

ILLEGAL CAPTIONS

The Illegal Captions project of CAPTIONING SUCKS! lodges thoroughly researched and well-founded complaints against missing or inadequate captioning. Every TV broadcaster in Canada has been targeted. YOU'RE NEXT

Rogers Broadcasting and two of its licensed broadcasters, CITY-TV Toronto and OLN, demonstrate a knowing and intentional *pattern* of:

- Providing no captioning at all.
- Destroying existing pop-on captioning for prerecorded fictional programming.
- Using real-time captioning for prerecorded (sometimes years-old) nonfiction programming.
- Using real-time captioning for prerecorded fictional programming.
- Airing programs with some other program's captioning.

Contravention of existing policy

Rogers is in flagrant, repeated, systematic, knowing, and consistent violation of the Commission's existing, albeit completely inadequate and illegal, captioning policy, CRTC 2007-54, whose ¶17 states (emphasis added):

English- and French-language broadcasters will be required to caption 100% of their programs... over the broadcast day, with the exception of advertising and promos. This requirement will be subject to exceptions that take into account instances, but not *patterns*, of equipment/technical malfunctions and human errors that are *beyond the broadcaster's control*, or circumstances beyond the broadcaster's control where captioning may not be available. In the case of any complaint, *the onus will be on the broadcaster* to demonstrate that the situation falls within this limited set of exceptions. The Commission notes that programs *must be captioned in their entirety* to qualify as captioned for the purposes of this obligation.

Methods

Illegal Captions took notes during normal viewing of CITY-TV and OLN. We also carried out two intensive periods of data collection in which we recorded the entire evening telecasts of CITY (1900 to 2300 hours or 2000 to 0000 hours) on January 5-9 and June 20 and 22-25, 2009. We waited after the first data collection to see if the problems spontaneously resolved; they did not, so we waited and reran the data collection.

The results are the same and reinforce our earliest observations. From the very month Rogers took over CITY and (later) OLN, captioning has gone to pot. Station ownership is the determining factor; things weren't this bad before Rogers took over.

RESULTS FROM DATA COLLECTION

MONDAY, 2009.01.05

- ✓ *The Bachelor*
Pop-on
- ✓ *True Beauty*
Pop-on
- ✓ *News*
Real-time

TUESDAY, 2009.01.06

- ✗ *Privileged*
Real-time (prerecorded drama)
- ✓ *Scrubs*
Pop-on
- ✗ *What Would You Do?*
Real-time (prerecorded nonfiction)

WEDNESDAY, 2009.01.07

- ✓ *13: Fear Is Real*
Pop-on
- ✓ *Everybody Hates Chris*
Pop-on
- ✓ *Friends*
Pop-on
- ✓ *I Love Money*
Scrollup (prerecorded nonfiction)

THURSDAY, 2009.01.08

- ✓ *Ugly Betty*
Pop-on
- ✗ *30 Rock*
Real-time (prerecorded drama)
- ✓ *30 Rock*
Pop-on
- ✗ *Murdoch Mysteries*
Real-time (prerecorded drama)

FRIDAY, 2009.01.09

- ✓ *Mantracker*
Pop-on
- ✓ *Survivorman*
Pop-on
- ✓ *Crusoe*
Pop-on

SATURDAY, 2009.06.20

- ✗ *Murdoch Mysteries*
Real-time (prerecorded drama)
- ✓ *Movie*
Pop-on
- ✗ *Reviews on the Run*
Real-time (prerecorded nonfiction)
- ✗ *Electric Playground*
Real-time (prerecorded nonfiction)

MONDAY, 2009.06.22

- ✓ *The Bachelorette*
Pop-on
- ✓ *Newlyweds*
Pop-on

TUESDAY, 2009.06.23

- ✗ *Privileged*
No captioning
- ✓ *Hitched or Ditched*
Scrollup (prerecorded nonfiction)
- ✗ *Make Me a Supermodel 2*
Real-time prerecorded

WEDNESDAY, 2009.06.24

- ✗ *The Goode Family*
Real-time (prerecorded drama)
- ✗ *Surviving Suburbia*
Real-time prerecorded
- ✓ *I Survived a Japanese Game Show*
Pop-on
- ✗ *Murdoch Mysteries*
Real-time (prerecorded drama;
billboarded as including “described
video”)

THURSDAY, 2009.06.25

- ✗ *30 Rock*
Real-time (prerecorded drama)
- ✓ *Scrubs*
Pop-on
- ✓ *Friends*
Pop-on
- ✓ *30 Rock*
Pop-on
- ✗ *Law & Order UK*
No captioning, then real-time
(prerecorded drama)

RESULTS FROM NOTETAKING

NO CAPTIONING

- 2008.06.15 00:56: *Man on Fire* (available with pop-on captions even in original theatrical release)
- 2008.08.31 00:24: *John Q* (at least one commercial did have captioning)
- 2008.09.13 10:48: Tridel infomercial
- All episodes of *The Thurman Thomas Show*, including 2008.09.14 00:08
- 2008.10.19 16:03: News (i.e., an uncaptioned newscast)
- 2008.11.08 19:30: *Polaris Prize*
- 2009.07.04 01:20: *Party Poker*

FICTIONAL PROGRAMMING SHOWN

WITH SCROLLUP CAPTIONING

- 2008.06.18 01:13: *Final Fantasy: The Spirits Within* (available with pop-on captions even in original theatrical release)
- 2008.09.22 00:28: *The O.C.*

Additionally, we have noticed more than one episode of *Ugly Betty*, known to be available with pop-on captioning, that was nonetheless aired with real-time captioning.

FICTIONAL PROGRAMMING SHOWN

WITH REAL-TIME CAPTIONING

- 2005.01.08: *Battlestar Galactica* (with occasional blank lines)
- 2009.06.04: *30 Rock*

Interpretation

CITY-TV cannot manage the task of airing programming with intact original pop-on captions.

- ¶ Only about one 30 *Rock* episode out of four airs with original pop-on captions despite the fact they are actually *available* for each and every episode (CaptionMax is the captioner). *30 Rock* is a prerecorded fictional program. Those same real-time captions are dumbly left intact on *repeat showings* even though such repeat showings occur so long after the original showing that the true pop-on-captioned episode could have been acquired. (Or the episode could have been recaptioned from scratch in pop-on.)
- ¶ An original Canadian series created for CITY-TV, *Murdoch Mysteries*, is known to carry original pop-on captions (done in Quebec). *Murdoch Mysteries* is a fictional program and is prerecorded so far in advance that “described video” is claimed to be available for it, but CITY-TV treats this series, set in a Toronto of the 19th century, like a live news bulletin and captions it in real-time.
- ¶ Nonfiction programming can be, but is not always, suitable for real-time captioning, but only if the show is live and never if prerecorded. CITY-TV airs prerecorded nonfiction

programming with real-time captioning.

- ¶ For some fictional programming, CITY-TV replaces known pop-on captioning with scrollup captioning (i.e., live-display captioning). Fictional programming is impossible to understand with any form of scrollup captioning, whether real-time or live-display.
- ¶ CITY-TV cannot manage to get its hands on pop-on captions for *brand-new series*. *Law & Order UK* was a mere three episodes old by the time CITY aired the beginning of an episode with no captions whatsoever, adding emergency real-time captioning only as the episode progressed. Such programming is deemed uncaptioned by CRTC policy.
- ¶ CITY does not caption all its newscasts.
- ¶ CITY has a de facto policy of only occasionally captioning programming that airs after midnight.

No broadcaster in recent or even distant memory has been so incompetent at the basic task of airing precaptioned programming with captions intact as CITY-TV.

Findings (OLN)

The Outdoor Life Network, now also owned by Rogers, is visibly incapable of providing any form of captioning on years-old television repeats.

Due to the tedium and irrelevance of most OLN programming, we surveyed only one program – *The Amazing Race*, stripped five nights a week on OLN. There are no original or never-aired episodes of this program; all episodes are repeats from the early 2000s to present. Episodes viewed from May 2009 to present all exhibit the following features in unpredictable sequence:

- ¶ No captioning.
- ¶ Original Canadian real-time captioning retained from first CTV airing (also a violation of policy as of that first airing, as *The Amazing Race* never was a live program).
- ¶ Near-verbatim scrollup (i.e., live-display captioning), seen on exactly one episode.

Not only can real-time captioners not keep up with bursts of dialogue, captioners have no preparation to load spellings of proper names, up to and including names of contestants. (Captions cannot even reliably distinguish John and Jon.) The foregoing are general deficiencies of real-time captioning that become intolerable when applied to prerecorded programming. Rogers puts zero effort into its statutory obligation to avoid such deficiencies.

We expect that, on receipt of this complaint, Rogers will do the absolute minimum to bring *The Amazing Race* into bare compliance. We will then simply examine other series on OLN and file amended complaints. The problems are clearly not confined to this specific program; they stem from Rogers's managerial incompetence.

LIFETIME ACHIEVEMENT AWARD

Running the wrong captions

In the broadcasting equivalent of a surgeon's amputating the wrong leg, Rogers, unique among broadcasters, shows a pattern of airing episodes of one program with captioning from other programs. How this is even technically possible we do not understand, but the company that brought you negative-option billing and Internet throttling has managed it.

- ¶ OLN: The *Amazing Race* episode "You always just forget about me!" airing 2009.06.05 was errantly captioned in real time. However, for part of its runtime the show aired captions (by Captions, Inc.) for a series of unrelated commercials for oatmeal and Wal-Mart. Captions then reverted to the already-incorrect real-time format.

- ¶ CITY: The *30 Rock* episode aired 2009.04.23 contained real-time captions from a newscast airing in the Okanagan Valley of British Columbia from 0:07 to 0:14.

As these scenarios border on the incredible, we have included photographs.

Patterns of noncompliance

Our evidence unequivocally shows *patterns of noncompliance*. Problems do not have to occur every single time to constitute a pattern; if that were true, then *The Amazing Race* would be legally admissible as an adequately captioned program because one episode used near-verbatim scrollup even though all other episodes are a mess.

We have documented *patterns of* absent captioning, misuse of real-time and scrollup captioning, and insertion of incorrect captions. Another documented *pattern* attests that Rogers cannot retain known pop-on captioning in programming it airs.

The CRTC despises captioning as much as Rogers does, or at least views captioning as just as much of an irritant. The Commission goes to extreme lengths to endorse, enable, and excuse inadequate or absent captioning. In Decision 2009-410, TVA *admitted* it did not live up to its captioning *requirements*. All the CRTC did was “note” TVA’s “efforts” without imposing a penalty. Lifeguards make “efforts” to save swimmers in distress, but they don’t get a gold star and a pat on the back when victims drown anyway. The Commission cannot get away with that sort of appeasement here, having given away its very last get-out-of-jail-free card.

The CRTC is obligated to rigorously enforce its captioning rules. We return to the stated policy as applied to the Rogers case:

- ¶ “English- and French-language broadcasters will be required to caption 100% of their programs... over the broadcast day, with the exception of advertising and promos”: Rogers airs uncaptioned programming. In at least one known instance, advertising was the only thing captioned.
- ¶ “This requirement will be subject to exceptions that take into account instances, but not patterns”: We have provided indisputable evidence of patterns of failure.
- ¶ “[C]ircumstances beyond the broadcaster’s control where captioning may not be available”: Captioning was always available for the programs discussed here. Some such captioning was appropriate but destroyed by Rogers (e.g., pop-on captions on *Murdoch Mysteries*); some was unsuitable yet retained by Rogers (e.g., real-time captioning on years-old repeats of *The Amazing Race*). Captioning is always “available” to multi-million-dollar broadcasting operations who can simply pay to have it done.
- ¶ “The Commission notes that programs must be captioned in their entirety to qualify as captioned for the purposes of this obligation”: CITY and OLN air uncaptioned and partially-captioned programming.

Remedies sought

We’ll be spending the rest of the year, and all of next year, and all of any subsequent years as deemed necessary, filing complaints against every broadcaster in Canada. We’ll eventually get what we want, and the longer the CRTC and broadcasters fight us, the more it’s going to cost you once we win.

This complaint represents the Commission’s first chance to rule that:

- ¶ Real-time captioning cannot be used on prerecorded programming, save for genuine emergencies and then only for the first airing of that episode in any time zone. (No repeats, not even dayparted repeats for the west coast, may rebroadcast those real-time captions.)
- ¶ Scrollup captioning of any form many not be used for fictional programming.
- ¶ Repeat episodes or airings must be individually inspected and brought into compliance with the foregoing. Broadcasters cannot just order an intern with a broadcasting diploma from Trebas to fast-forward through a tape until they find any captioning at all, then tick a box on a form claiming the show is captioned.

We petition for such a ruling, which must apply to all English- and French-language broadcasters. We’ll keep filing complaints until we get the ruling we want. Now’s your big chance.

We require additional remedies specific to Rogers. For all its licensed television operations, whether in English, French, or a third language, Rogers must publish monthly reports on category and extent of captioning for all programming. If we can do it, they can do it. Rogers must report the following:

- ¶ Airdate and airtime
- ¶ Original or repeat
- ¶ Captioned 100%, partially captioned, uncaptioned
- ¶ Exact method of captioning (e.g., pop-on, live-display scrollup, real-time, pop-on plus live-display scrollup)

In Decision 2009-408, the Commission imposed new reporting requirements on CITY-TV:

Rogers is required to file, for the upcoming year, detailed monthly programming reports, in addition to submitting television logs, to assure the Commission that it is meeting its regulatory requirements. The reports should contain sufficient details, such as the titles of programs and the date and time programs are broadcast, in order to allow the Commission to evaluate the CITY-TV stations' compliance with all of their programming obligations, commitments and expectations.

Those “obligations, commitments and expectations” include captioning. We petition the CRTC to amend Decision 2009-408 to include the captioning details we demand.

Such reports cannot be private; they must be published in valid, semantic HTML on a publicly accessible Web site without password protection. No other formats, including Excel or PDF, may be used, as they would surely be inaccessible to people with disabilities as produced by Rogers.

About this complaint

DATE

2009.07.14

ONLINE

captioningSUCKS.com/illegal/rogers1

CONTACT

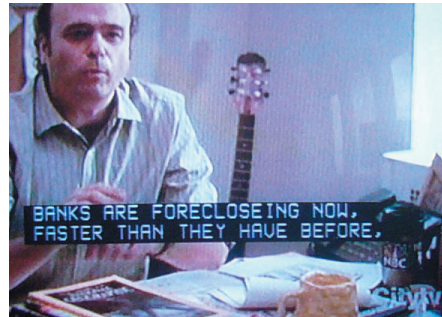
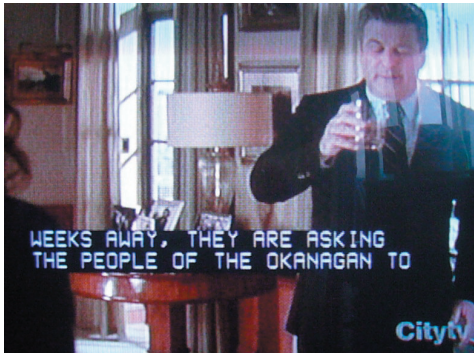
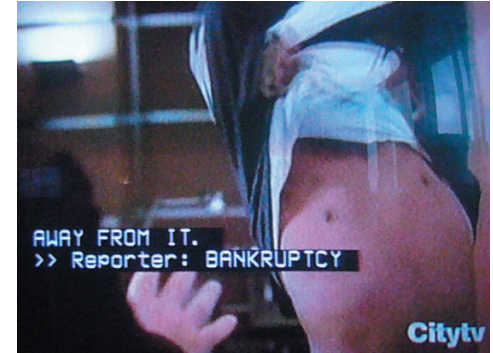
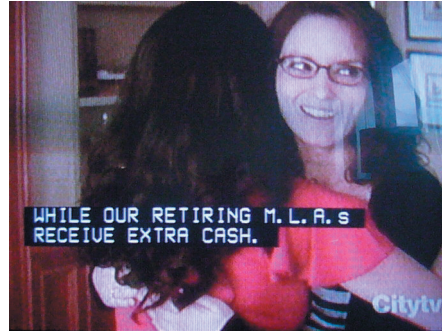
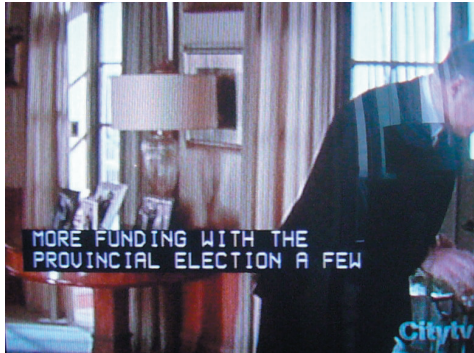
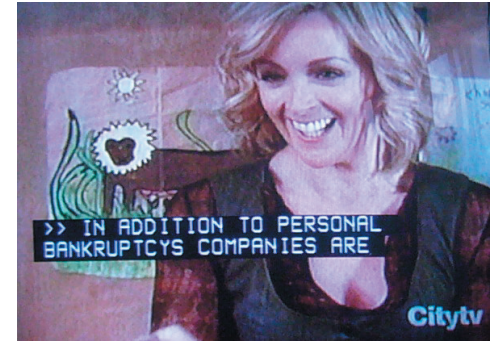
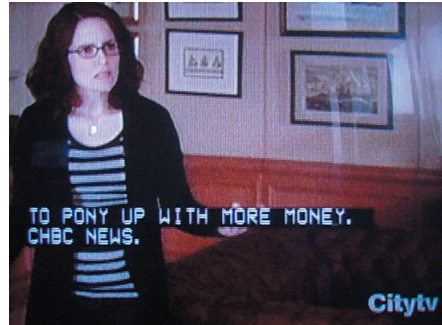
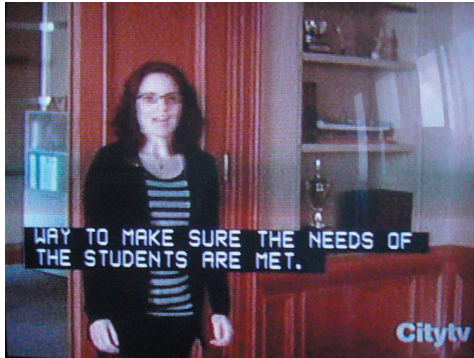
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**The wrong captions:
30 Rock**



**The wrong captions:
Amazing Race**

