoumání aplikace nadřazeného práva na svobodu projevu při posuzování daných případů porušení zákona.

Pro případ zájmu o detaily těchto případů je výseč materiálu Ofcomu v originálním znění přiložena k tomuto materiálu.

Jako příklad správní praxe lze uvést situaci s programem „ITCE“, který se zaměřuje na bangladéšské obyvatele. Ofcom vydal 20 upozornění na porušení zákona v rámci jednoho kalendářního roku (porušení zákona, porušení LP), v momentě kdy stále nedošlo k dostatečné nápravě situace (jednalo se především o to, že originální materiál přejímaný z Bangladéše nemá žádné oddělení obchodních sdělení) byla nyní provozovateli udělena sankce ve výši 20.000,- liber s tím, že bude monitorován a pakliže nedojde k dostatečné změně chování, bude mu odebrána licence.

BBC 3 – program s největší sledovaností u věkové skupiny 16-24 provede během jara tohoto kalendářního roku značně kontroverzní krok a přesune své aktivity kompletně do online prostředí. Během února bude program stažen z lineárního vysílání.

Chorvatsko:

Chorvatsko ve spolupráci s UNICEF vytvořilo novou kampaň pro propagaci labellingu „Let’s choose what we watch“

Kampaň obsahuje tři hlavní videa, která ukazují potencionální škodlivé následky, jež by mohl způsobit nevhodný obsah vysílání. Potud se tato kampaň podobá kampani RRTV „Vaše dítě, Vaše televize, Vaše zodpovědnost“, jež byla spuštěna v roce 2011.

Jako doplněk k hlavním třem videím (viz výše) tvoří kampaň svědectví známých televizních „tváří“ hovořících o tom, jaké mají jako rodiče zkušenosti s výběrem (a jeho důležitostí) médií, jejich obsahu a hlavně povídání si s dětmi o již shlédnutém obsahu.

Makedonie:

V reakci na nový volební zákon zde byla rovněž přijata metodologie pro posuzování politické reklamy.

- OATV zaujalo zejména konstatování, že v prvním a druhém kole voleb se bude užívat diskurzivní analýzy¹, tedy se bude posuzovat tón podávaných informací, sestavení informací atd.

Pro zajímavost exkurz do světa autorského práva - byl vydán rozsudek soudu v Kalifornii, ve kterém bylo postaveno na jisto, že text písně „Happy Birthday to You“ je nyní veřejným majetkem a společnost Warner si jej nemůže nárokovat. Žalobce v této věci dále plánuje ze společnosti Warner vysoudit veškeré autorské poplatky za posledních třicet let.

¹ Cílem diskurzivní analýzy je pochopit význam sociální reality pro zkoumané subjekty i způsob, jakým byla vytvořena.

Standards cases

In Breach

The Truthseeker: Genocide of Eastern Ukraine

RT Europe, 13 July 2014, 05:45, 09:45, 13:45, 21:45 and 14 July 2014, 01:45

Introduction

RT Europe is a news and current affairs channel targeted primarily at audiences on the European mainland. The licence for RT Europe is held by Autonomous Non-Profit Organisation TV-Novosti ("TV Novosti" or the "Licensee")¹ and is funded by the Federal Agency for Press and Mass Communications of the Russian Federation².

The Truthseeker ("Truthseeker") was an investigative current affairs series broadcast on RT Europe. Two viewers contacted Ofcom to complain that an episode of Truthseeker which appeared to be titled *Genocide of Eastern Ukraine* (the "Programme"), and which concerned the policies and actions of the Ukrainian Government towards the population of eastern Ukraine, made "no effort to provide balance" and contained "horrific" and "wild" claims.

Ofcom assessed the entire Programme, which was just over 14 minutes long, and noted the following:

The presenter, Daniel Bushell (the "Presenter"), introduced the Programme by saying:

"The genocide in eastern Ukraine and its quote 'shameful cover-up'".

A voiceover then gave the following summary of the Programme's content:

"Bombing the wheat fields to make sure there's famine. Kiev's leaders repeat Hitler's genocidal oath. And Ukraine's kids taught to occupy Western Europe".

The Presenter then referred to the genocides in Rwanda and the Congo and the US Government's involvement in these atrocities. During this section of the Programme, a number of captions related to the Presenter's comments were shown on screen. A short video clip of Bill Clinton was also shown in which he briefly referred to the US Government's involvement in "ethnic conflicts". The Presenter also interviewed investigative journalist William Engdahl who discussed the involvement of the US Government in the conflicts in the Congo and Ukraine. In relation to US involvement in the Ukrainian conflict, Mr Engdahl said:

¹ The Licensee holds licences for two separate services: RT Europe and RT UK. Although RT Europe is widely available to viewers in mainland Europe, UK viewers require specialist receiving equipment in order to receive it. RT UK is targeted at UK-based audiences and broadcasts on a variety of readily available digital television platforms in the UK. The Programme was shown solely on the RT Europe service.

² See the description of RT in *Television News Channels in Europe (Based on a Report prepared by the European Audiovisual Observatory for the European Commission – DG COMM, October 2013,* <http://www.obs.coe.int/documents/205595/264629/European+news+Market+2013+FINAL.pdf/116afdf3-758b-4572-af0f-61297651ae80>.) Section 5.4.6 of this report states that Russia Today: "can be considered as a state funded or public media service".

"I think the same cast are trying to orchestrate a genocide in eastern Ukraine".

The Presenter then said:

"Body parts lying on the ground. Another villager's organs hanging on the outside only a torso left. The latest victims of Kiev's mass daily bombings of unarmed civilians. Reportedly Kiev has again used banned cluster bombs in this attack designed to kill indiscriminately. The bombs splinter, maiming or killing everybody in the surrounding area. Vanya celebrated his fifth birthday the day before the bombing. The next day the Junta's³ cluster bomb blew his leg off. He died almost immediately in front of Vanya's mother's eyes. How would US backed president Poroshenko feel she says if that was his children?"

The Presenter also said:

"Kiev, notes historian Eric Zuesse, is the most far right-wing government on the face of the earth. It's on a one-way killing-spree. He points out that the self-defence forces are not bombing or massacring anyone. Residents of eastern Ukraine told Op-Ed News that they used to think pilots were just flying blind and missing their targets. Then they found they were actually highly accurate, always hitting civilians who had no other crime than their ethnicity. In the pretty countryside of east Ukraine a tiny village called Saurovka. The openly Nazi mercenaries who make up Kiev's new army despise the place because it has a memorial commemorating World War II victory over their fascist heroes. The memorial is shelled by Kiev's army almost every day. One day its mercenaries attack the village itself. Locals claim this is what happened next".

The following statement was shown both as on-screen text and in voiceover:

"Kiev's army, being a direct successor to Hitler's Wehrmacht, terribly hates the Saurovka memorial⁴. All the time their artillery and mortars lob shells directly at the memorial. One day the Right Sector⁵, National Guard, Azov and Dnepr Battalion⁶ mercenaries came to Saurovka village, and they instilled European values. They took the men alive and cut off the limbs. First their arms, then legs, then the heads. They did not cut the women – they raped them".

The Presenter said:

"Village after village, town after town in eastern Ukraine, eyewitnesses report unarmed civilians being systematically massacred, all under complete mainstream media silence. Independent journalists who might reveal what Kiev's doing are prize targets. It's already murdered and tortured numerous war correspondents such as Channel One cameraman Anatoly Klyan, the

³ A military or political group that rules a country after taking power by force.

Source: Oxford Dictionaries (Oxford University Press)
<http://www.oxforddictionaries.com/definition/english/junta>

⁴ An image of the war memorial at Savur-Mohyla was shown. The memorial commemorates soldiers killed during the Second World War.

⁵ Ofcom understands that Right Sector was set up in late 2013 as a grouping of Ukrainian far right-wing groups, and in late March 2014 became a political party.

⁶ Ofcom understands the Azov and Dnepr battalions to be volunteer far right-wing paramilitary forces.

correspondent and sound engineer for Rossiya TV and Italian photographer Andrea Rocchelli. The UN admits refugees are in the hundreds of thousands. The biggest humanitarian crisis in Europe since World War Two. Real numbers are likely to be much higher...Kiev has cut off the remaining humanitarian corridors so that millions in eastern Ukraine are no longer allowed out or food allowed in. Some of the locals survive on berries, famine now as catastrophic as the daily shelling. Once winter comes, they say, it will be another Leningrad siege. The city of Leningrad was besieged by the Nazis in World War Two for years leading to an estimated one million deaths”.

The Presenter said:

“American George Eliason, who lives with his Ukrainian family near Lugansk, is bombed daily by Ukrainian mercenaries. He’s surrounded by Kiev snipers and tanks. Killers from the Nazi Right Sector Party now control the streets of his village...First of all can you tell us the situation there?”

There was then the following exchange:

George Eliason: *“Hitting hospitals, orphanages, the city market, five, six, seven, eight times. It’s not a mistake any more. I mean it’s just horrific, the body count right now. Just people, there were no soldiers there; there was no military equipment there. They just dropped the bombs using phosphorus. Back in the War time they didn’t do this against the foreign invader. Never mind against people who didn’t attack anybody. So the level in terms of genocide, doing something that is beyond humanity. Walking up to somebody and disembowelling them, a child, that’s an act of heroism for Bandera⁷ [Described on screen as ‘Ukraine Nazi followers]”.*

The Presenter: *“Is Kiev trying to create a humanitarian catastrophe in the region?”*

George Eliason: *“One hundred per cent. What’s going on right now – they’re even burning the wheat fields so the crop doesn’t come in, just to make sure it happens. They’re bombing fields that need to be harvested. One of my neighbours went out to harvest his wheat, they shot up his tractor, sniper fire, just to get him off the field so the grain goes bad. It doesn’t get harvested. We’re looking at the possibility of a few hundred thousand people starving to death. They were shooting up all the medical transport. So right now it’s becoming critical. It’s very, very difficult to find any type of medication you need. It’s almost as though the more horrific thing they do, the easier it is for them to get away with it”.*

⁷ Ofcom understands this to be a reference to Stepan Bandera (1909-1959), a Ukrainian political activist and leader of the Ukrainian national and independence movement. Bandera is a controversial figure for many due to his widely debated involvement with Nazi Germany during the Second World War. He has been described by The Washington Post as: “idolized by some in the capital and western Ukraine, he is reviled as a fascist in much of the heavily ethnic-Russian east and south as well as in Russia itself”.
(http://www.washingtonpost.com/world/a-ghost-of-world-war-ii-history-haunts-ukraines-standoff-with-russia/2014/03/25/18d4b1e0-a503-4f73-aaa7-5dd5d6a1c665_story.html)

Shortly afterwards the Presenter said:

“Poroshenko⁸ officially calls eastern Ukrainians quote ‘parasites’. Washington’s blog notes that Hitler gave the same reason for ethnically cleansing his country. US appointed premier Yatsenyuk⁹ in his official statement calls eastern Ukrainians sub-humans for extermination...But buoyed by the silence in the West, Poroshenko just said it again in his official address, branding almost his entire country sub-human. Liveleak notes that sub-human is ‘untermench’ in German, precisely how Hitler described the Slavs in World War II. After Hitler’s invasion, survivors were put in so-called filtration camps and their living space, in German ‘lebensraum’ awarded to invading soldiers. Kiev’s defence ministry says its putting surviving eastern Ukrainians in filtration camps and will give lebensraum, eastern Ukrainian’s land, to Kiev’s soldiers after they’ve quote ‘cleansed’ the current inhabitants. Last week Kiev’s defence council bragged that it had already cleansed the first three villages”.

At this point, the Presenter conducted an interview via video link with Mark Sleboda who was described as a “US Navy vet and former senior lecturer in international relations”. The Presenter asked “[h]ow are these orders being carried out?” to which Mr Sleboda replied:

“This mass artillery attacks, the use of weapons such as Grads, multiple large rocket systems, Hurricanes, the Smerch city flatteners, are extremely ineffective in targeting small self-defence forces, the military forces of Novorossiia¹⁰ that are resisting them. They are specifically a weapon of ethnic cleansing. They are specifically targeting cities, towns. They have wiped out water supplies, very specifically, multiple times, with very precision targeting”.

The Presenter then asked Professor Francis Boyle (described in the Programme as a “top war crimes prosecutor”) the following question:

“Is Kiev committing genocide?”

Professor Boyle responded:

“Yes, I’m afraid what we’re seeing is a degeneration into genocide at this point. The United States here, under Obama, is guilty as sin in aiding and abetting what Poroshenko and his neo-fascists are doing now. Indeed yesterday and the day before the Obama administration and their spokespeople supported Poroshenko in acts of genocide against the Russian speakers”.

The Presenter then discussed the teaching of “extremist ultra-nationalist views” and “Nazi slogans and Hitler salutes” to Ukrainian children. The Presenter then said that “[G]angster president Poroshenko presumably approves of this since to him all eastern Ukrainians are parasites.”

⁸ Petro Poroshenko is the current President of Ukraine.

⁹ Arseniy Yatsenyuk is the Ukrainian Prime Minister.

¹⁰ Literally “New Russia”. Ofcom understands this to be a reference to the Russian-speaking regions of eastern Ukraine.

The Presenter concluded the Programme by saying:

“All of Western Europe was occupied by these people’s heroes not too long ago. Millions were quote ‘cleansed’ in the filtration camps that Kiev is again setting up today. Western leaders nurturing and financing today’s openly genocidal fascists is a slap in the face to every victim who died fighting the Nazis and it seems a perverse effort to want to go through it all again. Seek truth from facts – this is The Truthseeker”.

On-screen Captions

A number of captions were shown at the bottom of the screen at various points during the Programme. Ofcom noted the following:

“Eyewitnesses: Such attacks on civilians can only be described as genocidal”.

“Pro-Kiev supporter in Slavyansk admits Kiev snipers deliberately shooting babies”.

“Kiev claims it’s not committing genocide, denies casualty reports”.

“Anna-News: Kiev seizes city of Slavyansk, death squads going house to house executing all males under 35”¹¹.

“Kiev defense [sic] minister publically voices plan to corral citizens in ‘filtration’ camps”.

“Ukrainians’ homes – ‘Lebensraum’ in German – are handed to Hitler’s army”.

“Eyewitnesses: Kiev army now literally crucify babies in seized towns, force mothers to watch”.

“Kiev brags of filtration camps for ‘cleansing’ all E. Ukrainians”.

¹¹ Ofcom understands that Anna-News is a news agency based in Abkhazia. Abkhazia is described by the Encyclopaedia Britannica as an “autonomous republic in north-western Georgia that declared independence in 2008.”

Investigation under Rule 2.2

In Ofcom's opinion the inclusion of the numerous highly serious allegations about the Ukrainian Government and its military forces towards the population of eastern Ukraine in the Programme raised issues warranting investigation under Rule 2.2 of the Code. Rule 2.2 states:

"Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

We therefore asked the Licensee to explain how the Programme complied with Rule 2.2. Ofcom noted that the comments and allegations in the Programme were made in the context of an ongoing highly sensitive, politically contentious situation both in the Ukraine and internationally. Against this background it became evident in considering the Licensee's representations that the underlying facts on which the comments and allegations were based remained largely unsettled. In the absence of a firm or independently established set of facts that Ofcom could rely on, we concluded that it was not possible to pursue our investigation under Rule 2.2. However, we remained concerned about the strength of the comments and allegations and the manner in which they were made, particularly in light of reviewing the evidence and the sources the Licensee said it had relied on. We address this more fully in the context of considering the Programme's compliance with the special impartiality requirements under Rule 5.5 below.

Investigation under Rule 5.5

Ofcom considered that the Programme dealt with matters of political controversy i.e. the policies and actions of the Ukrainian Government and its military forces towards the population of eastern Ukraine. To the extent that the Programme dealt with these matters, the material referred to above raised issues warranting investigation under Rule 5.5 of the Code, which states:

"Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole".

We therefore asked the Licensee to comment on how the Programme had complied with this rule.

Response

Background and summary

The Licensee said that Truthseeker was a series of 13 minute programmes, produced in-house by RT, which has now been terminated. TV Novosti said that Truthseeker was "designed to cover news-related events in a non-news format with a focus on topics that were inadequately covered by mainstream media".

The Licensee went on to say that the background to the Programme was evidence from the UN refugee agency, the UNHCR, that "forced displacement was rising in Ukraine". TV Novosti said that Melissa Fleming of the UNHCR said that the rise in numbers of internally displaced people coincided "with a recent deterioration of the situation in eastern Ukraine" and that displaced people had cited "worsening law and order, fear of abductions, human rights violations and the disruption of state

services”. The Licensee also noted that: “More recently, despite the ceasefire, UNHCR reports that the humanitarian suffering continues in Ukraine. It reports that the official figure of internally displaced people has risen to 300,000 “but UNHCR officials believe the real number is two to three times higher”¹². The Russian authorities say around 814,000 Ukrainians have entered Russia since the start of the year”.

TV Novosti said that there had been “relatively little news coverage of the reasons for these displacements and the human cost at least on UK television”. In particular, the Licensee stated that the “actions of Ukrainian government forces and their irregulars and their impact on civilian populations in Eastern Ukraine were receiving little coverage in the mainstream media, which were instead focusing on the role supposedly played by Russia in the conflict”. TV Novosti explained that the Programme “was a serious contribution to public understanding of events in Ukraine which the mainstream media, for whatever reason, had not provided”. In particular, the Licensee said it “offered the kind of insight into events behind the UN figures that investigative journalism should provide and a counterbalance to the general lack of coverage” and “aimed to fill the information vacuum that been left by the mainstream media”.

TV Novosti said that as a result of concerns that one of the various captions that had appeared in the Programme as text at the bottom of the screen contained insufficiently corroborated information senior RT management took an almost immediate decision, well before Ofcom took action, to terminate Truthseeker with immediate effect and all historical episodes were removed from RT’s website.

Rule 5.5

The Licensee said it was not clear that the Programme breached Rule 5.5 and questioned whether Rule 5.5 was applicable in this case.

Application of due impartiality

TV Novosti stated that Ofcom’s guidance makes it clear that audience expectation “is a factor to be taken into account not only in considering whether due impartiality has been preserved in any particular case but also in considering whether due impartiality needs to be preserved in the first place”. The Licensee then said “that the likely expectation of RT’s audience would not be such as to engage the special impartiality requirements, having regard to the nature and mission or remit of the channel, the custom and practice in war reporting amongst broadcasters and to the very low number of complaints (two)”.

TV Novosti went on to say that audience expectations concerning the Programme would have been shaped by a number of factors, including “RT’s explicit mission which is, among other things, ‘to provide an alternative perspective on major global events, and acquaints an international audience with the Russian viewpoint’”¹³. The Licensee stated that the Programme aimed to pursue that mission and (in RT’s words) “to provide people with more answers to more questions, to examine world events from different point or points of view and to encourage people to keep questioning more”. TV Novosti also said that “it is reasonable to expect that audiences are familiar with a broadcasting format in which the broadcaster

¹² <http://www.unhcr.org/541c52839.html>

¹³ <http://rt.com/about-us/>

challenges the views of the mainstream media and provides alternative perspectives". Further, the Licensee said that the Programme was viewed almost solely by an international audience, whose expectations would have been somewhat different to a UK audience.

TV Novosti added that the "exigencies of war reporting" was another factor that "can be expected to shape audience expectations". The Licensee said that "[w]ar correspondents, whether embedded with one side's forces or acting independently, are likely to report events from one side or the other and not from both" and gave a number of examples.

Preservation of due impartiality

TV Novosti then went on to consider whether (if Ofcom decided that Rule 5.5 was engaged in this case) the Programme preserved due impartiality.

The Licensee submitted that the producers of the Programme had "prudently approached the making of the programme as though the rules were engaged" and that "they took steps to preserve due impartiality by including the Ukrainian government's viewpoint" in the caption which read "*Kiev claims it's not committing genocide, denies casualty reports*" (the "Caption").

TV Novosti also said that it had intended to broadcast immediately after the Programme a slate setting out the position of the Ukrainian Government as follows:

"The Ukrainian government denies all accusations regarding crimes against civilians.

Kiev says affected residents in the country's east are just a side effect of the anti-terrorist operation".

The Licensee explained that "[h]uman error unfortunately led to [this] statement being omitted". TV Novosti expressed regret for this omission.

The Licensee stated that a judgment as to due impartiality requires a "multi-factorial assessment". TV Novosti then set out various factors which it argued Ofcom should take into account in deciding whether it had complied with Rule 5.5. These factors included:

- a) the nature of the subject: the Licensee said the subject of the Programme, as indicated by the Presenter's words "*Genocide in Eastern Ukraine and its shameful cover-up*", was "the treatment of a civilian population in the course of a civil war and the lack of coverage by the mainstream media." TV Novosti said this was "presented in a broad international context focusing in particular on the alleged role of the United States in the Rwandan genocide, in Libya and the recent events in Ukraine". The Licensee said the passages that Ofcom has picked out for assessment are "taken out of context as criticisms of the Ukrainian government, its armed forces and supporters which is only indirectly what the Programme is about";
- b) the type of programme: TV Novosti submitted that the Programme was not a news programme and that Truthseeker "was designed to cover news-related events in a non-news format with a focus on topics that were inadequately covered by mainstream media." The Licensee said that the Programme's aims were "to provide people with more answers to more questions, to examine world events from different points or points of view and to encourage

people to keep questioning more.” TV Novosti added “it was not reporting news but was presenting a thesis which was intended to be challenging”;

- c) the type of channel: the Licensee said that RT as a channel “is intended to be challenging” and that RT news “aims to cover the major issues of our time for viewers wishing to question more and delivers stories often missed by the mainstream media to create news with an edge”. TV Novosti added that RT news “aims to provide an alternative perspective on major global events, and acquaints an international audience with the Russian viewpoint”;
- d) the likely expectation of the audience: the Licensee said it doubts that the Programme “was out of line with audience expectations”;
- e) the extent to which the content and approach was signalled to the audience: TV Novosti stated that “the content and approach will have been familiar to the audience from the nature of the channel and of the series, from the RT website and from the synopsis in the EPG: ‘The Truthseeker with its anchor Daniel Bushell laces hard-hitting reporting with humor (sic), featuring exclusive interviews and investigations’”. The Licensee said the title of the Programme itself would also have been a good indication as to the content and approach;
- f) the editorial content: TV Novosti said that the editorial thrust of the Programme “was not primarily aimed at criticising the Ukrainian government, its forces and supporters”. The Licensee submitted that the captions shown during the Programme were “an integral part of the editorial content, partly emphasising editorial themes and partly supportive by indicating the sources of the stories”;
- g) programmes scheduled before and after: TV Novosti explained that the Programme was a current affairs programme within a rolling 24 hour news channel, presenting opinions instead of the news. The Licensee said it was readily distinguishable from the news programmes scheduled before and after it and that audiences will have known to adjust their expectations accordingly; and
- h) the likely size and composition of the potential audience: TV Novosti highlighted the fact that the Programme was included in RT’s European service and was for reception by an international audience. The Licensee submitted, while accepting that the Code still applied, that “the different nature of the audience should be taken into account in any assessment of whether due impartiality was achieved”.

TV Novosti said that “any assessment of whether due impartiality was preserved should at least have regard to the above factors as well as other factors if relevant”.

The Licensee also questioned the extent to which the preservation of due impartiality required the Programme to reflect alternative viewpoints appropriately. TV Novosti said that under Rule 5.5 a broadcaster “may” be required to reflect alternative viewpoints in order to preserve due impartiality and that it is an editorial matter for the broadcaster as to how it maintains due impartiality. The Licensee went on to say that, in including the Ukrainian Government’s denials in the Caption it had followed Ofcom’s Guidance to Section Five of the Code which states that “alternative viewpoints could be summarised, with due objectivity and context, within a programme”. TV Novosti said that the Caption was an “express statement of the

Ukrainian government's position" and an "integral part of the editorial content of the Programme".

Licensee's comments on the Preliminary View

TV Novosti also commented on Ofcom's Preliminary View, which was to find a breach of Rule 5.5, and questioned whether a breach of Rule 5.5 was justified. A number of these submissions repeated or expanded on points made in its previous representations. The Licensee also made a number of additional comments, which are summarised below.

Application of due impartiality

TV Novosti referred to Ofcom's reasoning in the Preliminary View that the Programme dealt with a matter of political controversy. The Licensee said it did not think that the Preliminary View made out a case that the special impartiality rules applied to the Programme. TV Novosti did not think that Ofcom's reasoning was sufficient and it said that Ofcom had not given any consideration to what other factors might affect its conclusion on the application of due impartiality.

In particular, the Licensee questioned whether Ofcom had given due weight to TV Novosti's right to freedom of expression in relation to the application of the special impartiality requirements (and any of the other issues addressed in the Preliminary View). In support of this argument, TV Novosti referred to a previous Ofcom decision relating to the documentary feature film *An Inconvenient Truth*¹⁴. The Licensee said that in light of this decision there is a balance to be struck between freedom of expression and regulatory intervention and that the threshold for intervention is high. TV Novosti stated that it could not find any indication in the Preliminary View that Ofcom had considered whether the Programme crossed this threshold. Specifically, in relation to the Programme, the Licensee said that it seemed that matters of political controversy could include almost any conceivable subject that concerns Ukraine at present and as such a high test must be applied to ensure freedom of expression. TV Novosti submitted that "[a] very wide application of Section Five to cover not only discussions of particular political controversies but also all issues that might in some way have a relationship to those controversies (i.e. effectively any subject on which a factual documentary programme could be made where there was a reference to Ukraine) would have a chilling effect on RT's ability to explore what appeared to be genocidal behaviour in eastern Ukraine in conditions of mainstream media silence".

The Licensee disagreed that the subject matter of the Programme was the criticisms of the Ukrainian Government and its military forces towards the population of eastern Ukraine. Rather its view was that the subject matter of the Programme as a whole seemed to be more about mainstream media silence and the impact of US foreign policy as opposed to criticisms of the Ukrainian Government, its armed forces and supporters. In support of this assertion, TV Novosti said that the name of the Programme was "The Truthseeker" and not, as Ofcom stated, "Genocide of Eastern Ukraine". The Licensee also said that the Presenter, in the Programme's introduction, introduced the theme of mainstream media silence through the phrase "*shameful cover-up*". The Licensee said that this was followed by possible explanations for the silence and the genocide "pointing the finger not at the Ukrainian government but at

¹⁴ *An Inconvenient Truth* is a 2006 documentary feature film about global warming. Ofcom's decision relating to this case is available at:
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb165/>

the US". Therefore the criticism of the Ukrainian Government, its armed forces and supporters was only indirectly what the Programme was about.

Preservation of due impartiality

On the assumption that the due impartiality rules were applicable, TV Novosti did not think that Ofcom's provisional conclusion on the preservation of due impartiality was sustainable.

The Licensee said that it was not appropriate for Ofcom to reject the sufficiency of the Caption on quantitative grounds relating to its screen duration or the number of times it appeared without considering qualitative factors. In TV Novosti's view "it is the denial itself, not its duration or the number of times it appears, that is the key test of sufficiency here". The Licensee said that the denial in the Caption was categorical, unambiguous, clear and unmistakable. It added that "[i]t is reasonable to expect that audiences will perceive no undue bias in presentations where criticisms are balanced by a clear indication, however brief, that the criticisms are rejected". TV Novosti went on to say that Ofcom has "advanced no cogent reason why the [C]aption should not be treated as the presentation of the required alternative viewpoint sufficient to preserve due impartiality". The Licensee also submitted that the Programme's approach to the presentation of an alternative view in these circumstances was not out of line with industry practice, and gave examples of that practice. Further, TV Novosti said that it had "intended to emphasise the Ukrainian government's denial with the closing slate" (which was "inadvertently omitted") and that the Licensee's intention to include this slate should be taken into account by Ofcom when considering its response to the Programme.

TV Novosti expanded on its previous assertion that Ofcom did not appear to have taken a "multi-factorial" assessment of due impartiality. Specifically, the Licensee said that the Preliminary View started by looking for alternative views and then assessed the sufficiency of these views against a number of factors. In its view this approach was not procedurally appropriate. TV Novosti submitted that the Preliminary View considered the nature of the Programme, its subject matter and one aspect of audience expectations but none of these matters appeared to have any bearing on the assessment of whether the Caption was adequate and sufficient to preserve due impartiality.

Further, the Licensee made reference to having relied on guidance given in compliance meetings with Ofcom in November 2012 and March 2014 in which the special impartiality rules were discussed¹⁵.

In conclusion, TV Novosti submitted that Ofcom had not made a compelling case that the Programme was in breach of Rule 5.5.

¹⁵ In meetings with licensees Ofcom stresses that it cannot provide specific compliance advice about particular programmes in advance of broadcast. Compliance in specific programmes is the responsibility of licensees, not Ofcom. Ofcom can only provide general guidance, especially in an area like due impartiality, where cases tend to be very dependent on the individual facts. This is what happened in Ofcom's meetings with RT. Ofcom provided the Licensee with some general guidance about how to preserve due impartiality, and this advice largely echoed the published Guidance on due impartiality.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content which it considers best calculated to secure a number of standards objectives. These objectives include ensuring that the special impartiality requirements set out in section 320 of the Act are complied with, including that “due impartiality” is preserved on matters of political controversy. This objective is reflected in Section Five of the Code. In particular, Rule 5.5 states that:

“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment, as contained in Article 10 of the European Convention on Human Rights (“ECHR”). This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority.

Article 10 of the ECHR also provides that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Accordingly, Ofcom is required to set standards to secure the standards objectives in section 319(2) of the Act, including that the special impartiality requirements under section 320 of the Act are complied with, which includes the need to ensure that due impartiality is preserved in respect of matters of political controversy. Ofcom secures the application of the special impartiality rules through making and enforcing the Code, which includes the rules in Section Five relating to due impartiality.

Ofcom must also consider the broadcaster’s right to freedom of expression and the audience’s right to receive information. Therefore, in applying the due impartiality rules, Ofcom must balance the right to freedom of expression against the requirements of Section Five of the Code.

It is important to note the broadcasting of highly critical comments concerning the policies and actions of any individual or organisation, including a government or state agency, is not, in itself, a breach of the special impartiality rules. Further, the special impartiality rules do not prevent a broadcaster from making programmes about politically controversial subject matters, and it is crucial that broadcasters have the editorial freedom to do so. However, in doing so, broadcasters must ensure, in accordance with Rule 5.5, that programmes dealing with politically controversial matters preserve a level of impartiality which is appropriate to the subject and nature of the programme, taking into account other relevant contextual factors.

Therefore, in this case Ofcom took careful account of the Licensee’s right to freedom of expression and the audience’s right to receive information against the requirements of Rule 5.5. In doing so, we acknowledged that the Programme was made in the context of an ongoing, politically sensitive conflict in Ukraine. We noted

TV Novosti's representations detailing evidence from the UN refugee agency (the UNHCR) regarding the humanitarian suffering and the recent deterioration of the situation in eastern Ukraine. We also took into account the Licensee's representations that there had been very little coverage in the mainstream media about the actions of Ukrainian Government forces and the impact on the civilian population in eastern Ukraine. In light of the above, and in line with broadcasters' right to freedom of expression and audience's right to receive information, we considered that it was legitimate for TV Novosti to make and broadcast a programme which examined and explored the situation in eastern Ukraine. However, for the reasons we explain below, we considered that the Programme examined politically controversial matters; therefore, we considered that it was incumbent on the Licensee to comply with Rule 5.5 by ensuring that due impartiality was preserved in the Programme.

Application of due impartiality

The Code makes it clear that matters of political controversy are "political...issues on which politicians...and/or the media are in debate". Ofcom's published Guidance to Section Five of the Code¹⁶ ("the Guidance") explains that whether a matter of political controversy is being dealt with in a programme will depend on a "range of factors". In particular, the Guidance says that "[j]ust because a 'political'...matter is referred to in a programme, or broadcasters deal with particular matters that elicit strong emotions, does not mean that the special impartiality rules are engaged". The Guidance also explains that "just because a number of individuals and institutions, or the majority of the audience to a service, share the same viewpoint on a contentious issue, does not necessarily mean that a matter is not...a matter of political...controversy".

In assessing whether the Programme dealt with matters of political controversy, Ofcom first considered the subject matter of the Programme. We noted TV Novosti's representations that the Programme appeared to be more about mainstream media silence and the impact of United States foreign policy, as opposed to criticisms of the Ukrainian Government, its armed forces and supporters. This was not apparent to us when we viewed the Programme, although we noted that elements of the Programme did touch on these themes. In particular, the introductory section of the Programme highlighted the alleged role played by the US Government in the Rwandan genocide and speculated whether the US Government was involved in an alleged genocide in Ukraine. We also noted there were other brief references in the Programme to US involvement, for example references to the "*Obama administration*" supporting and "*aiding and abetting*" the Ukrainian Government. The Programme also contained one brief reference to "*mainstream media silence*" and another to the "*silence in the West*", as well as the reference to a "*shameful cover up*" in the introduction.

Taking the Programme as a whole however, it was clear to Ofcom that the main subject matter of discussion was the current situation in eastern Ukraine. Ofcom noted that the Programme contained commentary by the Presenter, and various interviews with individuals, which included a number of very serious allegations against, and critical comments about, the Ukrainian Government and its military forces regarding their policies and actions towards the population of eastern Ukraine. In particular, the Programme included accusations that the Ukrainian Government and its military forces had committed atrocities, and were attempting to commit genocide, against the population of eastern Ukraine. Ofcom also noted that the

¹⁶ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

subtitle of this particular episode of Truthseeker was “*Graphic*¹⁷: *Genocide of Eastern Ukraine*” and that the Presenter introduced the Programme by saying: “*The genocide in eastern Ukraine and its quote ‘shameful cover up’*”.

Further, Ofcom noted that the serious and politically sensitive allegations and comments made in the Programme were broadcast in the context of an ongoing and politically contentious situation in Ukraine which was the subject of political and media debate in the UK, Ukraine and internationally.

Taking all of the above into account, Ofcom considered the content of the Programme was primarily focused on the events unfolding in eastern Ukraine and in particular, an alleged policy of genocide being carried out, alongside other atrocities, by the Ukrainian Government and its military forces against the population of eastern Ukraine.

Therefore, Ofcom was of the view that the Programme dealt with matters of political controversy i.e. the actions and policies of the Ukrainian Government and its military forces policy towards the population of eastern Ukraine and that the Licensee was required to preserve due impartiality pursuant to Rule 5.5 of the Code.

Preservation of due impartiality

Having established that the Programme dealt with matters of political controversy, Ofcom assessed whether the Programme preserved due impartiality pursuant to Rule 5.5 of the Code.

In judging whether due impartiality has been preserved in a programme, the Code makes clear that the term “due” means “adequate or appropriate to the subject and nature of the programme”. Therefore, the Code states that “‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented”. In particular the Code states that “[t]he approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.” In addition, the Code makes it clear that context, as set out in Section Two (Harm and Offence) of the Code is an important factor in relation to preserving due impartiality. This covers a number of factors including the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

The Guidance states that whether or not due impartiality has been preserved will depend on a range of factors including the programme’s presentation of the argument and the transparency of its agenda. The Guidance also makes it clear that the broadcasting of highly critical comments concerning the policies and actions of any one state or institution is not, in itself, a breach of the Code’s rules on due impartiality. In particular, the Guidance states that it is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. The Guidance also says that the preservation of due impartiality

¹⁷ In keeping with other programmes in Truthseeker, this subtitle was broadcast at the conclusion of the opening sequence and appeared to Ofcom to be the title of the Programme. Ofcom was unclear why the word “*Graphic*” was included as part of this caption but considered that it did not in any way contradict or affect the words which followed.

does not require a broadcaster to include every argument on a particular subject or provide a directly opposing argument to the one presented in a programme.

Nevertheless, the Guidance is clear that broadcasters “must maintain an adequate and appropriate level of impartiality in its presentation of matters of political controversy”. In particular, it says that “[d]epending on the specifics of the issue...it **may** be necessary, in order to fulfil the due impartiality requirements, that alternative viewpoints are broadcast” (emphasis added). The Guidance explains that due impartiality will not be maintained by “merely offering people or institutions likely to represent alternative viewpoints (for example, representatives of a foreign government) the opportunity to participate in programmes, who decline to do so”. If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy then it “**must** find other methods of ensuring that due impartiality is maintained” (emphasis added). The Guidance gives examples of a number of editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, in order to preserve due impartiality. However, the Guidance makes it clear that it is an “editorial matter for the broadcaster as to how it maintains due impartiality”.

Having viewed the Programme in full, Ofcom was of the view that it presented a significantly negative picture of the Ukrainian Government and its military forces. As discussed above, the Programme made numerous highly serious allegations about the Ukrainian Government and military forces including allegations of atrocities and attempts to commit genocide. The allegations were accompanied by emotive footage of warfare and its after effects and numerous comparisons of the Ukrainian Government and its military forces to Hitler and Nazi Germany. All of this was broadcast with little or no counterbalance or objectivity and, in Ofcom’s view, this contributed to the Programme’s negative portrayal of the Ukrainian Government and its military forces.

Ofcom was particularly concerned that the Programme included allegations and statements that did not appear to be supported by the sources the Licensee said that it had relied on. For example, the Presenter said that “Kiev” had “*murdered and tortured numerous war correspondents such as Channel 1 cameraman Anatoly Klan, the correspondent and sound engineer for Rossiya TV and Italian photographer Andrea Rocchelli*”. In its original representations to Ofcom regarding Rule 2.2, TV Novosti said that reports of the precise circumstances were “conflicting” and it accepted that the reference to these journalists being tortured by the Ukrainian government or its military forces “does not appear to be substantiated in these accounts”. Having investigated the matter further, TV Novosti made further representations stating that: “Reports were sometimes conflicting but it was a reasonable inference that [Mr Klan and Mr Roccheilli] were killed by Ukrainian government forces and their irregulars”. The Licensee also said that at the same time there was “mounting evidence of abduction and torture of journalists and others by both sides in the conflict, for example as reported by Amnesty International”. According to its own sources, however, there did not appear to be any evidence that Mr Rocchelli was “*tortured*” prior to his death.

In contrast to the numerous allegations made against the Ukrainian Government and its military forces, Ofcom noted that the Programme contained one reference to the Ukrainian Government’s viewpoint regarding these allegations in the Caption, which read:

“Kiev claims it’s not committing genocide, denies casualty reports”.

Further, Ofcom noted that TV Novosti had intended for a 'slate' to be broadcast at the end of the Programme that set out the Ukrainian Government's viewpoint but that this was not in fact broadcast due to human error. Given that such a slate did not form part of the Programme as broadcast, Ofcom did not and could not take this into consideration in its assessment of whether the Programme preserved due impartiality.

Ofcom also noted that the Programme referred to statements made by the Ukrainian Government, in particular, statements made by the Ukrainian President, the Ukrainian Prime Minister and Kiev's defence ministry and defence council. However, we noted that these statements were not presented in an impartial way; rather they were presented in a way which served to undermine the Ukrainian Government's viewpoint and reinforce the highly critical and negative approach of the Programme as a whole. In particular, the Programme compared the policies, actions and opinions expressed in these statements to the policies and actions of Hitler and the Nazi government. Ofcom therefore did not consider that these statements provided balance to the negative picture presented in the Programme of the Ukrainian Government and its military forces.

As noted above, the Programme contained interviews with a number of individuals which were highly critical of the actions and policies of the Ukrainian Government and its military forces. Rather than questioning these interviewees in a challenging or objective manner, the Presenter asked leading questions such as "*[i]s Kiev deliberately trying to create a humanitarian catastrophe?*" and "*[i]s Kiev committing genocide?*" which, in Ofcom's view, had the effect of encouraging and eliciting further criticism from the interviewees of the Ukrainian Government and its military forces.

Apart from the Caption, we considered that the Programme did not include any other viewpoints that could reasonably and adequately be classed either as supportive of the policies and actions of the Ukrainian Government or which provided an alternative or more balanced viewpoint to those presented in the Programme. We also did not consider that, apart from the Caption, the Programme adopted any other methods or editorial techniques which provided any balance to the negative picture of the Ukrainian Government and its military forces in the Programme.

Having assessed the extent to which editorial techniques were employed by the Licensee to preserve impartiality in the Programme, we then went on to consider whether, taking into account relevant contextual factors, and the subject and nature of the Programme, "due" impartiality was, in fact, preserved.

Regarding the subject matter of the Programme, as stated above, we were of the view that its central theme was the policies and actions of the Ukrainian Government and its military forces towards the population of eastern Ukraine, and we noted that it contained highly serious allegations of atrocities and genocide.

In terms of contextual factors, we noted that the Programme was broadcast on RT Europe, a channel which TV Novosti said was "intended to be challenging" and "aims to provide an alternative perspective on major global events, and acquaints an international audience with a Russian perspective." We also noted that the Truthseeker series was described on RT's website as one which "laces hard hitting reporting" and that the Programme's aims were "to provide people with more answers to more questions, to examine world events from different points or points of view and to encourage people to question more". Further, we acknowledged, the Licensee's representations that the content and approach of the Programme would have been familiar to the audience from the nature of the channel and the series.

Taking all of this into account, we considered that viewers would have expected programmes on the channel and in the Truthseeker series to address controversial issues, and to do so from the perspective of TV Novosti, reflecting major global events from a Russian perspective. However, notwithstanding the nature of the channel and the audience's expectation, we considered that these contextual factors were outweighed by the strength of the allegations shown in a programme which dealt with matters of political controversy. In our view, therefore, the Licensee was nevertheless obliged to ensure that due impartiality was preserved in the Programme.

Ofcom also took into consideration TV Novosti's representations that the Caption was a "categorical" denial of the accusations of genocide within the Programme and we noted that the Caption stated that "Kiev" denied genocide. However, the Caption was broadcast on one occasion for a duration of approximately six seconds and it was one of 37 captions in total shown in a similar format during the Programme. In addition, we noted that the Caption was broadcast at the bottom of the screen alongside a news ticker and the Programme's other audio-visual content. We therefore considered the prominence and impact of the Caption was significantly reduced and limited by the way in which it was presented in the Programme and we did not consider, in the context of the Programme as a whole, that it provided sufficient or adequate counterbalance to preserve due impartiality.

Further, and importantly, the Licensee did not provide any evidence that due impartiality on the politically controversial matters in the Programme had been preserved in the Truthseeker series taken as whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

Therefore, for all the reasons stated above, Ofcom did not consider that due impartiality was preserved in the Programme.

Conclusion

Ofcom noted TV Novosti's representations that, as a result of concerns that the Programme contained certain information that had been insufficiently corroborated, its senior management had terminated Truthseeker with immediate effect and all past episodes had been removed from RT's website. We also recognised that the Licensee had intended for a "slate" to be broadcast at the end of the Programme that further set out the Ukrainian Government's viewpoint.

However, for all the reasons set out above, Ofcom was of the view that the Programme was a current affairs programme which dealt with matters of political controversy, and the failure of the Licensee to maintain due impartiality resulted in a serious breach of Rule 5.5 of the Code.

Ofcom therefore directs the Licensee to broadcast a summary of its Decision.

Breach of Rule 5.5

In Breach

The Truthseeker: Media ‘Staged’ Syria Chem Attack

RT, 23 March 2014, 04:45, 08:45, 12:45, 16:45, 20:45 and 24 March 2014, 00:45

Introduction

RT (formerly Russia Today) is a global news and current affairs channel produced in Russia, and funded by the Federal Agency for Press and Mass Communications of the Russian Federation¹. In the UK, the channel broadcasts on satellite and digital terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV-Novosti (“TV Novosti” or the “Licensee”).

The Truthseeker (“Truthseeker”) was an investigative current affairs series broadcast on RT. On 3 June 2014, Ofcom received a complaint² from the BBC regarding an episode of Truthseeker entitled “Media ‘Staged’ Syria Chem Attack” (“the Programme”) which was presented by Daniel Bushell (“the Presenter”) and broadcast on a number of occasions on 23 and 24 March 2014.

The Programme made a number of allegations about the BBC which centred on the following three BBC programmes (the “BBC Programmes”):

- an edition of *BBC News at Ten* broadcast on 29 August 2013 (the “29 August BBC News”);
- an edition of *BBC News at Ten* broadcast on 30 September 2013 (the “30 September BBC News”); and
- an episode of the BBC current affairs programme *Panorama* entitled “Saving Syria’s Children” broadcast on 30 September 2013 (the “BBC Panorama Programme”).

Programme summary

Ofcom reviewed the entire Programme, which was approximately 13 minutes long, and noted the following:

The Programme was introduced by the Presenter who said:

“Stunning fakery in the alleged chemical weapons attack according to a former UK ambassador. Coming up”.

Footage was shown of a number of people, covered in what appeared to be blood, lacerations and burns, standing or lying on the floor of a room.

¹ See the description of RT in *Television News Channels in Europe (Based on a Report prepared by the European Audiovisual Observatory for the European Commission – DG COMM, October 2013, <http://www.obs.coe.int/documents/205595/264629/European+news+Market+2013+FINAL.pdf/116afdf3-758b-4572-af0f-61297651ae80>)*. Section 5.4.6 of this report states that Russia Today “can be considered as a state funded or public media service”.

² The BBC also made a fairness complaint about the Programme (see page 89).

This footage was accompanied by the following voiceover commentary:

"The British Broadcasting Corporation is accused of staging chemical weapons attack".

Shortly afterwards, the Presenter said:

"August 2013 and NATO leaders can't get the public onside for the imminent bombing of Syria. Suddenly the BBC says it was filming a small rural hospital, and a game-changing atrocity happens right there the moment they were filming".

A caption was also shown on-screen which said:

"World changing atrocity happens when BBC invited to film in remote hospital".

Footage was shown labelled with the following on-screen graphic:

"Syria Crisis', Ian Pannell, BBC (August, 2013)".

This footage showed various wounded people being brought into a hospital. The voiceover within this footage said:

"Last month we were filming the doctors working at this hospital, when victims of an incendiary bomb attack on a school playground started pouring in".

Footage was shown labelled with the on-screen graphic:

"Saving Syria's Children', Ian Pannell, BBC (September 2013)".

The footage showed a female³ ("Dr Hallam"), wearing a surgical mask which covered her mouth, who said:

"Absolute chaos and carnage here, it must have been some sort of napalm".

The Programme switched back to the Presenter who said:

"But a highly sceptical public stayed hostile to military intervention. Exactly one month later the leaders are trying to pin a chemical weapons attack on Syria without success".

Two versions of the footage of Dr Hallam were shown side by side on-screen labelled "August 2013" and "September 2013", respectively, while the Presenter said:

"The BBC airs exactly the same footage, but digitally alters the word 'napalm' for quote 'chemical weapons' hoping no-one will notice".

Footage was then shown in which Dr Hallam said:

"Absolute chaos and carnage here, it must have been some sort of chemical weapon".

³ This individual was later identified by the Licensee as Dr Rola Hallam.

The Presenter said:

“Not only did folks notice but it unleashed a massive public investigation which made some extremely disturbing findings”.

An image of a letter of complaint to the BBC labelled “*First letter of complaint to the BBC*” was shown on-screen whilst the Presenter made this comment. The following captions were shown above and below the image of the letter, respectively:

“Fabrication in BBC Panorama’s ‘Saving Syria’s Children’”; and

“BBC ‘napalm/ chemical attack’ a ‘stunning fakery’: frmr [sic] UK Ambassador C. Murray”.

An on-screen graphic showed the following text, which was also spoken by a voice-over:

“This is the total fabrication – from beginning to end – of an atrocity with BBC ‘reporter’ Ian Pannell standing amidst a tableau of very bad actors. This is completely beyond the pale – Robert Stuart⁴”.

A graphic entitled “BBC doctors claims from ‘napalm’ to ‘chemical weapon’” was shown on-screen. Below this graphic the following text was shown:

*“Absolute chaos and carnage here, it must have been some sort of **napalm**”; and*

*“Absolute chaos and carnage here, it must have been some sort of **chemical weapon**”.*

These sentences were accompanied by images of their respective graphical ‘audio analyses’⁵ which were identical, save for the words ‘napalm’ and ‘chemical weapon’ in which the graphical audio analyses differed.

As these graphics were shown, the Presenter said:

“This audio analysis by media investigator, Robin Upson, shows both versions are identical and from the same speech. The BBC then digitally altered the words

⁴ After the broadcast of the BBC Programmes, Robert Stuart complained to the BBC that the BBC Programmes included faked footage. As of the date of the broadcast of the Programme, Mr Stuart had written two letters of complaint to the BBC, both of which the BBC had responded to substantively but in the Licensee’s view implausibly in certain respects. Shortly before the broadcast of the Programme, on 17 March 2014, Mr Stuart sent a third letter of complaint to the BBC Editorial Complaints Unit (the “ECU”). Following the broadcast of the Programme, on 23 April 2014, the ECU provided its provisional outcome concluding that there were no grounds to uphold any aspect of Mr Stuart’s complaint. On 19 May 2014, the ECU made its final decision and did not uphold Mr Stuart’s complaint. The BBC provided, as annexes to its complaint, letters of complaint from Mr Stuart to the BBC and the BBC’s responses to these letters. The BBC also provided Mr Stuart’s letter to the ECU and its preliminary outcome. The BBC did not provide the ECU’s final decision but referred to it in the body of its complaint to Ofcom. Ofcom notes that Mr Stuart’s correspondence with the BBC in relation to his complaint has been published by him at <https://bbcpanoramasavingsyriaschildren.wordpress.com/>

⁵ That is, a graphical depiction of the sounds of the words.

from 'napalm' to 'chemical weapon', the exact justification NATO was finding difficult to prove".

The Presenter said:

"The game-changing allegation was made by two doctors that had travelled with the BBC, who claimed the number of sudden casualties is quote 'overwhelming'. 'What kind of doctor', notes media investigator Robert Stuart, 'gives interviews, when she is surrounded by supposedly seriously burnt and dying teenagers?'"

The following caption was shown on-screen:

"Investigator: what kind of doctor does interviews when number of victims 'overwhelming'".

Footage of a hospital was shown and within this footage a medic said:

"Get anyone who isn't a patient out of here".

The Presenter said:

"When a nurse does finally start to help, her order to 'get anyone who isn't a patient out of here' doesn't apply to the cameramen. Even worse, notes Stuart, is the bizarre acting which starts when the man in the centre gives the sign".

Footage was shown labelled with the following on-screen graphic:

"'Syria Crisis', Ian Pannell, BBC (August, 2013)".

This footage, which lasted approximately 12 seconds, showed various individuals, covered in what appeared to be blood, lacerations and burns, standing or lying down on the floor of a room apparently in a hospital. In the foreground of this footage, one man was initially shown standing still for approximately two seconds and then lifting his arm and starting to move and groan. An extract of this footage, without sound, was also shown at the beginning of the Programme.

During this footage a voice off-camera said:

"What do you need to see? We are just human beings, we want to live, you know? This is our right to live".

A caption was shown on-screen which stated:

"Investigator R. Stuart – BBC's report on 'napalm/ chemical weapon attack' is 'staged'".

The Presenter stated:

"Dr Rola, on whose sole claim the BBC sends napalm/chemical weapons allegations around the world, is actually the daughter of Syrian rebel Mousa Al-

Kurdi. The parallel to the Gulf War and 'Nurse Nayirah'⁶ is stunning. Congressmen said the nurse's tearful testimony that Iraqis were killing children swung their vote in favour of war...Nurse Nayirah became the mainstream's darling, but once the vote had safely passed, she admitted inventing the whole thing and was actually the daughter of the Kuwaiti Ambassador to Washington lying to get the public to back war".

Whilst the Presenter made the above comments, the following captions were shown on-screen:

"'Dr Rola', responsible for chem [sic] claim, is daughter of Syrian rebel Mousa Al-Kurdi: 'Liveleak'"; and

"'Nurse Nayirah' lies pushed U.S. to bomb Iraq".

The Presenter asked George Galloway, then an MP, the following question:

"Why do we get almost identical claims before each war, which then prove lies?"

George Galloway, who was shown via video-link, said in reply:

"Well, the Bush and Blair Corporation as it became in the run up to the Iraq war, has almost entirely lost its reputation for journalistic integrity. A full enquiry must be launched into why the BBC used a piece of material, which was not just wrong, but was falsified and falsified with the purpose of propelling our country into war. That's not what the British public pays its BBC licence fee for; so that it can be tricked into a war".

Whilst George Galloway made the above comments, the following captions were shown on-screen:

"In lead-up to Iraq war 97% of BBC airtime given to pro-war media speakers, highest of any media: Cardiff Univ. study";

"Full enquiry must be launched into BBC 'napalm/ chemical' claim"; and

"Parliamentarian: both sides guilty in Syria but we're being tricked into supporting the rebels".

The Presenter said:

"In a statement, the British Broadcasting Corporation says it stands by its report. The Syrian opposition denies the allegations. Investigators such as Robert Stuart note their many questions sent officially to the Corporation remain unanswered.

⁶ Ofcom understands this to be a reference to Nayirah al-Şabah, who gave testimony to the US House of Representatives' Congressional Human Rights Caucus in 1990, alleging that atrocities had been carried out by Iraqi soldiers in Kuwait following Iraq's invasion of Kuwait. It has been reported that Nayirah al-Şabah's testimony was cited by some US politicians as a rationale for US participation in the 1990 Gulf War. It was subsequently reported that Nayirah al-Şabah was the daughter of Saud Al-Sabah, the Kuwaiti ambassador to the United States and her testimony had been arranged by a public relations company for a "Kuwaiti-sponsored" organisation. These revelations called into question the authenticity of Nayirah al-Şabah's original testimony. (See for example <http://www.nytimes.com/1992/01/15/opinion/deception-on-capitol-hill.html>).

There are also numerous such precedents both in this war and previous invasions”.

Whilst the Presenter made these comments an image of a further letter of complaint to the BBC labelled “*Third letter of complaint to the BBC*” was shown on-screen and the following on-screen caption was shown above the image of the letter:

“Fabrication in BBC Panorama’s ‘Saving Syria’s Children”.

The Programme went on to discuss the alleged widespread faking of atrocities by the mainstream western media, including the BBC.

The Presenter said:

“Brilliant’ is how a top western official called tricking the public through routine faking of atrocities and commonly aired on mainstream bulletins. Nightly News⁷ show just a few cases of what happened next after mainstream cameras ended their reports”.

Footage from an online programme (“*Nightly News*”)⁸ was shown in which the presenter of this broadcast said:

“It shows people putting on, you know, fake wounds, it shows – there is some guys; there - look there’s their head wounds, ‘peace everybody. You know we’re doing the right thing, we’re creating fake propaganda’. I mean it’s not even real atrocity so there they’re lined up. There is another video action showing a guy kicking his leg and with a fake blood wound. Here is a guy who wakes up from his funeral! Watch this: they’re up; wait, err there, oh he’s awake – he’s not even really dead, and so I mean this is just crazy what goes on. There is another video that was shot of a supposed massacre; and it cuts, you don’t see the whole thing ...”.

This section of the Programme included a screen shot of some data from the “*Lexis Media Database*”. This data, in combination with the accompanying commentary by the Presenter, suggested that on 205 occasions the BBC had published or broadcast information which was sourced from “*so called activists behind the fakes*”. The Presenter said:

“The so-called activists behind the fakes are by far the most popular source, despite them never being verified and regularly disproved as fabrications to justify for more NATO arms. The term ‘activist’ may sound like a well-meaning western campaigner or charity but the foreign policy journal notes it’s just news speak for insurgents”.

The Presenter said that the “*official source on Syria casualties or what mainstream claims is official is the impressive sounding organisation The Syrian Observatory for Human Rights*”. The Presenter said that “*Reuters exposed the fact three years ago [that] it was not an organisation at all or even working in Syria. It’s a single pro-insurgency supporter living in Coventry, England*”. The following caption was also shown:

⁷ An online programme (see <http://tv.infowars.com/index/channel/category>).

⁸ Ibid.

“Official’ Syria narrative comes from ‘some guy in a British apartment’ – NSNBC”.

Shortly afterwards, the Presenter said: *“In leaked footage ordinary Syrians told the BBC they are tired of its lies and the insurgents they’re cheer-leading are a tiny minority led by foreign gangs”.*

The Programme showed footage of a reporter questioning people on a street in Syria. The reporter asked a passer-by *“you don’t like BBC? Why?”*, to which the passer-by replied: *“Because you are talking very bad about Syria. Everybody when they hear BBC Arabic they can hear lies about Syria...”*. This footage was accompanied by the following captions:

“Courtesy Syrian to BBC reporter: you are not telling the truth about Syria”; and

“Leaked footage: Syrian’s won’t speak to the BBC because of its lies”.

The next part of the Programme focused on the US Central Intelligence Agency (“CIA”).

In particular, the Presenter said:

“Pro-war media forced to resort to colossal lies since Intelligence Chiefs revealed to America’s top investigative reporter Sy Hersh quote ‘Obama’s cronies are making it up”.

An on-screen graphic showed the following text, which was also spoken by a voiceover:

“The attack ‘was not the result of the current regime’ the high-level intelligence officer wrote in an email to a colleague. ‘The guys are throwing their hands in the air and saying ‘How can we help this guy – Obama – when he and his cronies in the White House make up the intelligence as they go along?’, said a former senior intelligence official (Sy Hersh, Author, ‘Whose Sarin’)”.

The Presenter also said:

“The Senate Committee Enquiry revealed CIA running mainstream media in the vast operation known as ‘MockingBird’. More than 400 journalists and media chiefs claiming to watchdog the government were the exact opposite joining to mask US Government crime at home and abroad. The operation continues despite Agency denials. Counter Punch discovered CIA imposing agents on firms like CNN. Former CIA executive Michael Scheuer British media are even closer to Intel targets [sic]”.

During this part of the Programme, the Presenter also interviewed Francis Boyle, Professor of International Law at Illinois University. The Presenter asked: *“How can nations stop war media that now perform the CIA’s covert operations?”* to which Francis Boyle replied:

“They certainly have their visas revoked and sent packing home because I really don’t understand why some of these countries keep, you know, European journalists, certainly in the United States, why they let them into the countries; because they are just using their coverage to provoke war and military intervention at home. In addition Bush junior administration lifted what was supposed to be the previous prohibition that intelligence agents were not

supposed to infiltrate the media. You know, you have to be very careful certainly dealing with US reporters whether or not they are intelligence agents”.

The Presenter then said: *“Banning active units of the military also known as ‘War Stream Media’ shows how serious the situation is now”.*

During this section of the Programme, the following comments were also made about Western mainstream media and the BBC:

- regarding media reporting of the conflict in Ukraine, the Presenter said: *“A leaked phone call with EU Foreign Minister Ashton, revealed the opposition planned and executed the infamous sniper violence of Kiev shooting both the police and their own supporters in the back. The study found a total of 250 mainstream sources lied that the snipers belonged to Yanukovich. Only seven of the entire mass media even mentioned the bombshell leak and those that did, framed the report to suggest it couldn’t possibly be true. Former Wall Street Journal editor Paul Craig-Roberts calls the coverage of Ukraine ‘a new low in the history of the mainstream’, which is now simply what he describes as a ‘Ministry of Lies”.* Whilst the Presenter made these comments, the following captions were shown on-screen:
 - *“New mystery snipers in Crimea, mainstream all backs opposition’s claims about their identity”;* and
 - *“New ‘NDA’ Act legalizes media disinfo campaigns against Americans [sic]”;*
- the Presenter said: *“Investigative reporter John Helmner has uncovered the main stream staging demonstrations and attempts to provoke disorder...one US scholar notes the coverage has now become Orwellian. What’s going on?”.* Referring to President Obama, David Cameron and the “French President”, John Helmer then said: *“When you’ve got weak political leaders you need to look stronger than you are in the public opinion in the media. So there’s this process of misleading and disinforming.”* These comments were accompanied by the following captions:
 - *“BBC digitally inserted political statements into riot ‘Concerts’, all fabricated: J. Helmner”;* and
 - *“‘Weak’ Hollande, Cameron and Obama ‘need to look stronger than they are in media”;*
- specifically regarding the BBC, the Presenter said *“Scheuer adds the BBC now takes the lead in regime change operations that cause quote ‘anarchy and violence”.* This was accompanied by a caption which read: *“Scheuer: Violence starts with the BBC”;* and
- the Presenter also said: *“Mainstream audiences are in freefall. CNN and NSNBC have shed half of their entire viewership in the last year alone. The question is how many more coups will they stage or help before they lose the public’s trust altogether?”.* Whilst this comment was made, the following caption was shown on-screen:

“Refuse visas for BBC journalists to ‘cover’ foreign ‘protests’ – Former CIA exec. M. Scheuer.”

The Presenter concluded the Programme by saying: *“Seek truth from facts, this is The Truthseeker.”*

The BBC’s complaint

The BBC’s complaint is that the Licensee failed to report news with due accuracy in breach of Rule 5.1 of the Ofcom Broadcasting Code (the “Code”)⁹.

In summary, the BBC said that the Programme presented information in an inaccurate and misleading way by asserting as fact that:

- the BBC had “completely fabricated a report of an atrocity in Syria and subsequently fabricated an interviewee’s speech in a further report”;
- the BBC report of the attack was “stage-managed for the cameras” and that the “BBC knowingly used actors in the reports pretending to be victims”;
- the BBC relied on the claims of a doctor of “questionable authenticity” and who was biased as result of family political connections who was lying to get the public to back war;
- the BBC had altered the “‘fabricated’ report” in a “deliberate attempt to mislead its audience hoping that no one would notice”; and
- the discovery of the fabrication and subsequent alteration of the report led to a “massive public investigation” which found that the BBC (and BBC reporter, Ian Pannell) were guilty of the total fabrication of an atrocity.

The BBC said that the “factual assertions” made about the BBC in the Programme were based on Mr Stuart’s complaint to the BBC. The BBC said that the “extremely disturbing findings” of the “massive public investigation” referred to and relied on in the Programme were in fact the complaints of Mr Stuart and that the statement of Mr Stuart which is read out in the Programme is portrayed as the “outcome of an official public investigation”. The BBC said that these assertions are false and “un-evidenced” and that Mr Stuart’s complaint had been “denied and rejected with detailed reasons” by the BBC at the date of the broadcast of the Programme.

The BBC also made the following additional points:

- regarding the allegation that the BBC had “digitally altered” interview footage, the BBC said that:
 - there was no fabrication of what the interviewee said in the BBC Programmes and that examination of the unedited rushes shows that the two versions of the interview footage used two different extracts from the same interview; and
 - the Programme based its statement that the BBC “digitally altered” the interview footage solely on an “unexplained purported ‘audio analysis’ by a media investigator”. The BBC said that the Programme did not provide any corroborating information for this statement or any explanation regarding the audio analysis “that would allow viewers to arrive at their own conclusions”;

⁹ Rule 5.1 applies to news reports and is therefore not applicable to the Programme which was an investigative current affairs programme.

- the Programme drew what it says to be a “stunning parallel” between the BBC Programmes and the “Nurse Nayirah’ testimony by suggesting that both “were complete inventions/lies to get the public to back war”;
- the Programme stated that in a “statement” the BBC had said that “it stands by its report”. The BBC said that this misled viewers by giving them the impression that the BBC was given an opportunity to comment on the assertions made in the Programme before the Programme was broadcast when this was not the case. The BBC said that the Licensee made no attempt to put these assertions of fabrication to the BBC. The BBC said that the reference to the BBC standing by its report may have been to the BBC’s responses to Mr Stuart’s complaint and that the Programme failed to accurately represent the BBC’s position in this regard by omitting information as to the BBC’s grounds for refuting Mr Stuart’s complaint;
- the Programme adopted the views of interviewees in the Programme that the BBC used the reports to provoke war and military intervention in Syria;
- TV Novosti made no attempt to put these allegations of fabrication to the BBC or to convey an alternative viewpoint to the claims of fabrication; and
- there was nothing in the Programme to suggest that the Licensee took any steps to corroborate its “very serious claims”.

Ofcom’s investigation

Ofcom has not taken forward the BBC’s complaint of due accuracy under Rule 5.1 as this rule applies to news reports and is therefore not applicable to the Programme which was an investigative current affairs programme. However, Ofcom considered that the Programme raised issues warranting investigation under Rule 2.2 of the Code which states:

“Factual programmes or items or portrayals of factual matters must not materially mislead the audience”.

We therefore sought the Licensee’s comments as to how the Programme complied with this Rule.

Response

In its response to Ofcom’s request for comments, TV Novosti said that its view of the BBC’s standards complaint had been fully addressed in its representations in relation to the BBC’s separate fairness complaint about the Programme and asked Ofcom to consider these representations in relation to whether the Programme complied with Rule 2.2¹⁰. In particular, the Licensee said that it thought it would be apparent from its representations in relation to the fairness complaint that it had taken the view that the Programme did not materially mislead the audience and that it was the BBC Programmes, not the Programme, which had “misled the audience”.

¹⁰ In reaching this Decision, Ofcom considered the representations made by the Licensee in response to Ofcom’s request for comments on the Programme’s compliance with Rule 2.2 following the BBC’s standards complaint. Ofcom also considered the Licensee’s representations in response to the BBC’s fairness complaint insofar as they were relevant to an assessment of the Programme’s compliance with Section Two of the Code.

By way of background, the Licensee said that the Programme had “questioned the authenticity of BBC reports of an atrocity described as taking place in Syria a few days after the use of chemical weapons in Damascus on 21 August 2013”.

TV Novosti said that following the broadcast of the 29 August BBC News “[d]oubts about the authenticity of the reports emerged within days” and that, after the 30 September BBC News and the BBC Panorama Programme had been broadcast, complaints had been made to the BBC alleging that some of the material in the BBC Programmes had been “faked”. In particular, the Licensee said that:

- a former UK ambassador had spoken of the “obvious faking of an interview casting doubt on some of the images presented” in the BBC Programmes; and
- Mr Stuart had “suggested...that some of the events were staged, misleading and implausible”.

Referring to the BBC’s response to Mr Stuart’s complaint, TV Novosti said that the BBC had “responded in detail” and had “denied all the claims in its response” to Mr Stuart’s complaint. In particular, the Licensee said that the BBC:

- “has accepted, in correspondence with Mr Stuart, that the material was edited, including changing the words spoken by a witness and presenting events out of chronological order, but denies that they were staged”; and
- “contends that what was done fell within the latitude allowed to broadcasters by the use of the word ‘due’ in relation to accuracy”.

The Licensee said that it disagreed with the BBC’s response to Mr Stuart and that the editing of the footage in the BBC Programmes “went far beyond what was proper in the circumstances” and that it was not surprising that audiences thought the material was faked. TV Novosti also said that to the extent the evidence was open to testing, it “clearly was faked”. The Licensee said that the BBC Programmes “presented a relentlessly one-sided view of the conflict in Syria which fell far short of achieving the impartiality on which the BBC’s reputation rests and on which the trust of audiences is also built”. TV Novosti also said that the BBC “having compromised the trust of its audience by editing and broadcasting this material in this way, suffered no injustice”, “that any damage to the reputation and good name of the BBC [was] self-inflicted” and that the BBC Programmes “should never have been broadcast”.

Regarding the Programme, the Licensee said that it reported on the matter with its “own take on what had happened” and that what was said about the BBC in the Programme was “legitimate” and “richly deserved”.

TV Novosti recognised that Ofcom’s functions do not extend to regulating the provision of the BBC’s services in so far as they concern the accuracy or impartiality of the content of any programme included in the BBC’s UK public broadcasting services and that this standards investigation was concerned with “Ofcom’s regulation of the provision of RT’s services”; but it said that if, as the Licensee considered was the case in this investigation, “it is necessary for Ofcom in the discharge of that function to decide whether the content of any BBC programme complies with the relevant requirements of accuracy and impartiality, [Ofcom] may and indeed must make that decision on the evidence before it independently of the

BBC". The Licensee then assessed in detail whether the BBC Programmes had preserved impartiality and accuracy and submitted that they had failed to do so¹¹. TV Novosti also made representations on whether the BBC Programmes preserved accuracy and impartiality in the context of Ofcom's assessment of whether the Programme had complied with Rule 2.2 of the Code, as follows:

- the Licensee gave specific detail on the doubts it referred to, which appeared online, about the authenticity of the 29 August BBC News. In particular, TV Novosti referred to an online article posted on 3 September by Francisco Santoianni which suggested that a number of the features in the 29 August BBC News report were either "implausible or not genuine" and that it appeared to him that at least one scene had been acted;
- the Licensee also gave specific detail about the doubts it referred to, which appeared online, about the authenticity of the BBC Programmes following the broadcast of the 30 September BBC News and the BBC Panorama Programme. In particular the Licensee stated that:
 - on or shortly after 4 October 2013, Mr Stuart posted on his website a copy of his complaint to the BBC¹² in which he complained of a "large measure of fabrication" and in particular complained about:
 - the editing of the footage to present events out of sequence to suggest that there were more victims than was really the case;
 - a supposed eyewitness covertly reading from a prepared text;
 - the faking of distress on the part of supposed victims;
 - the undisclosed background and affiliations of the charity Hand in Hand; and
 - the alteration of Dr Hallam's words.
 - on 7 October 2013 an individual whom it understood to be a former UK ambassador to Uzbekistan and a former Rector of the University of Dundee, posted a comparison of the two versions of Dr Hallam's interview under the title "Fake BBC Video" showing that it had been:

"...edited so as to give the impression the medic is talking in real time in her natural voice – there are none of the accepted devices used to indicate a voiceover translation. But it must be true that in at least one, and possibly both, the clips she is not talking in real time in her own voice. It is very hard to judge as her mouth and lips are fully covered throughout. Perhaps neither of the above is what she actually said".

¹¹ Ofcom does not regulate BBC licence fee funded services in respect of accuracy and impartiality and Ofcom has not undertaken an assessment of the accuracy and/or impartiality of the BBC Programmes in reaching this Decision. However, the representations made by the Licensee regarding the accuracy and impartiality of the BBC Programmes have been considered to the extent that they are relevant to Ofcom's assessment of the Programme's compliance with Section 2 of the Code.

¹² <http://bbcpanoramasavingsyriaschildren.wordpress.com/2014/01/18/first-letter-of-complaint-to-the-bbc-4-october-2013/>

TV Novosti also said that this individual went on to indicate that his confidence in the rest of the footage was therefore undermined and he said:

“But once you realise the indisputable fact of the fake interview the BBC has put out, some of the images in this video begin to be less than convincing on close inspection too”¹³;

- a report was posted on 7 October 2013 in which a reviewer¹⁴ indicated that they had written to Dame Fiona Reynolds, Senior Independent Director of the BBC Executive (in the mistaken belief that she was a Trustee), saying:

“[...] I, myself suspect the BBC of fraudulently altering audio in the report from Syria. I suspect the motive in this instance ...[is] propaganda intended to affect public opinion in the UK in such a way as to congregate [sic] support and underpin an offensive against the Syrian government”;
and

- at “about the same time” an individual, John Hilley, also appeared to have complained to the BBC that Dr Hallam’s comments had been altered “because on 18 October he posted a reply from one Neil Salt of BBC Complaints, in which Mr Salt explained how the interview had been edited and sought to justify it”¹⁵.
- regarding the volume of complaints to the BBC, the Licensee said that it could not know what other complaints about the BBC Programmes were made to the BBC but said that “it [was] clear that the [BBC] programmes, on each occasion they were broadcast, elicited doubts from audiences as to the authenticity of what had been shown”;
- referring specifically to the editing of the footage of the interview with Dr Hallam TV Novosti said that:

¹³ <http://www.craigmurray.org.uk/archives/2013/10/fake-bbc-video/> Ofcom accessed this website and noted that in an online blog dated 7 October 2013 and entitled “Fake BBC Video”, Craig Murray wrote (apparently in relation to the BBC Programmes): “Irrefutable evidence of a stunning bit of fakery by the BBC....The disturbing thing is the footage of the doctor talking is precisely the same each time. It is edited so as to give the impression the medic is talking in real time in her natural voice – there are none of the accepted devices used to indicate a voiceover translation. But it must be true that in at least one, and possibly both, the clips she is not talking in real time in her own voice. It is very hard to judge as her mouth and lips are fully covered throughout. Perhaps neither of the above is what she actually said. Terrible things are happening all the time in Syria’s civil war, between Assad’s disparate forces and still more disparate opposition forces, and innocent people are suffering. There are dreadful crimes against civilians on all sides. I have no desire at all to downplay or mitigate that. But once you realise the indisputable fact of the fake interview the BBC has put out, some of the images in this video begin to be less than convincing on close inspection too”.

¹⁴ Ofcom observed that the link to the review provided by the Licensee (<https://archive.org/details/BBCSyriareport1>) showed that the review was posted by someone identifying themselves under the name “coiaorguk”. We also noted that <http://www.coia.org.uk/> is the website of an organisation called the Children of Iraq Association which describes itself as a charity (it does not appear to be registered with the Charity Commission). From its website it appears that the COIA holds the UK and the USA responsible the deaths of hundreds of children in Iraq.

¹⁵ http://www.medialens.org/23_fg_75_lc/viewtopic.php?p=12230&sid=2b42a51ab54629944641b22f401bcf16

- viewers of the BBC Programme were presented with the same interview but “some of the words the witness used on one occasion were different from those used on another occasion” and that the words had “plainly been changed by the BBC”;
- it had not seen the footage and it provided an analysis of the footage which it had drawn from the BBC’s responses to Mr Stuart’s complaint.

The Licensee said that in the original unedited footage Dr Hallam said:

“I need a pause because it’s just absolute chaos and carnage here...umm... we’ve had a massive influx of what look like serious burns... Er... it seems like it must be some sort of chemical weapon, I’m not really sure, maybe napalm, something similar to that. Um so we are trying to do a bit of triage and stabilisation. We’ve got a lot of walking wounded who are managing to manage OK but obviously within the chaos of the situation it’s very difficult to know exactly what’s going on...”.

TV Novosti said that the footage was edited for broadcast in the 29 August BBC News as follows (with omitted words from the original unedited footage struck-through):

“I need a pause because it’s just absolute chaos and carnage here...umm... we’ve had a massive influx of what look like serious burns... Er... it seems like it must be some sort of ~~chemical weapon~~, I’m ~~not really sure~~, maybe napalm, something similar to that. Um so we are ~~trying to do a bit of triage and stabilisation~~. We’ve got a lot of walking wounded who are managing to manage OK but obviously within the chaos of the situation it’s very difficult to know exactly what’s going on...”.

The Licensee said that the footage was edited for broadcast in the 30 September BBC News and the BBC Panorama Programme as follows (with omitted words from the original unedited footage struck-through):

“~~I need a pause because it’s just absolute chaos and carnage here...umm... we’ve had a massive influx of what look like serious burns... Er... it seems like it must be some sort of chemical weapon, I’m not really sure, maybe napalm, something similar to that. Um so we are trying to do a bit of triage and stabilisation. We’ve got a lot of walking wounded who are managing to manage OK but obviously within the chaos of the situation it’s very difficult to know exactly what’s going on...~~”.

- it was “wholly wrong”, “inexcusable” and “violated one of the central principles of the [BBC’s] Editorial Guidelines”;
- there “were none of the usual indications by which a broadcaster usually signals to the audience that the material has been edited”;
- the “only conclusion” which viewers of the BBC Programmes could have drawn was that Dr Hallam had been “made by the BBC to appear to say something different”;
- “[f]aced with such a substitution [i.e. the word ‘napalm’ for ‘chemical weapon’], any reasonable person would conclude that someone had tampered with the

- evidence – that one or other report, or both, had been faked” and that this “would have confirmed (and no doubt did so) the doubts that Mr Stuart and others entertained about the authenticity of the [BBC] programmes”; and
- the “contribution presented as fact was to some extent invented” and that it would have “fundamentally undermine[d] trust in the content”. The Licensee said that it “does not help that there is an explanation [from the BBC] and that there may be a distinction between internal editing and other sorts of editing” as the “damage would have been done by broadcasting as fact two versions of the same thing”;
- TV Novosti also made further representations on the BBC’s response to Mr Stuart’s complaint, in particular the Licensee said:
 - that the BBC had denied Mr Stuart’s allegations in “extensive correspondence” with Mr Stuart which had been posted online by Mr Stuart;
 - that it was “not confident” that the BBC’s denials were “well founded”;
 - that the BBC had accepted that “the producers [of the BBC Programmes] used material in a way which was not chronological but [it] is satisfied that the manner in which the programme was edited made the content more engaging or presented complex issues in a readily comprehensible way without changing the reality of the narrative or the truth of the events that occurred”;
 - in relation to a specific allegation made by Mr Stuart in his complaint to the BBC that an eyewitness, Mohammed Abdullatif, featured in the 29 August BBC News was “covertly reading from a prepared text”, that the BBC had denied this allegation and it had not been “pursued in the subsequent correspondence”. Referring to a specific error and subsequent immediate correction the eyewitness made in his account, the Licensee said that there was “no plausible explanation” for this other than that the eyewitness misread from a prepared text. TV Novosti referred to the eyewitness saying “you’re recalling peace – you’re calling for peace” and said that the “only plausible explanation for his having said ‘recalling’ is that he misread the text by making the link underlined here: ‘you’re calling’”. The Licensee said: “No other explanation is conceivable”. TV Novosti argued that in light of this, it was “difficult to have confidence in the BBC’s other denials where the evidence is less easy to test”; and
 - with regard to the allegation that the BBC had altered the footage of the interview with Dr Hallam, the BBC:
 - had accepted that the interview was “edited on different occasions in a different way without the edits being visible” to the audience (because Dr Hallam was wearing a face mask) but that it had offered an explanation for the editing of the footage and it had said that:
 - “it is acceptable for programme-makers to edit the words of a contributor so long as that editing does not materially alter or change the meaning of what they said or any understanding that the audience might take away”;
 - “the 29 August version was edited for a number of reasons, including avoiding confusion with the incident in Damascus a few days earlier involving chemical weapons”; and

- “the 30 September version was used ‘unedited’ in the Panorama programme and that the context in which it was used was such that there would be no confusion with the incident in Damascus”;
- said that the interview was shot as a single sequence, the first version had been subject to “‘internal’ edits” and the second version had been “used ‘without any internal audio editing’”;
- “did not think that the audience [of the BBC Programmes] would have been misled”;
- in its assessment did not consider the “likely effect on the audience of being presented with the same interview on different occasions but with the words ‘chemical weapons’ substituted for ‘napalm’”; and
- did not go on to consider how editing footage of the interview with Dr Hallam “might be perceived when it was repeated in an altered form in later [BBC] programmes” or “whether altering the words would be at least misleading and at worst a fabrication”;

and

- the Licensee also referred in more detail to the political context in which the BBC Programmes were broadcast. In particular, the Licensee said that:
 - the BBC Programmes reported on “the political crisis in August and September 2013 after chemical weapons had been used in Syria (widely considered to be one of the most serious developments in the Syrian conflict) leading up to Syria’s declaration of its stockpiles to the Organisation of Prohibition of Chemical Weapons (OPCW) and the UN Security Council’s endorsement of OPCW’s timeline for their destruction”;
 - the requirements in the BBC Guidelines for due accuracy are at their highest level for news and current affairs programmes; that the content of the BBC Programmes was “concerned with events that may decide the fate of nations and/or their leaders”; and therefore “it is difficult to believe that any faking whatsoever would be tolerated”;
 - the 29 August BBC News “was broadcast when Parliament was virtually in the act of voting down the government motion to seek a UN Security Council resolution backing military action with respect to the use of chemical weapons in Syria”;
 - the 30 September BBC News was broadcast “a few days after the [UN] Security Council had adopted a resolution backing a plan to eliminate Syria’s chemical weapons and calling for those responsible for their use to be held accountable”; and
 - therefore the “nature of the content” of the BBC Programmes was “a contribution to the most momentous decisions and policies of the day”.

Having set out its detailed assessment of whether the BBC Programmes preserved accuracy and impartiality, TV Novosti then made representations specifically about the Programme.

- the Licensee said that it was “not the first to have gone public with an assessment of the failings of the three [BBC] programmes” and that “the failings [of the BBC Programmes] were of so serious a nature that they were a subject of legitimate debate”. The Licensee said that the BBC Programmes “invited exposure of their failings and speculation as to the BBC’s motives”. In particular, the Licensee said that broadcasting different versions of the same thing undermined trust and that, together with other implausible features of the BBC Programmes, “invited speculation of the BBC’s motives...which in all the circumstances was legitimate”. TV Novosti said that given these failings the BBC could not be “surprised at speculation as to its motives.” It explained that this was because of:

“the absence of any explanation why the BBC editors thought that the reference to chemical weapons should be omitted on 29 August [BBC News] but could be included in place of ‘napalm’ on 30 September in a Panorama programme which emphasised the chemical nature of the attack”;

and

- the Licensee said that the Programme began by making it clear that it was reporting on allegations about the BBC Programmes that were already in the public domain and that it then briefly set the scene politically by providing the context in which the 29 August BBC News was broadcast. TV Novosti said that the Programme introduced the issue of the alteration of Dr Hallam’s words in order to lead into Mr Stuart’s accusation of fabrication and the suggestion that the public was being misled into backing war. The Licensee said that the Programme then moved on to suggestions from various sources that “fakery is common in mainstream broadcasting”.

The Licensee also made representations on specific aspects of the Programme:

- regarding the statement: “Stunning fakery in the alleged chemical weapons attack according to a former UK ambassador”...the British Broadcasting Corporation is accused of staging a chemical weapons attack”, the Licensee said:
 - that this was an accurate report of an article by Craig Murray, former UK Ambassador to Uzbekistan in which he said, in relation to the BBC’s various broadcasts of the interview with Dr Hallam, “Irrefutable evidence of a stunning bit of fakery by the BBC”;
 - that there was nothing factually incorrect in the words used and that the factual matter was presented accurately in the Programme and “did not mislead”;
 - with regard to whether it was misleading to refer to “fakery” at all, that it had shown in the fairness representations that there was fakery; and
 - that in all the circumstances, “stunning” seemed to be “a reasonable adjective to use”.
- with regard to the statements in the Programme that the BBC “digitally altered” the footage of the interview with Dr Hallam, the Licensee said:
 - the “BBC’s editorial processes are no doubt digital and it did alter the words”;

- that it “remains unclear why the BBC editors thought that the reference to chemical weapons should be omitted on 29 August but could be included in place of ‘napalm’ on 30 September in a Panorama programme that did not flinch from mentioning chemical weapons prominently in the programme” and if “the BBC placed particular emphasis on chemical attacks in the programme, it is legitimate to consider why”;
- that the Programme “advanced its own reasons for doubting the report by showing how Dr Hallam’s interview had been manipulated”; and
- that the audio analysis featured in the Programme was “manifestly not false” and it “showed that the BBC had altered the words spoken by the witness”;
- in relation to the statement that the BBC was the subject of a “massive public investigation which made some extremely disturbing findings”, TV Novosti said:
 - that “it appears that the alteration of Dr Hallam’s words led to an undisclosed number of complaints to the BBC”;
 - that the investigation by Mr Stuart (into the BBC Programmes) “might fairly be described as massive and he provides cogent reasons for being extremely concerned about fabrication in the [BBC] programmes”; and
 - it was “true that the description of Mr Stuart’s complaint might have been misleading but in all the circumstances it did not result in any unfairness to the BBC”;
- with regard to the statement made by the Presenter that Mr Stuart’s questions to the BBC remained “unanswered”, the Licensee said it seemed to it to be a “fair reading of the relevant correspondence”;
- regarding the allegations that the BBC used actors in the BBC Programmes, TV Novosti:
 - said that the statement “[e]ven worse, notes Stuart, is the bizarre acting which starts when the man in the centre gives the sign” accurately reflected Mr Stuart’s critique of the BBC material;
 - said that the BBC denies that the sequence was acted or that it used actors in the BBC Programmes but that “evidence is not available to prove it one way or the other”; and
 - referred to the BBC’s denial (in its response to Mr Stuart’s complaint) that an interview (in the 29 August BBC News with an eyewitness, Mohammed Abdullatif) had been “scripted”. The Licensee said that Mr Stuart “thought the interview with Mr Abdullatif was scripted and the BBC denied that too, but the evidence was more amenable to testing and we were able to expose the truth”. The Licensee said that evidence was available which rendered the BBC’s denial “implausible” and it was therefore “legitimate to infer that the same may be true of the acting”;

and

- regarding the comment “In a statement, the British Broadcasting Association says it stands by its report” the Licensee said that:
 - the Programme “made it clear that the BBC stood by its report”;
 - “the BBC’s rejection of the accusations is recorded, albeit by referring to a ‘statement’ rather than publically available correspondence with Mr Stuart”;
 - this could have been better expressed but the material point this comment was making was that the BBC denied the allegations;
 - it may have given the impression that it had contacted the BBC when it had not done so and that that was “to be regretted”; and
 - the BBC’s denial of the accusations in Mr Stuart’s complaint was available online and that the “BBC’s views were fairly represented and the audience was not materially misled”.

Licensee’s comments on the Preliminary View

TV Novosti commented on Ofcom’s Preliminary View, which was to find a breach of Rule 2.2. A number of these submissions repeated points already made in the Licensee’s initial representations¹⁶. TV Novosti made a number of additional comments, which are summarised below.

Context

First, the Licensee submitted that Ofcom took insufficient account of the context in which the Programme was broadcast, and in particular, the editorial content of the Programme. The Licensee said that the editorial content was concerned with “the BBC’s reporting of events in Syria at a time when a public debate was taking place in many countries regarding allegations that the Syrian government had used chemical weapons and whether there should be a military response”. TV Novosti said that Ofcom’s Preliminary View “ignores the BBC’s reporting of those events and limits itself to the narrow question [of] whether the Programme had misrepresented a fact so as to cause harm and offence to the audience”. The Licensee said that Ofcom had chosen to ignore the BBC’s reporting of events, allegations about the use of chemical weapons and whether there should be a military response because it did not think it could or should “establish where the truth lay”. According to TV Novosti, this approach was incorrect and procedurally inappropriate as Ofcom has not considered the criteria set out in the meaning of “context” under Section Two of the Code and in particular the main thrust of the editorial content of the Programme.

The Licensee said that by not undertaking an assessment of the truth or otherwise of the allegations in the Programme, Ofcom did not do justice to the facts. In particular, TV Novosti went on to assert that the “Programme begins with a factual demonstration of how the BBC had doctored the interview with Dr Hallam. That was not in dispute. The BBC had edited what Dr Hallam said in an interview so as to make her appear to say one thing on one occasion and something else on another occasion. What was in dispute was whether or not this mattered”. The Licensee said that this was something that Ofcom could and should have taken a view on because the doctoring of the footage warrants investigation under Section Two of the Code

¹⁶ To the extent that this is case, such representations have not been summarised again in this section.

and ensuring compliance by the BBC with Section Two falls within Ofcom's functions. TV Novosti said that in reaching a decision on whether RT complied with Rule 2.2 "[t]o assess compliance by a whistleblower such as RT in this Programme while ignoring the mischief that RT was seeking to expose, would...fail to fulfil the contextual requirements of Section 2".

High test

Second, the Licensee suggested that Ofcom "may have misdirected itself as to the standard to apply" when considering whether the Licensee had breached Rule 2.2 in this case. TV Novosti cited an Ofcom 2010 decision which contained the statement that "the requirement that content must not materially mislead the audience is necessarily a high test"¹⁷. The Licensee said that if Ofcom had applied this "high test" to the Programme "it would have treated it as not having crossed the threshold and therefore not being in breach."

Freedom of expression

Third, TV Novosti argued that in finding on a preliminary basis that the Licensee had contravened Rule 2.2, Ofcom did not take sufficient account of the Licensee's right to freedom of expression. In particular, the Licensee said that there was no evidence in the Preliminary View that Ofcom had considered the need to secure that the application of Rule 2.2 is in the manner that best guarantees an appropriate level of freedom of expression under section 3(4)(g) of the Communications Act 2003 (the "Act"). TV Novosti submitted that therefore Ofcom may have treated what was said in the Programme as being in breach when, if it had considered how best to guarantee an appropriate level of freedom of expression, it would not have treated Rule 2.2 as being engaged.

Misrepresentation

Fourth, the Licensee commented on Ofcom's assertion that "one fact that was misrepresented was the description [in the Programme] of Mr Stuart's complaint to the BBC as a *"massive public investigation which made some extremely disturbing findings"*". TV Novosti said that in reaching this view Ofcom misrepresented the content of the Programme and overstated the case against a number of reasons, which are summarised below:

- TV Novosti noted that the Preliminary View stated that the various comments and allegations about the BBC were "speculative opinion". The Licensee said that the "general tenor" of the Preliminary View was that the allegations that Ofcom refers to "embrace amongst other things the manipulation or doctoring of" the Dr Hallam interview. The Licensee said that the video sequences of the Dr Hallam interview shown in the Programme "presented evidence, not speculative opinion, of the BBC altering a statement by a witness" and were the opening proposition from which the rest of the Programme flowed. TV Novosti added that some of what followed in the Programme might be speculative opinion but was likely to have been justified editorially by the opening proposition;
- the Licensee noted that Ofcom was of the view that the description of Mr Stuart's complaint in the Programme as a "massive public investigation which made some

¹⁷ See Ofcom's decision concerning *An Inconvenient Truth*, Broadcast Bulletin 165, 13 September 2010, page 44 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb165/issue165.pdf>).

extremely disturbing findings” was misleading. TV Novosti said that this description may have “over-egged” the position to some extent and that there was perhaps “an element of hyperbole” in the words used. However, the Licensee suggested that in the context of what followed in the Programme “no viewer could conceivably be left in any doubt that there had been no official investigation of the kind Ofcom has in mind”. In particular, TV Novosti referred to the fact that the description of Mr Stuart’s complaint was:

- accompanied by a screenshot of Mr Stuart’s first letter of complaint (rather than a command paper or Ofcom report);
 - followed by a quote from Mr Stuart (rather than the chairman of a committee of inquiry or CEO of Ofcom);
 - followed by an audio analysis by a media investigator (as opposed to extracts from an official report) which was in turn followed by references to a “game changing allegation” and to Mr Stuart as a “media investigator”; and
 - followed by George Galloway MP calling for a “full enquiry”;
- the Licensee also noted that, in its Preliminary View, Ofcom said that the “*extremely disturbing findings*” were in fact allegations made by Mr Stuart to the BBC which had been “investigated by the BBC and dismissed with detailed reasoning”. TV Novosti’s view was that, in the context of what followed in the Programme (see above), viewers would not have been misled into thinking that the reference to “findings”, was a reference to the findings of some form of official and independent investigation;
 - the Licensee noted that Ofcom said that Mr Stuart’s conclusions had been “dismissed” by the BBC with detailed reasoning. TV Novosti said that this suggested that the dismissal by the BBC was the firm conclusion of a significant and detailed independent investigation by the BBC. The Licensee said that this suggestion was not well founded because as of the date of broadcast of the Programme, Mr Stuart’s complaint was at an early stage of the BBC complaints procedure and that the ECU (which provides a degree of independence) had not yet responded to his complaint; and
 - the Licensee also said that it is clear from Mr Stuart’s letters to the BBC that he was not satisfied with the BBC’s responses. Specifically, the Licensee said that Mr Stuart had said that the BBC had only responded to some of his points. TV Novosti said that this was reflected in the Presenter’s comment: “*Investigators such as Robert Stuart note their many questions sent officially to the BBC remain unanswered*”.

Materially misleading

Next, the Licensee questioned whether the factors on which Ofcom relied to decide that the Programme “materially” misled the audience were relevant. In particular, the Licensee said that it was not sure that, by giving viewers the “incorrect impression” of Mr Stuart’s complaint, the Programme was materially misleading. TV Novosti also said it was not sure that the fact that viewers would have considered the BBC to be at fault in some “extremely disturbing” respects went to materiality either. The Licensee said that any incorrect impression of what had been found and by whom would have been corrected by what followed in the Programme.

Harm

Lastly, TV Novosti denied that any misrepresentations in the Programme were potentially harmful.

The Licensee said that Ofcom did not explain in the Preliminary View what the harm might have been in the Programme and how it was caused. TV Novosti said that any incorrect impression would have been corrected by the editorial content which followed the alleged misrepresentation and it was therefore unlikely that any harm or offence would have occurred.

Further, the Licensee noted that the harm referred to in the Preliminary View was a “breach of audience trust”. In this context, TV Novosti referred to *Traveller Movement v Ofcom and Channel 4*¹⁸ in which Mr Justice Ouseley reviewed Ofcom’s approach to the assessment of harm under Rule 2.1. The Licensee said that it had no reason to suppose that Ofcom’s approach to the assessment of harm under Rule 2.1 would be any different to an assessment of harm under Rule 2.2. TV Novosti referred to Ofcom’s reasoning in the standards decision which was the subject of this judicial review and said that Ofcom’s description of harm “distinguish[ed] between the relatively straightforward case where the link between the content and harm was direct and the more complex case where the harm may have been caused indirectly.” The Licensee noted that Mr Justice Ouseley found that the approach to the evidence required to establish harm is “reasonable and proper”¹⁹.

TV Novosti said that applying this approach to the Programme, “Ofcom must satisfy itself that there is a sufficient causal link between the editorial content in question and instances of actual or potential harm”. It submitted that Ofcom’s Preliminary View failed to show “any instances of actual or potential harm, still less any causal link”. Further, the Licensee said that treating loss of audience trust as a form of harm “would break new ground in the regulation of programme content”. TV Novosti explained that there is a straightforward case of direct harm, such as causing viewers to abandon conventional cancer treatment; however, there is a more complex case where the harm is caused indirectly by changing particular attitudes and opinions such as encouraging prejudice or discriminatory conduct towards a particular ethnic or social group, as described by Mr Justice Ouseley in *Traveller Movement*. The Licensee did not think that there was any authority to extend Ofcom’s approach where the only harm alleged was breach of audience trust.

TV Novosti also said that treating a loss of audience trust as a form of harm would remove all substance from the requirement that harm be shown before a finding of a breach of Rule 2.2 can be made, since any material that was materially misleading could be described as a breach of audience trust.

The Licensee said that that Ofcom’s assessment of harm in the Preliminary View was not (i) “reasonable and proper” (having regard to the judgment in *Traveller Movement*); (ii) consistent with the “high test” (referred to above); or (iii) in line with s3(4)(g) of the Act. TV Novosti also said that it was not apparent that a breach of audience trust falls within any of the harm identified in Article 10 of the European Convention on Human Rights (“ECHR”).

The Licensee said that the potential for real harm was in the “undisclosed doctoring” and broadcast by the BBC of the Dr Hallam interview “when the whole world was

¹⁸ [2015] EWHC 406 (Admin).

¹⁹ *Ibid*, para 49.

affected by Syria's behaviour in the conduct of its civil war". The Licensee stated that there was evidence before Ofcom that the BBC adopted a "cavalier approach" to the editing of the footage in the BBC Programmes and the Licensee said there was evidence elsewhere that this approach might be widespread in the BBC. The Licensee also expressed concerns regarding "[t]he BBC's apparent willingness to use, and its complaints staff to accept, any old video footage in any old order to tell a news story".

The Licensee concluded that it did not agree with the Preliminary View that the Programme (in stating that the BBC was the subject of a "massive public investigation which made some extremely disturbing findings") was materially misleading and had the potential to cause harm to viewers.

Decision

Under the Act, Ofcom has a statutory duty to set standards for broadcast content which it considers best calculated to secure a number of standards objectives. These objectives include ensuring that generally accepted standards are applied to broadcast content to provide adequate protection for members of the public from harmful and offensive material. This objective is reflected in Section Two of the Code.

Rule 2.2 of the Code states that: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

Ofcom's published Guidance²⁰ to Rule 2.2 (the "Guidance") states that Ofcom is "required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues". The Guidance says that Rule 2.2 is therefore "designed to deal with content that **materially misleads the audience so as to cause harm or offence**" [emphasis in original] and not with "issues of inaccuracy in non-news programmes". Further, the Guidance states that "[w]hether a programme or item is *materially* misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred [emphasis in original]".

Rule 2.2 is therefore concerned with the misrepresentation of facts and whether facts have been misrepresented in a way which materially misleads viewers. Broadcasters should therefore take care to ensure that facts are not presented in programmes in a way that is materially misleading. This is particularly important in factual programmes such as current affairs programmes or programmes of an investigative nature as the level of audience trust and the audience's expectation that such programmes will not be materially misleading is likely to be higher.

In reaching this Decision, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment, as contained in Article 10 of the ECHR. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority.

Article 10 of the ECHR also provides that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a

²⁰ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Accordingly, Ofcom is required to set standards to secure the standards objectives in section 319(2) of the Act, including that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. Ofcom secures the application of such standards through making and enforcing the Code, which includes the rules in Section Two relating to harm and offence.

Ofcom is also required to have regard to the need to secure the application of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in programme in television services in the manner which best guarantees “an appropriate level of freedom of expression” (section 3(4)(g) of the Act).

It is important to note that Section Two does not prevent a broadcaster from making serious allegations of wrongdoing about organisations and individuals; nor does it prevent broadcasters from making programmes about controversial subject matters. Indeed, it is crucial that broadcasters have the editorial freedom to do so. However, in broadcasting such programmes and making such allegations, licensees are required to ensure they comply with the applicable rules in Section Two. These include the obligation to ensure that facts are not misrepresented in a way which materially misleads the audience under Rule 2.2.

In considering the issues in this case Ofcom took account of the political context in which the Programme was broadcast, including the Licensee’s representations relating to the fact that a public debate was taking place at the time in many countries, and in particular the UK, regarding allegations that the Syrian Government had used chemical weapons and whether there should be a military response against Syria²¹. We also noted TV Novosti’s representations that a number of individuals, at the time, were of the opinion that the BBC had manipulated footage of a chemical weapons attack in Syria and that some of these individuals had published such opinions online and/or raised them with the BBC. We noted that a number of the individuals who queried whether the footage had been manipulated speculated as to the BBC’s motives for doing so and questioned whether this was to encourage support for military intervention in Syria. A number of these allegations were referred to and explored in the Programme. In line with the right to freedom of expression, we considered it legitimate for the Licensee to make and broadcast a programme examining such allegations about the BBC and for the audience to receive such information, and be informed about such allegations. However, in doing so, we considered that TV Novosti needed to comply with Rule 2.2 by ensuring that facts

²¹ In particular, Ofcom noted that following 21 August 2013, the issue of alleged use of chemical weapons by the regime of Bashar al-Assad dominated political discourse across the world, including in the UK. In the UK for example there was controversy about whether the UK should take part in military action against the regime of Bashar al-Assad in Syria following the attack on Ghouta and on 29 August 2013, after a lengthy debate, the UK Parliament rejected a government call to sanction UK military action. See also the UN Report published in September 2013 confirmed that the chemical agent sarin has been used in an attack at Ghouta, Syria on 21 August 2013. The report did not attribute responsibility for the attack (see http://www.un.org/disarmament/content/slideshow/Secretary_General_Report_of_CW_Investigation.pdf).

were not misrepresented in the Programme in a way which was materially misleading.

In assessing the application of Rule 2.2 Ofcom first considered the editorial context within which the comments were broadcast and the nature of the Programme. Ofcom noted that Truthseeker was an established series of factual current affairs programmes which aimed to provide an alternative perspective on major global events by questioning established viewpoints. Ofcom considered that the content and approach would have been familiar to its audience from the nature of the channel and the series. Accordingly, in Ofcom's view, it was likely that viewers would have expected the Programme to take a critical editorial approach, to address controversial issues, and to do so from the perspective of the Licensee, that is, reflecting major global events from a Russian viewpoint. Nevertheless, and given that the Programme was part of a factual current affairs series, we considered that it was important that the Programme did not present facts in a way which was materially misleading.

Ofcom noted that the events regarding alleged chemical weapons attacks examined in the Programme were matters of dispute at an international level, and that the various allegations made or reported in the Programme about the BBC were equally in dispute. Ofcom is not a fact finding tribunal and is not able or empowered, therefore, to establish the truth or otherwise of such allegations and to make findings of fact. Accordingly, it was not possible or appropriate for Ofcom to attempt to prove or disprove the allegations made about the BBC in the Programme. Similarly, Ofcom had no statutory jurisdiction to assess the accuracy and impartiality of the BBC Programmes²². Taking all this into account the question for Ofcom was a narrow one. That is, was an established fact materially misrepresented in the Programme?

In addressing this question it appeared to us that one fact that was misrepresented in the Programme was the description of Mr Stuart's complaint to the BBC as a "*massive public investigation which made some extremely disturbing findings*". This had the effect of elevating the various opinions expressed, and the allegations made, about the BBC in the Programme to the firm conclusions of a significant and detailed official investigation.

Ofcom noted that the reference to a "*massive public investigation which made some extremely disturbing findings*" was accompanied by an image, shown just afterwards, of a letter of complaint to the BBC together with a voice-over and onscreen graphic of the following quote attributed to Mr Stuart: "*This is total fabrication, from beginning to end, of an atrocity, with BBC 'reporter' Ian Pannell standing amidst a tableau of very bad actors. This is completely beyond the pale*". It therefore appeared to Ofcom that the reference to a "*massive public investigation*" was a reference to Mr Stuart's complaint to the BBC. However, the Programme did not make it clear that Mr Stuart's complaint was a complaint from a member of the public (albeit someone described in the Programme as a "*media investigator*") that was being dealt with internally by the BBC. Further, the Programme asserted that this "*massive public investigation*" had made a number of "*extremely disturbing findings*" that the BBC had fabricated a chemical weapons attack and used actors in its report of this attack in the BBC Programmes. However, these "*findings*" were in fact allegations made by Mr Stuart to the BBC to which the BBC had provided detailed responses; this was not explained in the Programme.

²² See footnote 11.

Ofcom noted that the Licensee had not been able to point to any official investigation or to any firm conclusions that had been published by such an investigation. Rather, TV Novosti had stated in its submissions to Ofcom that “Mr Stuart’s investigation might fairly be described as massive and that he provides cogent reasons for being extremely concerned about fabrication in the [BBC P]rogrammes”. We also noted that the Licensee had accepted that “[i]t is true that the description of Mr Stuart’s complaint might have been misleading” and that there was perhaps a level of hyperbole in the words used.

Further, it appeared to Ofcom, from TV Novosti’s representations, that the Programme based the statement that the BBC was the subject of a *“massive public investigation which made some extremely disturbing findings”* on a number of online articles which were posted following the broadcast of the BBC Programmes, including the online post of a former UK ambassador who had accused the BBC of “stunning fakery”. However, these articles did not show that the BBC was the subject of a *“massive public investigation”* or that there had been any *“extremely disturbing findings”*, rather they contained speculation by various individuals about the authenticity of the footage in the BBC Programmes. Again, this was not made clear in the Programme.

We therefore considered that to state that the BBC was the subject of a *“massive public investigation which made some extremely disturbing findings”* was a misrepresentation and overstatement of the nature of Mr Stuart’s complaint and these online articles.

Ofcom went on to assess whether this misrepresentation was “materially” misleading. In doing so, we considered context, the editorial approach, the nature of the misrepresentation and importantly the potential effect or actual harm or offence caused.

We noted the Licensee’s representations that, irrespective of any hyperbole in the words used in the statement *“massive public investigation which made some extremely disturbing findings”*, as a consequence of the editorial context in which the statement was made “no viewer could conceivably be left in any doubt that there had been [an] official investigation of the kind Ofcom has in mind”. We took careful account of the editorial context surrounding the broadcast of the statement in the Programme. In particular, as stated above, we noted that the statement was followed by an image of a letter of complaint to the BBC and a quote attributed to Mr Stuart. Nevertheless, we considered that viewers would have been given the incorrect impression that the BBC was the subject of a *“massive public investigation which made some extremely disturbing findings”* when this was not the case. Given the categorical nature of this statement, coupled with the various serious allegations made about the BBC throughout the Programme, we considered that viewers would have understood the statement to mean that the BBC Programmes had been subject to some form of significant and detailed official investigation. We were also of the view that viewers would have considered that the BBC had been found at fault in some *“extremely disturbing”* respects, in particular that the BBC had been found to have fabricated an atrocity and used actors in the BBC Programmes.

We did not consider this impression would have been corrected by the references to Mr Stuart, the image of the letter to the BBC, or any other content, which followed in the Programme. We did not consider that viewers would have clearly understood that the *“massive public investigation which made some extremely disturbing findings”* was a complaint by a member of the public to the BBC which had been responded to in detail by the BBC and that it was also based on a number of online articles

detailing individuals' opinions. Further, we considered that the content which followed in the Programme, and in particular the comments regarding the "*routine faking*" of atrocities by mainstream media including the BBC, would have reinforced viewers' understanding of the statement.

In assessing whether the Programme caused, or had the potential to cause, harm or offence to the audience, Ofcom considered that it is important that the content of factual programmes and current affairs programmes of an investigative nature can be relied on by viewers, particularly as audience trust in these programmes is likely to be higher. We considered that the presentation of materially misleading facts in programmes of this nature has the potential to cause harm to viewers. If programmes contain materially misleading facts, it is harmful or potentially harmful, to that audience. For the reasons stated above, Ofcom was of the view that the Programme, in stating that the BBC was the subject of a "*massive public investigation which made some extremely disturbing findings*" presented the audience with a materially misleading fact, and therefore, within the context of the Programme which was a current affairs programme, had the potential to cause harm to viewers. We did not consider, as the Licensee submitted, that the Programme provided sufficient editorial context so as to correct the materially misleading fact.

It is important to note that Section Two does not prevent a broadcaster from making serious allegations of wrongdoing about organisations and individuals; nor does it prevent broadcasters from making programmes about controversial subject matters. Indeed, it is crucial that broadcasters have the editorial freedom to do so. However, in broadcasting such programmes and making such allegations, licensees are required to ensure they comply with the applicable rules in Section Two. These include the obligation to ensure that facts are not misrepresented in a way which materially misleads the audience under Rule 2.2.

Given the reasons set out above, Ofcom's view is that Programme was in breach of Rule 2.2 of the Code.

Ofcom directs the Licensee to broadcast a summary of this Decision.

Breach of Rule 2.2