

**Jurisdictional Review and Regulatory Development regarding Access
to Audiovisual Media Services for People with Disabilities
Final Report**

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A. Executive Summary

This report outlines existing regulatory provisions regarding access to audiovisual services for people with aural and visual disabilities. In a European context, it is clear that the recent update of European Union broadcasting law (in the Audiovisual Media Services Directive) will, in the near future, increase the level of regulation in this area throughout both EU member states and also in candidate and potential candidate countries. In addition, the draft proposals of the update of the Convention on Frontier Television also make reference, for the first time, to the provision of access services for people with hearing and vision disabilities.

To date, however, the research shows that although there may be general legal principles regarding the provision of access to broadcasting service, in practice very few countries have specific regulations in this area. Or often, where they exist there is not sufficient implementation of the regulations. According to the EPRA research, there are plans to develop access obligations on TV broadcasters in Spain and Poland in the very near future, but no details are as yet available. Portugal introduced new obligations in May 2009.

The MeAC study (EC, 2007), in evaluating the level of provision of access services rated the UK, followed by Ireland as scoring highest in terms of the policy environment for promoting access.

Many EU countries do not have any obligations on broadcasters to provide subtitling (including Germany, Spain aside from Catalonia, Hungary, Luxembourg, Poland); or sign language interpretation (Germany, Spain with the exception of Catalonia, Hungary, Luxembourg, Poland, and the Netherlands). In the case of Germany some general provisions have been introduced at state level in Bavaria, Berlin/Brandenburg, Hessen and Northrhine-Wesphalia with the intention of improving provision of broadcasting access services.

Some examples of voluntary approaches are provided in the document. In addition, as regards the success of voluntary versus regulatory approaches, a comparative analysis based on the data of the MeAC (2007) study is included. This shows that in almost all cases, a high or medium level of regulatory provisions leads to a high or medium level of access services.

In general, a priority is placed on provision of services for people with hearing disabilities and there are less provisions or voluntary policies regarding people who are blind or have visual disabilities. Regarding services for people with hearing disabilities, more emphasis is placed on provision of some form of subtitling rather than on signing. Some exceptions to this include Greece and Cyprus, where signing is more prominently promoted. There has been no stated rationale for this approach. It can only be assumed that traditionally people with hearing disabilities have had less access to news media than those with visual disabilities. Exceptions to this do exist however. In the obligations of the UK, Canada and Slovakia, a higher priority is given to audio description than to signing. See section K for more detail.

The provision of audio description is an aspect that is not so widely regulated in either European or non-European states. In the case of EU member states and EU candidate countries this is likely to change in the near future due to the changes in the AVMS Directive. Quotas exist for this in the UK, Ireland, Portugal, Slovakia and Canada. In the US a regulation on this was overturned by an Appeal Court in the 1990s, where the court found that the regulator had overstepped its remit. In May 2009, the FCC established a working Group to investigate accessibility and also issues related to captioning and audio description with the switch-over to digital television.

In Australia, there are currently no requirements on audio description. In April 2008 the government published a discussion paper on audio description, the findings of which have not yet been published. Proposals included adopting a system similar to that in the UK and establishing targets of up to 10% by 2013. The Ofcom (UK regulator – Office of Communications) has launched a consultation (September 2009 to November 2009) as part of its review on access services with one of the areas of focus being that of audio description, and whether or not access obligations need to be increased.

There are quite varied approaches with regard to how channels qualify for obligations – what is termed in the Irish context as the “guiding principles” for establishing obligations. One can assume that each system is established in order to best reflect and accommodate the media landscape. Although it is not always explicitly expressed in the policies (as is the case in Ireland), obligations tend to take into account a variety of factors including the market, technology and digital development.

Distinctions are made between channels: public and private channels, free to air and pay TV, national and community channels, digital and analogue channels, national and foreign channels. Distinctions are made between types of programming: old and new programming, digital and analogue. Criteria taken into account also include: market shares of the channels, and the turnover of the channels. See section K (and table 6) for more details.

In some cases, only public service channels are subject to quotas. In other cases a distinction is made between public and private channels with stronger obligations for public broadcasters. In several countries both types of channels are treated equally. For some jurisdictions a distinction is made between types of transmission platforms. The French and British systems use, in the first instance, a guiding principle of audience share in order to assign obligations.

In Canada, while currently all channels are treated equally, the English language channels formerly had stronger obligations. In the US, the approach taken looks at both the age of the programming and whether programming is analogue or digital. In addition there are different rules for Spanish language programming. These will have to reach 100% of programming in the “new programming” category but have a longer time frame to achieve this than the English language programming.

Of interest is the fact that the French system places obligations on foreign channels available in France, while the UK is considering placing obligations on UK established channels that target other countries. (For more detail on the treatment of second language and foreign language channels, see section I).

For those countries without specific access rules, a variety of other approaches are used. Although this will undoubtedly change as countries implement European Broadcasting legislation. Some jurisdictions require that certain types of programming, such as news and information programmes, are accompanied with subtitles, signing or both, but without specifying an amount or percentage of programming (see table 4). In many jurisdictions, voluntary policies have been developed, mainly by public service broadcasters but also by private broadcasters. In addition, the industry practice code in Australia stresses the importance of raising awareness regarding the existence of such services: broadcasters are encouraged to advertise the existence of captioning on their programmes.

The move from analogue to digital television is a factor that in several countries has influenced policy regarding broadcasters' obligations to improve accessibility. Digital technology provides more capacity for additional services, such as sound channels for audio description etc. This can also be noted in the fact that in many jurisdictions there are higher obligations on digital channels / programming, for example in the Slovak Republic and Australia.

At the same time, broadcasters are facing the challenge and costs of digitising their services and in many countries are still simulcasting in analogue and digital. In the EPRA survey, the issue of costs was noted as a major obstacle to increasing access services. It was noted that for small markets the cost per viewer can be much higher. This was not, however always highlighted as being a problem in smaller countries. Aware of the costs issue, the French CSA has stated in its decision of 26 June 2007 that the sale of a programme (that the broadcaster has subtitled) to another broadcaster shall include the subtitling.

Some examples are noted in the research of funding systems for developing captioning (New Zealand) and the use of programming funding for producing captions (Hungary). For more detail on funding and costs see section H.

B. European and international context

1. Implementation of European Union law: Art. 3c AVMS Directive

The new Audiovisual Media Services Directive¹ now includes an obligation on the provision of access services for people with sensory disabilities. This implies that there will be a development of European standards in this area.

Article 3c: Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

2. Council of Europe

At the Council of Europe, the review of the Convention on Transfrontier Television in the draft proposal² contains a similar article:

Article 7: Access for disabled persons

Parties shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to persons with a visual and hearing disability.

Also, the in the context of a broader approach to improving the integration of disabled people into society have developed an action plan. The Council of Europe Disability Action Plan³ calls on Member States:

¹ **EC (2007)**: Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. **Available [here](#).**

² Council of Europe Standing Committee on Transfrontier Television (2009): Provisional agreement on the draft amendments to the ECTT T-TT(2008)003rev. Available [here](#)

³ Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015. Available [here](#).

“To encourage their broadcasting and related creative industries to ensure that people with disabilities can access broadcasting, films, theatre plays and other arts-related activities in accessible formats which may include captioning, subscript, audio description and sign language.”

3. United Nations

Finally, on a global level, the UN Convention of the Rights of Persons with Disabilities⁴ entered into force on 3 May 2008. The UK ratified this on 8 June 2009, while Ireland has signed the convention but not yet ratified it. The Convention also refers to access to media services for people with disabilities.

Article 30: Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

⁴ United Nations (2008): UN Convention of the Rights of Persons with Disabilities Available [here](#)

C. Note on Methodology

Use of the concurrent EPRA survey on Access Rules

A survey of the EPRA (European Platform of Regulatory Authorities)⁵ member authorities regarding the issue of access rules for broadcasters provides the majority of the information on European countries in this report. This research was completed for the EPRA meeting in Tallinn on May 6-8 2009. Additional information was accessed from the MeAC study carried out for the EU in 2007. Further research on the UK, France and Portugal was carried out for this report.⁶

Other jurisdictions

In addition, the following jurisdictions of the USA, Canada, Australia and New Zealand were examined in relation to these issues. The data on the additional countries was accessed via the regulatory authorities in the USA, Canada, Australia and New Zealand.

D. Overview of Access Rules in European jurisdictions.

Recent research carried out by the European Platform of regulatory Authorities (EPRA)⁷ shows that most European jurisdictions have some kind of provisions dealing with the access for disabled to audiovisual media services within their legal framework.

⁵ Machet, E (2009): Working group on the access by the Disabled to Audiovisual Media Services

Comparative background document: EPRA 2009/04. Available [here](#)

⁶ The EPRA report did not specifically examine definitions of access services i.e. the distinctions between subtitling and captioning, therefore it is not always precisely clear which service is required in the quota requirements for some European countries. Where possible this information has been supplemented.

These include via law, PSB contracts or licensing agreements. The research suggests that there is a gap between general legal provisions on disability and actual regulations outlining obligations for broadcasters. For example in the EPRA study, of the 25 countries surveyed only five had absolutely no obligations in the law, via regulations, license agreements or public service contracts. Many EU countries do not have any obligations on broadcasters to provide subtitling including Germany, Spain (aside from Catalonia), Hungary, Luxembourg and Poland.

The following EU countries have no legal obligations regarding providing sign language interpretation: Germany, Spain (with the exception of Catalonia), Hungary, Luxembourg, Poland, and the Netherlands. In the case of Germany some general provisions have been introduced at state level in Bavaria, Berlin/Brandenburg, Hessen and Northrhine-Wesphalia with the intention of improving provision of broadcasting access services. There are no obligations with regard to audio description in Cyprus, Germany, Greece, Spain, Hungary, Lithuania, Luxembourg, Poland, and the Netherlands. Of these countries Cyprus, Germany, and Greece all have general legal obligations to make audiovisual services accessible.

Due to the changes in the AVMS Directive this is likely to change in the near future. There are plans to develop access obligations on TV broadcasters in Spain and Poland in the near future.

Obligations for broadcasters and distinction between private and public broadcasters

In general one would assume that more stringent access provisions would be placed on public service broadcasters either because of the funding via state budget or license fee, or due to the nature of public service remits. This is the case in Belgium (Flanders), Switzerland, Great-Britain, Norway, Sweden, Slovakia and Ireland. In some countries, only the public service broadcasters have obligations in this area (Belgium (Walloon), Denmark, Italy and Norway).

The Irish rules also distinguish between public and private whereby only the PSB (RTÉ) is required to provide Irish sign language and Audio Description.

As noted in the research carried out for the EPRA, there are several countries that make no distinctions between public and private channels with regard to provisions on access: Cyprus, Greece, France (and more recently the Spanish autonomous community of Catalonia). (For more detail on distinctions between types of channels on which obligations are imposed in European and non-European jurisdictions see section K).

E. Specific regulations in European jurisdictions

The majority of the data in this section was sourced from two reports: EPRA (2009) and MeAC (2007). However, France and the UK were researched separately again for this report and Portugal was examined for this report as new rules were introduced after the publication of the EPRA study. Two countries have very detailed regulatory regimes regarding access to broadcasting services for people with disabilities: the UK and France. The UK system, in particular is similar to the Irish system whereby channels have been required to build up the percentages of services over specific time-frames. The UK and France being large television markets have both created thresholds regarding market shares of channels in order to ensure a fair burden on channels.

1. France

In France, numerous provisions deal with the access to AVMS for disabled people: the law n°2005-102 of 11 February 2005⁸ on the equality of rights and opportunities, the participation and citizenship of disabled persons, introduced measures for the access of deaf or hard of hearing persons. Further to a Conseil Superior de l'Audiovisual (CSA) Decision 26 June 2009⁹, amendments were added to the licensing conventions of commercial channels implementing these provisions. (The CSA is the French broadcasting regulatory authority).

Public service broadcasting contracts (contrats d'objectifs et de moyens) and PSB terms of reference (cahiers des missions et des charges des chaînes publiques) contain provisions for the access of deaf or hard of hearing persons. In addition, the new broadcasting law of 5 March 2009¹⁰, transposes Art. 3c. of the AVMS Directive.

The 2005 law sets public service channels a target of 2010 for all broadcasts to be made accessible for people who are deaf or hard of hearing, excluding advertisements and certain other exceptions, justified by the nature of the programme. In working towards the goal, the legislation establishes increasing annual quotas, measured in broadcast hours, for each of the public service channels. According to CSA data, the number of annual hours of subtitled programming by terrestrial broadcasters has been growing exponentially.

⁸ Law n°2005-102 of 11 February 2005. Available [here](#)

⁹ CSA Decision 26 June 2009

Available [here](#).

¹⁰ Public consultation process on the changes to the audiovisual landscape following the introduction of the law of 5 March 2009. Available [here](#).

As regards private terrestrial channels, the law establishes the same target date of 2010 for channels whose average annual audience is greater than 2.5% of the total television audience. Channels whose average audience share is less than 2.5% of the annual total must undertake to make at least 40% of programming accessible to those who are deaf or hard of hearing, particularly during peak viewing times while ensuring diversity in the programming thus covered. Cable and satellite channels must make at least 20% of programming accessible to those who are deaf or hard of hearing, particularly during peak viewing times while also ensuring diversity in the programming thus covered.

2. United Kingdom

The Ofcom (Office of Communications, the UK broadcasting and telecommunications regulator) has developed an extensive Code on Television Access¹¹ resulting from the Communications Act 2003¹². The code sets targets for all public service channels (Channels 3, 4 and 5 and the BBC) as well as extending obligations to many other channels whether broadcast on digital terrestrial or digital satellite signals.

Table 1: interim annual targets for the provision of television access services with effect from the anniversary of the relevant date (UK)

| Anniversary of relevant date | Subtitling | Signing | Audio description |
|-------------------------------------|-------------------|----------------|--------------------------|
| First | 10% | 1% | 2% |
| Second | 10% | 1% | 4% |
| Third | 35% | 2% | 6% |
| Fourth | 35% | 2% | 8% |
| Fifth | 60% | 3% | 10% |
| Sixth | 60% | 3% | 10% |
| Seventh | 70% | 4% | 10% |
| Eighth | 70% | 4% | 10% |
| Ninth | 70% | 4% | 10% |
| Tenth | 80% | 5% | 10% |

¹¹ Ofcom Code on Television Access Services 2008. Available [here](#)

¹² Communications Act 2003 Available [here](#)

In the case of the BBC, 100% of all output was to have been subtitled from 2008. At least 90% of programmes on the 3rd channels (ITV) and Channel 4 must be covered by 1st January 2010 and at least 80% of programmes on Channel 5 were to be covered by 1st January 2008. Other broadcasters are divided into 3 categories with higher targets set for Level 1 broadcasters - 80% for Level 1 by 2014 compared with 53.33% for Level 2 and 26.66% for Level 3 in the same period¹³.

Ofcom has also set targets for all channels to achieve a level of 10% of programmes to be audio described and 5% of programmes to be signed by 2014. The same target-level exists for public service channels, but the targets were to have been met by the earlier date of 1st January 2008 (see table 1).

The Code was amended in December 2007¹⁴ to reduce the requirements for signing on channels with an audience share of between 0.05 per cent and one per cent, other than public service channels, from January 2009. This was after a consultation that showed that the users were not gaining any particular benefit from the presence of signing on some of the smaller channels. Instead, they would be required to transmit a minimum of 30 minutes of sign-presented programming each month between 7am and 11pm.

¹³ Ofcom list: [TV Channels required to provide access services in 2006](#)

¹⁴ Statement following the Ofcom review of signing obligations: Signing on television: New arrangements for low audience channels. December 2007. Available [here](#)

In September the Ofcom launched a consultation (September 2009 to November 2009)¹⁵ as part of its review on access services. There are three main areas of focus in the consultation:

- the criteria used by Ofcom for selecting those TV channels which are required to provide access services, in the light of the potential impact of both the economic downturn and rising quotas on the range of accessible television services (see also section H on funding and costs);
- whether there is now a case for increasing audio description quotas against the backdrop of developments in technology, and efforts to develop awareness and usage of and access to audio description by people with visual impairments; and
- whether the current exemption from providing access services which is applied to channels targeting areas outside the UK should be re-examined in the light of changing circumstances.

3. Belgium (Flanders)

The new Media Decree (2009) defines audio subtitling, audio description, subtitling and signing.

The Flemish public service broadcaster and the private broadcasters shall make a majority proportion of their programmes accessible to people with a visual or hearing disability. They shall use subtitling, audio description, signing and audio subtitling.

¹⁵ Ofcom: Review of Access Code 2009. Consultation Documents available [here](#)

Between 2007 and 2011 the PSB have to maximise efforts to make its offer accessible for people with a visual or hearing disability. For the hard of hearing people the PSB shall expand its subtitling offer to television programmes gradually to 95% in 2010

The regulations also use an audience threshold regarding private broadcaster obligations:

From 1 January 2010 or after private broadcasters obtain, during six consecutive months an average market share of 2%, they meet the following conditions:

- Full subtitling within 12 months of the main news program.
- Full subtitling of all news programs and 90 percent of the information programs within 36 months.

4. Belgium (Walloon)

In Belgium Walloon, only the PSB is subject to obligations. The regulations specify certain programmes that should be prioritized (information programmes, especially the evening news, and messages of general interest) and subtitling requirements are based on hours of programming.

- Subtitling for 600 hours/year (2007), 800 hours/year (2009) to 1000 hours/year (2011),
- RTBF, (the public service broadcaster of the French speaking community) must promote its subtitling service appropriately to the public
- RTBF must provide a version of the evening news and the youth news with sign language on an alternative platform such as internet, or digital (cable or terrestrial) TV,

- On the main analogue channel, RTBF must broadcast a repeat of this news programme (i.e. live on digital, repeat on analogue)
- RTBF must provide teletext information including job offers.

5. Denmark

The public service broadcaster Danmark Radio (DR) public service contract (2007-2010) has obligations for access services. Specific types of programmes will require subtitled and also accompanied by sign language (see table 4). For example, For digital broadcasting of DR1 and DR2, DR shall provide sign language interpretation of at least 2 of the regular newscasts on DR1 and/or DR 2 during the period from 17.00 –24.00. The PSB is expected to increase its sign language interpretation in relation to the 2006 level. Subtitling should reach 100% by 2012. Trials with technology that produces audio description are also being carried out during this period.

6. The Netherlands

The Dutch system has used a time-frame for development of quotas similar to that in the UK and Ireland.

Since 1 December 2006 public service and private broadcasters are obliged to subtitle a minimum percentage of the (originally in Dutch language) programmes. The obligations regarding subtitling apply to national public service broadcasters (PSB) and national private broadcasters (reach of at least 75% of population).

- The minimum amount of subtitled programmes of national PSB should be: 2008: 80%; 2009: 85%; 2010: 90%; 2011: 95%
- For national private broadcasters the following percentages apply: 2008: 15%; 2009: 25%; 2010: 30%; 2011: 50%

7. Portugal

In May 2009, the Portuguese Regulatory Authority (Entidade Reguladora para a Comunicação Social - ERTC) introduced regulations on access services for the first time. They will be implemented over two time periods between July 2009 and December 31 2012. The Free to Air channels must provide:

- eight hours per week of programmes, fictional or documentary with subtitles between the hours of 8am and 2am,
- three hours weekly of informational, educational, cultural, recreational or religious interpretation programmes with using sign language,
- on a weekly basis, the interpretation (signing or subtitling) of a full-service news of the night,
- thirty minutes per week of fictional or documentary programmes with audio description.

Pay TV channels must provide:

- two hours a week of information programmes with interpretation (signing or subtitling), including,
- on a weekly basis, full interpretation of one of the news services.

Free to air channels will implement this in two stages between July 2009 and December 31 2011.

For the public service broadcasters, the obligations will be included in the public service contract in 2010 for national services, and will be equal to those of the private channels.

The Governing Council of the ERC also recommended that broadcasters continue efforts to adopt new technologies particularly with regard to digital platforms.

The ERC will conduct periodic dissemination of the results of implementation of the Multi-Year Plan and the assessment of these results, as well as its evolution. The Regulatory Board may review, by 30 November 2010 and taking effect from 1 January 2011, all the obligations laid down in this Multi-Year Plan, considering the technological and market developments.

8. Slovakia

In Slovakia a distinction is made between public and private and between analogue and digital broadcasts. From June 2009 public digital broadcasters are obliged to broadcast:

- 20% of its output with audio description,
- 3% with sign language,
- 50% of all programmes of each channel must be subtitled.

Analogue public service broadcasters:

- 25% of all programmes of each channel must be subtitled, and
- 1% of all programmes must be translated into sign language.

Digital private broadcasters:

- 10% of all programmes must be subtitled OR translated into sign language
- 3% of all programmes must be with audio description.

9. Sweden

In Sweden, there are stricter provisions for public service broadcasters. The licensing conditions mention a minimum level of 65% subtitling, with a priority for news, information, cultural content and children's programmes. This covers the period from 2006 to 2009.

The obligations for private broadcasters are more general without any quota requirements: “ a licence to broadcast TV programmes or sound radio programmes other than community radio and local radio may be granted under the condition of the obligation to (...)

4) provide scope for broadcasts that are specially adapted to persons with impaired sight or hearing (and),

5) design broadcasts in a manner that makes them accessible to persons with functional impairments.”

Summary

From table 2, it can be noted that quota systems are very varied between European jurisdictions. The guiding principles by which certain types of channels are given specific obligations vary widely. In some cases only public service channels are subject to quotas. In other cases a distinction is made between public and private channels with stronger obligations for public broadcasters (Netherlands). For some jurisdictions a distinction is made between types of platforms (Slovakia, and Israel). The French and British systems use in the first instance a guiding principle of audience share in order to assign obligations. In the case of the UK, this involves a minimum audience share, after which obligations are equal. In the French case different quotas are assigned according to whether channels are above or below a certain audience share threshold. The UK rules also include the provision that accessibility services costs should not exceed 1% of the broadcasters' turnover.

In France, the CSA in 2007 decided that programmes where the broadcaster has included subtitles must include these subtitles when they are sold to other broadcasters. The French also include a quota for accessibility for the deaf and hard of hearing for channels to which they have not assigned a frequency. See also additional information and comparisons with non-European jurisdictions on funding and costs (section H), minority language programming (section I), monitoring (section M) and prioritising of services (section K).

Table 2: Obligations on access services for channels in European Jurisdictions.

| | | | |
|--|---|--|--------------------------------|
| Netherlands | | | |
| Channel type | National Public | National Private (reach 75% of the population) | |
| Subtitling | 80% by 2008 95% by 2011 | 15% by 2008 50% by 2011 | |
| Czech Republic | | | |
| Channel type | Public | Private | |
| Subtitling | 70% (no time-frame) | 15% (no time-frame) | |
| Belgium Flanders | | | |
| Channel type | Public | Private | |
| Subtitling | 95% by 2010 | For broadcasters with 2% audience share From 1 January 2010 100% within 12 months of the main news programme. 100% news programmes and 90% information programmes within 36 months. | |
| Belgium Walloon | | | |
| Channel type | Public | | |
| Subtitling (priority news) | 800 hours/year by 2009 1000 hours/year by 2011 | | |
| Sweden | | | |
| Channel type | Public | | |
| Subtitling | 65% with priority for certain types of programming (no time-frame) | | |
| Denmark | | | |
| Channel Type | Public | | |
| Subtitling | 100% by 2012 (DR) | | |
| Israel | | | |
| Channel Type | FTA | Cable and Satellite | |
| Subtitling | Lower quota for FTA channels | All recorded programmes with Hebrew and Arabic Subtitling by 2013. All live programmes by 2015 | |
| Portugal | | | |
| Channel Type | FTA | Cable and Satellite | |
| Subtitling | 8 hours of specific types of programming per week | 2 hours of information programming per week | |
| Signing | 3 hours per week | | |
| Audio description | 30 minutes per week | | |
| United Kingdom | | | |
| Channel Type | 80 channels with audience share of at least 0.05% where costs are 1% or less of broadcasters turnover | | |
| Subtitling | 80% by 2014 (beginning with 10% from 2005, ten year period) | | |
| Audio description | 10% by 2014 | | |
| Signing | 5% by 2014 (beginning with 1% from 2005, ten year period) | | |
| France | | | |
| Channel type | Channels with audience share of at least 2.5% | | |
| Accessible to deaf subtitling or signing (not specified) | 100% accessible by 2010 (excluding advertising and other programmes derogations) | | |
| Channel type | Terrestrial with less than audience share of 2.5% | | |
| Accessible to deaf subtitling or signing (not specified) | 40% accessible by 2010 (excluding advertising and other programmes derogations) | | |
| Channel type | Channels not assigned frequencies by the French regulator (CSA) | | |
| Accessible to deaf subtitling or signing (not specified) | 20% accessible by 2010 (excluding advertising and other derogations) | | |
| Slovakia | | | |
| Channel Type | Digital private From June 2009 | Digital PSB From June 2009 | Analogue PSB From June 2009 |
| Subtitling | 10% (or signing) | 50% | 25% |
| Audio description | 3% | 20% | |
| Signing | 10% (or subtitling) | 3% | 1% |

Sources: EPRA (2009); MeAC (2007); relevant national regulators, legislation and regulations.

F. Overview of Access Rules in Non-European Jurisdictions

1. Australia

The Australian system uses three legislative frameworks to regulate access rules for free-to-air television: Disability Discrimination Act; Broadcasting Service Act; Code of Practice.

The Disability Discrimination Act (DDA)¹⁶ prohibits disability discrimination in the provision of goods and services (s24). This has been held to include the broadcast of free-to-air television. In 2008, the Australian Human Rights Commission granted free-to-air stations an exemption from the DDA on the condition that they increase levels of captioning on their primary channels to:

- 75% of programs between 6am and midnight for the year ending 31 December 2009
- 80% of programs between 6am and midnight for the year ending 31 December 2010
- 85% of programs between 6am and midnight for the year ending 31 December 2011

Prior to the exemption expiring on 31 December 2011, the broadcasters must also consult with Deaf Australia and Deafness Forum on issues involving caption quality, total caption levels achieved, caption levels achieved on secondary channels, and further increases after the expiry of the exemption.

¹⁶ The Disability Discrimination Act 1992 (amended 2006)
Available [here](#)

The Broadcasting Services Act 1992¹⁷ (amended 2009) sets captioning quotas for commercial and public broadcasters (ABC and SBS). The act requires that all prime time programmes (6.00pm – 10.30pm) and all news and current affairs programs be captioned. The act no longer limits this to situations where it is practicable and therefore any failure to caption is a breach of the act. The captioning provisions do not apply to community broadcasters or to subscription television.

Quotas only apply when the license holder commences broadcasting in digital. All stations in Adelaide, Brisbane, Melbourne, Perth and Sydney started broadcasting in digital on 1 January 2001. Most other stations were required to broadcast in digital by 2004. In some remote areas not yet receiving a digital service, the local stations do not have to comply with the captioning quotas until they start broadcasting in digital. Quotas also do not apply during a license's first year of operation.

SDTV and HDTV multi-channels do not need to provide a captioning service unless a program has been previously broadcast with captions. Quotas do however apply to simulcast channels.

Exemptions exist for the following:

- Television programs that are not in English or mainly not in English,
- Non-vocal music-only programmes,
- Incidental or background music,
- A live sports program where unscheduled extended coverage displaced a news program.

¹⁷ The Broadcasting Services Act 1992 (amended 2009) - Available [here](#)

The Television Industry Code of Practice¹⁸ places obligations on broadcasters to advertise captioning; establishes procedures for monitoring captioning transmissions; and states that emergency and disaster information must be displayed visually as far as is practicable.

There are no legal requirements to provide audio description on Australian television, although the Government has recently launched a consultation on access and released a discussion paper on Access to Electronic Media¹⁹ encompassing audio description. Although the findings have yet to be published, contributions are pointing towards the UK example and proposing establishing targets of up to 10% of programming by the time the digital switchover is complete in 2013.

Overall the focus of the consultation includes the following issues:

- Current levels of captioning on free-to-air television including digital multi-channels, subscription television, DVDs and films in cinemas, including cinemas in regional areas, in Australia.
- Current levels of audio description on free-to-air television including digital multi-channels, subscription television, DVDs and films in cinemas in Australia.
- Costs of providing captioning and audio description on free-to-air television including digital multi-channels, subscription television, DVDs and films in cinemas, including cinemas in regional areas, in Australia.

¹⁸ Australian Commercial Television Industry Code of Practice 2004. Available [here](#).

¹⁹ Australian Government Discussion Paper on Access to Electronic Media. Available [here](#).

- Appropriate future targets for captioning and audio description on free-to-air television including digital multi-channels, subscription television, and Australian television and film productions made available on DVDs, and films in cinemas.
- The captioning and audio description of advertising content on these media.
- The captioning and audio description of audio-visual content that is distributed via the internet
- The extent to which the quality of captions and audio description can be effectively measured and standardised for different types of content, including 'live' content.

2. Canada

Captioning

The Canadian Radio-Television and Communications Commission set out its policy regarding captioning in Public Notice CRTC 1995-48 and, since 1995, has generally required English language broadcasters to provide captioning on 90% of all programming and 100% of all news (with some exceptions). No distinctions are made between public service and private channels although consideration is given to the means and target audience of the channel when considering exemptions. In 1999 the Commission stated that it felt French-language programming should have similar requirements for captioning.

In May 2007 the Commission announced a new policy with respect to closed captioning²⁰ requiring all English- and French-language broadcasters to provide captioning for 100% of programming, excluding adverts and promos and allowing for exceptions arising from technical malfunctions.

The 100% captioning requirement is not restricted to free to air or public service broadcasters. The Commission believes the rationale behind the captioning requirement extends equally to all broadcasters, including educational broadcasters, pay, pay-per-view and video-on-demand services. The application of this policy will therefore form part of routine discussions when licenses come up for renewal or for initial licensing of new service providers.

Although the Commission is not yet prepared to impose targets on 3rd language programming, it does encourage broadcasters to make programming more accessible and to caption third-language programming whenever possible, particularly when the third language uses the Western alphabet. Third-language broadcasters providing programming in English or French are subject to the same policy requirements for English- and French-language programming. (See section I on minority language broadcasting and access services).

²⁰ Canadian Radio Television Communications Commission (2007): Public Notice CRTC 2007-54 on a new policy with respect to closed captioning. Available [here](#)

Audio description (Described programming)²¹

In 2001, the Commission introduced conditions of licence requiring minimum levels of described programming on licensees of major English-language generalist television stations:

- broadcast two hours per week of Canadian priority programming that is described during prime time in the early years of the licence term, increasing to four hours by the end of the licence term.
- 50% percent of these hours must consist of original programming.
- Described programming must consist of dramas, documentaries or children's programming.

For public service broadcasters the Canadian Broadcasting Corporation (CBC) French-language and English-language and television networks currently do not have conditions of licence requiring the provision of described video.

From 2004, the Commission has, at the time of licence renewal, imposed similar conditions of licence on those analogue and Category 1 English-language pay and specialty services whose schedule is comprised mainly of programming suitable for described video, i.e. drama, documentaries and children's programming.

²¹ The CRTC distinguishes two separate services for blind or visually impaired people. Audi description which involves text on screen being read out; and video description “described programming” which involves visual action being described. Whereas in other jurisdictions, audio-description is the term used for the second service.

In 2009, this policy was updated²². Two new programme genres were added to the list of types of programming: “variety and general entertainment, and human interest“.

In addition, the obligations were extended to French-language services operated by private broadcasters and to the English-language and French-language television services operated by the public service broadcaster CBC. (See under section I for more information on the treatment of minority language broadcasting). The Commission published a list of channels and services and their obligation on the CRTC website in 2009²³

Definitions:

Captioning is the on-screen textual representation of the audio component of a program. It is presented as a banner, usually at the bottom of the screen, and provides a text rendition of all significant audio content, including on-screen dialog, sound effects and non-speech information such as the identity of speakers and their manner of speaking. It is generally made available in a closed format via line 21 of the vertical blanking interval. For persons who are deaf or hard-of-hearing, closed captioning provides a critical link to televised news, information and entertainment. It can also benefit individuals who are learning English or French, helping them to improve comprehension and fluency and can help to improve literacy skills in adults and children who are learning to read.

²² Canadian Radio Television Communications Commission (2009): Broadcasting and Telecom Regulatory Policy CRTC 2009-430: Available [here](#).

²³ [List of services](#) required to provide audio description services

"Video description" or **"described video"** refers to a narrative description of a television program's key visual elements for the purpose of allowing persons who are blind or who have a visual impairment to understand what is occurring on the screen. In providing video description, a narrator offers information on visual cues such as settings, costumes, body language or other purely visual information. (This is what is generally termed audio description in other jurisdictions including Ireland).

3. United States of America

Basic rules requiring all video programming distributors, including cable operators, broadcasters, satellite distributors and other multi-channel operators, to close caption their television programmes were established in 1996. The basic provisions are in The Communications Act 1934 (s713)²⁴, (as amended by the Telecommunications Act 1996) and the related Part 79.1 of the Code of Federal Regulations²⁵ and overseen by the FCC. A transition schedule setting caption quotas for broadcasters was established, though greater time in the transition period was given to Spanish language programming. Different schedules apply to new programming, "Pre-Rule" programming and Spanish language programming:

"New" Programming: As of 1st January 2006, all "new" English language programming, defined as analogue programming first published or exhibited on or after 1st January 1998, and digital programming first aired on or after July 1, 2002, must be captioned, with some exceptions.

²⁴ The Communications Act 1934 (s713), Available [here](#).

²⁵ Code of Federal Regulations - Title 47: Telecommunication (December 2005) 47CFR79.1 Available [here](#).

“Pre-Rule” Programming: Analogue programming that was first shown before 1st January 1998, and digital programming that was first shown before 1st July 2002, are both known as “Pre-Rule Programming.” Pre-Rule Programming that is not exempt from the closed captioning rules must be captioned as follows:

- 1st January 2003, to 31st December 2007: 30 percent of programming per channel per quarter.
- 1st January 2008, and thereafter: 75 percent of programming per channel per quarter.

All **Spanish language programming** that was first shown after 1st January 1998, must be captioned by 2010 with some exemptions. The following schedule applies to Spanish language “new” and non-exempt programming, or programming shown after 1st January 1998:

- 1st January 2004, to 31st December 2006: 900 hours of programming per channel per quarter or all of the new, non-exempt Spanish language programming on that channel, whichever is less.
- 1st January 2007, to December 31, 2009: 1350 hours of programming per channel per quarter or all of the new, non-exempt Spanish language programming on that channel, whichever is less.
- 1st January 2010, and thereafter: 100 percent of all programming, with some exceptions.

For Spanish language “Pre-Rule Programming” (first shown before 1st January 1998) that is not exempt from the closed captioning rules, the following schedule applies:

- 1st January 2005, to 31st December 2011: 30 percent of programming per channel per quarter.
- 1st January 2012, and thereafter: 75 percent of programming per channel per quarter.

The regulation also makes provision for an inquiry into the provision of video description, which it defines as: the insertion of audio narrated descriptions of a television programme's key visual elements into natural pauses in the programme's dialogue.

There are two types of exemptions built into the regulations: Self-implementing exemptions and exemptions based on undue burden. The self implementing exemptions are listed in the regulations, they include programmes between 2am and 6am, captioning that would cost more than 2% of gross revenue, programmes primarily in a language other than English or Spanish and non vocal, music programmes.

If a broadcaster wants to rely on the undue burden exception they must first prove this to the Federal Communications Commission. For undue burden to be proven, captioning must be a significant difficulty or expense. Examples include commercials less than 10 minutes, and programming shown between 2am and 6am.

A Federal Communications Commission ruling requiring major broadcast networks and cable companies in the top 25 TV markets to provide 30 hours of audio description per quarter from April 2002 was overturned by an Appeal Court ruling that the FCC had acted beyond the scope of its remit. Subsequent bills designed to update the FCC powers to adopt audio description rules have failed to pass through Congress. However, in May 2009 the FCC announced the establishment of a working group to study accessibility of television programming for those who are deaf or hard of hearing, or are blind or have a vision disability. The working group will focus on technical issues related to captioning and audio description associated with the switchover to digital television.²⁶

4. New Zealand

In New Zealand, there are currently no obligations regarding the provision of access services. See section H regarding funding schemes for public service broadcasting provision of captions.

Table 3: Obligations on access services for channels in Non-European Jurisdictions

| New Zealand | | |
|--------------------------|---|--------------------------|
| Channel Type | Public Service | Cable and Satellite |
| Subtitling Captioning | No statutory obligations but funding provided by broadcasting commission covering an average of 230 captioned hours per week. | No statutory obligations |
| Canada | | |
| Channel Type | All English- and French-language broadcasters | |
| Subtitling | 100% from 2007 | |
| Audio description | From 2009, a list of services in both English and French Language required to provide audio description on a range of genres. In the first half of the license period for new entrants this must be 2 hours of programming per week during prime time, increasing to four hours per week by the end of the license period. Designated Audio described channel – ‘The Accessible Channel’ | |
| Australia | | |
| | programming | |
| Captioning | all prime time programmes (6.00pm – 10.30pm) all news and current affairs programmes | |
| Channel Type | All Free-to-Air Channels (exemptions) | |
| Subtitling Captioning | 75% of programmes between 6am and midnight for the year ending 31 December 2009 80% of programmes between 6am and midnight for the year ending 31 December 2010 | |

²⁶ The United States legislation on technical requirements of equipment also requires that any television with a screen larger than 13” made in or imported into the country must have the technical capacity to display captions.

| | |
|-------------------------|--|
| | 85% of programmes between 6am and midnight for the year ending 31 December 2011 The captioning provisions do not apply to community broadcasters or to subscription television. |
| Audio description | No requirements, though an ongoing consultation being carried out (2008-2009). |
| United States | |
| Programming type | "Pre-rule" Programming |
| Closed Captions | Analogue programming first shown before 1 st January 1998, and digital programming first shown before 1 st July 2002, are called "Pre-Rule Programming." Pre-Rule Programming that is not exempt from the closed captioning rules must be captioned as follows: 1 st January 2003, to 31 st December 2007: 30 percent of programming per channel per quarter. 1 st January 2008, and thereafter: 75 percent of programming per channel per quarter. |
| Programming type | New Programming |
| Closed Captions | As of 1 st January 2006, all "new" English language programming, defined as analogue programming first published or exhibited on or after 1 st January 1998, and digital programming first aired on or after July 1, 2002, must be captioned, with some exceptions. |
| Programming type | Spanish Language Programming |
| Closed Captions | 1 st January 2007, to December 31, 2009: 1350 hours of programming per channel per quarter or all of the new, non-exempt Spanish language programming on that channel, whichever is less. 1 st January 2010, and thereafter: 100 percent of all programming, with some exceptions. |

Sources: relevant national regulators, legislation and regulations.

As with the European jurisdictions one can note that guiding principles by which certain types of channels are given specific obligations vary widely. In Canada, while currently all channels are treated equally the English language channels formerly had stronger obligations. The Australian system applies only to free-to-air channels and not to pay TV or community TV. In the US, the approach has been taken that looks at both the age of the programming and whether programming is analogue or digital. In addition there are different rules for Spanish language programming, allowing a longer timeframe to achieve 100%.

G. Other Approaches

a) Countries with more General Provisions

Germany (certain states)

In Germany some general provisions have been introduced at state level in Bavaria, Berlin/Brandenburg, Hessen and Northrhine-Wesphalia towards improved provision of broadcasting access services. It merely states that “the public broadcasters should consider accessibility within the bounds of possibility”, and no concrete quota or targets to be achieved have been stipulated. See also the section on provisions on certain types of programming below.

b) Provisions on certain types of programming

In France, the legislation stipulates that channels must allow for access to a diverse range of programmes broadcast, and that peak-time viewing in particular should be made accessible. In Denmark, the public service broadcaster DR must provide sign language interpretation of at least two of the regular newscasts on DR1 and/or DR 2 during the period from 17.00–24.00 on its digitally broadcast Channels. For the majority of countries news and information programming is of the highest priority.

Table 4: Examples of obligations for specific types of programming (largely in countries that have no quota system)

| Programme Types | Countries |
|---------------------------------------|---|
| News and information | Belgium Flanders, Belgium Walloon, Denmark Bosnia and Herzegovina, Cyprus (5 min per day SL or ST), Greece (7 min per day SL and ST), Moldova (20 min SL), Sweden, |
| Election and political party coverage | Denmark (ST and SL) |
| Children’s programmes | Sweden |
| Events / special interest | Denmark (PSB SL or ST), Moldova (20 min SL) |
| Cultural programming | Bosnia and Herzegovina, Sweden |
| Teletext information | Belgium Walloon |
| Talk shows and entertainment | Bosnia and Herzegovina, Greece (4 hours per week) |

Source: EPRA (2009)

c) Voluntary approaches

According to the EPRA (2009) research, voluntary policies regarding the provision of access services exist in (among others) Germany, Spain, Italy, Hungary, Lithuania, Poland, Portugal and Sweden. For example, in Germany both private and public channels have voluntary policies, although most is provided by the public service broadcasters. The PSBs also provide audio description on some programming.

In Hungary, the commercial TV channel TV2 provides subtitling on a voluntary basis: This is funded under a scheme for producing programmes of public benefit (see below). An analysis of the co-relation between regulatory obligations (versus no obligations or voluntary schemes) and the actual provision of access services is provided under section L below on implementation and impact.

H. Funding Schemes and issues of cost

In the EPRA (2009) survey, the issue of costs was noted as a major obstacle to increasing access services. However, only one response, from Norway, specifically referred to the fact that broadcasters operating in smaller markets have higher costs for providing services. For small markets the cost per viewer can be much higher. On the other hand, the Czech Republic response to the EPRA survey described how the provision of access services had become a successful economic sector (as there is now a flourishing subtitling industry in the Czech Republic). For small countries, the costs can be higher due to the fact that the language (for example Norwegian) is not used in any other country (in contrast to Austria, Belgium or Ireland where both programming and services for creating subtitling and other access services can be sourced in other larger markets).

Funding of access services on public service broadcasting programming in New Zealand

Of the non-European jurisdictions, New Zealand does not currently have legislation requiring captioning of television programmes. For the State Broadcaster, TVNZ, captioning is funded by the government funding body known as New Zealand On Air, and currently provides an average of 230 captioned hours of programming per week. (Relevant legislation: Broadcasting Act 1989, Section 36: The Functions of the Commission are: (...) (c) To ensure that a range of broadcasts is available to provide for the interests of (...) iv. Persons with disabilities).

Aims of the scheme:

- To caption a minimum of 90 hours of television per week spread across the three national free-to-air PSB channels.
- The programme choice must provide "continuous coverage" during prime time. This means that from 6pm to 10pm every day there will be at least one captioned programme on air.
- To caption a variety of programmes to suit all tastes.

Priority is given to providing funding for the following types of programming:

- News and current affairs – (currently four daily bulletins plus several weekly current affairs programmes)
- New Zealand produced programmes

- Prime-time programming, especially New Zealand produced programmes, high-rating foreign programmes and movies as they premiere on TV
- Children's programming

The schedules available on the website give an indication of the types of programmes and time slots captioned²⁷. The decision to allocate the funding of captioning of programmes is taken by the broadcaster, via the TVNZ Captioning management group.

Use of the fund for producing programmes of public benefit in Hungary

In Hungary there are no laws/regulations which require broadcasters to make programmes accessible (signing, captions/subtitles, audio description). However, funding is made available (Act 1996. I. on Radio and Television 84. § (2)) to produce programmes of public benefit. Using this TV2 and SINOSZ applied for subsidies for subtitling some of TV2's programmes. MTV, the state television provides sign language interpreting for broadcasting the sessions of the Parliament.

Example of cost assessment from Australian regulator

The Australian government is currently carrying out a consultation on access services. As yet there are no results regarding the process. One of the key issues addressed is the issue the costs of providing captioning and audio description on free-to-air television including digital multi-channels, subscription television, DVDs and films in cinemas, including cinemas in regional areas, in Australia. Their discussion document²⁸ outlines the costs in the Australian market in 2006 for the provision of captioning.

²⁷ See the 'What's on' section at www.tvnz.co.nz/captioning

²⁸ Australian Government Discussion Paper on Access to Electronic Media. Available [here](#).

Table 5. Annual estimated cost of captioning television and film services in Australia

| Service | Cost (Millions) |
|-------------------------------------|------------------------|
| Captions for free-to-air TV | \$14.0 |
| Captions for pay TV | \$1.0 |
| Captions for video/DVD | \$1.5 |
| Captions for television commercials | \$1.0 |
| Captions for cinema | \$0.5 |
| Total | \$18.0 |

Source: 'Listen Hear! The economic impact and cost of hearing loss in Australia', Access Economics, February 2006, cited in the Australian Government Discussion Paper on Access to Electronic Media.

Recommendations of Canadian CRTC regarding costs and funding

In reviewing its policy on “described video”²⁹ the Canadian CRTC stated that it had considered the costs and the benefits of providing described video and the difficult economic environment in which television broadcasters currently operate. It noted potential ways of helping to increase these services:

- The CRTC recommended that producers and broadcasters work together to incorporate described video into the production process.
- The CRTC recommended that the Canada Media Fund make the production of described video a criterion for funding television programmes and that other production funds do likewise.
- The Commission also reminded broadcasters and producers that the production of described video is eligible for federal and provincial tax credits.

²⁹ Canadian Radio Television Communications Commission (2009): Broadcasting and Telecom Regulatory Policy CRTC 2009-430: Available [here](#).

Other references to costs and funding in the policies, reviews and consultations

- Aware of the costs issue, the French CSA has stated in its decision of 26 June 2007 that the sale of a programme (that the broadcaster has subtitled) to another broadcaster shall include subtitling.
- The recent launch (September 2009) of an Ofcom (UK) consultation on the access rules will examine the criteria for selecting channels for obligations in the light of the current economic crisis (among other reasons).

I. Minority Language channels and programming

Examples of countries where minority language channels and programming come under the access obligations are the US, Canada, the UK and Ireland. In the US and Canada, the policies on “second language” programming have recently been changed to place equal obligations on these. Third language programming is generally exempt from obligations, for example in Canada (except where they broadcast English or French programming).

As mentioned earlier the French jurisdiction places quota obligations on channels not licensed in France (foreign channels). The UK Ofcom, in its most recent consultation document, is considering whether channels licensed in the UK but targeting other countries should have the same obligations as those targeting the British market.

Canada

In Canada, from May 2007 the obligations for closed captioning were increased. Both English and French language programming is required to be captioned to a level of 100%. Previously the obligations on French language programming were less than that of English.

There were two reasons for this: in the first place the technology used for live captioning was developed for the English language and does not accommodate the French language very well; in addition, there is a lack of trained captionists for French language programming. Because of this the Commission considered requests to tailor the 100% requirement as necessary. New entrants should also be permitted to request that the obligation be tailored to their specific circumstances, for example, that their captioning obligation should increase to 100% over time.

Any requests for exceptions to the general policy will require the broadcaster to demonstrate, with specific and detailed supporting evidence, including financial information, at licence renewal or initial licensing, that it is impossible for it to meet the 100% captioning requirement and that a tailoring of the requirement is necessary. Third language programming is exempt from obligations, for example in the US and Canada (except where they broadcast English or French programming).

The Commission also proposed the establishment of working groups to be organised by the Canadian Association of Broadcasters (CAB): working groups on captioning for each of the French-language and English-language markets.

In 2009, an update³⁰ was published of the current policy. The Commission noted that captioning technology, including voice recognition software - which is used extensively in captioning French-language programming - had greatly improved: and should no longer be considered a technology in development.

³⁰ Canadian Radio Television Communications Commission (2009): Broadcasting and Telecom Regulatory Policy CRTC 2009-430: Available [here](#).

Therefore captioning technology would no longer be considered as a factor when considering requests by broadcasters, including French-language broadcasters, for exceptions to the policy that generally requires that 100 percent of programming be closed captioned.

In the same policy update, with regard to audio description, the obligations were for the first time applied to French language programming. Here the Commission noted that “the shortage of programming with described video is particularly acute for French-language programming since, up until now, none had been required and none had been provided.”

As noted above under the section “Funding schemes/ costs”, the CRTC suggested several recommendations for increasing the production of programming with audio description.

USA

In the US, there have been different rules in the past for Spanish language programming. Specifically the quotas (for captioning) have been less than that of English programming and expressed in hours per year rather than percentages. This has changed and by 2010 100% of programming must be captioned. The channels have a longer timeframe (8 extra years) to achieve this, than the English language channels.

United Kingdom

In the UK, the Welsh language public service (commercial broadcaster) is considered to be a Level One broadcaster: “this equates to the full current annual targets for subtitling, signing and audio description, as well as any alternative requirements”. In other words S4C has the same obligations as the other main national channels.

J. Developments regarding “must-carry”, teletext and EPGs

In Ireland, in addition to the provisions of the broadcasting and disability legislation, the EPG Licensing policy places a number of requirements on the providers of EPGs. Also the BCI DTT licensing Policy requires the holder of a commercial DTT multiplex licence to carry assistive services.

In Sweden, a recent review of the “must carry rules” resulted in a report presented to government in December 2008: Among the recommendations, the Swedish Authority concluded that must-carry rules should include searchable teletext services and any services that are aimed at increasing accessibility for disabled persons.

In Australia, the Commercial Television Industry Code of Practice, developed by Free TV Australia includes provisions (among others) that deal with closed captioning. Under this code, commercial television licensees will:

- ensure that closed-captioning is clearly indicated in station programme guides, in press advertising, in programme promotions and at the start of the programme
- exercise due care in broadcasting closed captioning, and ensure that there are adequate procedures for monitoring closed captioning transmissions
- provide adequate advice to hearing-impaired viewers if scheduled closed captioning cannot be transmitted.

The Australian Subscription Television and Radio Association (ASTRA) has developed the Subscription Broadcast Television Code, Subscription Narrowcast Television Code and the Open Narrowcast Television Code. Each of these codes includes provisions in relation to closed captioning:

- where closed captioning programming is made available it will be clearly identified with programme schedule information provided to the press and in programme guides.
- when closed captioned programming is introduced, or the range of programmes captioned is extended, the relevant broadcaster will consult with organisations representing the hearing impaired and organisations specialising in providing closed-captioning.

In Canada, Broadcasting Distribution Regulations require operators to carry “described video signals”; however the CRTC has relieved most operators of the obligation to do this with analogue signals. By the end of August 2009, all operators were expected to carry these signals on their digital services.

K. Overview of guiding principles and priority of types of services in establishing obligations

In Ireland, the BCI uses a range of criteria for establishing whether channels: are obliged to provide services; how much (% quotas); by when (time frames):

- The nature of the broadcaster
- The level of development of the broadcaster
- The level of current provision
- The type of programming schedule
- The technical and human resource cost
- The technical capacity

Table 6: Guiding Principles for establishing obligations / Distinctions between types of broadcasters, programming, audiences, income etc.

| Criteria that establish obligations, quotas and time-frames | Countries, detail and nature of obligation (Quotas, Timeframes) influenced by criteria |
|--|---|
| Public and Private Channels | - Public channels only with obligations: Belgium (Walloon), Sweden, Denmark. - Public channels stronger obligations: Belgium (Flanders), Czech Republic, Slovakia. Quotas |
| Free to air and Pay TV | - Israel: there are stronger obligations on cable and satellite channels who are required to have all programming subtitled by 2013. Quotas |
| Digital and Analogue Channels | - Slovakia: distinction between analogue PSB channels (25% subtitling by 2009) and digital PSB channels (50% by 2009). Digital PSB also have obligations for audio description. Quotas |
| National and Community Channels | Community channels exempt in Australia |
| National and Foreign Channels | - France: distinction between channels licensed in France (see under audience shares; 100% and 40%) and foreign licensed channels (20% by 2010). Quotas |
| Minority languages | Israel: Hebrew and Arabic channels (cable and satellite) treated equally (both 100% of programming by 2015). Canada: English and French language channels and programmes treated equally as regards captioning (since 2007) and audio description (since 2009) |
| Old and New Programming | US: distinguishes between old (analogue before January 1 st 1998 and digital before new 1 st July 2002) and new programming (analogue after January 1 st 1998 and digital after 1 st July 2002). Quotas and timeframes |
| Digital and Analogue Programming | As above (re analogue and digital) |
| Recorded and live programming | Israel: For cable and satellite recorded programmes to be 100% subtitled by 2013, and live programming also by 2015. Timeframe |
| Audience Shares | UK: Distinctions between channels based on audience share of at least 0.05% . Quotas France: Distinction between audience shares of 2.5% (100% services by 2010), and those with less than 2.5% (40% services by 2010). Quotas |
| Costs as % of Turnover | UK: Obligations for 80 channels with audience share of at least 0.5% where costs are 1% or less of broadcasters' turnover. Quotas |

There are quite varied approaches with regard to how channels qualify for obligations – what is termed in the Irish context as the “guiding principles” for establishing obligations. One can assume that each system is established in order to best reflect and accommodate the media landscape. Although it is not always explicitly expressed in the policies (as is the case in Ireland), obligations tend to take into account a variety of factors including the market, technology and digital development.

In the US, a similar list of criteria is used in assessing whether channels can be made exempt from obligations, where the channel has to prove the obligations cause an “undue burden”:

- The nature and cost of the closed captions for the programming;
- The impact on the operation of the provider or program owner;
- The financial resources of the provider or program owner; and
- The type of operations of the provider or program owner.

As noted earlier, the public service broadcasters tend to have a higher level of obligation regarding access services than the private broadcasters. In addition it is clear from below that services for the deaf have generally been prioritised over services for the blind (audio description). While it is difficult to establish a rationale for this, it could be assumed that historically people with hearing disability were suffering a greater disadvantage as regards access to news programming. Also, most of the basic obligations on public service broadcasters relate to news programming, particularly where limited provisions exist. However, Canada, Slovakia and the UK have clearly placed audio description at a higher priority than signing, Portugal includes it in obligations.

Table 7: Priority given to types of services (countries with and without detailed obligations)

| | Services for deaf and hard of hearing | | Services for people with visual impairment |
|----------------|---|---|---|
| | Subtitling | Signing | Audio Description |
| Austria | For PSB not specified just "services" for hard of hearing | PSB: Signing on main evening news | None |
| Australia | Obligations require subtitling or captioning | Obligations require subtitling or captioning | None |
| Belgium | Subtitling | | None |
| Canada | Subtitling | | List of channels to provide a certain level for particular programme genres |
| Cyprus | | PSB signing: one news broadcast per day | None |
| Czech Republic | Public and private open or closed captioning | | None |
| Denmark | PSB one evening news subtitled | | None |
| France | "services" for deaf and hard of hearing. No preference | "services" for deaf and hard of hearing. No preference | None |
| Greece | | One news programme per day signing (public and private) and one entertainment programme | |
| Israel | Subtitling Arabic and Hebrew | Signing Arabic and Hebrew | |
| Netherlands | PSB subtitling Private subtitling | | |
| Portugal | 8 hours per week | 3 hours per week | 30 minutes per week |
| Slovakia | | For Digital PSB but less than audio description. | Stronger obligations on Digital PSB channels (20%) than for signing (3%). Obligations for Private digital channels (3%) |
| Sweden | PSB subtitling | | None |
| Switzerland | PSB subtitling 33% Private broadcasters: one programme per week accessible: service type and target not specified. | At least one programme per day Private broadcasters: one programme per week accessible: service type and target not specified. | PSB must provide 2 films with audio description per month. Private broadcasters: one programme per week accessible: service type and target not specified. |
| United Kingdom | 80% | 5% | 10% |
| United States | Closed captions | | None |

L. Implementation and Impact of Regulatory provisions

Of the 25 countries surveyed in the EPRA (2009) report, only five had no reference to any obligations in the law, the regulations, the licensing agreements or the public service contracts (although in the Spanish case these do exist in Catalonia). The MeAC (2007) study notes a substantial lack of availability of key accessibility services across the European Union Member States. Although the Audiovisual Services Directive is expected to make a positive contribution to the provision of accessibility service, the study concludes that further (mandatory) EU-level measures will be needed if sufficient accessibility of TV services is to be achieved across Europe within any reasonable timeframe. The research shows that accessibility services are at their most extensive in countries with high levels of regulation, further supporting the argument that further EU-level measures will be beneficial in this area (see table 4 below).

Table 8: Correlation of regulation of access and actual provision of access (example of subtitling) based on 2007 data of MEAC study

| | Countries with high levels of policy on provision of services* (4 or 5) | Countries with medium level of policies on provision of services (2.5-3.5) | Countries with low level of policies on provision of services (0.5-2.0) | Countries with no policies on provision of services (voluntary only) 0 |
|--|---|--|---|--|
| Public Service Broadcasting | | | | |
| Levels of national language broadcasts in PSB that are subtitled | | | | |
| high (4-5) | UK Canada | US | | |
| medium (2.5-3.5) | Ireland Sweden | Australia Spain France Czech Republic | Belgium | |
| low (0.5-2.0) | | Denmark Italy Austria | Slovenia Slovakia | Germany Luxembourg |
| Commercial broadcasting | | | | |
| Levels of national language broadcasts on commercial channels that are subtitled | | | | |
| high (4-5) | UK Canada | US | | |
| medium (2.5-3.5) | | Australia | | |
| low (0.5-2.0) | Ireland | Spain France | | Luxembourg |

*The high- low criteria here are based on the measurements used by the MeAC study with 5 being highest and 0 being the lowest score (concerning both levels of regulation, and levels of access provisions).

The MeAC study noted that many countries do not directly address commercial broadcasters in their regulations, and there is a lack of response from such broadcasters in the absence of such policy provisions.

The study concludes that a combination of the following needs to be addressed at EU-level:

- Strengthening of the eAccessibility dimension of EU policies on TV services, including appropriate measures to address both public and commercial broadcasters
- Introduction of measures to address accessibility of TV equipment (as well as services)
- Introduction of measures to address new issues posed by digital TV
- Wider, multi-sectoral measures to help ensure coherence across all relevant policy sectors - TV services, TV equipment and, where relevant, the social policy sector which continues to play an important role in relation to affordability and equipment provision in some countries

Accompanying measures to reach, mobilise and increase the capacity of the various stakeholders (industry, users, policy) in this field.

M. Monitoring and assessment

In general, the process of monitoring the provision of services involves a system of self monitoring and reporting by broadcasters, and/or a system of response to complaints.

In the UK, this falls under the remit of Ofcom enforcement team and can be initiated as a result of citizen or consumer complaints or on Ofcom's own initiative.

Broadcasters are required to submit quarterly reports starting from 1 January 2005 to Ofcom; and to keep a recording in sound and vision of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom. Once a new policy and accompanying regulation has been created, a period of compliance promotion commences – ensuring that the stakeholders involved are aware of the regulations. This is an important stage of the cycle; infringement prevention is often quicker and easier than formal enforcement activity. Failure to comply with these rules can lead to enforcement action.

In Canada, broadcasters have to submit for approval by the regulator the details of their own mechanisms and procedures related to the monitoring and quality control of closed captioning. In the US the monitoring of the system is based on a complaints system.

In the recently (May 2009) introduced obligations, the Portuguese regulator (ERC) outlined that the ERC will conduct periodic dissemination of the results of implementation of the Multi-Year Plan and the assessment of these results, as well as its evolution. The Regulatory Board may review, by 30 November 2010 and taking effect from 1 January 2011, all the obligations laid down in this Multi-Year Plan, considering the technological and market developments.

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