Communications Law Centre, UTS

Submission to Convergence Review Emerging Issues Paper (No. 1)

31/10/2011
Introduction

The Communications Law Centre responds to the Convergence Review ‘Emerging Issues Paper’ regarding the issue of disability with a separate submission written by Adelaide Ryan, a CLC volunteer who has a profound hearing loss and wears a Cochlear Implant. Despite having a Cochlear Implant, she relies heavily on the use of captions in any content offered by television, DVDs and the Internet.

It has been asserted in various Australian government reports\(^1\) that social inclusion is an essential policy to implement in various contexts such as education, employment, and social interactions to combat economic and social disadvantage in Australia. It also has been maintained that successful inclusion of deaf and hearing impaired people in the mainstream sectors enables them to become “economically self-sufficient adults”.\(^2\)

The United Nations Convention on the Rights of Persons with Disabilities provides an obligation on ratifying states to conform to its principles and to ensure that all communications services and information are accessible to people with disabilities.\(^3\) Additionally, the Commonwealth Disability Discrimination Act 1992 (the Act) was passed with the aim of eliminating discrimination on the grounds of disability.\(^4\) The Act was aimed at eliminating such discrimination ‘as far as practicable’ and also to recognise that people with disabilities have the same rights as the people without disabilities.

In this submission we will be referring to the following two principles from the Emerging Issues Paper:

- **Principle 2:** “Australians should have access to and opportunities for participation in a diverse mix of services, voices, views and information”.

---


Disability Discrimination Act 1992 (Cth) (‘DDA’) s 3(a)(i).
• Principle 8: “Australians should have access to the broadest possible range of content across platforms and devices”.

**Suggested regulatory framework**

Currently, captioning services are not covered by a singular regulatory framework. In the context of television broadcasting, we rely on the provisions in the *Broadcasting Services 1992* (Cth), the Commercial Television Industry Code of Practice and the Australian Human Rights Commission complaint systems as associated with the *Disability Discrimination Act 1992* (Cth).

In the era of media convergence, there is a need to apply regulatory parity to captioning services to ensure that all content is treated equally and is accessible to all deaf and hearing impaired people. Regulatory parity is also important in order to provide fair and effective access to content, and to ensure consistent compliance, fairness, certainty and simplicity with regards to content that is accessed by deaf and hearing impaired people.

**Circumstances where regulatory parity should not apply**

Regulatory parity should not apply where Internet service providers do not provide Australian content.

**Addressing Internet services**

Currently, the main commercial broadcasters are legally obliged to provide captioning on their programs in prime time each day. This obligation should also extend to all platforms that commercial broadcasters use such as the Internet. The ABC captions certain television programs broadcast over the Internet on its iView platform.

To ensure equal access for people with disabilities, any commercial broadcasters providing content to the Australian public should be captured under the same regulatory framework to ensure all content is universally accessible.

Additionally, print media such as the *Sydney Morning Herald* and *The Australian* provide content over the Internet. CLC volunteer Adelaide Ryan typically reads the news via the Internet but is unable to view the audio-visual content because captions are not provided.
The importance of access to content in educational contexts

Technologies with text-based communication aids provide direct access to the English language for the hearing impaired. It has been argued that this captioned audio-visual content allows deaf and hearing impaired people to improve their literacy skills. To this end, Media Access Australia have created a campaign scheme called “Cap That!” a positive national awareness campaign designed to encourage teachers to turn on captions in the classroom to improve learning and literacy for hearing impaired students. In order for the “Cap That!” scheme to be successful in educating hearing impaired students, regulation needs to ensure that all Australian content is accessible to the scheme.

Conclusion

The Communications Law Centre submits that education and social inclusion are critical in the era of media convergence. Australian content needs to be accessible to deaf and hearing impaired people, who are entitled to have access to the same content as anyone else. This includes ensuring that the hearing impaired are able to enjoy the audio-visual content offered via the Internet by Australian commercial broadcasters and media services.

Professor Michael Fraser, AM
Director
Communications Law Centre, UTS

Adelaide Ryan
Researcher
Communications Law Centre, UTS

---
