



British Screen Advisory Council

'Bringing the audiovisual industries together'



Submission to:

**IPO consultation on
'The UK's implementation of
the Marrakesh Treaty'**

18 June 2018

UK Implementation of the Marrakesh Treaty: BSAC response

1. The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the UK audiovisual industry, including television, film, video games and new digital media businesses. BSAC Members include not only all of the segments in the UK audiovisual value chain (including development, production, sales, acquisition and licensing of content), but also leading technology firms and Internet Service Providers (ISPs)¹.
2. We are submitting this short response to the consultation on the UK's implementation of the Marrakesh Treaty². BSAC certainly supports improved access to audiovisual content for people with disabilities, but exceptions to copyright that might help deliver this should not be considered in isolation from commercial activity, including activity that delivers statutory obligations to provide access services. We note that the consultation document does not acknowledge any overlap with such statutory obligations, possibly because they do not apply to the type of content that comes within the scope of the Marrakesh Treaty, and the EU Directive and Regulation which implement the Treaty. As explained below, it is particularly important that the impact of any modification of the copyright exceptions takes these obligations into account.
3. We are not able in the time available to provide a detailed response to this consultation. We have not been closely following the process that resulted in the Marrakesh Treaty, and then adoption of the Directive and Regulation, given that they only apply to copyright works and accessible copies that do not encompass audiovisual content. We had not, therefore, expected that UK implementation of the Marrakesh Treaty would have an impact on the audiovisual sector. We have only very recently noticed that the consultation document does, however, propose more extensive changes to UK law than necessary to meet the terms of the Directive.
4. We are, however, concerned about the proposal to remove the 'commercial availability' restriction in the existing exceptions to copyright provided for the benefit of people with a disability so that they could in the future permit accessible copies that are the same as commercially available accessible copies to be made. Such a restriction is, in our view, an important way of ensuring that the exceptions comply with the three-step-test. We certainly agree that any alternative restrictions devised to comply with the three-step-test may make the scope of the exceptions much more difficult to understand, both for both right holders and those who wish to benefit from the exceptions.

¹ For a full copy of our Membership list, see our website, at <https://www.bsac.uk.com/membership/>

² See IPO, 'Consultation on UK's implementation of the Marrakesh Treaty' (May 2018), at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705158/marrakesh-treaty.pdf

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5. There is a significant amount of commercially available audiovisual content that includes options for accessibility, particularly subtitles, but also audio description and sign language. Evidence of this for much audiovisual content has been published by Ofcom in the context of statutory obligations that do, or will in due course, apply to many audiovisual services (as explained below)³. Although we accept that most of those facilitating access to audiovisual content for people with a disability are unlikely to use their resources to make accessible content if it is commercially available, removing the restriction in the exceptions so that this becomes possible could clearly result in accessible copies being made in competition with those that are commercially available. Where the statutory obligations as indicated below apply, there would not, then, even be the option in the audiovisual sector to stop investing in making accessible content commercially available. We are certainly not suggesting that there is any desire in the audiovisual sector to reduce the commercial availability of accessible content. However, if investment in doing this were to be undermined by activity under the copyright exceptions, it might be appropriate to consider a reduction in such investment.

6. Statutory obligations requiring audiovisual content to be made available in accessible forms are presumably important to people with a disability who benefit from them and we certainly do not want to suggest that they should be changed. However, it is very important that the impact of any changes to the copyright exceptions are considered in the context of these statutory obligations. At the moment there are obligations on broadcasters as explained in Ofcom's Code on Television Access Services⁴. But obligations are expected to also apply to on demand programme services in the near future⁵. Any changes to the exceptions to copyright as they apply to audiovisual content must therefore take into account the additional impact on audiovisual content service providers who are, or will be, required by a statutory provision to make that content available in accessible forms.

3 See Ofcom, 'On-demand programme services: Access services report 2016/17' (19 December 2017), at <https://www.ofcom.org.uk/research-and-data/multi-sector-research/accessibility-research/odps-accessibility-report> for TV access services 2017 Q1 and Q2; and the report at <https://www.ofcom.org.uk/research-and-data/multi-sector-research/accessibility-research/tv-access-report-2017> for on-demand programme services 2016/17

4 See Ofcom, 'Ofcom's Code on Television Access Services' (30 January 2017), at https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf

5 See the Ofcom consultation, 'How should On-demand Programme Services be made accessible?' (19 December 2017), at https://www.ofcom.org.uk/data/assets/pdf_file/0030/108669/consultation-odps-accessibility.pdf, which will inform regulations to be made under the Digital Economy Act 2017

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*For more information about BSAC
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