CVAA Online Video Captioning Requirements and Deadlines

Introduction

Closed captioning, which was mandated by the FCC in the early 1980s as a requirement for broadcast TV, originated to make programming accessible to all audiences. But in an age when online video streaming services rival traditional broadcasting, how do we ensure content is captioned for those who need it?

The 21st Century Video Accessibility Act (CVAA) of tackles that question.

Signed by Obama in 2010, the CVAA sets clear rules for internet video programming and clips that previously aired on TV in the US. It is enforced by the FCC and phased in for video creators over several years (see timeline below).

As of September 30, 2013, all broadcast video that previously aired on US television with captions must include captions if published on the Internet. Stricter CVAA compliance deadlines are approaching for video montages and live footage.
The purpose of this brief is to help video publishers better understand the deadlines, specifications, and legal implications for online video accessibility. This brief covers:

- The legislative history of the CVAA.
- What content is covered or excluded from CVAA compliance.
- Video captioning requirements already phased in.
- Who is responsible for ensuring compliant captioning.
- Technical captioning requirements for videos and streaming apparatuses.
- FCC captioning quality rules.

21st Century Communications & Video Accessibility Act (CVAA)

The CVAA was passed in 2010, modernizing and broadening a string of laws passed in the 1980s and 1990s that were designed to ensure that TV and telephone services were accessible to people with disabilities.

The Federal Communications Commission (FCC) enforces compliance with the CVAA and clarifies the law when necessary.

The CVAA requires that video programming that is closed captioned on American TV is also closed captioned when distributed via Internet protocol (IP). This does not include programs shown only on the Internet.

These requirements are increasingly necessary with the rise of online video delivery. An eMarketer study found a clear upward trend in digital video viewing and a downward trend in TV viewing among US adults. Many viewers are “cutting the cord” of traditional satellite and cable TV altogether in favor of online streaming services.

Some examples of content that must be captioned according to CVAA rules include:

- Online video streaming websites or applications whose content previously aired on US TV with captions

An eMarketer study tracks the steady decline of traditional broadcast TV viewing and the increase of digital video viewing among US adults.
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- Broadcast network websites that publish full episodes or clips of content that originally aired on US TV with captions
- Programming on a broadcaster’s YouTube channel, Facebook page, or other app if that content originally aired on US TV with captions

Video Content Excluded from CVAA Captioning Requirements

- **Consumer-generated media:** Homemade movies and videos originating on the Internet do not require captioning.
- **Internet-only video content:** E.g., Netflix originals, Amazon Prime originals, etc. Unless these movies have aired on American TV with captions, they are not required to have captions for Internet distribution under CVAA rules. Note, however, that this type of content may be covered under the ADA.
- **PEG channels:** Public, educational, and government access television.

CVAA Video Captioning Deadlines

To ease the burden on video programming owners (VPOs) and video programming distributors (VPDs), the CVAA phases in regulations over time. This process started in 2012 and will continue through 2017.

The first CVAA deadline (September 30, 2012) required that all pre-recorded video programming shown on television with captions have captions when delivered online. This applied only to shows that were unedited for distribution. For example, if a scene was added or removed, the program did not require captioning for online distribution under this deadline.

The second CVAA deadline (March 30, 2013) required that live and near-live programs shown on TV with captions be captioned when re-published on the Internet. A near-live program is a program recorded less than 24 hours before being aired for the first time. Sports programming, broadcast news, and live events such as concerts and award shows are considered near-live programming.

The September 30, 2013 deadline required all broadcast video, *edited or unedited*, that previously aired with captions on TV to have captions for publication online. The impact of this milestone was somewhat tempered by an FCC order postponing caption requirements for video clips. This preserved a loophole that let VPOs and VPDs publish nearly all of a program and claim it as a clip, thus skirting the CVAA captioning requirement.

That loophole closed on January 1, 2016, when the CVAA was officially applied to video clips posted online. Now, all straight lift video clips of any length, edited or unedited, must be captioned if the original program was aired on US TV with captions.
CVAA Closed Captioning Rules for Archived Video

The CVAA also phased in requirements for captioning archival video content that previously aired on TV before streaming it online.⁴

- **March 30, 2014:** Video in a distributor or provider’s library shown on TV with captions must be captioned within **45 days** if aired online on or after March 30, 2014 and before March 30, 2015.
- **March 30, 2015:** Video in a distributor or provider’s library shown on TV with captions must be captioned within **30 days** if aired online on or after March 30, 2015 and before March 30, 2016.
- **March 30, 2016:** Video in a distributor or provider’s library shown on TV with captions must be captioned within **15 days** if aired online on or after March 30, 2016.

**Section 203 of CVAA: Video Programming Apparatus**

In the past, regulations required built-in closed captioning decoders in analog and digital televisions, predominately for screens greater than 13 inches. Since broadcasters were required to create accessible programming with closed captions, it was important for all hardware devices to display these captions to accommodate viewers.

Section 203 of the CVAA focuses on “video programming apparatuses,” ensuring that accessible video can be delivered on any device. “Apparatus” is defined not only as hardware (e.g., DVD or Blu-ray players), but also as software, such as a streaming video player or app.

This means that IP video distributors must use media players that allow users to toggle captions on and off, select their language for subtitles (when applicable), and customize how captions are displayed.⁵ This relates to the FCC’s User Control mandate, which requires media players to allow viewers greater control over how their captions appear on screen.

For example, YouTube and Hulu (pictured below)⁶ allow viewers to customize the size, font, color, and opacity of the caption display for easier viewing and personal preference.
Section 203 Requirements

- Video playback apparatus of any size should be designed to receive or play accessible video, if technically feasible. Manufacturers have the burden to demonstrate that compliance is not feasible.
- Apparatus with screens less than 13 inches have to meet the same requirements if doing so is achievable, which is based on technical, economic, and operational impact on the company.
- Apparatus designed to record video programming must enable the rendering or pass through of closed captions in a manner that enables viewers to activate and deactivate closed captions when played back on a screen of any size, if achievable.

Exceptions to Section 203

Does this hardware requirement extend to mobile phones and tablets?

Not yet.

The following devices are not covered by Section 203:

- Mobile devices
- Smartphones
- Game consoles
- Cellular telephones
- Tablets

Who is Responsible for Captioning: Producers or Distributors?

In February, 2016, the FCC held a public meeting to clarify who is responsible for complying with closed captioning requirements. Online video captioning requirements apply whether you’re the video creator or the content distributor.

The commission broke down the responsibility for IP video closed captioning as follows:

- **Video programmers** will be responsible for ensuring compliance with FCC caption quality requirements
- **Video programmers** will be responsible for providing closed captioning on all non-exempt programming
- VPDs will be responsible for passing through captions
- VPDs will be responsible for ensuring maintenance and delivery of captions
The FCC places the responsibility for captioning certification on video programmers. The process for certification is:

- **Video programmers** will now provide annual certifications directly to the FCC instead of to VPDs, attesting to the following:
  - They are in compliance with FCC captioning rules
  - They follow the best practices for ensuring captioning compliance
  - They are exempt from closed captioning requirements
- **VPDs** will no longer be required to obtain certifications from video programmers
- **Video programmers** must provide contact information for the individual(s) responsible for captioning compliance directly to the FCC

The FCC updated their closed captioning complaint rules, again splitting responsibility for investigating and addressing complaints between VPDs and video programmers. The new complaint obligations are:

- **VPDs** will conduct an initial investigation into captioning complaints and respond to any complaints associated with distribution
- **Video programmers** will now be responsible for addressing complaints associated with caption creation, quality, or delivery to VPD

Finally, the FCC introduced a “compliance ladder” for caption quality to encourage companies to quickly resolve quality issues. Both VPDs and video programmers will initially have the opportunity to address caption quality issues; however, the FCC will have the right to bypass the ladder and enforce caption quality compliance if they determine that the circumstances warrant direct action. They are expected to release specific standards for “intentional and deliberate” violations of caption quality.

### Closed Captioning Quality Requirements

In 2014, the FCC issued clear standards for closed captioning quality, to which both broadcast and IP video captions will be held. It is the video producer’s responsibility to ensure that closed captions meet quality standards at the time they are delivered to the distributor.

Caption quality is assessed on four factors: **accuracy, timing, completeness, and placement.**

### FCC Rules for Caption Accuracy

The FCC states, “In order to be accurate, captions must match the spoken words in the dialogue, in their original language (English or Spanish), to the fullest extent possible and include full lyrics when provided on the audio track.” Specifically, they require captions to include all words spoken in the order spoken (i.e., no paraphrasing).
Captions must use proper spelling, spacing between words, capitalization, and punctuation.

Accurate captions must also convey the tone of the speaker’s voice and intent of the content.

The goal here is for captions to maintain the impact of the performance so that the overall message is not lost on the viewer.

Captions of essential nonverbal information (sound effects, music playing, audience reactions, who is speaking) must be provided if they are to be considered accurate.

**FCC Rules for Caption Synchronicity**

The FCC states, “In order to be synchronous, captions must coincide with their corresponding spoken words and sounds to the greatest extent possible.” Captions must display at a speed that can be reasonably read by viewers. And, if a program is edited for rebroadcast, captions must be reformatted to provide accurate synchronization.

**FCC Rules for Program Completeness**

The FCC states, “In order for a program’s captions to be complete, captions must run from the beginning to the end of the program, to the fullest extent possible.”

Consumers have complained that captions drop off in the middle or before the end of programming. Now, any program that does not include captions up to its conclusion will be in violation of these standards.

**FCC Rules for Caption Placement**

In response to complaints that some captions obscure important information, the FCC states that “captions should not block other important visual content on the screen including, but not limited to, character faces, featured text (e.g., weather or other news updates, graphics and credits), and other information that is essential to understanding a program’s content when the closed captioning feature is activated.”

For example, if you are watching a documentary and there is text in the bottom of the screen that states who the speaker is and what their profession is, closed captioning cannot be placed over this text, as it would obscure the information. Instead, that caption frame should be placed at the top of the screen (see below).
The new guidelines go on to require that captions not run off the edge of the screen and that the text be sized appropriately for legibility.

**Caption Style and End-User Control**

The FCC embraced the Video Programming Accessibility Advisory Committee’s (VPAAC) suggested presentation format for closed captioning, requiring the following end-user controls:

- Font size
- Font style
- Character color
- Opacity
- Edge attributes
- Caption background
- Language selection
- Preview/setting retention

**Caption Formats**

The SMPTE-TT (Society of Motion Picture and Television Engineers Timed Text) caption format is a “safe harbor interchange and delivery format.” The FCC adopted this format as the preferred IP-delivery caption format in order to minimize the need to produce multiple formats and potentially re-caption content.

SMPTE-TT is not required, but recommended by the FCC. Devices that support SMPTE-TT are in compliance in regard to functionality.

**Conclusion**

The laws governing Internet video accessibility have arrived. Video owners and distributors are now required to provide an equivalent experience for the millions of people who are deaf or hard-of-hearing, much like TV broadcasters had to do in the 1980s.

The CVAA has been phased in over time to allow video producers and distributors time to implement these accommodations. As the last deadlines approach, it’s up to the FCC to enforce closed captioning regulations for broadcast-turned-digital video.
Endnotes


iii https://contently.com/strategist/2015/07/06/the-explosive-growth-of-online-video-in-5-charts/


vi http://www.3playmedia.com/2016/05/25/rethinking-how-we-use-closed-captioning-in-education/


viii http://www.3playmedia.com/2016/02/19/fcc-implicates-video-programmers-in-new-captioning-rules/

ix http://www.3playmedia.com/2014/04/03/fccs-new-quality-standards-closed-captioning-video-programming/


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