



Federal Communications Commission
Washington, D.C. 20554

October 2, 2014

DA 14-1437

Small Entity Compliance Guide

Closed Captioning of Internet Protocol-Delivered Video Clips

FCC 14-97
MB Docket No. 11-154

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. BACKGROUND INFORMATION

In 2010, Congress passed the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) in order to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”¹ Pursuant to its responsibilities under the CVAA, the Federal Communications Commission initially adopted closed captioning requirements for all full-length video programming delivered over Internet protocol (“IP”) if the programming was published or exhibited on television with captions on or after the applicable compliance deadline.² These requirements applied only to full-length video programming and not to video clips; however, the Commission left open the possibility that it might extend the captioning requirement to IP video clips in the future if it found that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, because the programming is posted online in a video clip format.³

As part of its continued implementation of the CVAA, the Commission adopted the *Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking* on July 14, 2014.⁴ In the *Second Order on Reconsideration*, the Commission concluded, based on the record compiled in the proceeding, that it will extend the IP closed captioning requirements to video clips⁵ and it set forth a schedule of deadlines for compliance.⁶

II. KEY DEFINITIONS

Video Programming Provider or Distributor: Any person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.⁷

Straight Lift Clip: A clip that contains a single excerpt of a captioned television program with the same video and audio that was presented on television.⁸

Montage: A single file that contains multiple straight lift clips.⁹

¹ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010). See also Pub. L. No. 111-260, 124 Stat. 2751 (2010); Amendment of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

² *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 816–18, paras. 44–48 (2012) (“*IP Closed Captioning Order*”).

³ See *id.* at 818, para. 48..

⁴ *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 14-97, 2014 WL 3427583 (July 14, 2014) (“*Second Order on Reconsideration*”).

⁵ *Id.* at *1, para. 1.

⁶ *Id.*; see also *id.* at *11, para. 23.

⁷ 47 C.F.R. § 79.4(a)(3). See also *IP Closed Captioning Order* at 793–94, para. 8.

⁸ *Second Order on Reconsideration* at *11, para. 24.

Mash-Up: A single file that contains a compilation of one or more video clips that have been shown on television with captions, combined with additional content that has not been shown on television with captions.¹⁰

Advance Video Clip: A video clip that is added to the video programming distributor’s or provider’s library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming, including the advance video clip, is shown on television with captions on or after the compliance deadline.¹¹

III. COVERED PROGRAMMING

The closed captioning requirements for IP-delivered video clips will apply if the video programming provider or distributor posts on its website or app a video clip of video programming that it showed on television in the United States with captions on or after the compliance deadline (see Compliance Deadline Schedule below).¹² The requirements do not apply to third party distributors of video programming.¹³ Once the captioning requirement is triggered, it applies regardless of the online clip’s length and the type of content contained in the clip,¹⁴ and captions must be available at the same time the IP-delivered video clip is posted online except as otherwise stated in the Compliance Deadline Schedule below.¹⁵

IV. COMPLIANCE DEADLINE SCHEDULE

1. IP-delivered **straight lift clips**, as defined in the “Key Definitions” section, must be provided with closed captions if the associated video programming is shown on television in the United States with captions on or after January 1, 2016.¹⁶ The addition of a brief introduction or advertisement to an otherwise covered video clip (e.g., a straight lift clip) does not exempt it from the requirement.¹⁷
2. IP-delivered **montages**, as defined in the “Key Definitions” section, must be provided with closed captions if the associated video programming is shown on television in the United States with captions on or after January 1, 2017.¹⁸ The addition of a brief introduction or advertisement to an otherwise covered video clip (e.g., a montage) does not exempt it from the requirement.¹⁹

⁹ *Id.* at *12, para. 25.

¹⁰ *Id.* at *11–12, paras. 23, 26.

¹¹ *Id.* at *20, para. 47.

¹² *Id.* at *10, para. 22.

¹³ *Id.* n.163.

¹⁴ *Id.* at *10, 12, paras. 21, 27.

¹⁵ *Id.* at *13, para. 28.

¹⁶ *Id.* at *11, paras. 23–24.

¹⁷ *Id.* at *12, para. 26.

¹⁸ *Id.* at *11–12, paras. 23, 25.

¹⁹ *Id.* at *12, para. 26.

3. The captioning requirement for IP-delivered video clips of **live or near-live programming** will go into effect on July 1, 2017.²⁰ Due to the time-sensitive nature of posting live or near-live video programming on the Internet, the Commission grants a **grace period** of 12 hours after the associated video programming is shown on television in the United States with captions within which captions must be provided for IP-delivered video clips of live programming, and a grace period of eight hours for video clips of near-live programming.²¹

If an entity is unable to post captioned IP-delivered video clips by the compliance deadlines or within the grace period provided for clips of live or near-live programming because it lacks the resources to do so, it may petition for an exemption of this requirement.²²

V. EXEMPT PROGRAMMING

The IP captioning requirement does not apply to video clips that are never shown on television with captions.²³ The requirement also does not apply if a video clip is posted online with a substantially different audio track from that aired on television.²⁴

Video clips already in an entity's online library prior to the compliance deadlines of January 1, 2016 for straight lift clips and January 1, 2017 for montages are also exempt from the IP captioning requirement.²⁵ Because some video programming distributors may already have hundreds of thousands or even millions of video clips in their libraries at the time the rules go into effect, the Commission has determined that compliance with the rules for archived video clips would be economically burdensome, and the costs would outweigh the benefits.²⁶

Mash-ups and advance video clips, as defined in the "Key Definitions" section, are not subject to the *Second Order on Reconsideration*. Instead, the accompanying *Second Further Notice of Proposed Rulemaking* explores covering these types of online videos clips and invites comments on the application of the IP closed captioning rules to mash-ups and advanced video clips.²⁷

VI. ADDITIONAL COMPLIANCE REQUIREMENTS

The requirements for closed captioning IP-delivered videos apply to video clips in the same way they apply to full-length video programming shown online.²⁸ Online captions must be at least of the same quality as televised captions for the same programming.²⁹ In determining the quality of closed captioning, such factors

²⁰ *Id.* at *11, 13, paras. 23, 28–30.

²¹ *Id.*. The grace period begins upon the conclusion of the television display of the associated video program.

²² *Id.* at *13, 15, paras. 30, 34.

²³ *Id.* at *10, para. 20.

²⁴ *Id.*

²⁵ *Id.* at *14, para. 31.

²⁶ *Id.* at *14, paras. 31–33.

²⁷ *See id.* at *19–21, paras. 44–50.

²⁸ *Id.* at *15, para. 34.

²⁹ *Id.*

as completeness, placement, accuracy, and timing are taken into account.³⁰ Because clips are sometimes recaptioned, *de minimis* differences between the closed captions that appeared on television and those that are provided online do not constitute a violation of this rule.³¹ Additionally, entities are not responsible for quality issues outside of their control.³² The Commission recognizes that providing captions for video clips may present technical challenges beyond those associated with captioning full-length programs, and it will take this difficulty into account in the event of complaints.³³

INTERNET LINKS

Report and Order

- <http://www.fcc.gov/document/fcc-requires-closed-captioning-ip-delivered-video-clips-0>

Chairman and Commissioner Statements

- Chairman Wheeler: <http://www.fcc.gov/article/doc-328173a2>
- Commissioner Clyburn: <http://www.fcc.gov/article/doc-328173a3>
- Commissioner Rosenworcel: <http://www.fcc.gov/article/doc-328173a4>
- Commissioner Pai: <http://www.fcc.gov/article/doc-328173a5>
- Commissioner O’Rielly: <http://www.fcc.gov/article/fcc-14-97a6>

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*