

ALERT

FCC Releases IP Video Closed Captioning Rules

January 19, 2012

On January 13, 2012, the Federal Communications Commission (FCC or Commission) released a *Report and Order* fulfilling its obligations under Sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). Section 202 of the CVAA directed the Commission to revise its regulations to require closed captioning of IP-delivered video programming that is published or exhibited on television with captions after the effective date of the new regulations. Consistent with Section 203 of the CVAA, the Commission also imposed closed captioning requirements on certain recording devices and equipment that receives or plays back video programming (e.g., smartphones, tablets, DVD players, PCs), so that the apparatus is capable of rendering, passing through, or otherwise permitting display of captions.

The rules are wide-ranging and govern virtually all video programming producers who make content available online-including television stations, broadcast and cable networks and cable systems. The FCC's requirements speak in terms of video programming owners (VPOs) and video programming distributors or providers (VPDs), defined as follows:

- *Video Programming Owner*: "any person or entity that either (i) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol; or (ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a

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distribution method that uses Internet protocol."

- *Video Programming Distributor or Provider*: "Any person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol."

In short, the rules provide that all full-length video programming previously distributed on television with captions must contain captions when it is displayed online via IP. In addition, the rules require:

- VPOs to send required caption files for IP-delivered video programming to VPDs along with program files;
- VPDs to enable the rendering or pass through of all required captions to the end user, including through the hardware or software that a distributor or provider makes available for this purpose
- VPOs and VPDs to agree upon a mechanism to make available to VPDs on an ongoing basis information about video programming that is subject to the IP closed captioning requirements; and
- VPOs to provide VPDs with captions of at least the same quality as the television captions for the same programming, and VPDs to maintain the quality of the captions provided.

Additionally, the Commission adopted the Society of Motion Picture and Television Engineers (SMPTE) Timed Text format (SMPTE ST 2052-1:2010: "Timed Text Format (SMPTE-TT)" 2010) (SMPTE-TT) as a safe harbor interchange and delivery format, but imposed no requirement that all covered entities use this standard.

Importantly, the captioning rules do not pertain to video clips, which the Commission defined as "[e]xcerpts of full-length video programming." The FCC also specified the procedures by which VPDs and owners may petition the Commission for exemptions from the new requirements based on economic burden; made clear that it would not treat a *de minimis* failure to comply with the new rules as a violation; and indicated that entities would be permitted to comply with the new requirements by alternate means, as provided in the CVAA; and outlined the procedures for complaints alleging a violation of the new requirements.

The rules will be phased-in as follows:

- All prerecorded programming that is not edited for Internet distribution and is subject to the new requirements must be captioned if it is shown on television with captions on or after the date six months after the rules are published in the Federal Register;
- All live and near-live programming subject to the new requirements must be captioned if it is shown on television with captions on or after the date 12 months from when the rules are published in the Federal Register;
- All prerecorded programming that is edited for Internet distribution and is subject to the new requirements must be captioned if it is shown on television with captions on or after the date 18 months after the rules are published in the Federal Register; and
- Archival content must be captioned as follows:

- Beginning two years after the publication of the rules in the Federal Register, all programming that is subject to the new requirements and is already in the VPD's library before it is shown on television with captions must be captioned within 45 days after it is shown on television with captions.
- Beginning three years after the rules' publication in the Federal Register, such programming must be captioned within 30 days after it is shown on television with captions.
- Beginning four years after the rules' publication in the Federal Register, such programming must be captioned within 15 days after it is shown on television with captions.

These deadlines will be triggered by publication of the new rules in the Federal Register. We will advise our clients once the dates have been established. If you would like additional information about the closed captioning rules for online video programming, please contact the attorneys listed below or the Wiley Rein attorney who regularly handles your FCC matters.