

# Captioning on Video on Demand Services

It's time for Australia to catch up



# Contents

About Media Access Australia .....	3
Media Access Australia - Inclusion through technology .....	3
About the author .....	3
Executive summary .....	4
Introduction.....	4
United Kingdom .....	5
Catch up TV .....	5
ATVOD's best practice guidelines .....	7
Video on demand .....	7
United States .....	7
Legislation covering video on demand.....	8
Compliance with the new rules .....	8
Litigation .....	9
Netflix .....	9
CNN .....	10
Amazon.....	10
Australia .....	10
Catch up TV .....	10
ABC iView .....	10
SBS On Demand.....	10
Commercial catch up TV services .....	11
Foxtel Go.....	11
Video on demand .....	11
iTunes .....	11
Other video on demand services .....	12
Reasons put forward for not captioning online video .....	12
Conclusion: the need for regulation.....	14
Recommendations.....	14

# About Media Access Australia

## Media Access Australia - Inclusion through technology

Media Access Australia is Australia's only independent not-for-profit organisation devoted to increasing access to media for people with a disability.

Access to media, enabled through technology, empowers people to be independent, gain knowledge, make their own choices and be active members of our society.

We promote inclusion by providing information and expertise on the accessibility of mainstream technologies to government, industry, educators, consumer organisations and individuals.

We work as a catalyst for change across television, video, cinema, the arts, education, digital technology and online media, with a primary focus on people who are blind or vision impaired, or Deaf or hearing impaired.

## About the author

Chris Mikul is Media Access Australia's Project Manager for television. He has been involved in access for over twenty years, and was formerly National Production Manager at Media Access Australia's predecessor, the Australian Caption Centre.



# Executive summary

Consumers are increasingly watching TV programs and movies online, on a variety of devices.

Captioning levels on this content are low in Australia and the UK, and were correspondingly low in the US until the introduction of legislation, the *21st Century Communications and Video Accessibility Act* (CVAA). The US is the only country so far to introduce such legislation.

In Australia, the only networks which provide captioning on their catch up TV services are the ABC and SBS.

The only Australian video on demand service to offer captioning is iTunes.

Media players now generally support captions, and other technical issues surrounding the provision of captions on online video are being dealt with.

Recommendations:

- All catch up TV services in Australia should include captions where captions have been provided as part of the broadcast service.
- If Free TV and ASTRA do not commit to providing captioning on their catch up services voluntarily, the Department of Broadband, Communications and the Digital Economy (DBCDE) should initiate a formal consultation process, and report to the Government by the end of 2014.
- The Australian Communications and Media Authority (ACMA) should undertake a review of the CVAA and any other relevant legislation or regulation, and recommend appropriate changes to the *Broadcasting Services Act* (BSA).
- Captioning provisions for online video to be included in the BSA by the end of 2015.

## Introduction

The phenomenon of media convergence is rapidly changing the way consumers watch TV programs and other video content. Many major broadcasters and other content providers in Australia and other countries have introduced 'catch up' TV and video on demand (VOD) services, and consumers are watching these on a wide range of devices.

A research report released by the Australian Communications and Media Authority (ACMA) in October 2011, *Digital Australians—expectations about media content in a converging media environment*, found the following:

- 17% of all respondents to an online survey had watched catch up TV in the previous month.
- 31% of respondents aged between 18 and 29 had watched catch up TV in the previous month.
- 68% of respondents aged between 18 and 29 had watched online video content in the previous month.<sup>1</sup>

---

<sup>1</sup> ACMA, *Digital Australians—expectations about media content in a converging media environment*, October 2011, [http://www.acma.gov.au/webwr/assets/main/lib410130/digital\\_australians-complete.pdf](http://www.acma.gov.au/webwr/assets/main/lib410130/digital_australians-complete.pdf), Tables 2 and 7.



Recognising the shift to online viewing, the Broadcasters' Audience Research Board in the UK will commence collecting viewing figures for people watching TV programs on computers and tablets from the second half of 2013.<sup>2</sup>

Captioning is an essential service for Deaf and hearing impaired people, and becomes even more important as Australia's population ages. Many years of campaigning by access advocates in Australia, the UK, the US and other countries have seen the introduction of mandated minimum levels of captioned content on free-to-air and subscription television (and, to a lesser extent, minimum levels of audio described content). In the US and UK, captioning on the main free-to-air channels is at or close to 100%, while in Australia amendments to the BSA will see captioning on the free-to-air main channels rise to 100% for the hours between 6am and midnight in 2013-2014. Quotas have also been imposed on Australian subscription TV, ranging from an initial 5% to 60% according to genre, for a specified number of channels for each service.

Captioning of online content, on the other hand, has been very inconsistent both in Australia and internationally, with the US being the only country to deal with the issues in a systematic way via legislation.

This report looks at the current levels of captioning on catch up TV and video on demand services in the UK the US and Australia; impediments which are delaying the introduction of captioning on these services, and the need for regulation to ensure that these increasingly popular services are accessible to Deaf and hearing impaired users.

#### *A note on terminology*

The terms 'video on demand' and 'catch up television' are used somewhat interchangeably both in Australia and elsewhere. In this report, 'catch up TV' refers to a service provided by a broadcaster, sometimes in conjunction with another party (e.g. the Seven Network and Yahoo!'s Plus7 service), with the content predominately consisting of programming which has been broadcast a short time before being made available online. 'Video on demand' refers to services such as iTunes or Netflix whose content may have been broadcast at some stage (with or without captions), but has been made available to them by video content producers rather than broadcasters.

## United Kingdom

### Catch up TV

In the UK, the catch up services of free-to-air and subscription broadcasters are regulated by the Authority for Television on Demand (ATVOD). The exception to this is the BBC's iPlayer service, which is regulated by the broadcast television regulator Ofcom. Unlike Ofcom, ATVOD has no legal powers to enforce rules, but has a duty "to encourage service providers to make their On Demand Programme Services ('ODPS') more accessible to people with disabilities affecting their sight or hearing or both". As part of this duty, ATVOD conducts an annual survey of VOD service providers

---

<sup>2</sup> <http://www.campaignlive.co.uk/news/1186244/tv-body-barb-track-vod-viewing-first-time/>



and publishes the results, with the latest being its *Provision of Video on Demand Access Services – 2012 Report*.<sup>3</sup>

Requests to take part in the survey were sent to 81 service providers, and responses were received from 17 of them (which together provide 36 services). ATVOD found that the highest levels of captioning on catch up services (after the BBC, which regularly captions 90% or more of the programs on its iPlayer service<sup>4</sup>) were on ITV and Channel 4’s players.

In their responses, some of the service providers gave the following reasons for not providing captions.

- Platforms not set up for closed captioning. These are often third party platforms (e.g. the TalkTalk player on YouView).
- Difficulties in providing captions for live programs online, as the captions created for broadcast are not linked to a hard copy of the program.
- Online versions may differ slightly from the broadcast version, requiring a modified caption file.
- Caption files may not be available for archive programming.
- Sky commented that there was “increased operational complexity that results from creating and handling two versions of a program – one with access services, one without. On platforms with limited capacity this would result in less variety of content being made available for all viewers.”

**Table 1 Captioning levels on UK catch up TV services, 2012**

Catch up TV service	Content	Approx. content captioned
BBC iPlayer	BBC programs	90%
ITV Player	ITV programs	64%
Channel 4’s 4OD		80%
Channel 5’s Demand 5		20%
UTV Player	Northern Ireland channel (ITV licensee)	53%
Viaplay	Swedish cable channel	50%
Viasat 4 Play	Swedish cable channel	75%
TV3 Play Norway	Norwegian cable channel	25%
TV3 Play Sweden	Swedish cable channel	20%
TV6 Play	Swedish cable channel	35%
TV8 Play	Swedish cable channel	20%

Sources: for BBC: [BBC access services: Getting subtitled programs](#)

Other TV services: I Heart Subtitles: [Subtitles and Captioning – Regulatory requirements update part 2 and adding business value](#)

In concluding its 2012 report, ATVOD has outlined its next steps.

- Continue to engage with service providers and other stakeholders.
- Work with stakeholders to explore possibilities for technical standardisation to aid the delivery of access services for video on demand.
- Consider making responses to future surveys compulsory.

<sup>3</sup> [http://www.atvod.co.uk/uploads/files/Provision\\_of\\_Access\\_Services\\_2012\\_Report\\_FINAL.pdf](http://www.atvod.co.uk/uploads/files/Provision_of_Access_Services_2012_Report_FINAL.pdf)

<sup>4</sup> The iPlayer is the also only catch up service in the UK to provide audio description on some programs.



- Consider whether there are opportunities to highlight best practice, to encourage other service providers to improve.

## ATVOD's best practice guidelines

In addition to monitoring and encouraging the provision of access services for video on demand, ATVOD has produced a set of *Best practice guidelines for service providers*<sup>5</sup>. Its recommendations include the following.

- Service providers should make efforts to publicise the presence of access services (captioning, audio description or signing), both on their services in general, and on particular programs.
- As a minimum standard, there should be an indication at the end of a program description that it has a specific access service.
- Where a sequence of programs relies on continuity for understanding and enjoyment (e.g. episodic drama), every effort should be made to ensure that all programs in the series have the relevant access services.
- Access services should be simple to enable and disable, through means appropriate to their users.
- Service providers should monitor playout at regular intervals to ensure their services are provided correctly.
- Service providers should monitor the quality of their access services, and periodically consult with groups representing access service users on issues regarding quality.

## Video on demand

The only non-TV video on demand supplier in the UK which currently provides captions on a small percentage of its programs is iTunes.

**Table 2 Captioning levels on programs available from the UK iTunes store, 2012**

Video on demand service	% content captioned
iTunes Store Movies	10%
iTunes Store 'Latest TV episodes'	15%

Source: research carried out by Media Access Australia, November 2012.

The three largest movie on demand services in the UK are Netflix, Love Film and Tesco's Blinkbox, but none of these provide any captioning on their content.

## United States

The US is so far the only country which has introduced legislation to deal with the issue of captioning on catch up TV and video on demand services. Prior to the captioning requirements of the CVAA coming into effect in September 2012, the levels of captioning on these services were very low. PBS (the public broadcaster) was the only network to have a significant amount of captioning on its catch up service.

---

<sup>5</sup> [http://www.atvod.co.uk/uploads/files/Access\\_Services\\_best\\_practice\\_guidelines\\_FINAL\\_120912.pdf](http://www.atvod.co.uk/uploads/files/Access_Services_best_practice_guidelines_FINAL_120912.pdf)



A survey carried out by Media Access Australia in 2011 found that levels of captioning on titles available from the main video on demand providers was also quite low prior to the CVAA coming into effect, with the exception being TV shows on iTunes. (The large percentage on the latter was probably due to the fact that the new rules were impending.)

**Table 3 Captioning levels on US video on demand services, June 2011**

Video on demand service	% content captioned
Hulu movies	25%
Hulu TV shows	35%
Netflix	32%
iTunes Store Movies	16%
iTunes Store 'Latest TV episodes'	93%

## Legislation covering video on demand

The *Telecommunications Act of 1996*, which contains the requirements for television programs to be captioned, also requires that on demand programming delivered to television via a cable box must also be captioned. The act was not deemed to cover IPTV, however.

The CVAA has revolutionised online accessibility in the US. The act stipulates that any TV program which was broadcast with captions must also be captioned if distributed over the internet. Following the passage of the act, the Federal Communications Commission (FCC) set the following deadlines for different types of programming.

- 30 September 2012: All pre-recorded, non-archival programming not edited for internet distribution
- 31 March 2013: All live and near-live non-archival programming
- 31 September 2013: All pre-recorded, non-archival programming edited for internet distribution
- 31 March 2014: All archival programming

## Compliance with the new rules

In December 2012, eight deafness advocacy groups, including the National Association of the Deaf and the Deaf and Hard of Hearing Consumer Advocacy Network, filed a report<sup>6</sup> with the FCC on the initial compliance of video programming owners and distributors with the first of these deadlines. In compiling the report, the group tested various combinations of video programming and playback apparatus, including web browsers and mobile phone apps. They found that there was “a relatively high rate of initial compliance”, with 82% of the combinations tested including captions as required.

Services which were found to be non-compliant included Amazon, Hulu and NBCUniversal's Syfy network.

- The delivery of captions on Amazon's programs was found to be consistently late (between 2.5 and over 20 days), although the percentage of non-compliant programs decreased

---

<sup>6</sup> <http://instituteforpublicrepresentation.org/wp-content/uploads/2012/12/IP-Compliance-Report-Final-with-Appendices.pdf>



during the survey period. The groups subsequently launched a law suit against Amazon (see below).

- The Hulu Plus app for Apple TV was found to not support captions.
- No programs were captioned on Syfy, a website owned by NBCUniversal.

The report noted that, in general, web browsers currently do not support captions, due to a lack of captioning support for HTML5 video. It notes that there has been some experimentation with JavaScript to solve this problem, while work on WebVTT (a new captioning format designed for use with HTML5) is ongoing but not yet finalised. In the meantime, it suggests three temporary solutions that video owners and distributors could consider:

- Creating native apps and directing mobile users to them
- Incorporating and developing JavaScript solutions
- Making programs available on platforms like iTunes and YouTube which do provide captioning support

The report also noted problems with caption quality, including a loss of captions when switching to full-screen mode, captions being too small to read, and captions lagging behind dialogue. There was also an inconsistent use of 'CC' or any other logo to identify captioned programs.

## Litigation

### Netflix

In June 2011, the National Association of the Deaf (NAD) sued online video service Netflix for failing to provide captions on the majority of titles on its 'Watch Instantly' service. In November 2011, a court ordered a stay in the motion, pending the FCC's actions in this area.

In June 2012, the NAD had a significant win in the lawsuit when the District Court of Massachusetts held that the *American with Disabilities Act* (ADA) applies to website-only businesses. Judge Posner denied Netflix's motion that the ADA applied only to physical businesses:

"In a society in which business is increasingly conducted online, excluding businesses that sell services through the internet from the ADA would run afoul of the purposes of the ADA and would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges and advantages, available indiscriminately to other members of the general public."

Judge Posner's ruling also clarified the impact on the lawsuit of the CVAA, which directed the FCC to make rules for the provision of online captioning. Netflix had argued that the act "carved out" online video programming as separate from the ADA, but Judge Posner dismissed this, stating that there is "no conflict between the statutes".<sup>7</sup>

Since the NAD launched its suit, captioning on Netflix had increased to 90%. In October 2012, Netflix reached an agreement with the NAD to provide 100% of its content with captions by 2014. Netflix also agreed to improve its user interface to make it easier for people to identify which movies and TV shows have captions.

---

<sup>7</sup> <http://www.nad.org/news/2012/6/landmark-precedent-nad-vs-netflix>



## CNN

In 2011, the Greater Los Angeles Agency for Deafness launched a suit against CNN and its owner, Time Warner, for not captioning news clips on its website, alleging that this violated state disability laws. Lawyers for the network argued that having to provide captions would cause delays and inaccuracies, and that requiring a single network to provide them would be an infringement of its rights of free speech under the First Amendment. In March 2012, a federal magistrate rejected this argument on the grounds that the suit was directed to the format in which news clips were to be delivered and not their content.

The FCC's new rules governing captioned content do not cover video clips lasting two or three minutes, and the CNN suit is ongoing.

## Amazon

In January 2013, seven American deaf consumer groups filed a complaint<sup>8</sup> with the FCC, accusing Amazon of violating the rules requiring the captioning of TV programs made available online.

Monitoring of programming on Amazon's 'Instant Video' service in October and November showed that between one and eighteen programs a day were not captioned which should have been.

The groups which filed the complaint include the NAD, Telecommunications for the Deaf and Hard of Hearing, and the Deaf and Hard of Hearing Consumer Advocacy Network. They contend that Amazon has no excuse for failing to caption these programs, considering that it was a participant in the FCC's Video Programming Accessibility Committee, which determined how the new rules regarding caption of online videos were to be implemented.

# Australia

## Catch up TV

Currently the only catch up TV services in Australia which provide captions are the ABC's iView, and SBS On Demand.

### ABC iView

Captions became available on iView in March 2010. All prime time programs screened on ABC1 and ABC2 can be watched on iView with captions. The children's news program *Behind the News* is the only non-prime time program, as well as the only children's program, captioned on iView.

In July 2011, the iView app for iPads was enabled for captions.

### SBS On Demand

SBS introduced captioning to its On Demand service in June 2012. All programs on SBS which were not captioned live are available with captions on the service for between seven and 30 days.

---

<sup>8</sup> <http://instituteforpublicrepresentation.org/wp-content/uploads/2012/12/Amazon-Complaint-Final-with-Appendix.pdf>



The process of enabling the player for captions took about 18 months. It involved SBS staff writing some code, and Softel (the UK company which supplies SBS with its captioning software) developing a 'clip and stitch' module for them which integrates the caption file with the online master. The process is fully automated, so that no human input is needed now that the service has been set up.

At the moment, the colouring and positioning of the captions is lost (all are white and centred), but Softel is developing an HTML player which will take 2052 format caption files and retain the colouring and positioning.

SBS has had technical problems with migrating live captions to the player, but has advised Media Access Australia that these are close to being resolved

SBS also hopes to extend the captioning to third party platforms in the future.

## Commercial catch up TV services

None of the commercial networks have as yet provided captions on their online players, or have any plans to in the near future.

The only network to have shown any interest in the matter is Seven. Following correspondence with a Deaf activist in 2010, Yahoo!7 (which administers Plus7, the catch up service) began work on enabling the player for captions, with at least one test program produced. A number of dates were given for captioning to begin, the last being June 2011, but subsequent to this Yahoo!7 advised that the project had been put on hold due to other priorities.

## Foxtel Go

Foxtel recently introduced its Go service. Anyone who has a Foxtel account can download an app and watch 60 channels on their iPhone and iPad. This is being marketed as "a new way to watch Foxtel", and is a service which all subscribers are paying for even if they cannot use it. In other words, Deaf and hearing impaired subscribers who cannot use Foxtel Go because captions are not available on it will not be receiving a discount on their subscription.

## Video on demand

### iTunes

iTunes is the only commercial video on demand service in Australia to provide some captions on some content.

**Table 4 Australian iTunes store captioning levels, May 2013**

	<b>Content</b>	<b>% captioned</b>	<b>Notes</b>
iTunes Store Movies	7,359 titles. 1,920 have captions.	26%	Captioned movies can be searched for.
iTunes Store 'Top TV seasons'	200 seasons of the most popular TV shows. 77 have captions.	38%	Captioned TV series cannot be searched for (although they can in the US store). For some series, only some seasons have captions. In a small number of cases, not all the programs within a season have captions.



## Other video on demand services

The table below lists services available in Australia which do not yet have captions.

**Table 5 Australian VOD suppliers which do not provide captions**

Service	Content
CASPA	TiVo's video-on-demand service. Movies cost \$3.95-\$5.95, TV shows \$1.95-\$2.95. A few old shows are free.
Foxtel on Demand	Available through set-top box and internet-connected IQ box. Hundreds of titles available. Movies are \$5.50 (SD) or \$5.95 (HD), TV shows are \$1.95-\$2.95.
Telstra BigPond	Hundreds of movies and TV shows. New release movies are \$5.99.
Fetch TV	IPTV service offering FTA and subscription channels, movie rentals, TV on demand, games and audio channels.
Quickflix	Over 50,000 movies and TV shows for hire on DVD or as streaming video.(captions available on DVDs but not streaming videos).
BBC iPlayer	Available through an app for iPads and iPhones since 2011.
YouTube Movies	Available through YouTube on desktop computers, and Google Play through smartphone or tablet apps. New release movies are \$5.99.

The only one of these which has expressed interest in captioning on its content has been Telstra BigPond. Section 1.4 of *Telstra's Disability Action Plan (2010-2012)* reads:

### **1.4 Captions for movie downloads**

*Explore commercially viable introduction of captioning and audio description on BigPond Movies and BigPond TV, including:*

- *Commercially viable options to obtain captioned movie titles for download*
- *Capability of Big Pond and Telstra systems and media player software/ devices to present suitable captions for download*
- *Monitoring and implementation of relevant outcomes from the DBCDE Access to Electronic Media Review.*

## Reasons put forward for not captioning online video

The following are some of the common reasons which have been used by providers to justify a lack of captions on catch up TV and video on demand services in law suits, submissions and general comments.

- The time and money needed to enable media players to support captions can be considerable, and suppliers will often need to purchase caption files. Commercial suppliers may believe this is not justified by the extra income captioned content will generate.

*Comment: Deaf and hearing impaired people represent almost 15% of the population, and this is growing. The costs associated with upgrading media players are one-off, and will eventually be recovered by increased revenue. Caption files are available for almost all new*



*television programs and new-release movies, and can be purchased for much less than the cost of captioning programs from scratch.*

- Video suppliers may be using the media players of third parties, and are therefore not able to upgrade them to support captions.

*Comment: Captioning is becoming a recognised feature for generic online video players, with change partly driven by new legal requirements in the US.*

- Caption files are often not available for older TV programs and movies.

*Comment: Captioning for these programs can be phased in over time, as is happening in the US.*

- There are particular technical problems associated with migrating live captions to online video.

*Comment: These technical problems are being overcome. Live captions are available on the BBC's iPlayer and the ABC's iView, and since March 2013 have been compulsory in the US.*



# Conclusion: the need for regulation

The CVAA will ensure that almost all television programming in the US that is made available on network catch up services, and on commercial video on demand services such as iTunes, will have captions by March 2014. It seems likely that levels of captioning on services not covered by the Act, including short clips on news websites, and older TV programs and movies for which caption files are not available, will rise due to litigation by individuals and advocacy groups.

The situation is different in the UK and Australia, where access on online video services is low or non-existent, and there is little indication that this will change significantly in the near future. The UK is slightly ahead in that in addition to the BBC, the catch up services of the three main commercial networks caption 20% to 80% of their content. This is possibly because there is a stronger culture of captioning in the UK (fostered largely by the BBC). Nevertheless, with the regulatory body ATVOD lacking the powers to impose minimum levels of captioning, there is no certainty when levels will rise to match those on broadcast television.

As with other access services, commercial providers of catch up TV and video on demand services have tended to lag behind in providing access and have often only acted under threat (or actual) litigation and regulation. At the same time, these services are being marketed as additional options to access the content at 'viewer convenience'. The lack of access services (especially where they are provided routinely for broadcast/narrowcast) contradicts this customer service approach. In some cases, such as Foxtel's Go, the online service must be paid for by the subscriber (i.e. it is included in the subscription price, not as an optional extra).

Clearly, strong enforcement is needed to change this situation. The provision of captioning on these services should be part of strong broadcast regulation, a culture of enforcement and a desire by the regulator to expand access services.

## Recommendations

1. All catch up TV services in Australia should include captions where captions have been provided as part of the broadcast service. There are enough examples of this happening routinely to show that it is possible and the main barrier is lack of desire to provide this service. The first stage should be to seek voluntary compliance via Free TV and ASTRA codes of practice mechanisms, and if that fails, include requirements in legislation framed around the CVAA.
2. A consultation process should be set up by DBCDE to identify the mechanisms and pathways to achieve captioning on VOD services in Australia. This consultation should include a wide range of experts and interest groups and should draw on the experience of local and international suppliers. This process should report to the government by the end of 2014 to allow recommendations and implementation as part of the review of the access provisions of the BSA due by the end of 2015.

The ACMA should undertake a comprehensive review of the CVAA and any other regulation/voluntary systems set up by other regulators (especially the FCC and Ofcom). This review should identify the mechanisms used to ensure compliance, problems identified in implementation and solutions created to meet those. The aim of the review should be a recommended legislative framework for inclusion in the BSA as part of the review of the access provisions of the BSA due by the end of 2015.

