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Katie Ellis, Gerard Goggin, Beth Haller, Rosemary Curtis

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Wayne Hawkins

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VIDEO ON DEMAND

Is This Australia's New Disability Digital Divide?

Wayne Hawkins

Introduction

When we talk of digital disruption we think of innovative start-ups, capitalizing on opportunities provided by digital networks, challenging and disrupting traditional business models. Clayton Christensen coined the phrase “disruptive innovation” in 1995 to explain his theory of how innovative products or services attract underserved segments of a market as an entry point.¹ Adopting Christensen’s definition of “disruptive innovation” in the context of media and communications, we see an explosion of innovative start-up companies challenging the status quo. Music, publishing, news, television and film industries are all being disrupted by innovation made possible by the growing ubiquity of high-capacity broadband. Broadband as a disruptive technology has created both threats and opportunities in media and communications for businesses, consumers and policy makers alike. While the economics and changing industry structures have been widely examined and theorized across business, research and political sectors, there has been little investigation into the social implications of this disruption, in particular the implications for people with disability.

Audiovisual content delivered over broadband is challenging traditional broadcast television, with its capacity to deliver time-shifted programming and video-on-demand (VOD) services.

In evaluating these new services from the perspective of critical disability studies we see that progress in disability access and inclusion is also being disrupted. Consumers with disability and their advocacy organizations now need to develop innovative models of resistance in order to push for the inclusion of access services if they are to benefit from these new digital services. No longer willing to wait for legislative or regulatory safety nets, disability activists are harnessing online social media channels to create agency and disseminate calls-to-action as new ways to challenge the embodiment of ableist norms in these new disruptive services.²

Questions about digital accessibility and inclusion are often routinely answered from an assumption that digital technologies, such as broadband-delivered services, are enablers for people with disability, somehow inherently ameliorating the barriers of analog platforms. However, as with most technology innovations, digital technology only becomes accessible when inclusive design and usability factor in the design process.³ Similarly, access services are necessary if audiovisual content is to be accessible and usable. Access services—captioning, audio description, sign-language interpretation and clean audio tracks—provide many consumers with disability,

primarily consumers with sensory impairments, greater access to information, social participation and community inclusion. Audiovisual content with no textual display of the dialogue excludes people who are Deaf or hearing impaired from knowing what is being said. Similarly, when following the context of a program or film is dependent on knowing what is happening on-screen, people who are blind or vision impaired are unable to follow the program without audio description. On-screen sign language interpretation allows people whose first language is sign language to understand what is being said and a digital clean audio track, eliminating background sounds, allows people who are hard of hearing to follow the dialogue.

The hard-won adoption of access services provided across traditional television for people with disability, largely guaranteed under social policy, broadcast legislation and the acknowledgment of access to communications as a human right, are by and large being lost in the transition to anytime, anywhere, any device audiovisual media delivered over broadband. These access services need to be embedded into online services if people with disability are to enjoy the benefits of choice and control afforded by VOD's anytime, anywhere, any device.

Despite the widespread international adoption of the Convention on the Rights of Persons with Disability (CRPD)—160 signatories as of May 2017—public policy has struggled to keep pace with these rapidly evolving online services.⁴ Thereby allowing for a recreation of the market failure of traditional broadcast television in terms of universal access; failing to uphold the social contract of access and inclusion for people with disability enshrined in national and international human rights instruments. While broadcast regulators such as the US Federal Communications Commission (FCC) and the UK's Office of Communications (Ofcom) have a long history of implementing and monitoring television captioning for viewers who are Deaf or hearing impaired, the move to provide access services over Internet Protocol television (IPTV) and VOD services has been slow and fractured.⁵ It wasn't until the implementation of the US Twenty-First-Century Communications and Video Accessibility Act in 2010 that the FCC had the congressional mandate to begin requiring captioning across different delivery platforms.⁶ In the UK it has been an ongoing "wait and see" approach with the regulator collecting annual reporting on the levels of access services being provided in an absence of any regulatory requirements.⁷ Interestingly, Australia, one of the first nations to sign and ratify the CRPD has, as of August 2017, adopted no other regulatory oversight of VOD services other than its recent implementation of a general services tax (GST)—colloquially known as the "Netflix tax."⁸

VOD Down Under

This chapter evaluates Australia's burgeoning VOD market, and argues that this technology constitutes a disruption for consumers with a disability. Whereas digital terrestrial television in Australia is directed by the Broadcasting Services Act 1992 (amended in 2012) to provide limited access services for people with disability—specifically closed captions—this disruptive VOD market is as yet unregulated in terms of accessibility.⁹ Consequently, there is a paucity of access services in place to make these "anytime, anywhere, any device" services accessible for Australians with sensory impairments. Australia's first online catch-up television service was the Australian Broadcasting Corporation's iView, introduced in 2008. Since then all free-to-air broadcasters have introduced stand-alone online catch-up services.¹⁰ In addition, in 2014, Australia's free-to-air broadcasters introduced Freeview Plus, an online streaming platform offering both broadcast and catch-up programming. In addition to these catch-up services, by mid-2015 a number of new subscription VOD services had been introduced into the Australian market—Netflix Australia, Stan and Presto (Presto ceased operations in early 2017)—along with an increasing number of Telcos and Internet service providers (ISPs) offering online VOD services such as Fetch TV, as part of their triple-play bundles.¹¹

Prior to the introduction of these new VOD services, widely referred to as the “streaming wars” of 2015, there were limited offerings in the Australian subscription VOD market.¹² For example, TiVO, a forerunner to streaming services, while successful in the United States had a short-lived Australian lifespan during the late 2000s.¹³ It was Quickflix who introduced Australia’s first streaming subscription service in 2011 after several years of offering an online DVD rental service. This was followed, in 2013, with “EZYFlix,” the streaming subscription service that grew out of “EZYDVD,” another online DVD rental service.

It is this growing plethora of new and emerging online audiovisual services that is disrupting the traditional television and movie market, changing the way consumers engage with audiovisual media. Providing consumers with unprecedented flexibility and greater control over when and how they consume audiovisual content. No longer are consumers constrained by television consoles or cinema screening schedules when wanting to view television or movies.¹⁴ This chapter investigates how the current VOD market ostensibly denies this increased flexibility and control for Australian VOD consumers with disability.

First, by adopting a critical disability theory approach, the chapter examines how these VOD services create a new interpretation of digital divide in Australia, expanding on the traditional binary concept of the digital divide—that of connected or not connected. Furthermore, the chapter expands the concept of a “second level” digital divide proposing that there is another manifestation of digital divide. In this case a digital divide is created when information delivered over digital networks is inaccessible to people with sensory impairments; adopting the term “disability digital divide” to explain what it means to be denied access to the information that digital networks can deliver constitutes a critical part of the chapter’s focus.

Second, the chapter examines the role public policy has played in exacerbating this disability digital divide. It illuminates how Australia’s neoliberal public policy approach in media and communications has prioritized ableist norms over inclusive social policies. Further, the chapter asserts that social resistance to these ableist norms will continue to be necessary for Australians with disability if they are to gain access to and benefit from these VOD services, suggesting that the principles of access and inclusion enshrined in the CRPD are the enablers necessary to underpin this resistance.

The chapter concludes by examining how other jurisdictions are making progress in providing greater access to online audiovisual media for their citizens with disability. Embedded in this examination are possible approaches for a productive and inclusive way forward for stakeholders, people with disability, broadcasters, service providers and government. To bridge this socially constructed disability digital divide, created by inaccessible VOD services, this chapter offers a critical summary of and suggestions for amendments in practice and some hope for more inclusive options in future planning.

Viewing VOD Through a Critical Disability Theory Lens

The convergence of media in which traditional platforms of television and cinema are being delivered as “anywhere, anytime, any device” consumables over broadband, creates new tensions between digital technologies and disability access and inclusion.¹⁵

Interrogating this tension from a critical disability approach provides a valuable framework to explore the pressures between constructs of disability and equality.¹⁶ Critical disability theory, as with other interpretations of Horkheimer’s critical theory of society—feminist theory, critical race theory, queer theory—challenges hegemonic social narratives.¹⁷ Through incorporation of disability and critical theory as one of this chapter’s theoretical foundations it is possible to investigate and illuminate how the social construction of disability in Australia has influenced public policy, specifically the digital convergence of new media policy.¹⁸ The chapter asserts that it is

the inherent design of audiovisual content and delivery services embedded within the ableist public policy framework in which VOD is situated that creates barriers to access for people with a range of impairments.

In Australia disabled persons organizations (DPOs) have lobbied for many years to overcome the ableist norms that have dominated our disability discourse. Changing the disability discourse from that of an historical perception of disability as an aberration needing to be hidden from public view and addressed through charitable and welfare protection¹⁹ to the current social model of disability in which it is understood to be societal barriers—both physical and attitudinal—which disable people with impairment.²⁰ This change in the positioning of disability has not been universal, while there are a number of positive changes in how Australia views people with disability there continues to be a dichotomy between public discourse and public policy. For example, Australia was one of the first countries to adopt the CRPD in 2008, and in 2010 adopted a whole-of-government national disability strategy to guide the implementation of the CRPD. Furthermore, in July 2013 Australia launched the National Disability Insurance Scheme, with the goal of ensuring all Australians who have or acquire a profound or severe disability, before the age of 65, have access to the supports they need to live an “ordinary” life.²¹ In stark contrast to these forward-thinking initiatives, successive governments have failed to address the media and communications market failure, unwilling to implement the legislative safety-net mandating access services on these new broadband-enabled content services.

Digital Divide

The long-held conception of the “digital divide” in Australia has primarily been that of the tension between those people who can connect to digital networks and those who cannot—the haves and have-nots—thereby focusing the discussion on issues of network availability, affordability and accessibility. Moreover, the policy focus on bridging this digital divide has been on promoting growing the network infrastructure, expanding out into areas that have previously not had available networks; addressing affordability of connection to the network; and promoting assistive products for people who for reasons of disability cannot use traditional telephony network services.²² Since the 2009 introduction of Australia’s National Broadband Network roll-out there has been an ongoing policy presumption that this national network will ameliorate the digital divide—providing broadband availability to all people in Australia. This broadband availability, however, will only be the first step in connecting all Australians. Providing broadband access to all premises will not ameliorate those digital divides created through issues of affordability, digital literacy and competency, nor will it bridge the digital divide created by inaccessible digital content.

For many low-income Australians there are barriers of affordability making digital connectivity difficult or sometimes impossible.²³ Exacerbating these low-income issues for people with disability is the acknowledged higher cost of living with disability, the high-cost of assistive technology and the ongoing cost of high-capacity bandwidth needed to be able to participate fully over digital networks. Recent statistics indicate that only 53 percent of Australians with disability are in employment and only one in two of those employed are in full-time employment.²⁴ Australian government statistics on social welfare benefits report that less than 10 percent of people in receipt of a disability support pension have additional sources of income.²⁵

A 2010 Organization for Economic Co-Operation and Development (OECD) report indicated that almost one in two Australians with disability are living in poverty; this is more than twice the number of Australians without disability.²⁶ These factors of low levels of employment, high levels of poverty and the higher cost of living with disability mean that for many Australians with disability digital engagement is unaffordable.

Digital competency also plays a significant role in Australia's disability digital divide. The Australian Digital Inclusion Index reports that digital literacy plays a significant role in digital inclusion.²⁷ The Index also indicates that older Australians have higher levels of digital exclusion. Given the age-related incidence of sensory impairments—vision loss and hearing loss—digital exclusion is higher for these groups. For example, Vision Australia's research estimates that 70 percent of people who are blind or have low vision are aged 65 and over, and predicts a significant increase to this figure in the coming decades. Additionally, Vision Australia research indicates that more than 65 percent of their clients do not use the Internet.²⁸ When we look at national research we see that people with the lowest level of digital inclusion are those people with low incomes, people over the age of 65 and those people with disability.²⁹

Examining the barriers created by inaccessible VOD highlights a more nuanced understanding of the digital divide—expanding on the binary notion of connected or not connected, creating a necessity to reimagine the concept of the digital divide to include not only the barriers to connectivity but also the barriers to the information and content that is delivered over the network.³⁰ Specifically with regard to VOD, it is access to the audiovisual content delivered over online platforms that creates a digital divide when that content is not accessible. The compounding nature of multiple barriers for people with disability exemplifies the critical need to include access features in all VOD content.

Video on Demand

Australia has been undergoing a roll-out of a National Broadband Network (NBN) since 2011. The NBN promises to provide high-speed, high-capacity broadband to every household in Australia by 2020. Additionally, Australia's growing footprint of 4G mobile broadband offers previously unavailable opportunities for streaming high-quality audiovisual media. These high-capacity, all digital networks are providing the opportunity for this explosion of VOD. Australian consumers have developed an appetite for viewing this online content; content viewed over a range of devices—computers, Internet-enabled television, mobile devices such as tablets and smartphones. While research indicates that broadcast television remains the primary viewing model for most Australians,³¹ it is inevitable that this will change with the expansion of online viewing platforms and flexible consumption models. Australians with disability expect to be able to take advantage of these new delivery models and the anytime, anywhere flexibility they provide.

Catch-Up Television

The transformation in the delivery of television programming and other audiovisual content over broadband has occurred at a speed that public policy has been unable to keep pace with. As such, this explosion of new services with their convergence of media and increased delivery models has perpetuated the dichotomy of new technology for consumers with disability: technology as enabler on the one hand or barrier on the other.³² Given that there is no public policy requirement for VOD content to include access services for Australian viewers with disability, it is not surprising that free-to-air broadcasters have been slow to provide any access services on their catch-up platforms.³³ The national broadcast service, the Australian Broadcast Corporation, offers the highest percentage of closed captioning on its catch-up content. However in 2017 the ABC catch-up "iview" service was only providing captioning on programming that had aired on the network's main terrestrial channel with captions; select programming on its additional digital terrestrial channels—specifically ABC original and commissioned programming. The ABC's iview service is also the only Australian catch-up service to have provided audio description. This was during a 15-month government-funded audio description trial that concluded in July 2016. While other networks provide catch-up services, the amount of captioning

varies between broadcasters, leaving consumers who rely on captions with no certainty about which programs will be captioned. Aside from this smorgasbord of captions, there are no other access services—audio description, Auslan Sign Language or clean audio tracks—on any of the free-to-air catch-up services.

Subscription Services

Mirroring the online catch-up television environment, subscription VOD services available in Australia provide very little in the way of access services for viewers with disability.³⁴ Of the increasing number of subscription services only Netflix offers 100 percent of captioned content and a limited amount of audio-described content. New market entrants such as Stan, introduced into the Australian market in April 2015, provide limited captioned content and no audio-described content despite many of the television programs and films in their catalogue having both caption and audio-description digital files available from the content developers. Quickflix, Australia's first streaming VOD service, provides captions on content where caption files are available from the content suppliers, but has no audio description on any of its streaming content.

This paucity of access services on Australian online video content exacerbates the disability digital divide. With the growing amount of inaccessible VOD content available in Australia, consumers with disability are being left behind when it comes to social inclusion and participation. This barrier to information through new media is reinforcing hegemonic ableist norms at a time when recent Australian disability discourse has been one of inclusion and participation.

Policy Discourse

Good public policy involves balancing a number of important interests. For communications and disability these issues include policy and regulations that encourage a robust and competitive industry, as well as address issues of inclusive access and also underpin broader social policy goals and objectives.³⁵ Australia has adopted a number of human rights instruments, both domestic and international—Disability Discrimination Act (1992), CRPD (2008), National Disability Strategy (2011)—intended to provide equitable access and inclusion along with anti-discrimination protections for people with disability. Implicit in these instruments is an expectation that public policy will be inclusive of the needs of people with disability and when the private sector fails to include people with disability these instruments will be the safety net to ensure that all Australians have full and equal participation in all aspects of Australian life.

This chapter's evaluation of the transformation of Australia's broadcast and media marketplace and the public policies designed to regulate this market indicate that these human rights mechanisms and their supporting public policy protections are falling short.

Assuming that the market will address all consumer needs in broadcasting has been the promise of industry and successive federal governments. While industry self-regulation policy proponents argue that public interest is best served by a robust and competitive marketplace, there is much evidence that the competitive broadcasting market has failed to deliver for many Australians living with disability. It took over a decade of advocacy and campaigning by DPOs and disability advocates before traditional broadcasters were required, in 2014, to provide 100 percent closed-captioned programming on their primary free-to-air channels between the hours of 6 am and midnight.³⁶ In as much as these new online television catch-up services do not include 100 percent captioning, audio description or sign-language interpretation, free-to-air television broadcasters have recreated the same barriers that have plagued terrestrial television services—excluding consumers with sensory impairment. While the national broadcaster recently concluded—in July 2016—a 15-month audio-description trial on its online catch-up service, the

amount of described content was limited to 14 hours per week, less than 10 percent of the available content on the service. While this trial was considered as a positive initiative by the Australian blindness sector and consumer organizations—noting that the majority of Australians who are blind or vision impaired were unable to participate given their lack of broadband connectivity—history again tells us that this trial may go the way of the 2013 three-month trial that the same broadcaster delivered on its primary terrestrial television channel. This initial trial was enthusiastically adopted by blind and vision-impaired viewers, however since the conclusion of the trial there has been no implementation by the broadcaster or any other broadcaster in Australia to implement a permanent audio-description service. Neither has there been any commitment from successive governments to mandate this essential access feature on any of the free-to-air broadcast networks. Audio description on television is available in many comparable jurisdictions, for example in the United Kingdom television broadcasters are mandated to provide a minimum of 10 percent of their programming with audio description. The UK regulator, Ofcom, reports that many of the networks are exceeding these mandated quotas and providing in excess of 20 percent of their programming with audio description.³⁷ In fact, Australia is the only English-speaking country in the OECD that has no audio description on free-to-air television—in addition to the United Kingdom, Canada, Ireland, New Zealand and the United States all have some level of audio-described content on free-to-air broadcast television.³⁸

While Australian broadcasters argue “technical” difficulties prevent them from providing audio description, it is apparent from these international examples that the problem is not “technical” but a lack of willingness from both the industry and government to implement this access feature in Australia.

In the same way that it took many years for Australian public policy to address this inequity on traditional broadcast television, there is little expectation that public policy will address this new disability digital divide in a timely manner. In fact, it appears that the window of opportunity for disability as a public policy agenda priority in the telecommunications sector may well have come and gone. After a number of media reviews and inquiries including the Australian Government’s 2010 review of media convergence and multiple inquiries into electronic access to media for people with disability, there is still no public policy plan to implement further access services across audiovisual media. As can be seen in reviewing the history of resistance by people with disability to gain access services on broadcast television in Australia, the same ableist norms and hegemonic dominance inherent in Australia’s communications market are now being recreated with this new media of VOD. With only one of the free-to-air broadcasters providing a significant proportion of closed captions on their online catch-up services, we see the reintroduction of the market failure in providing equal access for people with disability.

The formation of an audio-description working group, announced by the minister for communications and the arts in April 2017, was seen as a possible bright spot on the policy agenda. The working group was made up of representatives from broadcasting and streaming industries, audio-description service providers and consumer groups to “examine options for increasing the availability of audio description services in Australia.” However the final report,³⁹ released in May 2018, was met with disappointment by leading audio-description advocates at the lack of “commitment from the Government to introduce a permanent audio description service on Australian television within a specified timeframe.”⁴⁰

Conclusion

Australia has long been a nation of early adopters of new technologies. This is clearly evident in our rapidly growing consumption of online catch-up television and VOD services. However, as this chapter has shown, this increased anytime, anywhere, any device consumption of VOD is

not possible for all Australians. Many people with disability are being left out of this rapidly expanding digital market, creating a new disability digital divide in Australia.

While other comparable countries are adopting inclusive policies and initiatives to address this disability digital divide for their citizens, Australia remains stalled in taking tangible action to bridge this growing disability digital divide. The US Twenty-First-Century Communications and Video Accessibility Act (CVAA), enacted in 2010, includes provision requiring that audio-visual content broadcast with captions must provide captions when delivered over other platforms such as catch-up television or VOD services. The CVAA additionally requires major broadcasters to provide progressively greater quotas of audio-described content on broadcast television. In the United Kingdom, the communications regulator Ofcom requires that television broadcasters provide captions, audio description and sign-language services. The provision of these services is required to increase over time. Recent Ofcom reports indicate that while broadcasters are currently mandated to provide at least 10 percent of content with audio description, many broadcasters are voluntarily exceeding these quotas.⁴¹ For example, the BBC is providing in excess of 20 percent of programming with audio description. Additionally, Ofcom regulates the VOD industry in the United Kingdom, and while there are currently no legislative requirements for VOD providers to provide access services, Ofcom is monitoring annual levels of access services being provided and working to encourage providers to increase accessibility of their services over time.

These international initiatives have roll-on benefits for Australian VOD consumers. With the increased globalization of delivery services, content produced overseas with access services has the potential to benefit Australian consumers with disability. For example, the introduction of Netflix in the Australian VOD market in 2015 has provided Australians who rely on captions access to Netflix's entire Australian catalogue and provided Australians who rely on audio description access to audio-described Netflix content. Much of Netflix's accessibility is a result of disability advocacy in the United States. Netflix is required to provide captioning on its content as a result of an Americans with Disabilities Act court case initiated by the National Association of the Deaf.⁴² Similarly, audio-described Netflix content is largely due to advocacy pressure bought against the provider by the Accessible Netflix Project.⁴³

These international initiatives outline opportunities for Australian stakeholders to work to bridge this growing disability digital divide created by inaccessible audiovisual content.

While the dichotomy of new digital technologies as potential enablers or potential barriers for people with disability is broadly acknowledged in critical disability studies, communications and media studies,⁴⁴ this chapter has shown that VOD as a disruptive technology, while having the capacity to provide access services—thereby enabling and empowering people with sensory impairment—is in fact a disempowering development for many Australians with disability.

It appears that the lessons of the past have not been learned by industry or policy makers, with new VOD technologies recreating the familiar barriers to access and inclusion of traditional television. While Australian disability public policy is talking the talk of inclusion it is not walking the walk to make this new media accessible for all Australians.

Disability organizations and disability advocates are again being called upon to challenge the ableist hegemony of communications and media policy. Grassroots activism underpinned by the human rights principles of equal access and inclusion—embodying the emancipatory nature of critical disability theory—may well be the best pathway to resolving this impasse in Australia in the same way as grassroots activism in the United States has increased Netflix access for people who are Deaf and people who are blind or vision impaired.

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