



**Before the
 Federal Communications Commission
 Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Internet Protocol-Delivered)	MB Docket No. 11-154
Video Programming: Implementation of the)	
Twenty-First Century Communications and Video)	
Accessibility Act of 2010)	
)	

**REPLY COMMENTS OF
 THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

The Information Technology Industry Council (“ITI”)¹ hereby files these comments in response to the Public Notice released on October 21, 2010 in the above-referenced docket.

The Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)² gives the Federal Communications Commission (“Commission”) the tools necessary to ensure that people with disabilities can share in the rich diversity of communications and video technologies that are being developed today, while at the same time preserving significant

¹ ITI represents over 40 of the nation’s leading information technology companies. For more information on ITI, including a list of its members, please visit <http://www.itic.org/whoweare/2010-member-companies>.

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the Accessibility Act and the amendments made by that Act).

technical and business flexibility for private enterprises. ITI's members share this balanced goal with the President, the Commission, and the hundreds of members of Congress who supported this legislation. ITI welcomes the opportunity to respond to some of the questions raised in the Notice of Proposed Rulemaking.

To facilitate a review of the ITI comments, we reference the relevant paragraphs from the Notice. Our responses follow:

Paragraph 15: The Commission definition of a video programming distributor (“VPD”) should specifically note that product manufacturers which merely provide a link to connect video programming content delivered using Internet Protocol (“IP”) are not considered VPDs. The entity which licenses and delivers the video programming from a video programming owners (“VPO”) should be considered a VPD. Such information location tools which an apparatus manufacturer may provide to access the services of a VPD are exempt from liability under CVAA Sec. 2(a).³

Paragraph 16: Consistent with the need for flexibility, VPDs and video programming providers (“VPP”) must retain the freedom to make design decisions as to their own web sites, and the Commission should not regulate any rigid layout elements.

Paragraph 17(2): The Commission’s Video Programming Accessibility Advisory Committee (“VPAAC”) report recommended that: “For Internet-delivered caption content, the positioning information as originally authored shall be made available to the consumer device.” This means made available by the VPO/VPD/VPP to all devices. In some cases, such as with small screen displays, it may not be achievable to position the caption content as designed by the VPO, due to the relative size of the text. The captions may end up blocking the video image, or be rendered

³ CVAA § 2(a) (limitation on liability) provides that “no person shall be liable for a violation of the requirements of this Act ... to the extent such person,, provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such video programming...”

so small as to be unreadable.

Paragraph 20: ITI agrees with the comments of the Consumer Electronics Association that “The Commission should explain that its regulatory authority under the CVAA does not extend to fixed-media (DVD, Blu-ray Disc™, and any successor format) players that only provide playback capability of video programming contained on fixed media.”⁴ The CVAA directs the Commission to narrowly prescribe regulations that “include an appropriate schedule of deadlines for the provision of closed captioning of video programming once published or exhibited on television.”⁵ Packaged media such as feature movies] that are equivalent to as DVDs and Blu-ray Discs™ may also be distributed by electronic means. Such packaged video content that is sold via electronic sell-through and that were not published or exhibited on television should thus not subject to the CVAA, despite being distributed electronically.

Paragraph 21: ITI supports the Commission’s decision to apply the requirements of Section 202(b) solely to full-length programming and not to video clips or outtakes. This approach appropriately reflects the statute’s definitions and scope provisions. Consistent with these definitions, we encourage the Commission to clarify that music videos are “video clips” because they form the building blocks of full-length programming. Further, defining “video programming owners” (VPO) as the copyright holder of video programming is essential to ensuring that the VPO has the necessary rights to caption the programming. Regardless of how captioning responsibilities are assigned between VPOs, VPPs, and VPDs, such responsibilities must extend only so far as the programming in question meets the Commission’s proposed definition of “video programming.” The CVAA does not provide authority to go further.

Paragraph 22: ITI agrees with the Commission that “the best reading of the statute requires closed captioning on IP-delivered video programming that was published or exhibited on television *in this country* with captions after the effective date of the regulations.” We also agree

⁴ CEA Comments at 13.

⁵ CVAA § 202(b).

that “the differing caption standards in foreign countries could hinder the process of transferring those captions to a suitable format for U.S. consumers.” To do otherwise could also create the potential risk that other governments would seek to impose their captioning standards on U.S.-originated content. Ultimately, we expect that global voluntary standards will be developed that will help facilitate consistency worldwide to the extent possible.

Paragraph 24: ITI supports the Commission’s proposal to define “live programming” as programming that is shown on television substantially simultaneously with its performance. ITI also agrees that live programming should not be captioned. Live streaming over the Internet alone does not constitute “live programming” in the context of CVAA and is not subject to CVAA

Paragraph 40: In previous filings, ITI recommended that the Commission consider the inclusion of reliable, widely-adopted standards and technical specifications as “safe harbors” for achieving compliance with the provisions of the CVAA.⁶ W3C and SMPTE are examples of reliable standard bodies capable of producing suitable standards and specifications that meet the functional requirements for use as a potential safe harbor. SMPTE-TT, which originates from W3C TTML, is an appropriate example of a standard that ITI would recommend for consideration under a safe harbor designation. Along the same line, similar considerations should be granted other non-proprietary interchange and delivery formats that were already implemented in products being sold in U.S. markets prior to the enactment of the CVAA. ITI supports the conclusion of the VPAAC that standards for captioning be developed within an open, transparent process by recognized industry standard-setting organizations, including fora and consortia, with participation open to any interested party.⁷ Generally, ITI agrees with the

⁶ For example, see *Notice of Ex Parte*, Comments of the Information Technology Industry Council in response to the Federal Communications Commission Notice of Proposed Rulemaking on Advanced Communications Services, GH Docket No. 10-145 (<http://fjallfoss.fcc.gov/ecfs/comment/view.action?id=6016826922>), August 29, 2011.

⁷ It is important to note that the terms “standards” and “recognized industry standards-setting organizations” as used in the VPAAC report are intended to have the same meaning as the terms “voluntary consensus standards” and “voluntary consensus standards bodies” as defined in OMB CIRCULAR NO. A-119, Revised (http://standards.gov/standards_gov/a119.cfm#4).

Commission that it would be premature for the agency to mandate a particular standard for the interchange format or delivery format of IP-delivered video programming subject to Section 202(b) of the CVAA.

Paragraph 41: The Commission should clarify in its Order that a one-time, unintentional machine or software failure constitutes a *de minimis* violation, and allow the manufacturer the opportunity to remedy the violation rather than automatically trigger an enforcement action and/or corresponding fine.

Paragraph 42: As recommended by the VPAAC in its report (page 17), the Commission should require that “any additional delivery formats used are based on standards developed within an open process by recognized industry standard-setting organizations.”

Paragraph 50: In the context of waivers, the Commission should look at how the product is marketed and designed. ITI agrees with the Consumer Electronics Association that “the Commission should look at the “core” function of the apparatus, as *intended by the manufacturer.*”⁸ For example, if the device contains an interface that permits connection to a television or computer monitor (e.g., HDMI), but the device is primarily designed for purposes other than receiving or playing back video programming, then the device should not be defined to be an apparatus and subject to the CVAA.

Paragraph 51: “Apparatus” as used in Section 203 includes only physical devices (including software or other component aspects where bundled with the physical device) as regulated devices. It does not mean stand-alone software. The plain meaning of “apparatus” and provisions in Section 203 support this conclusion. Because Section 203 applies to an “apparatus,” Commission authority to require compliance properly extends only to the manufacturer of that apparatus. Nevertheless, the effect of the Commission’s rules will be to ensure that software makers and other makers of components for physical devices will help solve

⁸ CEA Comments at 17.

the problem of ensuring devices meet the standards the Commission will establish. We also urge the Commission to adopt a 2-year transition period prior to enforcement, i.e., similar to that which was adopted for advanced communications services under Section 716.

Paragraph 52: The Commission points out that the CVAA provides that “any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements” to display or render captions and we subsequently propose adopting this exception as written. ITI agrees with the Consumer Electronics Association that “display -only video monitors” are not only computer monitors, but include any video display screen or video projector that does not include a television tuner or that requires a separate source device to render the video content.”⁹ Display-only video monitors are not capable of decoding a compressed video transport stream delivered via Internet Protocol. Internet Protocol transport requires a compressed video transport stream due to bandwidth constraints. ITI supports CEA’s recommendation that “any device which is only capable of displaying an uncompressed or “baseband” video signal therefore falls within this exemption.”¹⁰

Paragraph 53: ITI supports using the definition of achievability in the CVAA. The analysis will need to be done on a case-by-case basis.

Paragraph 54: ITI agrees with the Consumer Electronics Association that “the captioning capability requirements apply only to apparatus *designed* – and thereby intended – by manufacturers for receiving, playing back, or recording video programming.”¹¹ For example, an external USB-connected hard drive or other storage device including SD memory cards used for storage of data should not be covered. The device which writes the video content to such external storage devices may be covered if it permits receiving or transmitting programming.

⁹ CEA Comments at ii.

¹⁰ CEA Comments at 16.

¹¹ CEA Comments at 12.

Paragraph 54: Products that implement multipurpose DLNA protocols should not be covered except those that are primarily designed and marketed to record video content. For example, a general purpose PC with DLNA should not be considered a video recorder unless it includes video recording software when sold.

Paragraph 55: In this paragraph, the Commission asks a number of important questions. We repeat the questions below, and include our responses and recommendations:

- The Commission seeks input on the CVAA objective that “interconnection mechanisms and standards for digital video source devices [be] available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions.” Specifically, the Commission asks if it is sufficient to require that intermediate devices, such as set-top boxes and digital video recorders, be capable of conveying closed captions to display devices and to assume that standards for interconnection will be developed as necessary.”

Response: Yes, ITI believes this is sufficient.

- Is it sufficient to require that intermediate devices, such as set-top boxes and digital video recorders, be capable of conveying closed captions to display devices and to assume that standards for interconnection will be developed as necessary?

Response: Yes, ITI believe that this approach should be sufficient.

- Does the Commission need to extend its regulations to manufacturers or standards bodies that develop and deploy these interconnection mechanisms to ensure that they are capable of conveying closed captioning information? Should the Commission take a more active role in requiring a particular standard?

Response: No. ITI believes that the market will respond to this need by virtue of the necessity to comply with the new law.

- We additionally seek comment on what specific connections Congress intended to be covered by this provision. For example, component video connections and HDMI, used to transmit high definition video signals from a set-top box or computer to a television or monitor, do not carry closed captions. However, based on our requirements, those devices connected to the television or monitor via HDMI or component video would be required to render the captions prior to transmitting the video signal.

Response: ITI does not have a specific comment, other than to note that, for display-only monitors, interfaces that only provide open captions embedded in the video content are adequate and necessary for providing captions on display-only video monitors.

- Did Congress intend to cover home networking connections, such as WiFi or Multimedia over Coax (MoCA), and if so, should we instead direct our attention to the protocol suites which use these interconnection technologies, such as DLNA?

Response: No, we do not believe Congress intended to cover WiFi networks. WiFi devices do not meet the definition of an apparatus. Regarding MoCA, captions are already carried by DLNA protocols, which work over any Internet Protocol network.

- We seek comment on what it means to carry the necessary information to “permit or render the display of closed captions” and what existing technologies satisfy this requirement.

Response: ITI believes that interconnection mechanisms which “permit or render the display of closed captions” include those that carry either the caption data itself to enable the display to *render* the captions OR those that carry the captions in open format (e.g. HDMI) that permit the display-only monitor to *display* the captions.

In closing, we note that the Commission raises the issue of enforcement in paragraphs 16, 36 and 45. Regarding the topic, and the corresponding prospective fines for failure to adhere to the law and regulation, we note that the Commission often uses its discretion when instituting fines and there should be no difference with respect to closed captioning. Rather than adopt a \$10,000 flat

fee fine, ITI recommends establishing a range going no higher than \$10,000, with the Commission determining what would be appropriate in each given case.

This concludes ITI's comments on the referenced rulemaking. We would welcome the opportunity to meet with Commissioners and staff to respond to any questions or provide greater detail regarding our comments and recommendations.

Respectfully submitted,
/s/ Ken Salaets
Ken Salaets
Director, Global Policy

Information Technology Industry Council
1101 K Street, N.W.
Suite 610
Washington, D.C. 20005
202-737-8888

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