

Interim Regulatory Impact Statement: Supporting local audiovisual content production and accessibility

Coversheet

Purpose of Document	
Decision sought:	Cabinet approval to release a public consultation document
Advising agency:	Ministry for Culture and Heritage
Proposing Ministers:	Minister for Media and Communications; Minister for Arts, Culture and Heritage
Date finalised:	21 October 2024
Problem Definition	
<p>Declining production of and engagement with New Zealand audiovisual media content places at risk:</p> <ul style="list-style-type: none">the societal and cultural benefits of seeing ourselves and our stories on-screen (including the democratic value of local news and current affairs content plurality), andthe workforce and economic value of our local media and content production sectors. <p>Intervention could help to mitigate specific risk factors relating to:</p> <ul style="list-style-type: none">global streaming platforms' lack of investment into local content productionthe inaccessibility of local platforms on smart TVs, andthe relatively low levels of captioning and audio description for local content, which creates barriers for populations with specific access needs.	
Executive Summary	
<p>Local media content (both factual and fiction) provides crucial societal and cultural benefits for New Zealand. The organisations that create and provide access to this content contribute significantly to New Zealand's economy.</p> <p>Local broadcasters have traditionally been the main providers of local content to New Zealand audiences. As audiences increasingly move away from traditional linear television, they are seeing less local content. Combined with economic headwinds, the advertising revenue that has sustained New Zealand broadcasters (and funded their contribution to the production of local content) has significantly reduced.</p> <p>Sector feedback has warned that without intervention, broadcasters and local production companies will face further shut-downs and cutbacks on top of those seen through the first half of 2024 – reducing the production of and access to local content. New Zealanders' engagement with local content may also further decline due to the ready accessibility of other options (which often have higher production values, and built-in accessibility through captioning and audio description).</p> <p>Other jurisdictions have long-standing and specific protections in place to ensure access to local content, and many are considering or implementing options to modernise and extend</p>	

regulatory regimes to account for the rise of global streaming platforms. Local sector advocacy and initial engagement indicates support for government intervention that encourages more access to and engagement with local content, but concern to minimise compliance costs in the current economic context.

With an overarching objective of ensuring New Zealanders have access to local content (and preserving the societal, cultural, and economic benefits of engagement with that content), this interim RIS considers three areas of potential regulatory intervention, summarised below. All options are analysed at a high-level; should preferred options be progressed, consultation and further work will be required to determine the nature and detail of both regulatory design and impacts.

The criteria guiding analysis are:

- **Regulatory stewardship:** ensuring fit for purpose, robust and coherent regulation (including compliance with international obligations);
- **Sector sustainability:** enabling healthy and sustainable local media and content production sectors;
- **Audience and societal interests:** meeting audience preferences and interests, in a way that preserves and enhances broader societal interests;
- **Government costs and efficiencies:** managing the cost of, and encouraging efficiencies in, government intervention;
- **Compliance burden:** minimising unnecessary costs on regulated parties; and
- **Treaty of Waitangi:** upholding the Crown's te Tiriti obligations.

Scope constraints and assumptions include:

- **fiscal context:** given the Government's stated focus on reducing public spending, options that involve significant new expenditure are out of scope. However, it is generally assumed for the purposes of this analysis that existing funding flowing into the media and content production sectors will not substantially reduce.
- **international trade obligations:** recognising New Zealand's commitments under the General Agreement on Trade in Services, options do not propose more stringent requirements on international service suppliers than local service suppliers.
- **regulatory and funding bodies** as assumed to be available to take on administration, monitoring, and enforcement functions under any proposals to be progressed.

Issue A: Increasing investment into and discoverability of local content

With the twin objectives of increasing the volume and discoverability of local content on global streaming platforms and increasing those platforms' investment into local production, the range of options under consideration (alongside the counterfactual) covers:

- **reporting requirements** on the level and accessibility of local content on platforms
- **'discoverability' obligations** to ensure local content is easily found on platforms
- **minimum catalogue requirements** for local content, as a proportion of total titles
- **investment requirements** into local content, based on local revenue, and
- **a levy** to support local content, that existing local funding entities could distribute.

The preferred option is to introduce local content investment requirements (which would apply to all professional, curated audiovisual media platforms operating in New Zealand),

and 'discoverability' obligations for local content. These mechanisms would complement each other to increase the local content that New Zealanders have access to and can easily find, providing ongoing support for sector sustainability and ensuring new local content was available to keep New Zealanders (and overseas audiences) engaged.

Issue B: Ensuring accessibility of local media platforms

In industry terminology, the position and availability of linear channels and on-demand/streaming services on a TV home screen is referred to as 'prominence'. Prominence affects viewership, and in turn, advertising revenue.

To support New Zealanders to easily find and engage with the local services that carry more local content, options under consideration (alongside the counterfactual) are:

- **reporting requirements** on TV manufacturers in relation to their systems and processes to ensure appropriate prominence of local broadcasters and platforms;
- **must-carry requirements** to ensure local platforms and services are pre-installed and receive a basic level of prominence and accessibility on TV home screens; and
- **must-promote requirements**, obligating TVs to carry and promote both local TV services and local content at various points of interaction with users

The preferred option is to institute must-carry requirements, which would minimise risks of increased costs or reduced choice for users (in terms of both the TV market and platform ordering on screen), s6(a)

Issue C: Increasing captioning and audio description

While government provides some funding for captioning and audio description (CAD) of local media content, New Zealand has no specific legislative obligations relating to CAD. CAD levels on streaming and on-demand platforms and private broadcasters are low compared with international counterparts. Regulatory options in this space would seek to increase access to media for disabled people and others with specific accessibility needs, and comply with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Alongside the counterfactual, options considered are:

- **reporting requirements** on broadcasters and media platforms operating in New Zealand around the levels of CAD for content hosted on their platforms; and
- **substantive obligations** on broadcasters and platforms to provide equitable access to their content, with specific, progressive CAD targets to be phased in over time.

The preferred option is to introduce substantive obligations to increase CAD levels; as voluntary targets or substantial increases to public funding for CAD are likely infeasible in the short-term, this would be the most effective way to improve accessibility of (and engagement with) local content for audiences with specific access needs. It would also address identified and long-standing concerns with New Zealand's compliance with UNCRPD.

Noting the significant compliance burden and varied levels of existing technological capability, it would be important to carefully phase implementation and, while outside the scope of this RIS, make best efforts to retain or enhance government funding for CAD.

Next steps

Public consultation will be undertaken on the preferred options in this interim RIS (including seeking feedback on the alternative options), which will support more comprehensive analysis and provide a mandate for detailed design work on options to be progressed. This will also enable costs and benefits to be quantified.

Legislative reform would be required to implement the preferred options. This could be progressed alongside legislative change to the regime for media regulation and oversight and/or to the entities that administer public funding for audiovisual content (each canvassed in separate interim RISs).

Limitations and Constraints on Analysis

The key limitation on the analysis in this RIS, noting it is intended to support consultation, is the absence of formal views and feedback from affected parties and the wider public.

Constraints on options centre on the current fiscal context; approaches to the problems that involve significant new Crown expenditure have been ruled out of scope, given the Government's signals about fiscal discipline and the ongoing need to find savings.

Change options are light on detail, in line with an approach of seeking stakeholder inputs early to both provide a mandate for and inform detailed policy analysis and design. However, a lack of readily accessible evidence (along with time constraints and commercial sensitivities) has meant some details that would have been helpful to inform consultation are not available. This includes:

- reliable information on international subscription video-on-demand platforms' revenue
- the level and proportion of captioning on audiovisual platforms
- evidence about the impacts of other jurisdictions' approaches to the issues under consideration (most of which are newly or not yet fully implemented).

With explicit objectives around increasing the production and accessibility of local content, this RIS raises potential issues in relation to compliance with New Zealand's international trade obligations. s6(a)

The lack of detail and consultation also means analysis of options' compliance with and potential to support better outcomes under te Tiriti o Waitangi is under-developed.

Preferred options carry administration costs for government and compliance costs for parts of the industry. Due to time constraints and the need to determine the shape of the preferred options in more detail, costs of preferred options have not been quantified. These costs, both one-off and ongoing, are expected to be a significant factor in Ministers' policy decision-making.

Should change options be carried forward, a final RIS following consultation is expected to address these deficiencies so Ministers can be confident in using the analysis to inform final policy decisions.

Responsible Manager

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Manatū Taonga the Ministry for Culture and Heritage

s9(2)(a)

21 October 2024

Quality Assurance

Reviewing Agency: Ministry for Culture and Heritage, Department of Internal Affairs

Panel Assessment & Comment: A Quality Assurance Panel with representatives from MCH and DIA has reviewed the Interim Regulatory Impact Statement, *Supporting local audiovisual content production and accessibility*, and considers it meets the quality assurance criteria for an interim RIS.

The analysis is robust and balanced and supported by a good analytical framework. The options are set out clearly and concisely and the context for the policy intervention is well canvassed. Limitations and constraints, and their potential impacts, are clearly articulated and understood. Further sector consultation and cost/benefit analyses are required to fully inform options for Ministerial decision making. There is also a need for further detailed work on the impact of New Zealand's existing trade agreement commitments. The Panel considers the RIS provides sufficient information to inform decisions to consult on the proposals.

Proactively released

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. This section provides the overarching context, counterfactual, and problem definition for specific areas of potential regulatory intervention analysed in this RIS. Subsequent sections provide more specific information to inform analysis of options.

Media and content production sector

Local broadcasters and content

2. Local broadcasters have traditionally been the main providers of local content to New Zealand audiences, through production (creating content), commissioning (paying a production company to create content), and acquisition (buying the right to show already-produced content on their platforms).
3. As well as the sector's economic impact (the media and content production sectors employ over 25,000 people and are estimated to provide around \$4.6 billion per year to the economy),¹ local media content provides significant societal benefits. It:
 - 3.1. plays a vital role in supporting our democratic process through informed citizenry, and fosters critical thought, counters misinformation and disinformation, and promotes informed many-sided debate;²
 - 3.2. provides opportunities for our stories and voices to be heard here and globally, preserving and promoting our culture and history; and
 - 3.3. contributes to social cohesion and collective identity.

Shifts and challenges

4. Local broadcasters continue to reach large audiences overall,³ and remain an important mechanism for ensuring New Zealanders have access to content that is produced by, for, and about us. Research suggests that audiences use linear free-to-air TV because it is 'free' and 'easy' (i.e. it can be found at the click of a button).⁴
5. However, in the last decade or so, technological advancements and increasing globalisation have brought new entrants (predominantly multi-national platforms) into the market. Audiences now have significantly more choice around where and how they consume media content, and the types of content they consume.
6. Since 2020, digital media (such as broadcaster streaming services, global streaming services, and social media) has attracted bigger audiences in New Zealand than traditional linear broadcasting. YouTube is the most popular video platform in New Zealand, reaching 43 percent of the population daily, followed by Netflix at 38 percent,

¹ Infometrics Media and Broadcasting sector profile 2023, commissioned by the Ministry www.mch.govt.nz/sites/default/files/2024-03/media-broadcasting-profile-2023.PDF

² A key differentiator between global streaming platforms and local broadcasters is the production of local news and current affairs.

³ According to local broadcaster websites, their main channels TVNZ1, Three and Whakaata Māori reach 3.1m, 2.3m and 1.1m New Zealanders per month respectively. NZ On Air's *Where Are The Audiences 2024* states that combined daily reach of local broadcaster free-to-air channels is 29%, and 35% for their streaming apps (TVNZ+, ThreeNow and Māori+); www.nzonair.govt.nz/research/where-are-the-audiences-2024/.

⁴ Freeview market tracker, July 2024.

Facebook at 36 percent and TVNZ1 at 32 percent.⁵ This same research found that growth in use of global media platforms in New Zealand is slowing and the decline of local platforms may be plateauing, but the range of potential factors behind this include the cost of living, which may have affected SVODs subscriptions. The analysis in this RIS therefore places more weight on longer-term trends.

7. By their nature, global platforms carry less New Zealand content. As viewership on these platforms increases, New Zealanders are less exposed to, and engaging less with, local content. This trend is particularly evident for certain population groups, including young people.⁶ The wider range of available content (often with higher production values) also seems to be decreasing appetite for local content.⁷
8. Less engagement with local content affects investment from platforms and other sources of private funding (particularly for genres commanding less advertising revenue, which often coincide with public or special interest content). These factors contribute to less local content being created, with flow-on impacts for the viability of New Zealand production companies.
9. As audiences increasingly move away from traditional broadcasters, the advertising dollars that have sustained them (and funded broadcasters' contribution to the production of local content) has significantly reduced. Financial headwinds exacerbate these reductions, as advertisers spend less and content costs more to produce. Examples of impacts through the first half of 2024 include:
 - 9.1. Warner Brothers Discovery NZ, which owns Three and ThreeNow, announcing it would no longer be commissioning local content without co-funding from government (via the funding entities).
 - 9.2. significant cuts to TVNZ's local content slate, with further reductions signalled.
10. Local media have been attempting to mitigate these issues and move with audiences by providing online platforms and diversifying their content offerings, while maintaining traditional broadcasting services (which still serve a broad base, particularly for certain population groups and in times of crisis). However, within New Zealand's small market, the extent to which local media companies can compete with global platforms is limited. The increasing costs of production, and the limited engagement it generates, means acquiring overseas productions is often a better economic prospect for local platforms than producing, commissioning, and acquiring local productions.

Regulatory and funding environment

11. Government provides funding to support media content production in New Zealand, primarily through Crown Entities NZ On Air and the New Zealand Film Commission (via Vote Arts, Culture and Heritage and Vote Business, Science and Innovation), and Te Māngai Pāho (via Vote Māori Development).
12. There is significant competition for the contestable elements of public funding⁸ – for example, in 2022/23 NZ On Air funded less than half of the applications it received.

⁵ NZ On Air, *Where Are The Audiences? 2024*; www.nzonair.govt.nz/research/where-are-the-audiences-2024/.

⁶ Ibid. Only 16% of people aged 15-24 engage with free-to-air TV (where the majority of local content can be found) on a daily basis, compared with 29% for all New Zealanders.

⁷ NZ On Air, *Where Are The Youth Audiences? 2022* found two thirds of 15-24 year olds think NZ shows are lesser quality than overseas shows, watched by hardly anyone they know, or often make them cringe.

⁸ The NZFC administers the New Zealand Screen Production Rebate, which is uncapped for eligible productions.

While this has been a feature of contestable funding rounds for some time, reports from the funding entities suggest the demand has been greater over the last 12 months as economic pressure reduces broadcasters' investment into local content.

13. The New Zealand Film Commission Act 1978 emphasises industry development as well as film production and distribution. In performing its legislative functions, the Film Commission may only provide funding to films with significant New Zealand content.
14. The Broadcasting Act 1989 was designed to promote, and increase the level of, local on-air content through settings for public funding. It establishes:
 - 14.1. NZ On Air under Part 4 of the Act, which is mandated to:
 - reflect and develop New Zealand identity and culture, including by promoting Māori language and culture
 - promote a sustained commitment by broadcasters to programmes reflecting New Zealand identity and culture
 - ensure a range of programmes is available to provide for the interests of specific population groups that have been (at least historically) under-served by commercial broadcasting.
 - 14.2. Te Māngai Pāho via Part 4A of the Act (in 1994), which has legislative functions to promote Māori language and culture by making funds available for programmes, archiving, and other activities.
15. As a result of these obligations, the vast majority of publicly-funded audiovisual content (excluding films) is broadcast on free-to-air TV – via both government-owned broadcasters TVNZ and Whakaata Māori, and commercially-owned broadcasters such as Three and Sky (via its free-to-air Sky Open channel).
16. Unlike in other jurisdictions, there are no regulatory requirements for broadcasters (or any other media platforms) to carry specific levels of local content. However, public broadcasters are subject to government oversight (which includes expectations relating to local content), and some relevant legislative obligations:
 - 16.1. TVNZ must provide high-quality content that is relevant to, and enjoyed and valued by, New Zealand audiences and encompasses both New Zealand and international content and reflects Māori perspectives.⁹
 - 16.2. Whakaata Māori must ensure that during prime time it broadcasts mainly in te reo Māori; and ensure that at other times it broadcasts a substantial proportion of its programmes in te reo Māori.¹⁰

International trade obligations

17. New Zealand's free trade agreements contain a range of obligations relevant to options analysed in this RIS. Underpinning all agreements is the General Agreement on Trade in Services (GATS), under which New Zealand must treat suppliers from any member Countries no less favourably than it treats its own like services and service suppliers. This applies in respect of all measures affecting the supply of services, including the production, distribution, marketing, sale and delivery of a service, and extends to de

⁹ Television New Zealand Act 2003.

¹⁰ Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003.

facto treatment (that is, settings should not make it easier, either in law or in fact, for domestic suppliers to provide services in New Zealand than foreign suppliers).

18. s6(a) [REDACTED]
19. The New Zealand Australia Closer Economic Relations Trade Agreement (CER), which came into force in January 1983, requires New Zealand policies and practices relating to audiovisual services not to discriminate against Australian service providers.

Interdependencies and related work

20. The options analysed in this interim RIS sit within a broader work programme aiming to create a modern, fit for purpose regulatory and funding environment that enables the New Zealand media and content production sector to deliver for New Zealand audiences. Separate, interim RISs analyse high-level reform proposals to:
- 20.1. consolidate NZ On Air and NZFC into a single content funding entity; and
 - 20.2. expand or replace the broadcasting standards regime to provide platform-neutral regulatory oversight of professional media in New Zealand.
21. Te Puni Kōkiri is also progressing related work, with a view to making Māori language outcomes as effective and efficient as possible. It is currently completing a stocktake of the Māori language entities, including Te Māngai Pāho, and the wider Māori language sector, which will inform a proposed action plan for 2024-25.
22. Broader government work related to local content accessibility includes:
- 22.1. exploring options to support a sector-led transition away from digital terrestrial television, which could include supporting audiences in moving to new forms of technology so they can continue to access free-to-air TV.
 - 22.2. rural connectivity, including potential future government investment, spectrum allocations and enhancing telecommunications regulation and funding frameworks. MBIE is leading this work, with the Commerce Commission also working on a rural connectivity study to inform future policy work in this area.
23. Specific interdependencies between these areas of work and the options considered in this RIS are discussed in the analysis sections below.

Counterfactual

24. Industry estimates suggest traditional broadcast TV will wind up in the next decade or so s9(2)(ba)(i) [REDACTED] This phase-out will eventually reduce operating costs, which currently include maintaining legacy infrastructure as well as new platforms. However, once audiences are completely online (via streaming and on-demand), the need will only increase for local platforms to be very strategic in how they both compete with and differentiate themselves from global platforms.
25. Local content is likely to remain proportionally more expensive than overseas content. We expect local media, and particularly publicly owned media, to maintain their

commitment to showing local content. However, the pressure to make budgets work while competing with significantly-more resourced global platforms may mean acquisition of overseas content is an increasing component of their business models.

26. The Government has signalled that Budget 2025 will need to involve further reductions in spending, so there is a risk that less public funding for content will be available (at least in the short-term).
27. These factors indicate that local content production will face ongoing and potentially increasing challenges, including around the funding required to kickstart higher quality productions that can compete with international offerings for audiences (and therefore attract investment). Sector feedback has warned that without intervention, both local media and production companies will not be able to withstand significantly prolonged financial headwinds, and further shut-downs and cutbacks are likely.
28. New Zealanders' access to and engagement with local content may also further decline, due to reduced commissioning and production and the continued availability of other content (often with higher production values and more accessibility options).

What is the policy problem or opportunity?

29. Declining production of and engagement with New Zealand audiovisual content, including via audiences' declining use of local platforms, places at risk:
 - 29.1. the societal and cultural benefits of seeing ourselves and our stories on-screen;
 - 29.2. the plurality, diversity, and relevance of news and current affairs content, which has a crucial democratic function; and
 - 29.3. the workforce and economic value of our local production sector, including our ability to attract and service international screen productions that bring significant opportunities for sector development and wider economic benefit.
30. Modernising our regulatory landscape provides opportunities to mitigate these risks. Specific problems and opportunities are outlined below in relation to each area of potential regulatory intervention, which seek to increase:
 - 30.1. streaming platforms' investment in local audiovisual content production;
 - 30.2. the accessibility of local platforms on smart TVs; and
 - 30.3. captioning and audio description of audiovisual content.

What objectives are sought in relation to the policy problem?

31. The key objective for potential interventions across all three sets of options is to ensure New Zealanders have access to local content, thereby preserving and promoting the societal benefits identified above at paragraph 29. Specific objectives in relation to each area of potential regulatory intervention are covered in more detail below.
32. All objectives align with the overarching aims of the Ministry's media and content production work programme, which are to
 - 32.1. ensure a modern, fit for purpose regulatory and funding environment; and
 - 32.2. support healthy and sustainable New Zealand media and content production sectors that deliver for New Zealand audiences.

Section 2: Deciding on options to address the policy problem

What criteria will be used to compare options to the status quo?

- 33. Criteria used to analyse options are:
 - 33.1. **Regulatory stewardship:** ensuring fit for purpose, robust and coherent regulation (including compliance with international obligations);
 - 33.2. **Sector sustainability:** enabling healthy and sustainable local media and content production sectors;
 - 33.3. **Audience and societal interests:** meeting audience preferences and interests, in a way that preserves and enhances broader societal interests;¹¹
 - 33.4. **Government costs and efficiencies:** managing the cost of, and encouraging efficiencies in, government intervention (including return on investment);
 - 33.5. **Compliance burden:** minimising costs on regulated parties; and
 - 33.6. **Treaty of Waitangi:** upholding the Crown's te Tiriti obligations.
- 34. At this stage of (initial) analysis, the criteria are weighted equally. As this RIS is considering new mechanisms to support the accessibility of local content, options scoring well against the first three criteria (which often coincide with the objectives of reform) will generally involve a trade-off against compliance burden and cost to government. The overall cost/benefit efficiency will be considered in conclusions.

What scope will options be considered within?

- 35. Options have been formulated within the scope of the overarching policy objectives of the Ministry's media and content production work programme, as set out above at paragraph 32. Options include both legislative and non-legislative changes.
- 36. Constraints on the scope of options across all areas of potential intervention include:
 - 36.1. fiscal context: in light of the Government's stated ongoing focus on reducing public spending, an overall package of reform will need to be as close to fiscally neutral as possible, if not produce savings. Therefore, options that involve significant new government spending have been ruled out of scope.
 - 36.2. international obligations: recognising New Zealand's trade commitments, options do not propose more stringent requirements on international service suppliers than local service suppliers. s6(a)
- 37. The scope of options is limited to media platforms that provide professional audiovisual content and that have editorial or substantive curation functions in respect of the content they provide. This means options do not affect social media or other platforms hosting user-generated content (for instance, YouTube, TikTok, Facebook).

¹¹ While there may be a tension between immediate or individual audience preferences and broader societal interests, this criterion primarily focuses on how options can create complementary impacts across both.

38. As an interim RIS, the analysis is necessarily high level. Options have implications for and dependencies with other areas of the Ministry's work programme, particularly the proposals to consolidate NZ On Air and NZFC into a single content funder and to implement a new, platform-neutral regulator for professional media. One or both of these bodies would likely need to perform functions (administration, monitoring and/or enforcement) in relation to some or all of the options in this RIS.
39. Further consultation and subsequent detailed analysis would determine how these functions would be designed and managed, if change is to be progressed.
40. Assumptions for the purposes of this analysis include that:
- 40.1. public funding for the creation of local content will continue (though as noted in relation to the counterfactual, there is a risk this funding reduces in light of the Government's ongoing priority to reduce Crown debt); and
 - 40.2. regulatory and/or funding bodies will be available to take on administration, monitoring, and enforcement functions under any proposals to be progressed.
41. Specific scope considerations and assumptions are outlined in relevant sections below.

Proactively Released

Issue A: Increasing investment into and discoverability of local content

Specific context

42. Global streaming platforms provide professional visual media content directly to viewers online on-demand. This includes:
 - 42.1. subscription video on demand (SVOD) services that offer professional film and television content that is accessed online on-demand by a user who is paying an ongoing fee for access, for example global platforms Netflix, Disney+, Amazon Prime and the New Zealand streaming platform Neon.
 - 42.2. transactional video on-demand that offer professional film and television content that is accessed online on-demand by a user who pays a one-off fee for access to services, for example Google Play Movies.
 - 42.3. Free video-on-demand platforms, including those local broadcasters operate.

Market and sector context

43. Global streaming platforms provide choice to New Zealand audiences and global export opportunities to creators. Unlike most New Zealand audiovisual platforms, these platforms are not free to access and therefore, at least theoretically, have limited reach.
44. Global streaming platforms' services differ to broadcasters', including:
 - 44.1. a narrower range of content genres (mainly drama, high-end factual and comedy), though some are moving to provide sports coverage and
 - 44.2. a focus on content for its global audience
45. Like local broadcasters and platforms, global streaming platforms are affected by financial headwinds; they are reporting losses, reducing content commissioning, and taking steps to increase revenue. Netflix recently tightened rules on password sharing and added a lower-fee subscription supported by ads in the USA and Britain. Disney+ and Amazon Prime Video also have a tier of subscription that includes adverts. Amazon Prime Video has introduced ads before and during content in countries including the UK, Germany, Canada, France, Italy, Spain, Mexico and Australia.

Viewership and revenue

46. As noted above, research indicates that global platforms have been overtaking local media broadcasters and platforms in terms of audience reach. Global streaming platforms do not report individually on the number of subscriptions in or revenue from New Zealand. Available data and subscription pricing provides some indication that larger global platforms' New Zealand revenue may be on par with local free-to-air broadcasters and platforms.
47. Global streaming platforms are particularly popular with audiences that are less engaged with locally produced content:¹²

¹² NZ On Air: *Children's Media Use Report 2020*; *New Zealand's Identity, Culture and the Media: What's changed in 30 years?* 2019; *Where Are The Youth Audiences?* 2023; KANTAR New Zealand, *Strong Public Media Audience Data Analysis* March 2021; NZ On Air, *Where Are the Audiences?* 2024.

- 47.1. Netflix has the highest daily reach to children (47 percent, compared to 16 percent for TVNZ1 and 15 percent for TVNZ2); many children are unaware of local content, and most do not have a favourite New Zealand-made show.
- 47.2. More than half 15 to 24-year-olds cannot remember watching any New Zealand show, and believe there is no locally produced content for people like them.
- 47.3. Subscription streamers are the most popular form of media for New Zealanders of Pasifika descent, and significantly more popular than TV for those of Asian descent (62 and 58 percent daily reach respectively, compared to 34 and 28 percent for TV).

Investment in local content

48. While public broadcasters have some legislative obligations that encourage commissioning and broadcasting of local content (noted above at paragraph 16), in New Zealand there are no requirements for commercial broadcasters or global digital platforms to show New Zealand content or display it so that viewers can find it.
49. Public broadcasters' annual reports, compared with a manual survey of global streaming platforms' catalogues and uptake of New Zealand screen production incentives, indicates that local platforms spend on and carry a significantly greater proportion of local content¹³ than international platforms. For instance:
 - 49.1. TVNZ's 2023 annual report highlights around \$105 million in spending on local content in 2022/23, representing more than 60 percent of its overall content spend, and notes it has more than 120 local shows in development and production (working with over 60 independent production companies).
 - 49.2. Global streaming platforms' use of the New Zealand Screen Production Rebate has been almost exclusively for international productions, with the higher-percentage domestic Rebate employed in respect of two co-productions (which are not required to meet the test for significant New Zealand content).
 - 49.3. A manual scan in October 2023 indicated Netflix currently holds fewer than 10 New Zealand titles (and 13 international productions filmed in New Zealand). Disney had none, and Neon (Sky New Zealand's streaming platform) carried 54 home-grown titles, making up 4 percent of its catalogue.
50. Limited engagement with global streaming platforms' representatives has indicated [REDACTED] s9(2)(g)(i) [REDACTED] [REDACTED] Representatives have encouraged government focus on and investment into increasing the slate of 'premium' local productions, to showcase local talent and build investor confidence.
51. Netflix has advised that its focus in New Zealand currently is training and development to help build sector capability; for instance, from 2022-24 it funded *A Wave in the Ocean*, a pop-up intensive film school run by Dame Jane Campion that supports ten emerging filmmakers. In 2024 meetings with the NZFC and Ministry officials, Disney also expressed interest in opportunities to support talent development.

¹³ For the purposes of this analysis, 'local content' is defined as more than simply made in New Zealand; see further paragraph 69.

Discoverability of local content

52. Many New Zealanders lack awareness of the local content that is available to them.¹⁴ Anecdotal evidence suggests this is a particular issue on global platforms.
53. On top of these platforms' large catalogues of content and the business need to cater to many different international audiences, other factors also contribute New Zealanders' ability to identify and find local content – in industry parlance, 'discoverability'. The relative visibility of content depends on a range of different mechanisms comprising both human and machine-generated decisions,¹⁵ the latter of which are often influenced by commercial factors.
54. The table below shows an assessment of the discoverability of New Zealand content (noting this term may denote different levels of New Zealand involvement across platforms) on key platforms New Zealanders access, from a manual scan in June 2024.

Discoverability of New Zealand content on platforms, June 2024

	Platform	Visible on home screen	Category on home screen	Pre-set filter	Promoted on banner	Origin label
Local	TVNZ+	Yes	Yes	Yes	No	No
	ThreeNow	Yes	No	Yes	Yes	No
	Māori+	Yes	Yes	No	Yes	No
	SKY	Yes	No	No	Yes	No
	Neon	Yes	No	No	Yes	No
Global	Netflix	No	No	No	No	No
	Disney+	No	No	No	No	No
	Apple TV	No	No	No	No	No
	Amazon Prime	No	No	No	No	No

Comparator jurisdictions

55. Many other countries have requirements for broadcasters to show local content and are introducing similar requirements on streaming platforms, as well as discoverability requirements. While the Ministry is not aware of research or insights around the impacts of new or proposed requirements on streaming platforms as they are mostly still in an implementation phase, notable examples include:
- 55.1. Australia currently has a voluntary reporting scheme for streamers on investment into and discoverability of local content, and has proposed to legislate that streamers must invest a percentage of their revenue in Australian content (and report against those requirements).
- 55.2. Under legislation passed in 2023, Canada's media regulator has implemented a requirement for streaming platforms to contribute five percent of their local revenue into funds for Canadian content, independent local news, and production funds for official language minority communities, Indigenous and Black creators, and for accessible content.

¹⁴ In NZ On Air's 2019 Culture, Identity and Media report, 43% stated that they were 'not sure what NZ programmes/shows are available'. Younger respondents were also more likely to state that, 'to be honest, I'm not sure what New Zealand programmes/shows are available' (e.g. 58% of respondents aged 16-17 and 48% of those aged 18-24 compared with 38% for respondents aged 25-34 and 37% for those aged 50-69).

¹⁵ These include the design and composition of home screens, recommendation rows, content carousels, search results, autoplay trailers, remote control buttons, 'previously watched' reminders, and push notifications.

- 55.3. The European Union requires streaming platforms' catalogues to include 30 percent European content, and enables member states to impose investment obligations, levies and discoverability requirements relating to local (national) content. Some examples are:
- a. The Netherlands requires five percent of annual revenue to be invested in local content, 60 percent of which must go to independent productions and 70 percent must be in Dutch or Frisian.
 - b. Spain has a five percent levy or investment obligation, of which 70 percent must go to works by independent producers.
 - c. Portugal has a one percent levy and a four percent investment obligation.
 - d. France has a 20 percent investment obligation and a five percent levy, of which 75 percent must be spent on independent film production and 85 percent on works of "French expression". In the first year of implementation (2021), streamers invested around \$NZD288 million, and in 2022 at least 17 French movies were funded by Disney+, Netflix and Amazon Prime Video.¹⁶

Counterfactual

56. New Zealanders' use of streaming platforms will continue to grow as linear TV winds down. Within the New Zealand market, global streaming platforms' dominance is likely to continue, as their size, budgets and positioning offer a wider range of high-quality content than is possible for platforms based in New Zealand. This is expected to be the case even if other interventions are progressed (for instance in relation to prominence – see further section 2A below). Global platforms' dominance may become more pronounced over time, noting that young people and the growing Asian and Pasifika populations are already less engaged with local content and platforms.
57. Assuming international NZSPR settings remain competitive, global streaming platforms are likely to continue investing in international productions that locate in New Zealand for filming or post-production. Investment in local content (in the more substantive sense) may also grow over time; initial engagement with global streaming platform representatives indicates this is more likely if the budget and quality of our productions is seen to improve. However, in the absence of any intervention it is likely their catalogues will continue to have proportionally low levels of local content, which will remain relatively less discoverable than on local platforms.
58. The competitive pressure on local platforms, exacerbated by financial headwinds, will continue to hamper their capacity to produce or commission local content (which is likely to remain more expensive than acquiring overseas content).

Specific policy problem or opportunity

59. The counterfactual places at risk the range, growth, and viability of New Zealand's content production sector, and means that New Zealanders will have fewer opportunities, and are less likely, to engage with or value local content over time.
60. Overseas experience shows there is an opportunity to ensure that global streaming platforms both contribute more to the New Zealand content production sector and better enable New Zealand viewers to access local content. Regulatory intervention could help to preserve the economic and societal benefits that creation of, access to, and engagement with local content provides, outlined above at paragraph 29.

¹⁶ www.screendaily.com/features/the-us-streamer-squeeze-why-europe-is-taking-on-the-svods/.

Stakeholder views

61. Alongside New Zealand audiences, key stakeholders include:
 - 61.1. global streaming platforms;
 - 61.2. New Zealand broadcasters/platforms; and
 - 61.3. New Zealand audiovisual content producers.
62. In 2023 the New Zealand Screen Production and Development Association (SPADA) launched a campaign advocating for a levy on global streaming platforms to support the local screen sector, via existing government funding entities. It highlights the risk of losing our local voice and stories, the revenue generated from local audiences that is not returned to the local sector or economy, and the relative lack of tax contribution and regulation compared to local platforms (despite the use of local infrastructure). Media coverage and limited engagement with other parts of the sector indicate support for a levy, though it is unclear whether other options have been discussed at length.
63. In Australia, Canada, and the European Union, global streaming platforms have argued against regulatory obligations for local investment, citing no clear market failure and the risk of unintended consequences.¹⁷ Initial engagement with global streaming platform representatives indicates they understand government's interest in promoting local content but see regulatory intervention as incompatible with their business models (which are focused on meeting global audience interest and demand regardless of origin), and ultimately unproductive compared with competitive production incentives.
64. Amongst local broadcasters and platforms, and the broader public, views on the issue and options for intervention are largely unknown at this stage.

Specific objectives and scope

65. Within the overall objective of ensuring New Zealanders have access to local content, the specific objectives for potential intervention in this area are to increase:
 - 65.1. the volume and discoverability of local content on streaming platforms.
 - 65.2. investment in local production to support the creation, production, and distribution of New Zealand content and assist with sustainability of the local content production sector.
66. The scope of options is constrained by New Zealand's international trade obligations; as any regulatory obligations or requirements would need to apply to all platforms providing substantially the same kind of service, options encompass local broadcasters and streaming platforms as well as global streaming platforms.
67. Options to encourage or require public funding entities to fund more local content that will be shown on global streaming platforms are not considered in this RIS.¹⁸ Regulatory settings for NZ On Air and the NZFC, which could encompass this issue,

¹⁷ Noted risks include exacerbating capacity constraints in the sector, making it difficult for new streaming services to enter the market, and/or inflating costs for both the production sector and consumers

¹⁸ As noted above, NZ On Air's long-standing policy of funding only free-to-air content is already in a state of flux, recognising audience shifts to subscription services. Initial work has found little evidence that changing this policy would result in more applications connected to subscription streaming platforms – the current lack appears more closely linked to the size of local budgets and funding pools are too small to bring interest.

may be considered following work and consultation on whether the two entities should be consolidated (referenced above at paragraph 20).

68. Options to change the New Zealand Screen Production Rebate, or create other financial incentives to commission or produce local content, are out of scope based on the fiscal constraints identified above at paragraph 36 and the fact that a review of the Rebate has only recently concluded.
69. Given the policy problem and objectives, a definition of 'local content' would aim to capture content that reflects New Zealand stories, places, voices, and faces – while maximising flexibility and minimising subjectiveness and uncertainty. Detailed analysis will be needed to define the parameters of obligations, but for the purposes of this analysis the definition of local content is assumed to encompass more than simply 'made in New Zealand'. For illustrative purposes, a definition (which could involve a 'menu' of factors with some compulsory categories) might include:
 - 69.1. the primary subject matter (e.g. set in, lead characters from New Zealand)
 - 69.2. key roles in production (including New Zealanders in 'above-the-line' roles like director, producer, writer, composer and actor)
 - 69.3. the primary production location (i.e. mainly filmed in New Zealand)
 - 69.4. the overall production spend (e.g. the majority of the spend in New Zealand)
 - 69.5. the production company is based in New Zealand.
 - 69.6. the content includes te reo Māori or tikanga Māori.
70. An assumption for the purposes of this analysis is that Australian content is not considered local content; Australian content quotas encompass New Zealand content.

s6(a)

71. As noted in the overarching scope section above, this analysis assumes that an independent regulator would implement, enforce and monitor this proposal. Because separate, concurrent work analyses options around the regulator (referenced at paragraph 20), costs of establishing a regulator are not included in the analysis.

What options are being considered?

72. Some of the options could be combined: the counterfactual and options A4 – A6 are mutually exclusive, but options A2 and/or A3 could complement another change option.

Option A1 – Counterfactual

73. Efforts to increase the volume and discoverability of local content that global streaming platforms commission and host on their platforms would continue in the context of marketing and promotion of New Zealand as a production location, including on the basis of our sector's talent and the existing screen production incentives that are available. The Ministry would work closely with the funding entities and MBIE (which has portfolio responsibility for international screen production activity) on achieving better strategic outcomes within the current regulatory and funding context.

Option A2 – Reporting requirements

74. Option A2 would require media platforms to report on their expenditure on, and the availability of, local content. These requirements would need to be monitored and enforced by a platform-neutral regulatory body (the prospect of which is being analysed in a separate interim RIS – see further above at paragraph 20).

Option A3 – Discoverability requirements

75. Option A3 would require media platforms to ensure local content is readily able to be found by New Zealand users. While detailed work would be required to determine the parameters of obligations, this could include requirements that local content be visible on home screens or included in relevant recommendation panels and search results.

Option A4 – Minimum content requirements

76. Option A4 would require platforms to carry a certain proportion of local content in their catalogues (often referred to by advocates and in overseas jurisdictions as ‘quotas’). Requirements similar to this option have been implemented by the European Union where 30 percent of global streaming platforms’ catalogues must be European content.
77. Further work would be required to determine how this requirement would be calculated. The option could also accommodate ‘sub-quotas’ that target certain categories of local content, for instance if reporting requirements and/or sector trend monitoring indicated a lack or a need in particular areas.

Option A5 – Investment obligations

78. Option A5 would require content providers to invest a proportion of their revenue directly into the production of local content. Again, further work would be required to determine how this requirement would be calculated, and whether (potentially over time) sub-requirements could target certain categories of local content.
79. Sub-requirements could also specify a balance between acquisition of existing content and commissioning and/or production of new content (including utilisation of independent local production companies).

Option A6 – Levy

80. Option A6 would require content providers to pay a proportion of their revenue into a national fund that is disbursed to support the production of new local content. Implementation would involve both a regulator to monitor and enforce the obligation and government funding entities (including, if progressed, a new entity consolidating NZ On Air and NZFC as noted above at paragraph 20) to administer the fund.
81. Options to calculate the levy could accommodate incentives for platforms’ independent investment into local content (that is, the levy could be calculated based on revenue that is not already redirected back into the local sector). Criteria for accessing the fund would also need further work to determine, but depending on the levy’s size (and therefore the fund’s size) it could support local productions that are more likely to be commissioned or acquired by global streaming platforms.

How do the options compare to the status quo/counterfactual?

Key: compared to counterfactual ++ much better + better 0 about the same - worse -- much worse / between scores

	Could be combined with other change options			Mutually exclusive options		
	A1: CF	A2: Reporting requirements	A3: Discoverability requirements	A4: Minimum content requirements (based on volume / catalogue size)	A5: Investment obligations (based on cost / revenue)	A6: Levy
Regulatory stewardship ¹⁹	0	0 / + Would formally recognise the regulatory issue, but significant change unlikely and does not substantively address risks that issues deepen over time. Could strengthen evidence base for further action (supporting best practice regulatory stewardship).	+ Would meet regulatory aim of ensuring local content is accessible to audiences on platforms they use. s6(a)	0 / + Would meet regulatory aim of increasing local content on platforms audiences use. s6(a)	+ Would meet regulatory aim of increasing local content on platforms audiences use. s6(a)	0 / + May support regulatory aim of increasing local content on platforms audiences use, if productions supported by the levy were attractive to (and shown on) streaming platforms. s6(a)
Sector sustainability	0	0 / + Could indirectly incentivise streamers to commission or acquire more local content via public awareness and perceptions of 'commitment' to New Zealand (including through potential campaigns by local sector organisations), but impact on sector sustainability likely to be minimal Unlikely to increase local platforms' investment.	+ Would support more local audience exposure to and engagement with local content, building value proposition of local production sector. Could indirectly lead to streamers commissioning or acquiring local content to extract some value from requirements to display it.	+ Would see short-term impacts to meet requirements but limited longer-term impacts as increases would only track against overall catalogue growth. Option to fulfil requirement by acquiring existing content (rather than investing in new content) would also limit impact, though payment would indirectly support local content production. Could increase international exposure of local content and talent if platforms make the content available in other jurisdictions (leading to greater investment and development opportunities). Local platforms likely to meet requirements without any further investment in local content (supports their sustainability but not content production sector's).	++ Would result in ongoing investment into new local production by streaming platforms, with direct and longer-term positive sector impacts. Utilisation of local content production sector would depend on detail of 'local content' definition and potential sub-requirements. Could increase international exposure of local content and talent if platforms make the content available in other jurisdictions (leading to greater investment and development opportunities). Sub-requirements could support independent NZ productions. Local platforms likely to meet requirements on existing investment levels (supports their sustainability but not content production sector's), though could change if local platforms' revenue continues to decline.	+ Would require ongoing investment, ensuring longer-term impacts. Funding entity/ies would be well-placed to distribute funding strategically to support content production sector sustainability. Depending on design of levy (e.g. threshold revenue or profit levels) local platforms would be subject to it, which could be detrimental to their sustainability particularly in current economic context.
Audience and societal interests	0	0 / + Indirect impacts on local content production sector could support audience interests, likely to be minor. Reporting could support greater understanding of extent of local content shown and commissioned in NZ, and its value.	+ Would support New Zealanders to find and engage more with local content on global streaming platforms without undermining choice, organically increasing societal benefits.	+ Increase in local content on global streaming platforms would support audience access, more so initially than over time. As acquisition of older NZ content would be most cost effective, societal/cultural impact may be limited. Unclear whether cheaper/lower quality content would be preferred as this may conflict with global platforms' value proposition. Potential that platforms reduce overall catalogue or new international offerings to limit impact.	++ Would increase (likely higher quality) local content on global streaming platforms, and ongoing obligations would mean new local content (via turnover if not overall catalogue growth). Increased quality and variety of new content will have positive impacts for audiences individually and at a cultural and societal level. Platforms likely to be more invested in quality of content they will host, which should benefit audience engagement with and experience of local content.	+ Would support more (and potentially better quality) local content production, but not necessarily result in significantly more access by audiences if the content doesn't end up on global platforms. The size and access criteria for the fund could address this (if it were accessible by, and supports content that is attractive to, global streaming platforms).

¹⁹ To avoid double-counting impacts, the objective of increasing private investment into local content is considered under the sector sustainability criterion.

Government costs and efficiencies	0	-	0 / -	-	-	0 / -
Compliance burden	0	-	-	--	--	--
Te Tiriti	0	0 / +	0	0 / +	0 / +	0 / +
Overall	0	0 / +	+	+	+ / ++	+

Project
 Regulatory Impact Statement

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 82. On the analysis above option A5 (investment obligations) is preferred as it most substantively addresses the policy issue and opportunities in a way that will continue to deliver benefits over the long term. The potential for nuanced sub-requirements, which could be introduced over time, provides further opportunities to tailor the intervention as and when evidence is available to indicate specific areas of strategic benefit and/or under-investment. It is unlikely to exacerbate the current financial pressure on local platforms, which should meet the obligations on existing levels of investment.
- 83. The Ministry considers that option A3 (discoverability requirements) could be combined with option A5 to enhance audience access to and engagement with local content. This would also increase the value of government spending by maximising the exposure of local content, which will often be produced with funding support from government.
- 84. s6(a) [Redacted]
[Redacted]
[Redacted]
[Redacted] Further work on detailed elements of any change options progressed would need to ensure appropriate mechanisms are in place to:
 - 84.1. minimise risks around international trade obligations
 - 84.2. meet Te Tiriti obligations in relation to tino rangatiratanga and active protection by supporting story sovereignty, cultural safety and authenticity.
- 85. The analysis suggests option A2 would have limited benefits on its own. It could be progressed alongside options A3 and A5 to support effective monitoring by a regulator, and could also support decisions in future around sub-requirements or other targeted intervention. At this stage, however, the Ministry considers decisions on reporting requirements could be left to detailed design and implementation of preferred options.
- 86. Option A4 would increase the visibility and reach of local content in the short term but may not have a significant ongoing positive financial impact once platforms reach the minimum requirements. It would also have a limited impact on sector sustainability as it would not necessarily result in direct investment into new local productions.
- 87. Option A6 would have almost the inverse effect – it would support more local content production, but would not necessarily result in increasing visibility and reach of local content on global streaming platforms. Option A6 is also likely to involve the least ‘buy in’ from global platforms, as there is no necessary business connection to the quality of content that it would support. It would require the most financial input from local platforms, which exacerbates current concerns about media sector sustainability and may therefore be counter-productive for the local content production sector (which will continue to heavily rely on local platforms’ content commissioning).
- 88. One factor not explicitly covered in the analysis is the risk of global streaming platforms exiting the market, if obligations are seen as too onerous or otherwise unwarranted compared to the revenue they generate in New Zealand. This outcome would undermine benefits in relation to both sector sustainability and audience interests. Further consultation is required to determine the level of this risk and any necessary mitigations, which the Ministry considers should be manageable in the context of detailed design if regulatory intervention is progressed.

Issue B: Ensuring accessibility of local media platforms

What is the specific context?

89. In an online viewing environment, TV device manufacturers are the gateways for audiences to access services, applications and content. In industry terminology, the position and availability of both the 'live TV' function and on-demand/streaming services on a 'home' or landing screen is referred to as 'prominence'. Prominence affects viewership, and in turn, advertising revenue.
90. Prominence of local apps and channels currently varies by manufacturer and can depend on the operating system used. Some manufacturers such as Samsung and LG have their own operating systems, while others use Google or Amazon.
91. There are no rules relating to prominence in New Zealand. Local broadcasters negotiate with device manufacturers, who exercise a degree of control in relation to app availability; positioning on the home screen; recommendations and search; and shortcut buttons on the remote.
92. Stakeholder engagement²⁰ in August 2023 indicated concerns with the current prominence levels of local broadcaster services on the main smart TV home screens in New Zealand. Unlike for global platforms, shortcuts to local apps were often indicated as difficult to find, if they were pre-installed at all; no local apps come pre-installed on the newest LG and Samsung TVs, while only TVNZ+ is pre-installed on TVs that use Google's platform. One model did not provide compatibility for Māori+ (the online platform for Whakaata Māori), which was found to have the lowest prominence levels of the local broadcaster services.
93. As well as these concerns about pre-installation and positioning on home screens, local broadcasters have outlined a range of other prominence issues in relation to audience 'pathways' to local content and services:
 - 93.1. The 'live TV' function can be difficult to find, and easily confused with manufacturer 'live TV' services such as 'Samsung Plus TV', which is heavily promoted and does not feature any local channels or content.
 - 93.2. Certain international content is often 'pushed' ahead of local content in recommendations²¹ and when using the search function.
 - 93.3. Downloading local apps (when they are not pre-installed) often requires an account for the app library, which acts as a barrier. Manufacturers also control which apps are promoted in the app library.
 - 93.4. Shortcut buttons on the remote for the largest global platforms are now commonplace, so users can bypass live TV and areas where local apps reside.

Efforts to address prominence issues

94. Freeview has previously invested resources in ensuring point-of-sale information was provided in TV stores about availability of local services on different devices. However, due to the resources required, it does not plan to repeat this in future.

²⁰ Ministry officials met with Freeview and its shareholders (TVNZ, Warner Bros Discovery, Whakaata Māori and RNZ) and local representatives of TV manufacturers (LGE, Panasonic, Sony and TCL).

²¹ In some cases, recommender systems display a selection of content from a particular service. Others aggregate content from multiple service providers. These are sometimes divided into categories including personalised recommendations, genre recommendations and other categories such as 'trending now'.

95. NZ On Air's funding strategy includes providing support for projects related to the discoverability of the content it funds. However, it has limited ability to dedicate resource in this space. Current funding mainly relates to the marketing and promotion of the content itself, and for content discovery platforms such as NZ On Screen, rather than the discoverability of local services on global platforms.
96. In mid-2023, the previous Government's Minister for Broadcasting and Media wrote to both manufacturers and local sector participants encouraging companies to collaborate to improve outcomes in relation to prominence.²² Freeview and local broadcasters have not reported any improvements since.

International comparators

97. Some jurisdictions are exploring or implementing (or already have in place) measures to ensure local services are easy to find and engage with on TV devices.²³
- 97.1. Australia has recently introduced a legislative prominence framework that imposes 'must carry' obligations on manufacturers of Smart TVs and smart TV accessories. This framework is intended to ensure that certain services provided by Australian free-to-air television broadcasters are available and accessible on TV devices. It applies to TVs purchased 18 months after the legislation was passed, and does not apply to existing TVs.
- 97.2. The United Kingdom's Media Act, which passed in May 2024, extends the existing prominence regime for public service broadcasters beyond linear TV to include online viewing of public broadcaster content (including on Smart TVs, set-top boxes and streaming sticks). The UK model uses a negotiation framework with an arbitration backstop. Ofcom (the UK's media regulator) intends to begin targeted consultation on a new prominence framework in late 2024.
- 97.3. The European Union's 2018 Audiovisual Media Services Directive introduced Article 7a, which provides that *Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest*. To date France, Germany, and Italy have proposed specific rules to implement Article 7a,²⁴ and other countries have reserved the possibility for the government or the regulator to introduce such rules (Ireland, Belgium, Bulgaria, Cyprus, Greece, Portugal and Romania).²⁵

Counterfactual

98. Even if interventions are progressed to increase the amount of local content on international platforms (see further section 2A above), it remains almost certain that local broadcasters and platforms will continue to carry more local content (both proportionally and in terms of overall volume).

²² The letter was sent to Samsung, LGE, Google and Freeview.

²³ Listed are the main jurisdictions we are aware of. In addition, Canada's Online Streaming Act targets discoverability and prominence of domestic content within global streaming services. There is not yet any available data regarding the efficacy of these measures as they are mostly still in an implementation phase.

²⁴ Each has developed a definition for what should be recognised as services of 'general interest'. France has initially restricted this to public service broadcasters, while Germany and Italy will likely adopt a broader definition that includes local commercial services and some purely entertainment channels.

²⁵ *Towards coherent rules on the prominence of media content on online platforms and digital services*, Centre on Regulation in Europe, December 2023, page 15.

99. Based on negotiations to-date, without intervention it is unlikely that local broadcasters will be able to negotiate improved prominence levels. As use of international online streaming services (such as YouTube and SVODs) increases further, local broadcaster streaming services may become more and more peripheral on connected TV device platforms. This impact will be more acute among the smaller of the local broadcaster services, Māori+ and ThreeNow, which are already less prominent.
100. Dynamics between device manufacturers and global platforms will also continue to develop. Manufacturers appear to be increasingly partnering with global platforms such as Google and Amazon, and therefore have less autonomy in relation to prominence. For example, Panasonic, which currently offers local broadcaster services comparatively more prominence than other manufacturers, has recently agreed to move from its own operating system to Amazon's for new devices. Freeview has advised that this move has led to a reduction in prominence for local services.²⁶
101. Based on recent experiences in the UK and Australia, manufacturers/ platforms may introduce charges for carriage (e.g. a proportion of advertising revenue) that local broadcasters may struggle to afford. During recent Australian Senate hearings, public broadcaster SBS claimed that one manufacturer had sought both a placement fee and a 15 percent share of revenue to feature on its television's homepage
102. In the longer term, as local broadcasters cease use of traditional broadcasting infrastructure such as DTT, they will be even more reliant on their platforms' degree of prominence to ensure ongoing viewership and viability.²⁷

What is the specific policy problem or opportunity?

103. Research by the Royal Melbourne Institute of Technology (RMIT) University in Australia found that about a third with a Smart TV in their home say they don't know how to download an app onto them, and over half don't know how to customise the order and appearance.²⁸ If a local app isn't on the default home screen, audiences are unlikely to go out of their way to find it.
104. Even where audiences are equipped to install and/or find local apps (which are increasingly likely to be buried amongst international apps and content), local research suggests that the comparative inconvenience is likely to decrease engagement.²⁹ RMIT's research suggests these impacts are most acute in older audiences and non-digital natives.
105. Given that local platforms are likely to continue hosting more local content than global platforms, decreased engagement with local apps contributes to the same societal and economic impacts as reductions in local content itself.
106. Exacerbating these impacts is the fact that decreased audience engagement directly affects broadcaster advertising revenue and brand value, which reduces broadcasters' financial capacity to create and commission local content and ultimately, to remain viable. Fewer local broadcasters/platforms creates specific consequences for plurality

²⁶ Freeview's own streaming app, which provides access to live streams of local channels no longer features on the home screen

²⁷ s9(2)(ba)(i)

²⁸ *Smart TVs and local content prominence, February 2023*, apo.org.au/sites/default/files/resource-files/2023-02/apo-nid321605.pdf

²⁹ Freeview market tracker, July 2024

and therefore accountability in terms of the vital role local news and current affairs coverage (from a variety of sources) plays in a well-functioning democracy.

Stakeholder views

107. Key stakeholders include local broadcasters; manufacturers of internet-connected TV devices such as smart TVs, streaming sticks and subscription TV boxes; and global platforms that often provide operating systems for these devices, such as Google. New Zealand content producers and the broader media sector will also have a keen interest in measures to support local platform prominence.
108. As noted above, Freeview and its shareholders (TVNZ, Warner Bros. Discovery, Whakaata Māori and RNZ) have highlighted to government a range of issues relating to prominence and its importance to their digital transformation strategies. Having attempted to negotiate with TV manufacturers and platforms but not achieving what they consider to be fair outcomes, they are now advocating for regulatory intervention.
109. In conversations with the Ministry in August 2023, local representatives of prevalent TV manufacturers in New Zealand (LG, Panasonic, Sony and TCL):
 - 109.1. indicated that local services such as TVNZ+ and Freeview remain a key part of their entertainment offer, and while they remain popular, they will continue to be provided with prominence (noting they consider generally that local services are already afforded 'fair' prominence on their platforms);
 - 109.2. raised concerns about the impact intervention may have on existing commercial deals with global platforms, innovation, consumer choice, the cost of TVs, and competition if some chose to withdraw from the New Zealand market;
 - 109.3. s9(2)(ba)(i)
[REDACTED]
 - 109.4. did not however push back on an idea (discussed internationally) of requiring a single prominent 'tile' on home screens where all local services could be found.
110. Netflix has expressed support for Australia's new 'must carry' framework, which affords local broadcasters a basic level of prominence on connected TV devices, noting the framework allows it to retain existing commercial arrangements with TV manufacturers and users still have the flexibility to shift tiles around to suit their preferences.

Specific objectives and scope

111. The specific objective for options in this section is to support New Zealanders to easily find and engage with local services and local content.
112. Based on conversations with manufacturers to date and the negligible difference the former Minister's letter appears to have made, very light-touch options are unlikely to have any noticeable impact. Initial analysis has therefore ruled out of scope:
 - 112.1. Indirectly encouraging access to local platforms through marketing, promotion and education about local content, building on previous Freeview efforts and NZ On Air discoverability funding (noted at paragraphs 94 and 95). This would come at a cost to government and is unlikely to change manufacturers' practices.

- 112.2. Initiatives that encourage voluntary agreements with manufacturers, such as a voluntary Code of Practice or Memorandum of Understanding (our initial assessment that this option would have limited impact is supported by the fact it has not been attempted in any other jurisdictions).
113. We have also ruled out financial incentives (for example, tax incentives for manufacturers that make local content prominent). As well as being administratively complex, costly for government, and out-of-step with New Zealand's standard approach, this option is not something that other countries have progressed.
114. For the purposes of this analysis we have defined parameters for intervention based on stakeholder engagement and international comparator analysis. These can be considered assumptions, and would be subject to consultation and change:
- 114.1. 'Local TV services' provide free access to local content through an online streaming service or 'app' and have a reasonable viewership (likely to require a threshold definition). This would currently include TVNZ+, ThreeNow, Māori+, and Freeview's streaming app.³⁰
- 114.2. 'Regulated devices' are internet-connected devices for which the primary purpose is the viewing of audiovisual content, such as smart TVs and smart TV accessories like streaming sticks. Devices with a primary purpose other than watching TV would be excluded (e.g. smartphones, computers, tablets).³¹
- 114.3. 'Regulated manufacturers' make regulated TV devices sold in New Zealand.
115. For regulatory options, it is assumed a competent regulator would administer the regime and provide further guidance as appropriate under legislation.
116. Some international jurisdictions are exploring or implementing requirements related to prominence of local radio services on connected devices such as smart speakers and car entertainment systems. Options below are confined to TV prominence, noting requirements for radio prominence could be added in future if appropriate.

What options are being considered?

Option B1 – Counterfactual

117. The Government would continue to encourage manufacturers to increase prominence levels on a voluntary basis (e.g. writing to device manufacturers again), but ultimately prominence levels would be left to the market and technological change.
118. While likely to be preferred by manufacturers, this option would be unpopular with local broadcasters. Representatives have said negotiations have been fruitless, and they consider regulation is the only way to achieve increased and/or sustained prominence.

Option B2 – Reporting requirements

119. This option would require regulated manufacturers to report annually on the systems and processes they have in place to ensure appropriate prominence of local broadcaster services and channels. The regulator could seek information about

³⁰ Several channels carrying local content but without their own streaming services for connected TV devices would benefit from prominence of the Freeview Streaming TV app. This includes Sky Open, RNZ's TV channels and Parliament TV. While community TV channels are not yet available on the app, this may change as broadcasters transition online.

³¹ Although audiovisual content is consumed via these devices, TV viewing is not generally the intended primary function. As viewing habits evolve 'Regulated devices' could be reviewed as appropriate.

availability, positioning, and discoverability, and would publish a report on the degree to which regulated devices are providing prominence to local broadcasters.

120. This option could be deployed in the first instance to gather more evidence and monitor whether more significant intervention was required to achieve results, but could also be progressed concurrently with options 3 or 4.
121. Based on stakeholder feedback in Australia, manufacturers and international streaming companies may be supportive of this option, although this option would not meet the expectations of local broadcasters.

Option B3 – ‘Must carry’ requirements

122. This option would require regulated devices to ensure local TV services are pre-installed and receive a basic level of prominence in terms of positioning on the home screen. Regulated TV devices would also be required to ensure ease of access to local free-to-air linear channels.
123. This option would not regulate disaggregated local content in the search function or in recommendation rails, nor would it prevent the owners of regulated devices from seeking payment or any other form of consideration to promote applications or content over and above the minimum requirements. Users could still reorganise home pages to suit viewing preferences. Local TV services would also only receive prominence on the basis their apps were up to date/compatible with regulated device platforms.
124. This option mirrors the Australian approach, which manufacturers’ feedback has fed into. Local broadcasters are likely to broadly support this option over the counterfactual or reporting requirements, but prefer a regime that covers disaggregated content in recommendations and search, and affords local TV services prominence above international streaming companies.

Option B4 – ‘Must promote’ requirements

125. Option four would require regulated devices to carry and promote, at no cost, both local TV services and local content at various points of interaction with users.
126. While users would retain the ability to reorder the home screen to suit their viewing preferences, minimum requirements would exist for both:
 - 126.1. positioning: regulated devices would need to ensure local TV services are prominent on the primary interface (e.g. within the first sequence of tiles, requiring no further navigation or scrolling by the user). Linear TV functionality must also be accessible from the primary interface and from the TV remote.
 - 126.2. discoverability: regulated devices would need to ensure disaggregated content of local TV services receives ‘positive discrimination’ in recommendation and search functions. In practice this would mean local content is ‘pushed’ ahead of international content.
127. Based on previous discussions local broadcasters would be supportive of this option. Manufacturers have been vocal in opposition to this option in Australia and the UK.

How do the options compare to the counterfactual?

Key, compared to counterfactual: ++ much better + better 0 about the same - worse -- much worse / between scores

	B1: CF	B2: Reporting requirements	B3: Must carry	B4: Must promote
Regulatory stewardship	0	0 / + Would formally recognise the issue, but unlikely to result in significant change and does not substantively address risks that issues deepen over time. Could strengthen evidence base for further action (supporting best practice regulatory stewardship).	0 / + Would address identified policy issue in a way that accounts for future risks and further developments. s6(a)	- Would address identified policy issue in a way that proactively supports better public interest outcomes. s6(a)
Sector sustainability	0	0 Unlikely to result in noticeable change so retains same risks and impacts as counterfactual.	+ / ++ Would help maintain, and improve in some cases, accessibility of local platforms, helping to maintain brand value and basis for advertising revenue. Prevents risk of future charges for basic prominence. These financial benefits support local platforms' transition to (and improvement of) digital services, bolstering sustainability, and continued investment in local content (sustaining the production sector).	++ Would significantly enhance accessibility of (and likely actual access to) local platforms, corresponding benefits for advertising revenue and brand value. Prevents risk of future charges for basic prominence. These financial benefits support platforms to implement digital transformation, further bolstering sustainability, and to continue investing in local content (sustaining the content production sector).
Audience and societal interests	0	0 Potential to indirectly influence some consumer purchasing decisions for TV devices (for instance if marketing focused on positive reporting results for certain devices). However, given reporting requirements themselves are unlikely to result in substantive change, this impact is likely to be negligible so option retains same risks and impacts as counterfactual.	++ Would support audiences to find local services and therefore engage organically with local content; particularly news and current affairs, which is almost exclusively contained on local platforms, Organic engagement supports receptiveness, which in turn supports the realisation of broader societal benefits (outlined in paragraph 29) organically. Risk that some compliance costs are passed onto consumers.	+ / ++ Would ensure audiences can easily find local services and disaggregated local content, with associated societal benefits (though any feelings of 'forced' engagement with local content may undercut these benefits). Compliance costs (discussed below) likely to be passed onto audiences, and/or could harm manufacturers' investment and innovation to the detriment of consumers. Alternatively, could result in market exit (leading to higher costs of devices).
Government costs and efficiencies	0	- Some government resource and funding would be required to establish and monitor reporting requirements (primarily via an independent regulator, which it is assumed would already be set up under the counterfactual). Given likely lack of noticeable impact, unlikely to represent efficiency.	0 / + Government resource and funding would be required to establish requirements and monitor/enforce compliance (as for B2). Would help to support the effectiveness and efficiency of government spend on local content and services (by enabling greater access and exposure).	0 / - Government resource and funding would be required to establish requirements and monitor/enforce compliance (as for B2). Would help to support the effectiveness and efficiency of government spend on local content and services. s6(a)
Compliance burden	0	- Modest compliance burden for manufacturers.	- Modest costs of software changes for manufacturers (should not affect hardware). Foregone revenue for manufacturers in terms of prohibition of charging local broadcasters for basic prominence.	-- Would require considerable and costly changes to current home screen set ups, and would impact existing commercial deals with international streamers. (Market exit may result; impacts discussed above in relation to audience criterion).
Te Tiriti	0	0 No substantive difference to counterfactual; noting Whakaata Māori and Māori+ appear to have the lowest prominence levels across smart TVs currently available on the market.	+ Would align with principles of active protection and equity (including around the economic benefits for Māori businesses) by supporting access to Māori platforms, language, stories, and storytellers, in turn supporting tangata whenua rangatiratanga over those taonga.	+ / ++ Would give effect to principles of active protection and equity (including around the economic benefits for Māori businesses) by encouraging access to Māori platforms, language, stories, and storytellers, including disaggregated content, in turn supporting tangata whenua rangatiratanga over those taonga.
Overall	0	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

128. The analysis suggests that option B3 ('must carry') would best address the problem and meet the policy objectives in a way that minimises unintended and adverse impacts, s6(a)
- While option B4 would have the greatest positive impact for the local sector, risks around increased compliance costs for manufacturers undercut the value of benefits for audiences. s6(a)
129. While there would be some cost to government in establishing and administering a framework, analysis of option B3 suggests this would be outweighed by the benefits of maintaining and/or increasing local platforms' prominence. These costs can be further rationalised as the changes would be progressed alongside a range of other complementary regulatory changes.
130. The compliance burden on manufacturers would be relatively modest; option B3 is expected to require only minor changes to software, mirroring changes that are likely to be required under the new regime in Australia (which is served by largely the same group of manufacturers). Existing commercial relationships between manufacturers and international streaming services should be unaffected, and while this option would prevent manufacturers charging local broadcasters for basic prominence, it would allow them to gather revenue for prominence beyond a basic level.
131. Option B4 again provides more apparent potential to support Te Tiriti outcomes and obligations, particularly as positive impacts of regulatory intervention are likely to be more pronounced for smaller local platforms (including, within the current context, Māori+). However, the risks of option 4 equally undermine this potential, including the risk of a market exit scenario, leading to a higher cost of devices for audiences.
132. Option B2's reporting requirements would be a step forward in terms of regulatory stewardship and enabling more evidence to be gathered, and could influence the behaviour of some consumers, but are unlikely to make a noticeable difference on their own (and based on views of local manufacturer representatives, would likely be used to justify current prominence levels). However, they could be progressed alongside a regulatory option to support monitoring and enforcement.

Issue C: Increasing captioning and audio description

Specific context

Captioning

133. Captioning represents spoken words, such as dialogue or narration, and other meaningful sounds in video, with text on the screen. Captions are time-indexed and synchronised to appear on the video screen at the same time as the words are spoken or sounds made. Closed captions can be turned on or off by the viewer, whereas open captions are always on.
134. Captions support access to audiovisual content for people who:³²
- 134.1. are D/deaf or hard-of-hearing, or have an auditory processing disorder (the estimated rate of hearing impairment in 2013 was nine percent);
 - 134.2. have a learning or intellectual disability (2013 rates were estimated at five percent for learning impairment and two percent for intellectual impairment);
 - 134.3. are not fluent in the language spoken in the video (in the 2018 census more than one in five respondents was multilingual, and 2.5 percent did not include English a language they spoke); and
 - 134.4. are otherwise in a position where they cannot or would prefer not to engage with sound content (e.g., where they cannot hear the video properly or where they don't want to make any noise),
135. 2024 research indicates 48 percent of New Zealanders have watched TV with captions, and use has been increasing over time.³³

Audio description

136. Audio description verbalises visual content and images, via audio track added to a video. Like closed captions, audio description can be turned on or off by the viewer.
137. Audio description can provide access for people who:
- 137.1. are blind or have low vision (in 2013, the rate of vision impairment was estimated at four percent);³⁴ and
 - 137.2. cannot keep their eyes on the screen, e.g., because they're doing something else at the same time, or want help keeping track of details in the story.
138. Studies show increases in New Zealanders' use of audio description when watching TV; eight percent in 2024, from seven percent in 2021 and two percent in 2014.³⁵

International obligations

139. New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008. Two articles are particularly relevant to CAD:

³² Stats NZ: 2013 Disability Survey www.stats.govt.nz/information-releases/disability-survey-2013 (results from the 2023 Disability Survey are expected to be available in late 2024); www.stats.govt.nz/information-releases/2018-census-totals-by-topic-national-highlights-updated/.

³³ NZ On Air, *Where Are The Audiences? 2024*.

³⁴ Stats NZ 2013 Disability Survey.

³⁵ NZ On Air, *Where Are The Audiences? 2024*.

- 139.1. Article 9 requires States Parties to take appropriate measures to, amongst other things, ensure persons with disabilities have access to information and communications (as well as other services) on an equal basis with others; and to develop, promulgate and monitor minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.
- 139.2. Article 21 requires States Parties to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive, and impart information and ideas on an equal basis with others, including (among other things) by:
- a. providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
 - b. urging private entities to provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities; and
 - c. encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities.
140. The UNCRPD Committee recommends that to fully realise the rights of disabled persons to accessibility of information, including television and films, countries should adopt a suitable legislative framework to progressively increase CAD (including concrete objectives, specific deadlines, budgets, sanctions, and evaluation). The Committee also states that accessibility obligations apply to both States Parties and companies, and that denial of access to communication technologies, facilities and services should be viewed in the context of discrimination.³⁶
141. The Committee's 2022 report on New Zealand's progress in implementing the UNCRPD commented on New Zealand's shortfalls under Article 21 and noted concerns about "the limited television channels that provide captioning and audio description with funding only provided on a yearly basis". The report recommended that New Zealand should adopt legislation to ensure that captioning and audio description is provided for television channels with funding security.³⁷ In 2023 the previous Government agreed to this recommendation with modifications.³⁸

Captioning and audio description in New Zealand

142. CAD in New Zealand is not regulated or required by legislation. Government supports the provision of CAD for New Zealand audiences through annual funding of \$4.9 million via NZ On Air (which has legislative responsibility to ensure that 'a range of broadcasts is available to provide for the interests of persons with disabilities and minorities in the community, including ethnic minorities').³⁹ NZ On Air makes this funding available to Able, which is a New Zealand-based not-for-profit organisation that provides media access services including captioning, subtitling, and audio description.

³⁶ United Nations Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014), Article 9: Accessibility

³⁷ United Nations Committee on the Rights of Persons with Disabilities Concluding Observations of the combined second and third periodic reports of New Zealand 26 September 2022. Page 9

³⁸ The relevant Cabinet paper noted that a response of 'accept with modifications' can acknowledge that Cabinet or Budget decisions are required to fully implement the recommendation [SWC-23-MIN-0083].

³⁹ Broadcasting Act 1989, s 36(1)(c)(iv) and (v).

143. For 2023/24, Able reported averages of 511 weekly hours of captioned broadcast content (equivalent to three channels captioned full time), and 144 weekly hours of audio described broadcast content (0.9 of a full-time captioned channel).⁴⁰
144. The channels and platforms in New Zealand vary in the technical capability to show captioning, live captioning, and audio description. All local platforms have basic captioning capability, but only around half have capability for live captioning, and only TVNZ's broadcast channels currently include capacity for audio description. Publicly available evidence is patchy about CAD volumes across different platforms, particularly for that beyond the services Able provides (for instance, where it may be included in shows acquired from overseas).

145. However, Able's reporting and other available information indicate that:

N.B. The information in paragraph 145 has been updated since this document was finalised and prior to public release, to correct percentage calculation errors.

145.1. In 2023/24 Able captioned 76 percent of TVNZ1's broadcast content, 89 percent on TVNZ2, and 68 percent on Duke. TVNZ+ 'reuses' closed captions when live content is made available on-demand and in 2023/24 Able provided just over 800 hours of captioning direct to TVNZ+; around 60 percent of its catalogue is captioned. Able provided audio description for around 32 percent of broadcast content on TVNZ1, 30 percent on TVNZ2, and 23 percent for Duke. TVNZ+ does not currently support audio description or live captions.⁴¹

145.2. Able captioned 71 percent of broadcast content, and audio described 10 percent, on Three in 2023/24.⁴² Much of the captioning is carried across to ThreeNow, and Able provided 13.4 hours of direct captioning in 2023/24. ThreeNow does not currently support audio description or live captioning.

145.3. Whakaata Māori does not provide captioning or audio description on its broadcast channels, live streaming, or on-demand content. However, burnt-in subtitles are available that translate te reo Māori content into English for programmes that are more than 30 percent in te reo Māori. Whakaata Māori is exploring options for automated closed captioning for its online platform.

145.4. In 2023/24, 50 percent of content on Sky Open was captioned by Able, which is carried over to its paid TV service. Its streaming and on-demand platform, Sky Go, does not currently offer CAD (though Sky has previously noted plans to offer captions from September 2024). Sky-owned Neon, a subscription-based platform, captions 56 percent of its catalogue as at July 2024, but does not appear to provide audio description.

146. International streaming platforms provide higher levels of CAD, noting their international audiences and United States legislative requirements.⁴³ For example:

146.1. Disney+ aims to provide closed captions or subtitles in English on all titles, though this varies by region and title.

⁴⁰ Able, *Captioning and Audio Description Output Report: FY24*. Figures represent CAD that Able has produced or acquired (and sometimes reformatted) e.g. from archives or overseas suppliers. Able's services are directed based on a combination of factors, including service terms (with NZ On Air), priority audiences, and channel and platform capability to host CAD.

⁴¹ An app called Earcatch can be synced with TVNZ+ to play pre-recorded audio description; around 500 episodes across 80 shows were audio described with a year's worth of funding from the Ministry's Cultural Sector Regeneration Fund across 2023/24; Able, *Captioning and Audio Description Output Report, FY24*.

⁴² For Bravo, which (like Three) is owned by Warner Bros Discovery, Able captioned approximately 3.4% of its content in 2023/24.

⁴³ The US requires broadcasters to caption all new programming (with a few exceptions). Major TV providers must offer 50 hours of audio description during primetime or children's programming per quarter. Captioned TV content must include the captioning if reshown on the internet (including via streaming services).

- 146.2. Netflix provides captions for all Netflix original films and series in the language in which they were originally produced. Captioning and audio description features are implemented as part of the production process.
- 146.3. Amazon Prime Video support notes that much of its content includes subtitles, alternative tracks and audio descriptions, though the range of supported features will depend on the viewing device.

Advocacy for change

147. Recognising the significant and growing populations that currently have inequitable access to local media, and New Zealand's UNCRPD obligations, stakeholders have long called for regulatory intervention to increase captioning.
148. In 2017, following the Government Administration Committee's Inquiry into Captioning in New Zealand, the then Government committed to investigating how to increase CAD across television, on-demand platforms, and in cinemas. This resulted in an increase for CAD via NZ On Air through Budget 2020 (from \$2.9 million to \$4.9 million).
149. Most recently, in November 2022 a petition with 2,079 signatures was presented to Parliament, requesting that the House put in place a requirement for captioning by all television and media organisations in New Zealand. The Social Services and Community Committee delivered its final report on the petition in April 2024, agreeing that captioning is a vital tool for increasing accessibility of New Zealand content and noting that current government work programmes (particularly on digitising all of government and modernising media legislation) would provide an opportunity to update regulatory systems around CAD.⁴⁴

International comparators

150. Most jurisdictions to which New Zealand tends to compare itself regulate the provision of captioning and/or audio description:
 - 150.1. In Australia, since mid-2014 commercial broadcast TV and the national broadcaster (ABC) have been required to carry captioning from 6am to midnight unless an exception applies. Subscription TV has legislated annual targets for captioning. Legislation that would create obligations for audio description on both broadcast and subscription TV is currently before the Senate.
 - 150.2. UK legislation requires TV broadcasters to progressively implement CAD. 80 percent of most TV broadcasters content must be captioned and 10 percent audio described by their tenth year of service.⁴⁵ The legislation also includes CAD regulation-making powers for on-demand programming. Ofcom (the relevant regulator) provides best-practice guidance for on-demand accessibility, but no specific CAD requirements currently apply to non-broadcast services.
 - 150.3. Canada requires broadcasters to caption 100 percent of content between 6am and midnight (with a few exceptions). Certain programming services must provide audio descriptions for programming aired during 7pm to 11pm.
 - 150.4. Ireland has a regulator that sets specific CAD levels that increase over time for broadcasters. These levels vary depending on the size of the broadcaster. Public broadcasters have the highest required levels.

⁴⁴ petitions.parliament.nz/2eff17e4-f78e-4d97-8dc6-86cae8461441

⁴⁵ The BBC must caption 100 percent of its content; Channels 3 and 4 must caption 90 percent.

151. While the Ministry has not found evidence about the costs for CAD overseas, it is likely larger markets and more prescriptive requirements (as well as increasing use of artificial intelligence) mean CAD production overseas is comparatively more affordable for broadcasters and platforms. It appears minimal government funding is provided for CAD beyond that for national broadcasters.

Counterfactual

152. Under the counterfactual government funding for CAD will continue to be determined via the annual Budget process. As fiscal pressure and Government efforts to reduce public spending continue, this funding is unlikely to increase in the short term, and there is risk of it being reduced. Without additional funding it is very unlikely Able (or any other provider) will be able to substantively increase CAD outputs. Given the economic pressure local media companies are facing, they are unlikely to increase their CAD provision independently.

153. Therefore, without regulatory intervention, levels of CAD for local content are likely to remain low by international standards, particularly on local streaming and on-demand platforms. As services and audiences continue to shift toward those platforms and away from linear broadcasting, the accessibility of local content for disabled people, neurodivergent people, and speakers of other languages may reduce further.

Specific policy problem or opportunity

154. The level of CAD in New Zealand is insufficient to support equitable access to media for disabled people. This is a significant problem in itself, and creates legal and reputational risk for New Zealand in terms of compliance with UNCRPD. The risk encompasses potential action under the Optional Protocol New Zealand acceded to in 2016, which created an individual complaints mechanism in respect of non-compliance.

155. The relative lack of CAD also creates accessibility issues for speakers of languages other than English.

156. Because global platforms appear to provide more CAD than local platforms, these population groups are less likely to experience the benefits of access to and engagement with local content (as identified in above sections).

157. Noting the ongoing diversification of languages spoken in New Zealand and the broadening use of CAD across the general population (likely in part due to changing device and consumption habits), there is also an opportunity to shore up the benefits of local content access and engagement by increasing captioning levels.

Stakeholder views

158. Key stakeholder groups are:

158.1. Population groups who have specific accessibility needs, including D/deaf, hard-of-hearing, blind, low vision, intellectually disabled, and neurodivergent New Zealanders, those with auditory processing disorders, and those who speak languages other than English.

158.2. Local broadcasters and platforms, and global streaming platforms.

158.3. Human rights groups and watchdogs.

159. In 2019 the Ministry carried out targeted consultation on options to increase CAD:

159.1. All broadcasters and providers supported higher levels of CAD but viewed its provision as the responsibility of government, with almost all stating they would not voluntarily agree to increase CAD. Many said their platforms or channels were not profitable and expenditure on CAD was not tenable (though they hoped changes to technology would make the production of CAD cheaper in the future). The current system of government funding was seen as unfair by most providers as most funding goes to TVNZ.

159.2. Disabled People's Organisations and service providers supported government regulation to mandate and maximise CAD. These organisations saw accessibility to content through CAD as a right guaranteed by the UNCRPD, play a vital role in supporting full and equal participation in society. Without access to media content, these New Zealanders can feel isolated, marginalised and unable to participate in everyday conversations. These stakeholders also raised wider issues of accessibility to information, for example, in airports, theatres and the availability of content in sign language.

159.3. The Office of the Ombudsman and Human Rights Commission considered that regulating and taking steps to increase access is necessary under New Zealand's UN commitments. The Office of the Ombudsman stated that to fully realise the rights of disabled people to accessibility of information, New Zealand must plan for how the rate of CAD will be progressively increased. Any plan must aim to more immediately address areas in which there is the greatest need (for example, emergency messaging, children's programming, and te reo Māori content). It also noted consideration be given to increasing audio description for both English and te reo Māori content.

Specific objectives, scope, and assumptions

160. The specific objective for options considered in this section is to increase the accessibility of local content for disabled people, in compliance with New Zealand's obligations under the UNCRPD, and for other populations whose access may be compromised by a lack of CAD (particularly speakers of languages other than English, and neurodivergent people).

161. Options that rest on voluntary increases in CAD have been ruled out following initial analysis of media platforms' capacity and/or willingness to voluntarily absorb increased CAD costs. The financial constraints facing the sector, combined with previous consultation (which indicated local media platforms see CAD provision as a government responsibility) suggest substantial increases are unlikely without regulatory intervention.

162. Options that involve a substantial increase in government funding have been ruled out based on overarching fiscal constraints. Tax-based incentives relating to the production or purchase of CAD services have been ruled out as qualitatively incompatible with those fiscal constraints, and unlikely to effect change given the factors identified around voluntary increases. Initial discussions with Inland Revenue also highlighted that such incentives are out of step with New Zealand's general approach to taxation.

163. Assumptions for the purposes of this analysis include that:

163.1. government funding for CAD will continue at least in the short-term (noting this funding remains subject to annual Budget processes);

163.2. there is sufficient local capacity, or sufficient capacity can be built, to provide increased levels of CAD; and

163.3. in line with the overarching assumptions for this RIS, a competent entity will continue to administer any public funding for CAD and a competent regulatory authority will be available to monitor and enforce compliance as appropriate in respect of any regulatory options progressed.

What options are being considered?

Option C1 – Counterfactual

164. There are no legislative requirements for broadcasters or streamers in New Zealand to provide captioning or audio description services with their content. Government would continue funding CAD via NZ On Air and Able as its primary mechanism for meeting UNCRPD obligations, though there is some risk that this funding is reduced or reprioritised as economic headwinds continue.

Option C2 – Reporting requirements in relation to CAD

165. Broadcasters and streaming services that operate in New Zealand would be required to report on the levels of CAD for content hosted on their platforms. Further work would be required to determine the nature of reporting requirements (for instance, in relation to specific types of content or platforms). This obligation could be progressed together with option C3; alternatively, it would be possible to develop non-binding targets against which reporting could be measured.

Option C3 – Substantive obligations to provide CAD

166. Option C3 would involve creating legislative obligations on broadcasters and streaming services operating in New Zealand to provide equitable access to their content.

167. Detailed requirements (either in secondary legislation or set by a delegated authority), would provide progressive targets for levels of CAD to be implemented over time, which could take into account providers' varying existing technological capacity. These would likely involve percentage-based requirements that increase each year, potentially preceded by a capability-building period. Detailed requirements could also provide quality guidance and types of content to be prioritised (for instance, emergency messaging, children's programming, or te reo Māori content).

168. This option would aim to mirror approaches taken in comparator jurisdictions Australia, the UK, and Ireland.

How do the options compare to the status quo/counterfactual?

Key: compared to counterfactual ++ much better + better 0 about the same - worse -- much worse / between scores

	C1: CF	C2: reporting requirements	C3: substantive CAD obligations
Regulatory stewardship	0	0 / + Would formally recognise the issue, but given local media organisations' current financial circumstances (and previously expressed view it is the government's responsibility to fund additional CAD), unlikely to result in significant change. Could strengthen evidence base for further action (supporting best practice regulatory stewardship); given gaps in evidence currently, this could be particularly beneficial.	++ Would support government compliance with UNCRPD obligations and associated UN recommendations. Assuming broadcaster and platform compliance with substantive CAD obligations, would address identified issues and opportunities. Options to phase implementation support good regulatory stewardship practice by ensuring feasibility and managed compliance costs (see further below).
Sector sustainability	0	0 Unlikely to significantly alter sector sustainability. May support more engagement with local platforms that can demonstrate higher levels of CAD, which would assist with brand value and ability to generate revenue (though could have inverse effect for those with lower levels of CAD).	- On the assumption that public funding will not increase in the short term, obligations to increase CAD provision would stretch local platforms' budgets, with potential implications for sector sustainability. Phased implementation would assist to manage sustainability implications. Any substantive increase in audience access (see below) could support opportunities for local platforms to increase revenue.
Audience and societal interests	0	0 / + Would support awareness of CAD provision, and could indirectly lead to more CAD (via public or stakeholder pressure and/or by increasing the evidence base for further regulatory intervention), both of which should enhance access for audiences with relevant needs.	++ Assuming broadcaster and platform compliance, would support increased local content accessibility for audiences with relevant needs. Could also support access for general audiences as preferences continue to diversify. Phased implementation would delay the extent of these benefits, but may improve longer-term results in terms of plurality/audience choice if local platforms can sustainably absorb additional costs. Some risks in relation to quality of CAD, as requirements may drive media platforms to cheaper overseas providers, noting this risk would only affect CAD beyond that already provided under the counterfactual; mitigations would include the incorporation of quality standards into the substantive requirements. Unlikely to substantively impact CAD on global platforms, as they already carry high levels.
Govt costs + efficiencies	0	0 / - Modest costs of developing requirements, and monitoring and ensuring compliance, would be borne by government (primarily via an independent regulator, which it is assumed would already be set up under the counterfactual). Any development of voluntary targets would increase costs to government (and reduce efficiency of the intervention, given assessment that substantive change is unlikely).	- Costs to government for implementation, monitoring, and enforcement (as for C2, via regulator already set up under counterfactual). Costs would be higher if phasing of obligations were tailored to each platform and/or were subject to review. Assuming no substantive increase in government funding, additional costs related to CAD provision itself would be limited to any additional support required for Whakaata Māori and Māori+ (which receive direct government funding). These costs could include support to increase technological capacity, which is comparatively low presently.
Compliance burden	0	- Would carry modest compliance burden for local and global platforms; extent would depend on detail and frequency of requirements.	-- Would carry significant compliance burden for local platforms, particularly those with lower levels of existing CAD technological capability. Phased implementation would help to manage additional costs. Impact of requirements on global platforms likely to be negligible, as they already carry high levels of CAD and are subject to similar requirements in other jurisdictions.
Te Tiriti	0	0 / + Depending on detail of requirements and potential voluntary targets, could provide more evidence on levels of CAD for content targeted or particularly relevant to Māori interests, potentially supporting targeted intervention if required. This intermediate step would align to an extent with the Crown's obligations particularly in respect of equity and active protection.	+ Would better meet te Tiriti obligations around equity and active protection in respect of the higher representation of Māori within disabled communities (noting lack of evidence about prevalence amongst Māori of specific impairments). Would support higher levels of CAD for content on current platforms targeted or particularly relevant to Māori interests (noting Whakaata Māori and Māori+ have low levels of CAD), aligning with te Tiriti obligations around the principles of equity and options. The compliance burden on these platforms may be higher, but phased implementation targets would take into account lower existing CAD capability; combined with Crown funding for Whakaata Māori, implementation would be expected to be compliant with Te Tiriti principles around self-determination, active protection, and partnership.
Overall	0	0 / +	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

169. Option C3 (substantive requirements for increased CAD) is preferred on the analysis above. With fiscal constraints making substantial increases to public funding for CAD infeasible at this time, option C3 is the only identified option that will have a meaningful impact on the accessibility of and engagement with local content for audiences with specific access needs. It would also address identified and long-standing concerns with New Zealand's compliance with UNCRPD, and the Crown's te Tiriti obligations.
170. Option C2 (reporting requirements) would be unlikely to have significant positive impacts on its own, even with voluntary targets. It could be progressed ahead of substantive requirements if further evidence is desired to support more targeted intervention, though the Ministry considers the case is clear for regulation across the board. Alternatively, it could be progressed with option C3. As with the other areas of potential intervention considered in this RIS the Ministry considers that, if preferred options are progressed, this question could be left to detailed design and implementation planning in respect of administration, monitoring, and compliance.
171. Phased implementation of detailed CAD targets under option C3 would be critical to manage the compliance burden and support sector sustainability (both of which will ultimately support better audience outcomes). Well-calibrated targets would allow a managed transition that accommodates the differing levels of existing technological capability across local platforms and ensure appropriate leeway for economic challenges and competing priorities (including around commissioning and acquiring local content).
172. While outside the scope of this RIS, the Ministry considers continued government funding for CAD (particularly for publicly funded content) will also be integral to mitigating the compliance burden and associated sector sustainability concerns for local platforms. The UN recommends funding security is provided with legislative CAD requirements.
173. Potential changes to NZ On Air (being considered in a separate, concurrent interim RIS) could create the opportunity to revisit the way government funding for CAD is administered. Alternatives to the current model could include subsidising or incentivising CAD production and acquisition rather than directly paying a supplier for it. However, careful analysis would be required before determining any change in approach. Able's services are targeted based on a complex balance of factors including delivery to priority CAD audiences, for whom benefits could be undermined if a less deliberate approach to funding is adopted.
174. Beyond sector compliance costs, a risk of option C3 relates to the quality of CAD services.⁴⁶ Without additional funding, substantive requirements to increase CAD are likely to mean broadcasters and platforms seek out the most affordable providers. Discussions with Able highlight that cheaper overseas providers may have impacts on New Zealand's unique language and cultural identity. They may also produce less accurate captioning (including via the use of under-developed AI tools). These issues have led to other countries introducing quality standards alongside substantive CAD requirements, which could also be incorporated here.

⁴⁶ The Ministry notes this risk should not be weighted against progressing the option, as it relates to additional CAD beyond that provided under the counterfactual (and option C2).

What are the marginal costs and benefits of the preferred options?

175. As monetised costs and benefits have not been quantified and evidence certainty is necessarily low (given options are high-level and consultation has not yet been undertaken) the below table compares one-off and ongoing costs and benefits on a general scale.⁴⁷

Affected groups	Comment	One-off	Ongoing
Additional costs of the preferred option compared to taking no action			
Local media platforms	Local content investment obligations – ongoing, monetised Evidence based on existing levels of investment. Anecdotal evidence of possible spike in production costs if greater demand for local content.	s6(a)	
	Local content discoverability requirements – one off, monetised Evidence based on existing discoverability features	s6(a)	
	Phased increases to CAD capability and provision – one off and ongoing, monetised and non-monetised (opportunity costs) Anecdotal evidence of significant costs (TVNZ estimates one-off cost of enabling functionality for TVNZ+ at \$0.5m).	High	Medium
Global streaming platforms	Local content investment obligations – ongoing, monetised. Evidence based on existing levels of investment. Anecdotal evidence of possible spike in production costs if greater demand for local content.	s6(a)	
	Local content discoverability requirements – one off, monetised Evidence based on existing discoverability features.	s6(a)	
	Phased increases to CAD capability and provision – ongoing (deferred), monetised Evidence from existing CAD capability and levels.		Low
Operating system providers (e.g. Google, Amazon)	Development, implementation, and maintenance of NZ-specific software – one-off and ongoing, monetised Evidence from Australian precedent (though no quantified costs)	Medium	Low
TV manufacturers		Medium	Low
Government	Establish, fund administration of, and monitor regulatory requirements - one-off and ongoing, monetised and non-monetised (opportunity cost), including legislative process. Potential for increased screen production rebate costs via local content investment requirements – ongoing, monetised. Evidence from analogous processes.	Medium	Medium
Total monetised costs	Mainly one-off initial costs with some ongoing; quantification to be completed post-consultation.	Medium	Low-medium
Non-monetised costs	Mainly opportunity costs for regulated parties and government.	Low	Low

⁴⁷ High = significant anticipated cost/benefit, low = modest anticipated cost/benefit.

Additional benefits of the preferred option compared to taking no action			
Local media platforms	Increased visibility, audience engagement, advertising revenue and brand value from TV prominence – ongoing, monetised		Medium - High
	Increased engagement from people with media accessibility needs, from phased CAD requirements – ongoing, monetised		Low-medium
Global media platforms	Potential for more engagement with specified 'New Zealand' content, and more audience goodwill, could lead to increased local subscribers/revenue – ongoing, monetised		Low
Content creators and producers	Higher demand for local content, from investment obligations – ongoing, monetised and non-monetised (empowerment to produce own/local stories and culture)		High
	More exposure of local content – ongoing, monetised (e.g. value of IP, future opportunities) and non-monetised (recognition)		High
People with media accessibility needs	Greater access to content on local platforms, via CAD requirements – ongoing, non-monetised (noting phasing will delay the full extent of these benefits).		High
New Zealand audiences/ public	Greater access to and engagement with local content (including easier access to local platforms particularly for those with limited digital skills) – ongoing, non-monetised.		Medium-High
Total monetised benefits	All ongoing; sector benefits mainly monetised (quantification to be completed post-consultation), audience benefits non-monetised.		Medium-High
Non-monetised benefits			High

Section 3: Delivering options

How will the new arrangements be implemented?

176. New legislation, progressed via Parliamentary process, would be required to implement the preferred options identified in this interim RIS. Substantive further work would be required before legislative processes begin, including:
 - 176.1. consultation with the public, the local media and content production sectors, global platforms and TV manufacturers, and existing funding and regulatory entities (noting that change to these entities is also being considered alongside the proposals in this interim RIS);
 - 176.2. detailed design of the proposed regulatory requirements and the mechanisms to ensure compliance, followed by further targeted consultation to ensure workability;
 - 176.3. costing and securing funding for implementation, administration, monitoring and enforcement as appropriate; and
 - 176.4. design and drafting of new legislation (which would likely be progressed together with legislative change relating to regulatory and funding entities).
177. As noted above, it is assumed an appropriate entity or entities would be available to administer any preferred options that are progressed. It is expected that legislative change required to implement proposals would be combined with that for a new, platform-neutral media regulator and/or consolidated content funding entity (options for which are considered in separate, concurrent interim RISs).

How will the new arrangements be monitored, evaluated, and reviewed?

178. It is expected that regulatory and/or funding entity/ies would have primary responsibility for monitoring the operation of new legislative requirements contemplated in this RIS.
179. The Ministry, as the existing monitoring agency for the relevant entities (and likely the monitor for both any platform-neutral regulator and any consolidated content funding entity), would retain an active role in monitoring the overall effectiveness of regulatory intervention. This would include policy review as part of standard regulatory stewardship. Depending on a range of factors yet to be determined, including budget implications and availability, a formal evaluation could be undertaken after a specified period of operation.
180. The Ministry's monitoring, and any formal review or evaluation, would be undertaken in close consultation with relevant entities and other interested departments (including Te Puni Kōkiri as monitor for Te Māngai Pāho and Whakaata Māori, and with policy responsibility for Māori media, and the Treasury as monitor for TVNZ).