

M/C Journal, Vol 19, No 5 (2016)

Video on Demand for People with Disability: Traversing Terrestrial Borders

Katie M Ellis, Mike Kent, Kathryn Locke

Abstract

Introduction

Within Australia, the approach taken to the ways in which disabled people access television is heavily influenced by legislation and activism from abroad. This is increasingly the case as television moves to online modes of distribution where physical and legislative boundaries are more fluid. While early investigations of the intersections between television and the concept of abroad focused on the impacts of representation and national reputation (Boddy), the introduction of new media technologies saw a shifting focus towards the impact and introduction of new media technologies. Drawing on Chan's definition of media internationalisation as "the process by which the ownership, structure, production, distribution, or content of a country's media is influenced by foreign media interests, culture and markets" (Chan 71), this article considers the impacts of legislative and advocacy efforts abroad on Australian television audiences with disabilities accessing subscription Video on Demand (VOD).

Subscription (VOD) services have caused a major shift in the way television is used and consumed in Australia. Prior to 2015, there was a small subscription VOD industry operating out of this country. Providers such as Quickflix had limited content and the bulk of VOD services used by Australians related to catch-up television, user-generated videos on YouTube or Vimeo, or accessing Netflix US illegally through virtual private networks (VPNs) and proxy services (Ryall; Lombato and Meese). VOD is distinct in that it is generally streamed over Internet-based online services and is not linear, giving viewers the opportunity to watch the video at any time once the programme is available. Unlike broadcast television, there is no particular government or corporate entity controlling the creation of VOD. These services take advantage of the time-shifted convenience of the medium. In addition, VOD is typically not terrestrial, traversing national boundaries and challenging audience expectations and legislative boundaries. This research is concerned with the subscriber model of VOD in Australia where subscribers pay a fee to gain access to large collections of content.

This internationalising of television has also offered the opportunity for people with disabilities that previously excluded them from the practice of television consumption, to participate in this national pastime. On an international level, audio description is becoming more available on VOD than it is on broadcast television, thus allowing disabled people access to television. This article situates the Australian approach to VOD accessibility within a broader international framework to question whether the internationalisation of television has affected the ways in which of content is viewed, both at legislative and public levels. While providers are still governed by national regulations, these regulations are influenced by international legislation. Further, the presence and success of advocacy groups to agitate for change has exacerbated the way accessibility is viewed and defined in Australia. The role of the Accessible Netflix Project, in conjunction with changes in the *21st Century Communications and Video Accessibility Act (CVAA)* in the USA, has not only reframed accessibility discourse in the US, but also, as companies such as Netflix move abroad, has potentially stimulated a shift in media accessibility standards in Australia.

We focus in particular on the impact of three new services – Netflix Australia, Stan, and Presto Entertainment—which entered the Australian market in 2015. At the time, Australia was described as having entered the "streaming wars" and consumers were predicted to be the beneficiaries (Tucker). Despite international moves to improve the accessibility of VOD for disabled consumers, via legislation and advocacy, none of these providers launched with an accessibility policy in place. Even closed captions, whose provision on Australian broadcast television had been mandated via the broadcasting services act since the early 1990s, were conspicuously absent. The absence of audio description was less surprising. With the exception of a 12-week trial on the Australian Broadcasting Commission (ABC) in 2012 and a follow up trial on iView in 2015, audio description has never been available to Australian people who are vision impaired.

The findings and methodology of this article are based on research into disability and streaming television in Australia, conducted in 2015 and 2016. Funded by the Australian Communications and Consumer Action Network (ACCAN), the 12-month project reviewed national and international policy; surveyed 145 people with disability; and conducted interviews with media professionals, policy advisors, accessibility advocates, and disabled Australian VOD consumers.

Accessibility Abroad Impacting on Local Accessibility: The Netflix Model

Despite the lack of a clear accessibility policy, Netflix is in front in terms of accessibility, with captions available for most content. Audio description for some content became available in April 2015 shortly after its Australian launch. The introduction of this accessibility feature has been directly attributed to the advocacy efforts of the Accessible Netflix Project, an international online movement operating out of the US and advocating for improved accessibility of VOD in the US and abroad (Ellis & Kent). Similarly, Chris Mikul, author of *Access on Demand*, was interviewed as part of this research. He told us that Netflix's provision of captions was due to the impacts of legislation in the USA, namely the CVAA. The CVAA, which we discuss later in the paper, while having no jurisdiction in Australia, has improved the availability of captions by mandating accessibility abroad. As a result, accessible content is imported into the Australian market.

When Netflix introduced audio description on its original programming, the VOD provider described the access feature as an option customers could choose, "just like choosing the soundtrack in a different language" (Wright). However, despite successful trials, other VOD providers have not introduced audio description as a way to compete with Netflix, and there is no legislation in place regarding the provision of audio description in Australia. People with disability, including people with vision impairments, do use VOD and continue to have particular unmet access needs. As the Netflix example illustrates, both legislation and recognition of people with a disability as a key audience demographic will result in a more accessible television environment.

Impact of International Legislation

The accessibility of VOD in Australia has been impacted upon by international legislation in three key ways: through comparative bench-marks, or industry expectations; via user-led expectations and awareness of differing policies and products; and also through the introduction of international providers onto the Australian VOD market, and the presence of parallel-import VOD services. While international VOD providers such as Netflix and iTunes have officially launched in Australia, Australian consumers, both prior to and after the official availability, often access the parallel USA versions of such services. Lombato and Meese theorise that the delays in content launches between the US and Australia, and the limitations caused by licensing agreements (reducing the content availability) have prompted the continued use of Netflix US and a "kind of transnational shop-front hopping" (126). This is significant for VOD content accessibility as it emphasises the effect of, and disparities in national legislation, whereby the same company provides accessible content only in locations in which it is subject to legal requirements.

Our analysis of international policy regarding the accessibility of VOD has found a varied approach—from a complete absence of accessibility regulations (New Zealand), to a layering of policy through disability discrimination acts alongside new media laws (USA). Additionally, this need to address convergence and new media in media accessibility regulation is currently a subject being discussed at government levels in some countries, primarily in the UK (ATVOD). However, outside of the USA, there remains either a lack of accessibility policies for media, new or old—as is the case in Singapore—or a lack of policies that facilitate accessibility for the VOD market—such as in Australia where a level of accessibility is required for broadcasters and subscription television but not VOD.

While these changes and advancements in accessibility are taking place abroad, the space that online businesses occupy is fluid. The accessibility requirements of physical spaces cross national boundaries, and operate across multiple media and technologies, and thus, multiple media laws. For example, Australian television broadcasters are subject to some captioning requirements, yet VOD is not. Furthermore, catch-up VOD services provided by mainstream Australian television broadcasters are not subject to these laws. While legislation that accommodates convergence and the new digital media landscape is logical (ACMA) there remain few examples globally that have made changes to reflect accessibility requirements in this context. The CVAA in the US is perhaps the most effective to date, specifically addressing the issue of access to modern communications for people with disability.

The CVAA and Captioning

The CVAA seeks to ensure that "accessibility laws enacted in the 1980s and 1990s are brought up to date with 21st century technologies, including new digital, broadband, and mobile innovations" (FCC). The CVAA is designed to be forward-thinking and evolve with changing technologies (Varley). As such, the Act has been distinctive in its approach to accessibility for Internet protocol delivered video programming, including VOD. While full accessibility requirements, such as the inclusion of audio description are not addressed, the Act is considered to be the most accessible globally in its requirements for captioning of all content—specifically, English and Spanish—across cable, broadcast, satellite, and VOD content. VOD apps, plug-ins and devices are also required to implement the complete captioning capabilities, with specific requirements for personalised presentation, colour, size, and fonts. This requirement is applied to video programming distributors and to video programming owners. Indeed, programmers are expected to provide captioning compliance certificates, and distributors are required to report a failure to do so. Quality standards have also been established, with an emphasis not simply on the presence of captioning, but also on accuracy, synchronicity, completeness, and appropriate placement of captions. Despite an absence of similar legislation locally, the impacts of these foreign interests will penetrate the Australian market.

In Australia, the example set by the CVAA has warranted recommendations by the ACMA and Media Access Australia. In a recent interview, Chris Mikul reinforced the position that, in order for the accessibility of VOD to improve in Australia, a similar Act is needed to the one established in the US. According to Mikul, "The CVAA in the US bridges the gap to some extent with captioning, although it doesn't venture into online audio description. [...] We need something like the CVAA here" (Mikul).

Beyond the impact of the CVAA on US VOD programming, the *Americans with Disabilities Act (ADA)* (1990) has been significant in the developing captioning requirements of the CVAA. In 2010, disability advocates seeking more accessible VOD services attempted to prosecute Netflix under the ADA. The National Association for the Deaf (NAD) argued that Netflix discriminated against those with a hearing impairment by not providing closed captions for all content. At this time, the CVAA did not include captioning requirements for VOD providers. Instead, it was argued that online businesses should be considered as a "place" of publication accommodation, and thus subject to the same standards and anti-discrimination laws. Netflix settled out of court in 2012, agreeing to caption 100% of its content by

2014 (Mullin; Wolford). However, a Federal Appeals Court later ruled that Netflix was not a place of public accommodation and therefore did not have to comply with the ruling (Hattem). Notably, during the case Netflix also argued that it should not be required to provide captions, as it was abiding by CVAA requirements at that time.

Accessibility Activism and Advocacy

Advocates for accessibility, such as the NAD, have impacted not only on the legislative framework for VOD in the USA, but also on the international public perception and expectation of accessibility. It is important to note that many of the help forums generated by international VOD providers mix customers from multiple countries, establishing a global space in which requirements, expectations and perceptions are shared. These spaces generate a transnational accessibility, providing an awareness of what provisions are being made in other countries, and where they are not. Orrego-Carmona conducted a study on subtitling for the purpose of language translation and found the globalisation of audio-visual content and international media flows have impacted on the public view of subtitling. Indeed, this finding can be extended to subtitling for people with disability. In the help forums for VOD providers, users identified an awareness of other more accessible media environments (such as whether companies provided closed captions in other countries), the impact of legislation in other countries on accessibility, and how or if international media companies were replicating accessibility standards transnationally.

Social media campaigns, instigated in both the UK and the US are significant examples of consumer and public-led activism for accessibility. "LOVEFILM hates deaf people", #subtleit, launched by the Action on Hearing Loss group in the UK, and #withcaptions, were all effective online campaigns launched by individuals and disability activist groups. In early 2014, comedian Mark Thomas, as part of his show *100 Acts of Minor Dissent*, placed two large posters at the entrance to the offices of Amazon UK stating "LOVEFILM hates deaf people." A subsequent petition through change.com attracted 15154 signatures, asking for rental DVDs that were subtitled to be listed, and all streamed content to be subtitled (<https://www.change.org/p/lovefilm-amazon-prime-video-amazon-uk-please-list-your-subtitled-rental-dvds-and-subtitle-your-streamed-content>). A year later, Amazon increased the subtitling of its content to 40 percent. As of June 2015 the company was working towards 100% subtitling. The petition turned its attention to Sky On Demand, initiated by Jamie Danjoux, a 17-year-old boy with hearing loss (<https://www.change.org/p/sky-enable-subtitles-for-ondemand>), has attracted 6556 signatures. The social media campaigns #subtleit and #withcaptions similarly aimed to target both VOD providers and the government, with the aim for both consistent and compulsory captioning across all VOD content. While UK legislation is yet to specifically address VOD captioning, the subject of accessibility and VOD is currently being debated at policy level. It was also successful in gaining commitments from Sky and BT TV to improve subtitles for their VOD and catch-up VOD programming.

In the USA, The Accessible Netflix Project and founder Robert Kingett have been significant advocates for the inclusion of audio description on Netflix and other US VOD providers. Further, while the Accessible Netflix Project has a focus on the United States, its prominence and effectiveness has facilitated awareness of the accessibility of VOD transnationally, and the group internally monitors and comments on international examples. This group was integral in persuading Netflix to provide audio descriptions, a move that has impacted on the level of accessibility worldwide.

These advocacy efforts abroad have not only included Australian audiences via their invitations to participate in transnational online spaces, but their success also has direct impact on the availability of captions and audio description imported to Australian video on demand consumers.

Conclusion

The national borders of television have always been permeable—with content from abroad influencing programming and culture. However, within Australia, borders have been erected around the television culture with long wait times between shows airing abroad and locally. In addition, licencing deals between overseas distributors and pay television have delayed the introduction of VOD until 2015. That year saw the introduction of three VOD providers to the Australian television landscape: Stan, Presto Entertainment, and Netflix Australia. With the introduction of VOD, it is not only international content that has altered television consumption. Overseas providers have established a firm place in the Australia television marketplace. Even before the formal launch of overseas VOD providers, disabled users were accessing content from providers such as Netflix USA via VPNs and tunnelling services, illustrating both the clear demand for VOD content, and demonstrating the multiple ways in which international legislation and provider approaches to accessibility have permeated the Australian television industry.

The rapid increase of ways in which we watch television has increased its accessibility. The nature of video on demand—streamed online and nonlinear—means that the content accessed is no longer as restricted by space, time and television. Audiences are able to personalise and modify access, and can use multiple devices, with multiple assistive technologies and aids. This increasingly accessible environment is the result of legislative and advocacy efforts originating in other countries. Efforts to improve captions and introduce audio description, while not originating in Australia, have seen improvements to the availability of accessibility features for disabled Australian television audiences. To return to Chan's definition of media internationalisation with which we began this article, a concern with television accessibility while not originating in Australia, has taken place due to the influence of "foreign media interests, culture and markets" (Chan 71).

However, despite the increased potential for full accessibility, there remains deficits. Captions and audio description, the two main features that support the playback of online video content in an accessible way, are not consistently provided. There are no clear, applicable legislative requirements for VOD accessibility in Australia. This must change. Based on our research, change at government, industry and advocacy levels are required in order for VOD in Australia to become fully accessible. Legislation needs to be introduced that requires a minimum level of accessibility, including audio description accessibility, on broadcast television and VOD. Further, governments should work to ensure that PWD are aware of the accessibility features that are provided across all media. For VOD providers, it should be recognised that a significant portion of the consumer base could be PWD, or their families and friends may wish to share in the activity of VOD. Establishing an understanding of the different accessibility requirements may come from hiring specialised accessibility consultants to make platforms accessible and useable for PWD. For consumers of VOD and advocates of accessibility, participation in advocacy efforts that encourage and demand that VOD providers improve accessibility options have been shown to increase accessibility abroad, and should be applied to the Australian context.

References

- ACMA. Australian Government. *Converged Legislative Frameworks: International Approaches*. Jul. 2011. 1 Aug. 2016 <<http://www.acma.gov.au/theACMA/Library/researchacma/Occasional-papers/covered-legislative-frameworks-international-approaches>>.
- ATVOD. *Provision of Video on Demand Access Services: A Report on the Level of Provision by On Demand*. UK: The Authority for Television on Demand, 18 Dec. 2015. 13 May 2016 <http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/accesseuropean/AS_survey_report_2015.pdf>.
- Boddy, William. "U.S. Television Abroad: Market Power and National Introspection." *Quarterly Review of Film and Video* 15.2 (1994): 45-55.
- Chan, Joseph Man. "Media Internationalization in China: Processes and Tensions." *Journal of Communication* 44.3 (1994): 70-88.
- Ellis, Katie, and Mike Kent. "Accessible Television: The New Frontier in Disability Media Studies Brings Together Industry Innovation, Government Legislation and Online Activism." *First Monday* 20 (2015). <<http://firstmonday.org/ojs/index.php/fm/article/view/6170>>.
- FCC. *21st Century Communications and Video Accessibility Act (CVAA) 2010*. USA: Federal Communications Commission. 27 May 2016 <<https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>>.
- Hattem, Julian. "Court: Netflix Doesn't Have to Comply with Disability Law." *The Hill*, 3 Apr. 2015. 20 Aug. 2015 <<http://thehill.com/policy/technology/237829-court-netflix-doesnt-have-to-comply-with-disability-law>>.
- Lombato, Roman, and James Meese, eds. "Australia: Circumnavigation Goes Mainstream." *Geoblocking and Global Video Culture*. Amsterdam: Institute of Network Cultures, 2016.
- Media Access Australia. "Policy and Expectations: What You Can Expect on Free-to-air Television." Australia: *Media Access Australia*, 2013. 27 May 2016 <<http://www.mediaaccess.org.au/tv-video/policy-and-expectations>>.
- Mullin, Joe. "Netflix Settles with Deaf-Rights Group, Agrees to Caption All Videos by 2014." *Arstechnica* 11 Oct. 2012. 1 Jan. 2014 <<http://arstechnica.com/tech-policy/2012/10/netflix-settles-with-deaf-rights-group-agrees-to-caption-all-videos-by-2014/>>.
- Orrego-Carmona, Daniel. "Subtitling, Video Consumption and Viewers." *Translation Spaces* 3 (2014): 51-70.
- Ryall, Jenni. "How Netflix Is Dominating Australia from Abroad." *Mashable Australia* 14 Jul. 2014. 14 Sep. 2016 <<http://mashable.com/2014/07/14/how-netflix-is-dominating-australia-from-abroad/#k19Af70FngqW>>.
- Tucker, Harry. "Netflix Leads the Streaming Wars, Followed by Foxtel's Presto." *News.com.au* 24 Jun. 2015. 18 May 2016 <<http://www.news.com.au/technology/home-entertainment/tv/netflix-leads-the-streaming-wars-followed-by-foxtels-presto/news-story/7adf45dcd7d9486ff47ec5ea5951287f>>.
- Unites States Government. *Americans with Disabilities Act of 1990*. 27 May 2016 <<http://www.ada.gov/pubs/adastatute08.htm>>.
- Varley, Alex. "New Access for a New Century: We Sit Down with Karen Peltz Strauss." *Media Access Australia* 28 Aug. 2013. 27 May 2016 <http://www.mediaaccess.org.au/latest_news/australian-policy-and-legislation/new-access-for-a-new-century>.
- Wolford, Josh. "Netflix Will Caption All Streaming Videos by 2014, per Settlement." *WebProNews*, 11 Oct. 2012. 1 Jan. 2014 <<http://www.webpronews.com/netflix-will-caption-all-streaming-videos-by-2014-per-settlement-2012-10/>>.

Wright, Tracey. "Netflix Begins Audio Description for Visually Impaired." *Netflix*, 14 Apr. 2015. 5 June 2016 <<http://blog.netflix.com/2015/04/netflix-begins-audio-description-for.html>>.