

**LILY BOND:** Welcome everyone, and thank you for joining this webinar entitled FCC Requirements for Closed Captioning, How Some Networks are Staying Ahead of the Curve. I'm Lily Bond from 3Play Media and I'll be moderating today. And I'm joined today by Peter Bothe, who is the director of operations at Time Warner Cable SportsNet, and by Maria Browne, who is an attorney at Davis Wright Tremaine LLP, specializing in communications laws.

We have about 45 minutes for this presentation and 15 minutes for Q&A. Great. So I am going to hand it off to Peter now. And he is going to present to you a little bit about Time Warner Cable SportsNet.

**PETER BOTHE:** Great, thanks so much. As Lily mentioned, I'm Peter Bothe. I'm the direct of operations for Time Warner Cable Sports. We're based in Los Angeles, California.

A little background on our business-- we actually are comprised of three regional sports networks. October 1 of 2012, we launched Time Warner Cable SportsNet, and in parallel, Time Warner Cable Deportes, which was the first ever Spanish language regional SportsNet in the US. Those two networks are a result of a 25-year partnership with the Los Angeles Lakers.

In addition to a long-term relationship with the Lakers, we also have relationships with the Los Angeles Sparks WNBA Team, the LA Galaxy, MLS soccer team, West Coast Conference college basketball, and then Mountain West college football. In February of 2014, we launched Time Warner Cable SportsNet LA, which is a partnership with the Los Angeles Dodgers. It's all Dodgers all the time.

And basically, for all three networks, the programming position is that the game is the heart of our viewership. The shoulder programming is where we see most of our eyeballs. So whether that's pre-game, halftime, post-game, or any type of original programming that we premiere as a companion piece to a game, that's where we see we drive most of our viewership. We also do make nightly studio shows, as well as a considerable amount of docu-reality original programming, reality shows, contest shows, and historical type programming.

So one of the things that we realized as we were launching this company-- and the nice thing about being a startup in the broadcasting space-- was that we were able to build a facility that was agile. We had no legacy systems. We had no previous requirements, I guess would be the best way of looking at it. And one of the things that we knew going into things was that the

viewer viewing habits are changing.

Over the last four or five years, people consume their content in a new way. And really, they do it-- I like to call it the Burger King way. They have it their way. They want to consume content on their own terms.

And in recognizing that, we at Time Warner Cable Sports actually view providing captioning and subtitling as really a means of supporting that shift. People might watch TV at night. There's time shifting that's happening. People watch things on their DVR.

But also, you might be laying in bed, and your spouse is next to you. They're asleep. And you get to have that 30 minutes to watch that biography program. Well, you don't want to disrupt your spouse.

So we've been committed to captioning, and well ahead of our FCC mandated requirements, since day one. And the reality is that our organization views FCC compliance as an ancillary benefit. We think that providing highly accurate captioning actually supports our promise to the viewer to actually consume the content when they want it, how they want it, wherever they want it.

Great. So currently-- and again, we are in a special category, because we are a newly launched network. And so our requirement for co-opting and complying with FCC mandates-- we're still ahead of the calendar. We actually don't have to be compliant until October 1 of 2016, unlike many companies where you're fast approaching a deadline.

But our current approach is that we do real-time captioning for all games, pre-game, post-game, halftime shows, both in English and in Spanish. And then any of our acquired programming, licensed programming, syndicated programming, we acquire that with captioning files included. It's a deal breaker for a vendor or a distributor provide the material to us without the captioning file.

I strongly recommend that your programming people take that approach. If they don't, it's pretty common. But it still shouldn't happen.

And then lastly, all of our original programming, which really is core to our brand position, we leverage 3Play's technology. We're really, really big fans of the rapid turnaround and accuracy and quality, combined with the truly best in market pricing. It does set them apart. And we couldn't be happier.

And so lastly, in terms of our web and user-authenticated streaming and VOD strategy, as I mentioned, we do have a different deadline than other people. It's 10/1 of this next year. And the things that we're doing in our roadmap involve updating our media player and site and apps to support real-time and offline captioning, and then really working closely with 3Play as well as our asset management system, our vendor, as well as Harris, who handles all of our master control playout, to integrate a workflow, to automate the workflow so that any short form material, anything that we're publishing to a VOD partner, we're automatically able to leverage the existing captioning content that already existed.

Our viewpoint as a company is that automation has a myriad of advantages. The two most specific are there is an opex benefit. You can lower your cost of ownership by automating. And then by removing human error, you benefit from not making mistakes. And obviously, from a completeness and accuracy standpoint, for FCC reasons, making sure that you work clean and work of the highest quality is critical.

I guess I think it's worth saying that-- and the poll probably suggested this-- there isn't really best practice in the marketplace at this point. And so I think that as we all move forward in our kind of operational capacity in the broadcasting space, it's important to know that there really isn't a best practice at this point. But together, hopefully many of us can collaborate and come up with the best way to do this.

We do, at my company, believe that working with 3Play to automate and to really leverage their algorithms is the way to go. And we encourage other people to do so. I think that's where we'll leave off.

**LILY BOND:** Great. Thank you so much, Peter. And thank you for the kind words. Maria, I'm going to hand over the presentation to you. And Maria's going to give a really well-thought-out presentation about the legal requirements for closed captioning of online video.

**MARIA BROWNE:** Thank you, Lily. Can everyone hear me OK?

**LILY BOND:** Yeah, you sound great.

**MARIA BROWNE:** OK. And you should be now able to see my screen.

**LILY BOND:** Yeah.

**MARIA BROWNE:** OK, great. So good afternoon, everyone. Or for West Coasters, I guess it's still morning. My name is Maria Browne. I'm an attorney with Davis Wright Tremaine. I've been practicing law for longer than I care to admit. And I've been advising clients on accessibility matters since they were imposed by the '96 act.

And then more recently, we had the 21st Century Communications Video Accessibility Act, which was passed on the anniversary of the Americans with Disabilities Act. It was the 20th anniversary, actually, and was Congress's effort to ensure that persons with disabilities have access to new technologies, primarily those delivered over the web, over the internet.

So let me see. For some reason this is-- oh, there we go. So what we'll cover today-- we will focus initially and primarily on closed captioning requirements for internet protocol delivered programming. And that is the programming that's required to be captioned by the 21st Century Communications Act that we mentioned before.

I may revert to the initialism for that phrase, which we refer to as the CVAA, during this presentation. I will also talk a little bit about the possible implementation by the FCC of online video description requirements, and then finally, the recent rules that do require making online emergency information available to consumers in an accessible format.

So online closed captioning-- so what's covered? What are you required to caption online under the Communications Act, the CVAA? Under the CVAA and FCC implementing rules, you're required to caption full-length programs once those programs are exhibited on television in the United States with captions, whether the captions were provided because you were obligated to provide them under the television rules or if they were provided voluntarily.

So once they're on television with captions and then that programming is retransmitted via IP, that IP delivered programming must include captions as well. That is true regardless of who distributed the programming online first with caption-- I'm sorry, on television with captions-- and who is then distributing it online with captions.

So it's for third party websites as well as, for example, if a programmer itself were to transmit the programming to a distributor in the US that's then distributed online with captions, and then that programmer puts the same programming online. Then it has to be captioned.

So full-length programming, that is different than what is referred to commonly as clips. Clips is anything short of a full-length program. The FCC initially stated that it would not obligate

entities to caption clips, that it was limiting its rules to full-length, but then subsequently changed course and now does require clips to be captioned.

That order was issued in the middle of last year. And the first effective date for requiring the captions is actually in January of 2016, so less than a month away now. And that applies to straight lift programming.

So if you take a portion of a full-length program, and it's from one point in the program to a second point in the program, and you lift that out, and you redistribute it online, that has to be captioned now. So you'll see that's regardless of whether it's a 10 second clip or a 10 minute clip. The commission said they weren't going to distinguish based on the length of the clip.

But this only currently applies-- unlike the full-length programming requirements, this only applies to programming that is distributed by the same entity on television, but then distributes it online via its website page or an app. So for example, if a program network were to distribute the television programming with captions and then distribute it on its website or on an app with captions, or an MVPD-- an MVPD is the initialism, for those who don't know, for Multi-channel Video Programming Distributor. It encompasses DBS-- Direct Broadcast Satellite-- as well as cable companies.

So if one of them were to distribute programming with captions over television or over their managed cable system, and then distribute that same programming on its website or via an app to a phone or an iPad or a tablet of any kind, that would then also have to be captioned. The clips would have to be captioned. So third party apps or websites currently for clips are not covered. That's the subject of a further notice of proposed rule making at the FCC. full-length programming, on the other hand, it doesn't matter where it was distributed initially or where it's being put up online, who is doing it. It has to be captioned.

It's really important, I think, to understand the rules governing television captioning to be certain that you're meeting your requirements for online distribution because they are tied together. So if particular programming is exempt from the television requirements, then it will not be shown on television with captions. And so then you don't have to actually, under the FCC rules, distribute it online with captions.

Currently, the rules there is 100% of English and Spanish, what they consider to be new programming, which is non-archival programming, which is very old programming, has to be captioned. So you've got some exemptions. I'll show you a quick page next. 75% of archived

programming-- so you'll see for digital, it's before 2002, and for analog, before '98. So that's pretty old stuff.

So here's the exemptions that apply in the television context, that then typically flow through to the online context because you may have chunks of programming that are being distributed online without captions. And typically, the reason is that, number one, they either were never distributed on TV, or they weren't distributed on television with captions. And so you've got these exemptions for the entire channel, which include channels that generate less than \$3 million annually in revenue.

To the extent that a particular channel spends or would have to spend more than 2% of its annual gross revenue on captions, it doesn't have to. So it might have some limited budget for captioning. And therefore, parts of its programming are not captioned. So again that would mean that you've got some programming that was just never captured on television, and therefore under FCC rules, doesn't have to be captioned online.

And then finally, we've got the new network exemption, which is for the first four years of channel operation. And that does apply to the channel in its entirety. Now, in the event that you have a network that falls under that exemption, but chooses voluntarily to caption, that programming, once it's voluntarily captioned, does have to appear online with captions.

There's also some program content-specific exemptions-- so for example, primarily textual, foreign language other than Spanish, for which the electronic newsroom technique is not available, programming over which a distributor has no control. Currently that would be your public access, [INAUDIBLE] access, or for an MVPD in a must-carry situation. But broadcasters are considered to be programmers that have their own independent obligations to caption. So typically, if you are viewing television broadcast programming online in an online format, it should be captioned.

So who's covered? The online captioning rules are set up a little bit differently than the television captioning rules. The television captioning rules place the legal responsibility on, like I said before, the term MVPDs or broadcasters. Those are the entities over which the FCC has a clear legal regulatory hook.

They opted, when they adopted those rules, not to impose the requirements for television directly on programming networks. However, that is the subject of a petition for reconsideration. And my understanding is there is an order that has now been circulated to the

commissioners by the staff that was charged with drafting it. So we should expect to see something in that space in the early part of next year.

And my understanding is there might be a shift to imposing requirements for television directly upon the networks themselves in addition to the distributors. And that is exactly how it works currently in the online context, so that both the programming networks and the distributors-- program content owners, rather, and the distributors-- are responsible for ensuring that whatever required captions exist do exist and are passed through to the consumer.

So the pass-through requirement is actually one that is the obligation of the distributor, actually. It has to either be passed through or made available to the end user. So let's see. Yeah, so it's render or pass through is the obligation on VPDs or the distributors.

The render is more of a picture. This was a rule-- this requirement was made necessary by existing technology at the time-- very costly and significant investment that had been made in existing technology that renders the picture of what's on the screen to the glass, as opposed to actually passing through the captions. So that is the distributor requirement, as I indicated before, that the programming owners themselves have to deliver the program files intact with captions.

And then under the rules, both are supposed to agree upon a mechanism that will ensure communication between the programmer and the distributor that whatever has to be captioned is being captioned. Because of the sheer volume of material and the scope of the rules extending beyond programming that a particular entity is responsible for distributing on television, my understanding is that the content owners are just providing captioned versions regardless of whether their archival programming had captioned versions. Because it's just otherwise impossible to track whether a particular piece of syndicated programming appeared at one point in time on television with captions.

So this is also something that's coming up, I think, in the context of the clips further notice, which we can talk about. But both distributors and programming owners are responsible for ensuring that the quality of the captions online is equal to the quality on captions with television.

And you may be aware that the FCC recently imposed specific quality rules on television captions. Those include completeness, placement, accuracy, and timing requirements. And

there were certifications that did take place in that context where the distributors had to seek certification from the programmers and report to the FCC any programmers that did not provide those certifications.

That was interesting. We're hopeful that this new regime for television-- like the IP context, the programmers actually have their own independent legal responsibility-- we won't have to see a certification process anymore, and certainly at least won't have to see the distributors having to report their affiliates that don't provide a certification.

So these are just-- I'll let you look at these later if you want. But those are the specific requirements for quality. And then this is a bit of an interesting issue. We said that the CVAA was implemented 20 year anniversary of the Americans with Disabilities Act. Well, the Department of Justice has recently taken the position that the Americans with Disabilities Act requires certain entities that distribute programming online to do so with captions because of their obligations under the Americans with Disabilities Act, regardless of what the CVAA says.

So CNN had a lawsuit filed against it by an advocacy group for the hearing impaired because they didn't caption all of their programming online. That actually was initially filed with an ADA component, but ultimately was resolved under the state law, which was the equivalent of the federal law at the state level, although not identical. So it's not necessarily precedent-setting for the Americans with Disabilities Act. But in that instance, the court concluded that there was no wrongdoing under the state law and that CNN had not violated the state law requirements for making programming accessible.

There's a significant debate as to whether the ADA should extend beyond the physical sphere to the online sphere in the First Circuit. There's actually a federal district court in Massachusetts a few years ago did decline to dismiss a complaint against Netflix, which was brought by the National Association for the Deaf, which took the position that Netflix needed to caption all of its programming.

Netflix raised in its motion to dismiss the fact that the CVAA says you have to caption only that programming which is first distributed on television. The Department of Justice filed an amicus in that court case and clearly laid out its opinion that the ADA does extend to Netflix programming. The case quickly settled after that.

But the problem with the Department of Justice's position is that there's actually a notice of inquiry pending concurrently at the Department of Justice about whether to extend officially its



rules to the online context. And that isn't even in sort of the comment period yet. So there are plenty of arguments that the Department of Justice is overstepping its authority in this instance and is getting ahead of itself in terms of the process. But nevertheless, it's something to be aware of.

Here is the list of effective dates. So for online programming, currently, all newly aired full-length content that appeared on television with captions is to be captioned online. Archival full-length programming, you've got a bit of a window in terms of how long you have between the day it's first published on TV with captions and then the date that you have to distribute it online with captions. You'll see that window gets shorter as each year passes.

Then we have the IP video clips timeline. As I stated earlier, the newly posted straight lift clips must be captioned as of January within less than a month. Montages or compilations of straight lift clips have an additional year to comply. So if you've taken parts of captioned full-length programming and you've put it all together, by January 1 of 2017, that montage must be captioned.

And then in the middle of 2017, you've got live or near live programming obligations for captioning. And so they've exempted completely any programming that existed in video programming libraries prior to the effective date. So they don't have an archival programming component like they do for full-length programming. For clips, it's just from the date. The rule starts to be effective going forward.

And then there's also-- there was some enhanced functionality. It really applies mostly to equipment, although an app is considered to be equipment under the rules, an app, a plug-in. So to the extent that you are doing this, you need to be sure that you comply with the FCC rule governing specific requirements for presentation, character color, opacity, size, font.

The goal of the rules is for the end user to be able to customize their captioning and make it most, I guess, easy for that person to read. You might have somebody-- and this is particularly true of our aging population-- who has both hearing and sight disability. So they rely on their captioning because they have hearing disabilities, but their eyesight isn't great either. So they need the ability to manipulate the captions. There are some ways to claim hardship under the rules depending on the size of the equipment, and so that's what's set forth here.

So video description. Currently the video description requirements for online programming are very, very in their infancy stages, I would say. So video description is, for those who don't

know, basically the oral description of the visual elements on the screen. And I give full credit to my colleague for this, but she said it's like the golf announcer talking about the people that are coming up to the green. They're about to putt. Sort of this low background voice that describes the visual elements of what's happening on the screen.

It's currently only required for a fairly limited amount of programming. It's broadcasters in top markets and the top five cable networks. And it's basically for prime-time programming, and it's 50 hours a quarter. So that's the television context.

In terms of what's online, they don't currently have an obligation. And there's a question as to whether the FCC has authority, actually, to impose video description requirements. They have certainly said that to the extent that this is your managed cable system that you're just then making available over new technology, that there is the expectation that that would be passed through, that the video description would be passed through.

Video description appears typically in the secondary audio channel, and that is-- so historically, that was used for foreign language programming. The requirement now is that it be used for video description as well. So there is this outstanding further notice of proposed rulemaking that has been outstanding for some time-- it'll be three years in spring-- and that is whether an MVPD must, in order to satisfy its pass-through obligations, permit that its subscribers that view programming-- the linear programming via apps, plugins, tablets, laptops or PCs or smartphones-- that they be able to view that same video description in those contexts as well as on television.

And then there is this technical capacity exception and how should that apply online. The Commission is also asking whether there should be a particular tag for video description streams so that it's easier to find for folks that are disabled. And then finally, whether it should mandate customer support for making video description more accessible, as they do in other contexts.

So emergency information. This is an area, obviously, where I think the Commission has focused more of its energy because of the nature of the information. And it has stated that unlike in the context of, for example, television captioning, where there are exemptions, there are no exemptions for captioning emergency information on television.

We're focusing today more on the online elements, but I could probably talk to your questions

about television after this is over if you have questions. So in terms of what is emergency information. So emergency information is that information that provides critical details about an emergency and how to respond. It involves, obviously, evacuation orders, routes, shelters, how to secure property. So many weather-related events, terror-related events.

It also includes things like school closings and bus schedulings, which is why there's a current NPRM out to see whether emergency information should be prioritized and whether you can actually-- we could eliminate, I guess, school closings and bus schedulings from required emergency information transmissions. There was actually a waiver issued, I think to NAB in that context, that they don't-- for a certain period of time don't have to include some of the school closing information as part of their emergency description requirements.

Just to explain this again sort of in the television context, because I think it's easiest-- and it's the only place it currently really exists-- that if you have a crawl, for example-- so you have your scheduled news programming. The way they do it in TV, you have scheduled programming and then you have unscheduled programming. There's a distinction.

But if you have an emergency crawl that is just available visually, that is the thing that needs to be read orally in the secondary audio stream so that that particular emergency crawl containing that critical evacuation information or pending storm information would be accessible to somebody who could not see the programming. So if they've got their television on, they'd hear that crawl. It would be preceded by tones, and then the emergency crawl information would be read through the secondary audio channel.

So the question. There are new rules that were implemented earlier this year, in July, actually, and are effective in two years-- so not until July of 2017-- that do require multi-channel video programming distributors to pass through oral description of visually displayed emergency information on second screens. So where they had their linear content, what we talked about before, and their subscribers are viewing that same offering, only over a different device-- not a television, but rather a tablet or a laptop or a smartphone-- that that has to be made available to that consumer. Again, it's not for two years.

And they've declined to put that obligation directly on manufacturers as well. But manufacturers of the devices do have to provide a mechanism comparable to a button, key, or icon for purposes of accessing that secondary audio stream. And then there is a further notice of proposed rulemaking in this context as well.

And as I indicated earlier, some of the questions are whether emergency information should be prioritized, whether the definition of emergency should be changed, and whether multi-channel video programming distributors that distribute navigation devices, which are distinguished from other types of video programming apparatus by virtue of who is distributing it, whether those should also be required to include the button, key, or equivalent for accessing the secondary audio channel. So that is the presentation. And I think we have now 20 minutes, it looks like, for questions.

**LILY BOND:** Thank you, Maria. That was a really great presentation, and there have been a lot of questions coming in. So I want to encourage people to continue to ask your questions as we're going through these. As Maria said, we do have 15 to 20 minutes to go through them.

Our contact information is on the screen, and there are also some additional resources that you might find useful. And just a reminder that this has been recorded, and the presentation and the slide deck will be available tomorrow, and we'll send out an email with the link to those. So to start off with the Q&A, so Maria, there's a question here if you can speak to the requirements of captioning song lyrics in caption files. I don't know if that's something that you're familiar with.

**MARIA BROWNE:** So song lyrics that were delivered via just in audio currently don't have to be captioned if they're delivered online. If they were delivered on television and they had captions, they were required to have captions and they would have to be delivered online with captions. But usually, they would be part of sort of an overall program.

I think we had originally said that if it was a part of an original program-- so for example-- and it could have been categorized as a clip initially, because it was part of a concert that was presented or something like that, or a larger piece of programming that before the reversal of the clips position, that we could actually determine that the individual performances wouldn't have to be captioned. But if in fact it was distributed as part of an overall program on television with captions, and that particular song then is provided online, my understanding is it probably would have to be captioned.

**LILY BOND:** Great. Thank you, Maria. A question for you, Peter. How have you developed your current captioning workflow?

**PETER BOTHE:** Well, at present we work with Dalet as our newsroom and asset management system. We have Harris as our-- in our master control. So we have worked with both vendors as well as

our integrator DSI, Diversified Systems, to develop all that and engineer it.

Being that I'm more of a production guy and not the engineer, I can't really speak to the specifics. But it is the assets-- after 3Play does the captioning, I know that we have a Watch folder and we bring it into our asset management system. We marry it to the video assets. And then from a scheduling perspective, that kind of conjoined asset, which is the video material as well as the captioning file, live in our traffic system and basically get scheduled and plays out.

**LILY BOND:** Great.

**PETER BOTHE:** And we're still currently working on the clipboard flow. We are very much in our due diligence phase. That's something that we're working on even as we speak.

**LILY BOND:** Great. Thanks. Maria, a question for you. How do you know if something has been on TV with closed captions in the past?

**MARIA BROWNE:** Yeah. So this is sort of what we talked about, this almost impossible task that the rules assume can be met, which is-- if in fact your particular entity is the distributor and/or the programming producer, you might have some understanding of the content that you've transmitted with captions, and in fact it may be in your files with captions. So if you've got archived programming with captions, then you know that it's been probably delivered on television with captions and should be formatted in a way that could be delivered online with captions.

And I understand that's sort of what people are doing. There was supposed to be collaboration between distributors and programmers to come up with a mechanism for unearthing this information. But my understanding is that the potential distribution paths are so vast for older programming that it's just been easier for the program content owners to go ahead and ensure that whatever they provide in the files to the distributors for online distribution is captioned.

**LILY BOND:** Great. Thank you, Maria. Another question here. Are there concerns about mishears and accuracy with automatic caption creation?

**PETER BOTHE:** Are you directing that to Maria or to me, or either?

**LILY BOND:** Either one of you that has insight on that could answer it.

**PETER BOTHE:** Well, I think from a completeness and accuracy perspective, of course, anything that's offline

captioned you want to be as close to 100% accurate as possible. But I think that the market is-- the home viewer is willing to accept that real time captioning is rarely close to being accurate. So yes, there's concern, because to the letter of the law from a completeness and accuracy perspective you want to be-- you want 100% accuracy. But it's not realistic, at least from a real time or live perspective.

We're finding that at least when we're using 3Play for our offline-- for all of our original programming, the accuracy is there. And that actually was one of the main factors when we were doing testing with the organization, as to selecting you as a vendor. We waited until we felt comfortable with that.

**LILY BOND:** Great. Thank you, Peter. I would add that one thing to keep in mind is that the National Association of the Deaf did recently sue Harvard and MIT for their online content for the inaccuracy of those captions, and that was content that they were captioning with the YouTube automatic captions. So the courts are getting involved, in terms of accuracy, kind of across industries.

And it's definitely something for post-produced captioning, that the automatic captions just are really not enough to comply with the legal requirements. Another question here is-- a bunch of people are asking, Maria, if you could clarify the rules for live programming, if there are specific requirements for captioning a live linear streams over IP, and if user-configurable captions are required.

**MARIA BROWNE:** Sure. So-- live currently is subject to-- sorry, let me-- I think that it's-- I mean, it will ultimately be. I'm just trying to remember the timing at this point. So yes, currently live programming, full-length, has to be captioned. Live does not have to be captioned for clips yet. That is what happens in July of 2017. Did that answer the question?

**LILY BOND:** Yeah, that's, I think, the question that they were asking. Thank you. There's a good follow-up question here about that. Someone is asking-- so they work for a professional sports league and they're asking, under IP delivered clips that would encompass footage from games that are clipped and posted to the website, is there a time frame that the captioning must be added? For example, if we put a clip on our site 30 seconds after it happened on broadcast, does it need closed captions immediately? Or do we have 24 hours? 12 hours? What's the time frame for captioning those clips?

**MARIA BROWNE:** So right, so that actually does not have to be captioned yet. That is considered to be live, and

that would be subject to the 2017 date.

**LILY BOND:** Great. Thank you, Maria. So another question here-- is there a rule for captioning web content of any length that doesn't air on TV?

**MARIA BROWNE:** Not at the FCC, currently. That is where we get into this, whether the Department of Justice would take the position that separate and apart from the CDA obligations and the FCC rules, there's an obligation under the Americans with Disabilities Act. And that's whether the offering constitutes a place of public accommodation. And what the commission said, what they've said is that companies like Netflix that only make their programming available online, that falls within the entertainment-- there are delineated places of public accommodation. There are like 9 or 10 of them, and entertainment locations are one.

Again, there is this split among the courts as to whether those places of public accommodation can actually be other than physical places. But you know, there are courts that have said that it need not be, and therefore, those would be covered. I think it remains to be seen how aggressively that will be pursued.

I think they're focusing on companies that are sort of, you know, obviously like a Netflix. And it's being enforced-- it's not yet being enforced by the Department of Justice. Well, as you said, they're getting involved because complaints are being filed, and typically, they're being filed by advocacy groups.

**LILY BOND:** Great. Thank you, Maria. Another question here-- there's just a series of questions about clips, so I'm just going to ask them individually, but know that there are more coming. Is there a difference between promo clips and clips released after the full-length program has been delivered?

**MARIA BROWNE:** Maybe you could explain. So are you saying a promo clip that's first online without having-- the full-length has not yet been delivered on television? So again, it's really going to come down to-- I mean, if this is a promotional piece that was on television with captions, which it may not have had to have been, but if it was voluntarily captioned, and it's retransmitted online in its entirety, that wouldn't be considered a clip, right? That would be considered sort of this full-length thing, I would imagine.

Now, if it's something that wasn't transmitted on TV and they're doing a promo online, that doesn't have to be captioned. And then if you do the full-length programming on television,

you know, then that full-length has to be captioned online. It really does tie, under the FCC rules, to the date that something was aired on television and whether it's full-length or something short of-- something less than the full presentation that was made for television.

**LILY BOND:** Great. Along those lines, someone is asking a little bit more specifically about promos. So if you post a promo that is a straight lift of a program that does then air on television with captions, will you have to go back and caption that pre-broadcast promo?

**MARIA BROWNE:** No, because if it's considered a clip, because it would be a straight lift clip from the material that's in your-- so if you have it in your library already as a promo and it's exactly the same as the clip that you then use subsequently-- you know, so straight lift. If it's in your library, under the clip rules, you don't have to then go back and recaption it.

**LILY BOND:** OK, thank you. Another question here. Is there a rule or law governing programs broadcast over the air on digital subchannels?

**PETER BOTHE:** I'm not certain.

**LILY BOND:** Maria, are you familiar with that at all?

**MARIA BROWNE:** So what do you mean? Can you repeat the question?

**LILY BOND:** Is there a rule or law governing programs broadcast over the air on digital subchannels? For example, channel 55.4?

**MARIA BROWNE:** Right, OK. So, yes. In other words, if you've got a multicasted broadcaster, so they're using their 6-megahertz spectrum for three or four channels, that doesn't matter. That's still considered to be a channel that has to be captioned on television. And again, if it's being transmitted on television, then the obligation extends to the online content as well. I think that's what they're talking about.

**LILY BOND:** Great, thank you. Someone is asking if you could touch on social media. If you share a clip of a program that was captioned on television, do you have to caption the clips if you're sharing them on Facebook and Twitter?

**MARIA BROWNE:** No. So that is excluded. That would be considered, you know, I think it's user-generated content. And the individual is not held to the same standard that the organization is required to meet.



**LILY BOND:** Great, thank you. Actually, I think they were saying if the broadcaster or network shares that clip on social media. Would that need to be captioned?

**MARIA BROWNE:** Hmm. IP-delivered is the standard. So that's a pretty broad requirement. It doesn't really indicate. I mean, the examples that are provided are primarily for web. Certainly, it wouldn't apply to a clip, right? Because that's not your website, and that's a third-party site.

So to the extent it was a clip, it would not apply. And I don't think you'd be distributing full-length programming over a social media outlet. So I would have to say that it's not likely to come up for full-length programming, and it doesn't apply to a clip.

**LILY BOND:** Great, thanks. Someone else is asking, for video-on-demand services, in terms of straight lift for IP-delivered clips, does this apply to extracts from feature films for the purpose of promotion?

**MARIA BROWNE:** I'm sorry. Can you repeat the question? For video-on-demand--

**LILY BOND:** For video-on-demand services, in terms of straight lift for IP-delivered clips, does this apply to extracts from feature films for the purpose of promotion?

**MARIA BROWNE:** So the television captioning rules do apply to video-on-demand. So presuming you're meeting that requirement and it's distributed on television with captions, and you do a straight lift from that on-demand programming, and you put it online for whatever purposes, it should be captioned, yes.

**LILY BOND:** Great. Thank you. Someone else is asking, since a regional sports network covers multiple states, are there any specific emergency captioning requirements for an RSN? Or does the responsibility fall on the distributor and not the content provider?

**MARIA BROWNE:** For online emergency information, at this point, it's a distributor obligation. And the interesting thing with-- for crawls, for example, the entity that's actually providing the emergency crawl is the entity that's responsible for making sure that the oral description is provided and made available through the secondary audio channel. The distributor is responsible for rendering or passing through that secondary audio stream. So that is how the-- so the responsibilities are divided, really.

**LILY BOND:** Great, thank you. It looks like we have time for one more question here. Someone is asking, "Hi, Maria. We have a promo that is an in-house ad with no words, just music. Do we need to

caption it with something such as "MUSIC PLAYING"?

**MARIA BROWNE:** No. Right now, primarily musical, non-vocal, is exempt. That falls within an exemption under the TV rule. So as long as it didn't show up that way on TV, you don't have to put in online with captions with that description either.

**LILY BOND:** Great. Thank you, Maria. Just to mention, there are a fair number of people asking about resources for best practices for captioning video clips and online video. We post all of the best practices and FCC requirements on our website, [3playmedia.com](http://3playmedia.com), and we have a lot of resources on there to check out. Some of them are listed on this screen.

But we definitely keep up-to-date with the new best practices and requirements, and all of our resources are free on our website. They're really for educational purposes. So feel free to check those out. And Peter and Maria, thank you so much for really great presentations and really thoughtful answers. It was great having both of you on the line.

**PETER BOTHE:** Glad we could help.

**MARIA BROWNE:** [INAUDIBLE].

**LILY BOND:** And thank you to everyone who joined us. I hope everyone has a great rest of the day.