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) takes on 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 has been phased in for video creators over several years (see timeline below).
Current Captioning Requirements Under the CVAA

- All broadcast video that previously aired on US television with captions must include captions when published on the Internet. This includes clips and montages.

- For clips and montages of live programming, up to a 12-hour delay is permitted after the programming has been shown on TV. Up to an 8-hour delay is permitted for clips of near-live programming.

- CEA-708 user controls for customizing caption display (i.e. font, size, color options) must be made available for broadcast video when published online.

As of July 1, 2017, all broadcast video (including clips and montages) that previously aired on US television with captions must include captions if published on the Internet. Stricter CVAA compliance deadlines 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.

A Brief History of the 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. A Pew Research study\(^{iii}\) found that 61% of young US adults use online streaming services as their primary source of TV. This rising generation of viewers is “cutting the cord” of traditional satellite and cable TV services in favor of online streaming.

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
- Broadcast network websites that publish full episodes or clips of content that originally aired on US TV with captions online
- 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 that these may be covered under the Americans with Disabilities Act.
- **PEG channels:** Public, educational, and government access television.

### CVAA Video Captioning Timeline

To ease the burden on video programming owners (VPOs) and video programming distributors (VPDs), the CVAA phased in regulations over time. This process started in 2012 and, as of July 1, 2017, all requirements have been phased in.

The first CVAA deadline was September 30, 2012 and required that all pre-recorded video programming shown on television with captions have captions when delivered online. This applied only to shows that

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The chart shows the percentage of U.S. adults who say that online streaming services is their primary way they watch television. According to the survey conducted Aug. 15-21, 2017, by the PEW Research Center:

- **Online streaming service:** 70% for U.S. adults, 15% for those ages 18-29, 7% for those 50-64, and 5% for those 65+.
- **Cable or satellite subscription:** 52% for U.S. adults, 37% for those 18-29, 7% for those 50-64, and 7% for those 65+.
- **Digital antenna:** 84% for U.S. adults, 10% for those 18-29, 15% for those 50-64, and 5% for those 65+.

Source: Survey conducted Aug. 15-21, 2017. PEW RESEARCH CENTER
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 was on March 30, 2013 and required that live and near-live programs shown on TV with captions be captioned when re-published on the Internet. Sports programming, broadcast news, and live events such as concerts and award shows are considered live programming. A near-live program is a program recorded less than 24 hours before being aired for the first time, such as a late-night talk show.

Then, after September 30, 2013 all broadcast video, edited or unedited, that previously aired with captions on TV had 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 (see below under “CVAA Closed Captioning Rules for Clips and Montages”), when the CVAA was officially applied to video clips posted online. Now, all 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**

These were the compliance deadlines 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.

**CVAA Closed Captioning Rules for Internet Video Programming**

These are the phased-in deadlines for full-length internet video programming that has aired on US television.5

- **September 30, 2012:** Video that is not "edited for Internet distribution" must be captioned.

- **March 30, 2013:** Live and near live programming must be captioned.

- **September 30, 2013:** Prerecorded video programming that is substantially edited for internet distribution must be captioned.

- **January 1, 2014:** CEA-708 user controls for captions (font, size, color) must be made available.
CVAA Closed Captioning Rules for Clips and Montages

These are the phased-in deadlines for video clips and montages of video content that are published online after airing on US television. Often referred to as “direct lift” or “straight lift” segments, video clips are short segments of previously recorded programming. Montages are multiple clips from single or multiple previously-recorded programs that are stitched together to form one clip.

- **January 1, 2016:** Video clips must be captioned if they contain a single excerpt of a captioned TV program with the same video and audio that was shown on TV ("straight lift" clips).
- **January 1, 2017:** Video montages must be captioned once published online.
- **July 1, 2017:** Video clips of live and near-live programming must be captioned. For clips of live programming, up to a 12-hour delay is permitted after the programming has been shown on TV. For clips of near-live programming, up to an 8-hour delay is permitted.

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

Further, the FCC’s user control mandate requires that video programming distributors (VPDs) comply with the advanced closed captioning standard CEA-708. This requires using a video player with customizable caption displays.
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.¹

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.\textsuperscript{11}

**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:xii

- 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.”xiii 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. It’s up to the FCC to enforce closed captioning regulations for broadcast-turned-digital video.

Endnotes


About 3Play Media

3Play Media provides closed captioning, transcription, and audio description to more than 2,300 customers in higher education, enterprise, entertainment, and government. 3Play Media simplifies the process of making videos accessible through flexible APIs, integrations with video players and platforms, simple plugins, and a user-friendly online account system. 3Play Media is based in Boston, MA and has been operating since 2007.