

Netflix Closed Captions Offer an Accessible Model for the Streaming Video Industry, But What about Audio Description?

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Abstract

With user preference driving the digital innovations of televisions, the opportunities for viewers with disability to access television via broadband and digital platforms are profound. Viewers with disability have the potential to experience flexibility in the form of accessibility features such as audio descriptions, captions, lip-reading avatars, signing avatars, spoken subtitles and clean audio. This is especially true as digital television and broadband services converge to deliver television services online through sites such as Netflix. Similarly, with television communication becoming increasingly social, people with disability are mobilizing online to advocate for better television accessibility. While some opportunities for accessibility are not being realised, others are arising through the recognition of people with disability as a niche audience.

Keywords: disability, new media, television.

Introduction

Social model disability theorists define disability as the restriction of activity imposed on top of people who have impairments (see Barnes 1997; Darke 2004; Ellis 2008; Finkelstein 1981; Goggin et al. 2005; Oliver 1996). The problem of disability relates to social barriers such as inaccessible locations, discriminatory attitudes and inflexible practices and procedures. For example, as a visual and audio medium, television is disabling to people who have vision and hearing impairments. People with vision impairment responding to a survey regarding television consumption in the 1960s responded that they did in fact watch television despite 'certain frustrations' (Josephson 1968, cited in Cronin 1998). According to the social model, these frustrations and difficulties are unrelated to a person's inability to see; instead they exist within the technology of television itself and a lack of accessibility to it for people who have vision impairment.

With user preferences driving the digital innovations of televisions, opportunities for viewers with disability to access television via broadband and digital platforms should improve. Viewers with disability have the potential to experience flexibility in the form of accessibility features such as captions, which provide a visual translation for people with hearing impairments, or audio descriptions (AD) which offer accessibility for people with vision impairment by describing important visual elements of a TV show, movie or performance. With digital television and broadband services converging to deliver television online through sites such as Netflix, the opportunity for viewers with disability to experience flexibility in the form of accessibility features is especially promising; however, these opportunities are not always being realised.

Netflix has been the target of a number of interventions by disability activists who note that accessibility features such as captioning and audio description, despite being available on broadcast or DVD versions of media content, are not included in online streaming (Elcessor 2011; Kingett 2014). Netflix has progressively been rolling out captions on streaming video since 2010 and, following a complaint that it was in breach of *the Americans with Disabilities Act* (ADA), agreed to caption 100 per cent of their content by 1 October 2014. Although Netflix attempted to argue that as an online space it was exempt from the ADA, the website and associated services was found to be a ‘place of public accommodation’ and therefore subject to the ADA (Moise 2012). People with vision impairment advocating through the Accessible Netflix Project (ANP) are hopeful that the settlement requiring Netflix to provide subtitles for people with hearing impairment will also see changes in the area of AD, particularly given the industry’s recognition that people with vision impairment represent a niche market opportunity.

As this discussion reveals, the approach most often taken to providing accessibility to audiences with disability is to retrofit existing platforms that had not recognised the importance of disabled audiences from the outset (Elcessor 2011; Ellis et al. 2011; Goggin et al. 2003). Following Elizabeth Elcessor (2011, p. 330), this paper outlines the ‘familiar story’ of the introduction of accessibility features in new media technologies as eventually becoming available thanks to activist critique of industry apathy towards disabled audiences. While audiences with disability have long been disregarded, this paper recognises that different impairments require different adaptive measures, and argues that the importance of AD has not been recognised to the same degree as that of captioning. The paper questions whether recent developments in television may improve the social position of people with disability through a focus on niche audiences and the application of legislation such as the ADA to the online environment.

Drawing on Morsillo and Barr’s (2013) argument that Netflix represents the future of digital television in Australia, this paper considers both the approach that Netflix has taken to television accessibility and the wider implications that changes in television viewing practices could have on the social position of people with disability. Despite the ADA mandate to improve the availability of captions, the ANP reports that Netflix has ‘no immediate plans to add audio description to [their] service’ (cited in Kingett 2014). Like audiences with hearing impairments who launched protests against Netflix for their lack of captions in 2009, the ANP, established in 2013, is critical of Netflix’s lack of AD (a feature available on DVD versions of a number of their releases). In addition to the activism of the ANP, Talkingflix – a new service catering exclusively to viewers with vision impairment – has emerged to capitalise on this niche market by providing an entertainment platform for people with vision impairment to listen to audio-described movies and television series.

Legislation

The US Congress described discrimination against people with disability as a ‘serious and pervasive social problem’ in 1990 as they passed the ADA (cited in Wooten 2012, p. 138). Massive shifts in media and online technologies occurred throughout the same decade with individual judges unsure of how to apply the ADA to the online environment (see Ellis et al. 2011). As technology has continued to evolve, other laws and guidelines have come into effect such as the 21st Century Communications and Video and Accessibility Act 2010 and *the United Nations Convention on the Rights of People with Disabilities*. However, the ADA remains a significant guiding piece of legislation with impacts felt internationally.

The ADA, which was modelled after *the Civil Rights Act* 1964, ‘prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life’ (ADA.gov n.d.). Specifically, it seeks to

remove barriers to the social participation of people with disabilities so they may ‘enjoy employment opportunities, ... purchase goods and services, and ... participate in State and local government programs and services’ (ADA.gov n.d.). While the ADA was intended to evolve with technology and mandated that ‘any place of public accommodation’ must be made accessible to people with disabilities, in 2002 US District Judge Patricia Seitz interpreted the law as applying ‘only to physical spaces, such as restaurants and movie theaters, and not to the Internet’ (Seitz, cited in McCullagh 2002). In short, three approaches have been taken to the applicability of the ADA to the internet. Firstly, some have successfully argued that the ADA does apply to the internet, while others have lost this particular argument, with judges ruling that the ADA does not apply online. The final approach is that the ADA only applies if the internet site acts as a gateway to a bricks and mortar store or business (Goren 2012). Significantly the recent ruling against Netflix could have a major impact on the way this law is applied online (Goren 2012; Mullin 2012; Wolford 2012; Wooten 2012).

Following the ADA, the *Disability Discrimination Act* 1992 (DDA) was introduced in Australia and embraced the same basic principles of disability inclusion. The DDA seeks to provide protection for people with disabilities and their carers by legislating against disability discrimination or the unfair treatment of people on the basis of theirs or a family member’s disability (Australian Human Rights Commission n.d.). Both the ADA and the DDA cover a variety of areas such as employment, education, public accessibility and the provision of goods and services, etc. (ADA.gov 2009; Australian Human Rights Commission n.d.). Both pieces of legislation have been applied to media, television and the internet with varying degrees of success (Ellis 2014b; Ellis et al. 2011; Goggin et al. 2003, 2005; Jaeger 2012).

Captions vs Audio Description: the current state of play

In the US, the *Television Decoder Circuitry Act* that was passed in 1990 was the direct result of the activist intervention of people with hearing impairment (Downey 2007). The Act mandated that televisions with screens larger than 13 inches made or sold in the US have an in-built closed caption decoder chip (Robson 2004), and worked in conjunction with the ADA to ensure access to television for people who had hearing impairment. This legislation and activism also impacted on the provision of captions in Australia through a similar stipulation in the Australian Standards. However, Joshua Robare (2011, p. 554) argues that the *Television Decoder Circuitry Act* unwittingly created a ‘have and have-not dichotomy’ in relation to accessibility for people with different impairments. As a result of the legislation and resulting standards, television broadcasters developed cost-effective ways to caption television content while AD – which is a more complicated process requiring more than one person – fell behind (Mikul 2010). To return to the Australian context, recent changes to the *Broadcasting Services Act* (1992) mandate that captioning be available on 100 per cent of content on Australian broadcast television. However, this ruling does not apply to content rescreened online, and AD is not mentioned in the legislation at all. Indeed, captions available on broadcast content are not included in ‘catch-up’ online screening on any of the commercial Australian free-to-air channels, with the recent exception of Channel 7 who have nevertheless not committed to captioning 100 per cent of content rescreened online (Media Access Australia 2014).

There is currently no AD on Australian television (Australian Government 2013; Ellis 2014a). However, between August and September 2012, a 13-week technical trial of AD was conducted by the public broadcaster, the ABC, to establish firstly how to deliver AD and secondly whether such content was available in Australia or overseas. During the trial 14 hours of audio-described content was aired by the ABC. Lauren Henley, a participant in this trial describes the impacts of AD on her viewing experience:

You might think that missing out on television is no great loss, but it's about more than watching the latest episode of *Days of our Lives*. Like the rest of my friends and family, I want to have choice about what I watch and have the ability to be informed about what is going on in the world. I lost many things when I lost my sight, but one of the things that I lost was social inclusion (Henley 2012).

Several surveys since the 1960s show that people with vision impairment do, in fact, watch television and appreciate the social nature of television viewing (American Foundation for the Blind 1997; Cronin 1998; Ellis 2014a). For example, a US study of AD during the 1980s cites a viewer with vision impairment's description of the experience of watching television with AD:

.... [It was] was very emotional. I found myself pacing the floor in tearful disbelief. It was like somebody had opened a door into a new world, in which I was able to see with my ears what most people see with their eyes (Cronin 1998).

Despite these benefits, the availability of AD on overseas content imported in Australia and discrimination against people with disability being unlawful under the DDA, the Australian government has elected not to continue AD on the ABC or introduce legislation around this accessibility feature.¹ In contrast, other countries such as the UK, US and Canada have governing legislation which outlines minimum requirements for AD. In 2012 OfCom, the independent regulator and competition authority for the UK communication industries, created *The Code on Television Access* to help encourage accessibility for people with vision impairments. Section 8 of this code stipulates AD targets up to a total of 10 per cent of content after five years of broadcasting while still allowing for some exemptions if audience share is less than 0.05 per cent, or where there are technical or financial difficulties (OfCom 2012). Following the introduction of this code, broadcasters began exceeding their minimum requirements with some achieving 100 per cent (OfCom 2013).

In 2000 in the US, the Federal Communications Commission (FCC) directed 'the four big TV networks and the 5 biggest cable networks to show 50 hours of audio described programmes per quarter by April 2002' (Mikul 2010). This was challenged by the Motion Picture Association, with the Supreme Court eventually ruling in their favour. However, in the meantime the networks had already begun to comply with the FCC's mandate. In 2010, *The Twenty-First Century Communications and Video Accessibility Act 2010* restored the rules earlier set up by the FCC to mandate four hours of audio-described content per week (Media Access Australia 2012). Media Access Australia also note that the transition to digital television created some confusion because 'no legislation was introduced to ensure that digital broadcasters transmit audio description as a secondary channel, and no standard for receiver manufacturers was developed' (Media Access Australia 2012). As the familiar story regarding (in)accessibility remains, Chris Mikul of Media Access Australia argues that at \$30 per hour AD costs only \$10 more an hour than captioning. However, he also notes that if a TV network contracted large amounts of AD they would be 'charged a significantly lower rate' (Mikul 2010).

Successive studies suggest that AD will become more widespread following advancements in technology. In the late 1990s Barry Cronin argued that the take-up of television sets with stereo sound would result in more audio-described content (1998), and the recent switch to digital has seen similar celebrations (Australian Communications Consumer Action Network 2012; Ellis 2014a; Utray de Castro et al. 2012). However, with no clear standards or

guidelines in place, the introduction of digital television in the US actually had a detrimental effect on the provision of AD (Media Access Australia 2012). Similarly, where all television sets imported into Australia must have particular captioning capabilities, there are no standards for AD (Mikul 2010, p. 7).

Australian Audiences

Of the 341 Australians with disability who participated in a 2013 survey regarding their television viewing habits, only 71 viewed television online. Further, it was rare for viewers with vision and hearing impairments to engage with this form of television, despite the majority watching broadcast digital television. While 95.2% of respondents with hearing impairments expressed a preference for captioning, 72.4% of respondents with vision impairment agreed that AD would make watching television easier (see Ellis 2014a). Given these responses and the lack of online television accessibility for people with disability, it is important to note that the Australian government in its *Review Into Access To Electronic Media For The Hearing And Vision-Impaired* (Department of Broadband Communications and the Digital Economy 2010) argued that accessibility features would become widespread online and on digital television as a result of industry innovation. By comparison, a recent report by the European Union found that accessibility is more widely available on digital and online television in countries where legislation is in place (Kubitschke et al. 2013).

While Netflix is not legally available in Australia, a number of other VOD services exist and, as Media Access Australia explains, ‘access to this content for people with a sensory impairment is patchy’ (Media Access Australia n.d.). Again, captions are available on some content but audio description is not offered anywhere. Following research that took place between January and October 2014, the Table 1 below outlines the accessibility offerings of VOD services available in Australia at that time.

Table 1: Accessibility on Australian VOD

VOD Service	Accessibility policy	Captions	Audio Description
Ezy Flix (ezyflix.tv) – Television and Movies	No accessibility policy	<p>Some movies are offered with English subtitles and there is a Language and Subtitles tab to allow users to search for movies with subtitles.</p> <p>‘We do have plans to offer closed captioning in the future. However, we do not know the exact schedule when this will be available’ (2014, pers. comm., 23 January).</p>	Not available
Quixflix (http://www.quickflix.com.au/) – Television and Movies	No accessibility policy	<p>Available if provided by studio.</p> <p>‘Our aim is to offer subtitles on as much content as possible. If content with subtitles is provided to us from the studios, we will certainly make these available for our</p>	Not available

		members. Our future plans involve providing as much content with subtitles as possible, on as many devices as we can' (Quixflix 'FAQ' 2014).	
YouTube (http://www.youtube.com/user/YouTubeMoviesAU) – Movies	'Easily add or edit captions for your videos with YouTube's in-line caption editor.' (Google Accessibility 2014) Policy also includes links to automatic captions and qualified caption vendors.	The site has a collection of movies which can be purchased and streamed - many do have the CC logo underneath.	Audio Description is available on some of the user-uploaded content, but not on the movies for purchase.
Foxtel On Demand (television) and Box Office (movies) (http://www.foxtel.com.au/support/ondemand-apps-extras/rent-on-demand-titles-216886.htm#TOC1)	Foxtel are required to caption content on 71 of their channels, although the number of hours depends on the genre.	Some closed captioning available.	Not available
Bigpond TV (http://go.bigpond.com/tv/bptv/) and Movies (http://bigpondvideo.com/)	No accessibility policy	'Bigpond now encodes Titles with Open captioning. These Titles have an OC logo on the cover art, and we also have a dedicated category titled Open Captions.	Not available

		Please note the Open Caption Titles have the captions embedded into the movie file, and cannot be switched on or off.’ (Bigpond ‘Support’ 2014).	
Fetch TV (http://fetchtv.com.au/) – Television and Movies	No accessibility policy	Captions included if they were available in original broadcast	Not available
Apple TV and iTunes	‘Apple TV supports VoiceOver, so if you are blind or have low vision, you can find your favourite entertainment. VoiceOver will tell you what’s on your display and help you choose commands with the included Apple Remote. And Apple TV supports closed captions, so those who are deaf or hard of hearing can enjoy new TV episodes and thousands of movies and iTunes U videos — without missing a word.’ (Apple ‘Accessibility’ 2014)	Captions are available for some movies, TV shows and podcasts.	Some audio description movies available on iTunes

Table 1 Accessibility on Australian VOD

This table illustrates that, as with broadcast television, audio description is typically not available via VOD services in Australia. However, unlike channels 9 and 10 (and until very recently 7), the platforms do make captions available if they were offered in the initial broadcast. In 2013, Media Access Australia argued that due to the increasing migration of Australian television viewers towards online services on a variety of devices, initiatives to introduce captions on all previously broadcast content should be introduced and regulated (Mikul 2013). In the US in September 2012, the *21st Century Communications and Video and Accessibility Act 2010* introduced the compulsory provision of captions on material distributed via the internet that had been previously captioned for TV broadcast. A month later, Netflix lost an ADA complaint against their lack of captioning and were ordered to improve the service (Wolford 2012).

An International Model for VOD: Netflix vs TalkingFlix

Netflix initially launched as an online pay-per-rental digital distribution scheme in 1997 and expanded to monthly subscription in 1999. Their business model is now based on unlimited rentals, no due dates and also employs online streaming. It has developed an extensive personalised video-recommendation system which has allowed it to venture into original content such as *House of Cards*. Netflix members subscribe to the service on a monthly basis and can watch as much as they want, anytime, anywhere, on nearly any Internet-connected screen. Netflix has had a major impact on network television in the US, particularly since venturing into original programming (Lotz 2007). However, Netflix has had a complicated relationship with accessibility, particularly since becoming a streaming-only service. With reports that it could be introduced in Australia in 2014 or 2015 (Bodey 2013; Buchanan 2014; Marshall 2013), Netflix's accessibility policies will have implications for the Australian television landscape.

Netflix famously did not offer captions on their free screening of *The Wizard of Oz* in celebration of the film's 70th anniversary in October 2009 (see Ellcessor 2011; Ellis et al. 2011; Haller 2009; Pham 2010). The availability of the film online was intended to promote Netflix's streaming services, though their streaming software (Microsoft Silverlight) was at the time unable to support captions and the company did not invest in fast-tracking their accessibility investigations. Netflix had also stated in 2009 that they would not air captions until they could 'figure out how to let individual viewers turn them on and off' (Hunt cited in Ellcessor 2011, p. 330). The lack of attention to accessibility caught the attention of people who were Deaf and hearing-impaired who 'sent thousands of letters and emails in the months before the free stream' (Ellcessor 2011, p. 330). The agitation on the part of these viewers with hearing impairment can be seen as a continuation of the advocacy employed by Deaf activists throughout TV's history (see Downey 2007; Ellis et al. 2015). While Netflix made no firm promise to implement captioning on all content (for example, they committed to 80% content by the end of 2011), the National Association of the Deaf (NAD) and the Western Massachusetts Association of the Deaf and Hearing Impaired pursued legal action under the ADA. As a result of the settlement Netflix must:

Maintain on its website (www.netflix.com) a list or similar identification of On-demand Streaming Content with Conforming Captions and Subtitles. Netflix will provide an option to either sort or filter the list by title, year, maturity rating, and genre. Netflix's obligation to maintain this list will expire on October 1, 2014, by which point Conforming Captions or Subtitles will be available on 100% of On-demand Streaming Content (Wolford 2012).

Whereas the NAD responded favourably to the settlement and predicted that Netflix would become ‘a model for the streaming video industry’ (Mullin 2012) resulting in greater accessibility, legal commentators such as Julian Sanchez (2012) and Eric Goldman (2012) criticised the ruling (Goldman 2012; Sanchez 2012). Following law professor Eric Goldman’s warning that the decision could result in a requirement to caption all YouTube videos (Goldman 2012), Sanchez argued the following:

Web sites are not ‘places’ at all, except in a metaphorical sense: They are streams of information transmitted to users. (There is, of course, some physical place where the server is located, but that place is typically not physically open to the public.) The court treats this as a kind of trivial semantic distinction rendered moot by the advance of technology, even suggesting that it would be ‘absurd’ to exempt Netflix and Amazon from the rules written for the local cineplex and bookshop. But there are actually quite a few crucial distinctions between Internet sites and traditional brick-and-mortar businesses, which make it a rather surprising leap to insist that a statute designed for literal ‘places’ naturally extends to the metaphorical digital ‘sites’ that serve similar functions (Sanchez 2012).²

Just as people with hearing impairments mobilised against Netflix in 2009 by sending thousands of emails and letters and eventually leading to ADA action, people with vision impairments have been invited to participate in the Accessible Netflix Project (ANP), which in 2013 initiated a campaign for the VOD service to provide AD (Kingett 2014). The campaign is critical of Netflix’s lack of AD despite its availability on a number of their releases. Robert Kingett recounts Netflix’s statement that ‘we have no immediate plans to add audio description to our service’ in response to the offer that audio-described versions of *Family Guy* be made available free to Netflix if they agreed to develop the technology required to stream it (Kingett 2014). If Netflix does become a model for the streaming video industry as the NAD hope, the issues around consistency of accessibility raised by these disability activists (from broadcast to streaming and the range of available video content) will impact on the Australian television landscape – a media landscape that has not invested in developing the capacity to broadcast accessibility features on broadband-based content (Ellis 2014b).

Kingett explains that one of the main obstacles that he has encountered with Netflix is the question of whose responsibility it is to provide AD. In a blog entitled ‘Netflix keeps refusing accessibility and audio description’ Kingett reveals that after several months of research he discovered that while AD is the responsibility of TV studios, it is Netflix’s responsibility to develop the technology to stream them. He cites an anonymous industry insider:

Moving forward on new T.V. Shows and Movies, it will be the studios responsibility to handle the described video. On older titles the studios, production companies, and networks are all arguing over whose responsibility it is to provide described video, and of course this is nowhere near a resolution. The issue on future shows and movies is also complicated as the work for described video is costly, and there is a writer guild issue, meaning will the Described Video that is being provided for a movie or television show is considered Writers Guild work or nonunion work? Obviously again this is a compensation issue and nothing has been determined as of yet. While this all sounds like a lot, the good that I take away from all of this is that Described Video is on the Studios and Production Houses radar and I’m sure all of this will be settled the next time contract negotiations with the WGA takes place (cited in Kingett 2014).

The ANP are particularly critical of Netflix because it will not look into streaming the already existing audio-described content for viewers who are blind or vision impairment. Following the FCC ruling discussed earlier, audio-described content is available and in use (Roberts 2014). Similarly, while audio descriptions of some films have been created and released on DVDs, for example, this content is not licenced for online distribution at the same time as video content (Cool Blind Tech 2014). Ellcessor describes the failure to introduce accessibility features in new media technologies as a ‘pervasive unwillingness to consider people with disabilities as a central audience’ (2011, p. 330). In the case of Netflix, captions were not prioritised until the ADA settlement, yet the VOD service refuses to consider AD. As a result, Talkingflix – a new service catering exclusively to viewers with vision impairment – has emerged to capitalise on this niche market.

Talkingflix will not produce original AD, instead it plans to licence the already existing content to make it available worldwide to audiences with vision impairment for a monthly fee of around \$10. In an interview with Cool Blind Tech, David Timar, CEO of Crossway Media Solutions, described Talkingflix as seeking to solve a ‘global problem’. People with and without vision impairment can potentially watch TV together without disturbing each other with their specific viewing preferences. As Timar explains:

This means that a blind person can sit down on the couch next to a friend or family member who is watching Transformers on television, and listen to the audio description of the movie without disturbing the others. The way this can be accomplished, is by having our mobile application recognize the movie, load its corresponding audio description track and start playing it back in sync with the original movie. So the movie is playing on the TV, while the user will hear the audio description separately via headphones (David Timar cited in Cool Blind Tech 2014).

This feature offers greater independence to viewers with hearing impairments who have traditionally relied on sighted family members or spouses to explain what was happening on screen (see American Foundation for the Blind 1997; Cronin 1998; Madson 2013).

Niche Audiences

While the news media typically celebrates the potential that digital technologies (including television) hold for the social inclusion of people with disability (Adams-Spink 2004, 2007; Aviv 2009; Fernandez 2013; Laker 2010; Martínez-Cabrera 2010; Salman 2006), theorists within critical disability and internet studies recognise that technologies are not inherently accessible (Ellis et al. 2011; Goggin et al. 2003; Wentz et al. 2013).

Fernandes et al. observe that people with different impairments require different accessibility features (2013). As the television experience becomes increasingly individualised with streaming television, these specific access requirements can potentially be enabled as ‘preferences’ through the affordances of digital broadband televisions (see Centre for Excellence in Universal Design 2014; Fernandes et al. 2013). Television shows are now more widely available through a number of digital platforms such as Netflix, iTunes, Ezydvd.tv and others. Paul Booth cites these newer platforms as evidence that television is ‘never unavailable’ (2011, p. 375). Yet, television has been and remains unavailable to a number of people with disability through a lack of accessibility features (such as AD in particular).

At the same time, television producers are increasingly recognising the importance of smaller niche audiences (Barr 2011; Hartley 2008; Lotz 2007; Morsillo et al. 2013; Napoli

2011; Sepinwall 2012). Napoli describes this new television environment as unconstrained by the physical limits of traditional shop fronts, Cineplex and cable systems. He also recognises that, despite content at times only attracting a small audience, ‘when these audiences are aggregated, they are quite significant’ (2011, p. 59). This new media environment is characterised by choice as people employ a variety of tools to find the content relevant to them. Instead of viewing people with particular impairments as an example of smaller niche audiences, the approach Netflix and others discussed in this paper have taken to accessibility follows a familiar story outlined by Ellcessor:

Having either neglected these audiences or dismissed them as too small to be of commercial importance, Netflix implemented an inaccessible technology. They faced criticism, then overhauled that technology to meet some of the needs of those who demanded captions, though it still has not reached parity with the services offered to hearing customers. This cycle, in which inaccessible technology is met with critique and then overhauled, has been critiqued for its redundancy and expense, both of which could be avoided if the needs of people with disabilities had been taken into account from the beginning of product development (2011, p. 330).

However, this retrofit relates only to captioning and, as the ANP points out, Netflix continues to dismiss audiences with vision impairment, even when AD is available for licencing. The VOD service targets specific and niche audiences through increasingly targeted and extremely precise recommendations such as ‘Dysfunctional Family TV Dramas’ or ‘Suspenseful Buddy TV Shows’ (see Amatriain et al. 2012; Brown 2012; Keating 2012; Napoli 2011). With more than 14 million people in the US and 350 000 Australians reported to have vision impairment (Arlene R. Gordon Research Institute 2014), a recommendation based on the availability of AD could result in a considerable audience.

Significantly, this focus on niche audiences and the successful intervention of Deaf activists in particular could affect the broader issue of accessibility and the evolution of how businesses approach this issue. With ADA experts advising businesses to make their websites accessible following the ruling against Netflix (see Goren 2012), there is hope for those advocating for AD to be considered as important as captions.

Conclusion

When accessibility features such as captioning and AD are not available, television is disabling for people with particular impairments. However, while captioning is a fairly well-known accessibility feature, AD is not as widely adopted nor understood; indeed, in Australia it is not available on television at all. Digital and streaming television affords flexibility regarding the form in which information is presented to the viewer, and should offer significant potential to people with disability who may experience difficulty watching television due to the effects of their impairments (Utray et al. 2012). While the government argues that industry innovation will result in the more widespread availability of accessibility features on digital and online television, the example of catch-up television removing closed captions to stream online suggests that this may be overly optimistic.

The VOD service Netflix is often celebrated as the future of television. Although unavailable (legally) in Australia at this time, Netflix is widely recognised as the industry standard for streaming content. Audiences can watch what they want when they want on a number of different devices, though the company has a vexed relationship with accessibility despite the changing nature of digital audiences. Netflix has been the target of a number of disability activist interventions that note that accessibility features such as captioning and AD are

unavailable online, despite being available on broadcast or DVD versions of media content. Although Netflix has attempted to argue that it is exempt from the ADA because (as an online space) it does not have a physical public facility, the recent settlement requiring that they provide subtitles for people with hearing impairment may see changes in other areas of accessibility, particularly because it offers a new precedent for the application of the ADA to online environments.

Audiences with vision impairment have mobilised under the direction of the ANP to argue for the introduction of AD on Netflix. With Netflix remaining so far unreceptive, another platform – Talkingflix – has emerged with the intention of being accessible ‘from the ground up’ to ‘show an example of how it’s done,’ hoping others may ‘copy’ them (Cool Blind Tech 2014). The ‘Netflix, Talkingflix, closed captioning, audio description’ debate unfolding through streaming television offers opportunity to reflect on this form of television and its relationship with personalisation and mobility. It is clear that online forms of media and entertainment are becoming as important as the bricks and mortar Cineplex, and therefore should be made accessible.

As illustrated by the research into video on demand services currently available in Australia, an environment focused on digital accessibility, niche audiences and consumer choice does not automatically offer great potential for people with disability, although it should. While the online environment may be unconstrained by the limitations of the physical world, we remain constrained by disability prejudice, which is unfortunately replicated online in the construction of inaccessible digital environments.

Notes

1. However, in July 2013 a coalition of viewers with vision impairment lodged a complaint with the Australian Human Rights Commission against the ABC claiming discrimination under the Disability Discrimination Act (DDA) and a breach of the UN Convention on the Rights of People with Disability. While the case has not been settled, a new trial of audio description on the ABC catch up service iview has recently been announced (see Vision Australia, 2014).
2. The warning that requiring Netflix to caption could force all YouTube videos to do this same is ironic given that YouTube already has a captioning service available. Perhaps if captioning were more widely available on VOD services such as Netflix, more YouTube creators would recognize the importance of making these available

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