

Captions mean television speaks volumes

Captioning is the only way in which some hearing-impaired people can access television. Brett Casey, manager, National Advocacy Service for the Australian Association of the Deaf, examines recent legislation which ensures that captioning exists on all networks via quotas imposed as of January 1, 2001

Have you ever watched television while being under an airport flight path? Imagine the frustration of missing out on the punchline of your favourite comedy show due to the noise. Or perhaps because you can't hear what is being said, you are confused over the plot of a movie.

Spare a thought for those who always miss out on such information - deaf and hearing impaired people. This community has for a number of years taken on television networks, lobbied politicians and made its cause known - you don't need volume to enjoy television but access to television speaks volumes. For this consumer group, access to television only comes by way of captioning.

What are captions?

Captions are used mainly by deaf and hard of hearing people, who numbered 1.7 million at the Australian Bureau of Statistics survey in 1995. The soundtrack of the television program appears in word form at the bottom of the screen. The captions are accessed via teletext page 8-0-1 and are available on all channels across Australia. But not all programs are captioned. Captions are free to the user though a teletext television is needed to decode them.

Until recently, there were no legislative measures in place which guaranteed captioning for this consumer group. But the recently passed *Television Broadcasting Services (Digital Conversion) Act (Cth) 1998* (which amends the *Broadcasting Services Act 1992*) allows for the introduction of captioning quotas on Australian free-to-air television from 2001. This has sugared the pill to an extent, as compulsory captioning will be required in prime time. On one hand, this announcement was much welcomed by deaf and hard-of-hearing viewers. On the other, there are still a number of issues to fight to ensure the full extent of the proposed quotas are enacted.

The quotas are included in Section 38 of the legislation. They dictate that all prime time (between 6pm - 10.30pm) and news and current affairs programs (not defined) must be captioned from January 1, 2001. But there is a qualifier. The whole section is prefaced with the phrase "as far as is practicable".

Prior to legislative efforts

To assess the potential impact of this seemingly innocent phrase it is worth briefly touching on the history of captioning regulation in Australia. Until this recent breakthrough, the amount of cap-

tioning has been determined largely through industry self-regulation. For the commercial networks, captioning is included in the FACTS (Federation of Australian Commercial Television Stations) *Code of Practice*.

Under this code member stations "endeavour" to increase the amount of closed captioning. No regulation, no minimum targets, no penalties for not increasing captioning. Many consumers would describe it as a "we'll do something if it doesn't cut into our profits too much" code. Under this regime, it has taken 16 years to reach a mere 15 per cent of programs being captioned. Compare this to the percentage of captioned television programs in America - roughly 95 per cent.

Commitment

The ABC included captioning as one of the responsibilities of a national broadcaster and has consistently provided the most captioned programs on television - an average of 27 per cent of its programs each year - despite little flexibility in its funding. The SBS has no such requirement though it does caption two news bulletins each night, funded by the federal government in 1997 (which also funds the captioning of ABC news bulletins in each state).

Before the recent legislation, consumers had to constantly lobby the television stations to ensure programs were captioned. This saw the birth of the National Working Party for Captioning (NWPC), which consists of representatives from across Australia. The prevailing attitude

from the stations relayed to the NWPC seemed to be that captioning was an expense that provided them with little benefit, apart from them being seen as good corporate citizens.

Of course, "benefit" is usually defined as "ratings points" in commercial television land. Without specific peplemeters in caption-watching households, their own evaluation systems would find it near impossible to measure the direct impact of captioning anyway.

That is not to say that all television networks take the same attitude. The Seven Network has been keen to take on the challenges of captioning. Since the first whisper of legislation, Seven has already rushed to build up its level of captioning to being very close to compliance with the legislation and there are still more than two years to go before it becomes a legislative requirement.

Anecdotal reports and some Seven publicity suggest that this activity comes about from a willingness to find solutions to captioning problems rather than excuses on why it can't be done.

Assessing the new digital legislation, with its protective "get-out" clause, it is anticipated that not much will change. It appears that the networks may still seek excuses for not captioning programs that are not "practicable". Therefore, as a consumer group we need to be ready to turn up the volume again by way of lobbying over the coming years.

At the same time for consumers, this is manifestly unjust. The spirit of the new legislation encompasses the philosophy of access, rather than exclusion. This is a powerful argument for the onus being on the networks to find solutions, not for the consumers to countermand industry arguments for why it costs too much. The Seven Network, and other third party suppliers such as the Australian Caption Centre, have demonstrated that where there is a will to find ways to make captioning "practicable", a breakthrough usually happens, and

often at reduced cost to the network.

An overseas experience

In considering the captioning sections of the digital legislation, the federal government looked at overseas models for guidance, particularly those in the U.K. and U.S. The most interesting part of legislation in these countries is that it is framed from the consumers' point of view.

In the U.S., program distributors will be responsible for captioning and meeting the targets. This means that the people creating the program, rather than the individual television station or video outlet, must make sure the programs are captioned. This is when programming goes directly to customers' homes, regardless of the technology used (including cable TV broadcasters). This was issued as a *Federal Communications Commission (FCC) Order 97-9* under the 1996 *Communications Act*.

All new programming in the U.S. (on or after January 1, 1998) must be made fully accessible. "Fully accessible" means 95 per cent of non-exempt programs by 2006 must be captioned. There are also provisions in place to ensure that existing (i.e. programs made before 1998) are also captioned.

The regulators also clarified what they deemed were reasonable exemptions to the FCC rules:

Where there is an economic burden - such as non-English language programming; primarily textual programming; late night programming; station announcements; local programming; non-vocal music programming.

Where the programmer has an annual revenue of less than US\$3 million.

Reduced spending based on a percentage of gross revenues - this was not specified but one Commissioner commented that two per cent of gross revenue being spent on captioning was not unreasonable.

Similarly in the U.K., the revised *Broadcasting Act 1996* stipulates that

all digital terrestrial channels (there may be up to 20) must caption 50 per cent of their programs by the tenth year after transmission starts. This is backed-up by penalties and fines, ultimately leading to cancellation of license for persistent breaches.

Having recently made a visit to the U.S., I was amazed at the choice of programs that I could watch at my own accord rather than having the choice made by television networks that practice routine discretionary decisions on what is feasible to caption and what is not.

On the home front

Back to Australia. The *Broadcasting Services Act 1992*, (Cth) which the new legislation amends, provides for all program standards to be subject to a process of community consultation (sections 123 (4) (b) (iii) and 126). The underlying philosophy is aimed at broadcasters ensuring that community requirements are met. But the phrasing of the legislation has reflected industry lobbying to minimise the cost of the imposition of captions.

Perhaps the most apparent issue in the U.S. legislation is that it has addressed the issue of producers of programs as being responsible for captioning and not primarily the networks. Not only is access improved but choice for consumers is inherently embedded and extended in this legislation. Additionally, exemptions, where granted, are based on true "hardship" provisions where the inclusion of captioning costs may force a program off air, rather than a minuscule dip in the network's operating profit. Feeble excuses to not caption are no longer a defence.

The Australian legislation has only dealt with free-to-air television broadcasters and has provided a one-off captioning quota for analog and digital services. Further, it will possibly take a number of years before all Australians can access the digital arena. In order to progress to the next phase and come closer to our American and British counterparts, we will require more lobbying, more meetings, more position papers and most of all, more publicity. <<

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