1. Introduction

Globally, products and services are typically designed with a customer-driven focus. In fact, this is the basis for the widespread segmentation techniques in marketing, “the process of partitioning markets into groups of potential customers with similar needs and/or characteristics who are likely to exhibit similar purchase behaviour” (Weinstein, 2004: 4). Blind persons and persons with low vision – currently at least 2.2 billion people worldwide (World Health Organisation, 2019) – have traditionally been considered the main target of audio description (AD), to the extent that the term audio description has been repeatedly followed by the phrase for the blind (and visually impaired) both in the specialised literature and in texts written by accessibility professionals for commercial purposes. International standards dealing with AD have specified that “[t]here are many secondary users of audio description, but the primary and intended users of audio description are blind persons or persons with low vision and their friends and family” (ISO/IEC TS 20071–21: 2015), thus widening the scope of AD, but highlighting that AD is primarily conceived for persons with vision disability and their immediate social circle.

However, we do not need to leave the field of marketing to acknowledge that any product or service also has salient unexpected design attributes which may reveal their hidden potential (MacMillan and Gunther McGrath, 1996). Accessibility services are no exception to this notion. As noted by Greco (2018: 206), there has been a shift “from particularist accounts to a universal account of accessibility”. While aids aimed at providing access have traditionally been intended exclusively or mainly for certain groups, access services are increasingly advocated as useful for anybody, thus going beyond their initial target: persons with disabilities. By taking today’s media landscape into account, in which the provision of accessibility has made great strides on VOD platforms, Davies (2019) and Agulló (2020) provide examples of potential users of subtitles initially aimed at the deaf and hard-of-hearing, which range from someone whose baby child is sleeping and does not want to turn up the volume to public transport users who may not be travelling with headphones. The same principle applies to
AD: as noted by Matamala (2019: 200), for instance, AD is a valuable resource for language training, since putting visuals into words may help guide the students’ attention. Not without reason, Ofcom (2006: 15) reported that only a minority of users who claimed to watch television content with AD had visual impairments. We firmly share the idea that AD has a tremendous hidden potential that will surely be revealed in the future.

This chapter, however, places emphasis on the role of the initial target of AD, that is, persons with disabilities, in providing a social and legal framework which has ultimately promoted the spread of AD. Since its conception, this access service has been a means to grant participation of persons with vision disability in all areas of life, but crucially in cultural life. Section 2 discusses two central concepts which have promoted interventions aimed at tackling communication barriers for persons with disabilities: the first one is disability as a social construct, with the social model of disability focusing on the environment and social attitudes instead of on the individuals with disability; the second one is the human rights-based approach to disability, which departs from the idea of persons with disabilities being welfare recipients and focuses on granting persons with disabilities full political, civil, economic and cultural rights. Section 3 explores the idea of participation, which has been a priority for international organisations working for the rights of the blind and partially sighted, with a focus on participation in culture. Section 4 offers an updated overview of the disability and accessibility legislation reached after the implementation of the social and human rights perspectives on disability and as a result of lobbying by persons with disabilities. Section 5 includes closing considerations and further reading suggestions are provided in Section 6.

2. Disability from a social and human rights-based perspective: implications for accessibility

The notion of accessibility gained momentum in the 1980s, when it was disseminated to the fields of construction, urban planning, transport and communication (Cocemfe, 2020). Such a dissemination process took place in the framework of an emerging social conception of disability. Notions such as participation and inclusion were brought to the fore and paved the way for underlining the social implications of disability, beyond the previous conception of the latter as a strictly medical phenomenon (Ligget, 1997; Rioux, 1997; Davis, 2012). It must be highlighted that the social and the medical models are not discrete units – rather, they have been used to analyse and understand the social reality of disability. Thus, for example, whenever an intervention programme is outlined, its link to either of the models is not made explicit, but it can be inferred from its nature whether it is closer to the social or to the medical perspective. Likewise, it is worth mentioning that the social-medical models dichotomy has transcended in the literature since the 80s, but it is still considered to have played “a pivotal role” in the debates leading to the Convention on the Rights of Persons with Disabilities (CRPD) (Degener, 2016: 2).

As a social phenomenon, disability ceases to be seen as a permanent condition intrinsic to the individual and becomes an experience of avoidable exclusion linked to the conditions of the environment (Huete, 2013). Such an experience of exclusion may affect many individuals in multiple circumstances linked to a physical condition, but also to other aspects, such as age, temporary health disorders or any other factor that may hinder the interaction of the individual with their environment.

This paradigm shift in the approach to disability puts society – as opposed to persons with disabilities – at the core of the discussion and proposes that any disadvantage faced
by persons with disabilities in any area of life is caused not by their disability, but by “the way in which we organise society” (Disability Rights Commission, 2005, para. 1). This means that problems connected to disability are not neglected, but placed under the umbrella of society.

(Oliver, 1990: 3)

The emergence of this model motivated interventions aimed at tackling barriers to participation and inclusion, such as those provided by accessibility services. The emphasis of these interventions was not placed on individuals anymore, but on the environment. Two types of action, strictly connected to accessibility, became prominent (Edler, 2012). First, physical and communicative conditions of the environment started being scrutinised to prevent exclusion. Second, measures – especially those aimed at preventing discrimination – started to be taken to impact social attitudes towards disability. In this respect, it must be underlined that organisations working for the rights of persons with vision disability have always been active in constructing and communicating a “positive view of blindness” (Ferguson, 2005: xii, 2007: 53).

According to Degener (2016), the social model is improved by a human rights-based approach to disability. The adoption of the CRPD has encouraged the idea that disability is fundamentally a human rights issue. The CRPD is the main text that specifically recognises human rights in terms of their implementation for persons with disabilities. The purpose of the treaty is not to establish new rights or create specific ones for persons with disabilities, but to interpret human rights in such a way that their application in the case of persons with disabilities is clear (Harpur, 2012). One of the rights in the treaty can be understood as new, i.e. the right to independent living, although it can be linked to previously established rights, such as the right to freedom of movement, housing or free participation (Degener, 2016).

The Convention not only strengthens basic rights, but also paves the way for the elimination of discrimination on the grounds of disability. Astorga (2012), the Mexican representative in the drafting committee of the CRPD, explains that the Convention reverses a historical situation of exclusion caused by social and cultural customs that have been institutionalised in law. The treaty guarantees full and effective participation in all areas of society, strengthening civil and political rights in relation to disability. It emphasises respect for difference and the inclusion of diversity and protects equal opportunities for any way of life chosen by persons with disabilities.

As explained by Quinn and Degener (2002), the usefulness of the human rights-based perspective lies in the fact that persons with disabilities become seen as active subjects with equal rights rather than as passive recipients of services. The authors show how the rights-based model is relevant for two reasons. First, because it guarantees the individual’s basic dignity and second, because this perspective fosters equality in the protection of the basic faculties of all people. They also point out that the rights-based model is opposed to a utilitarian sense that permeates society by treating people as a means and not as an end in themselves.

The rights-based model has its roots in the Universal Declaration of Human Rights (1948). With the Declaration, the will to establish a universal protection of basic freedoms and human dignity began to crystallise. Many other international legal instruments have emerged from the Declaration, inspired by the same claim to establish rights that preserve freedoms and dignity. In this sense, human rights are conceived as universal, insofar as they belong to the whole human family; inalienable, since they cannot be renounced or lost in any way and indivisible, as they are related to each other, and the violation of a human right also entails the violation of the whole.
Indeed, the World Blind Union’s (WBU) first strategic priorities are human rights and representation. Their aim is to reach “a world in which we, as blind or partially sighted people, can participate fully in any aspect of life we choose” (World Blind Union, 2017). As aptly put by Wall (2003, para. 3):

The rights of blind people? It is tempting to reply, no different from those of the sighted. We want a happy childhood; a good education (but should we be set apart or in the mainstream?); a satisfying job; a fulfilling family life; enjoyable leisure and social activities and the chance to take a full part in public life. We want respect; esteem; affection (if we deserve it); but above all recognition that we are citizens with full civil and human rights.

The next section provides an overview of how organisations devoted to the participation of the blind and partially sighted around the globe have united to achieve this aim. The focus is placed on cultural life, an area directly linked to audio description.

3. The right to partake in cultural life: a priority in the movements of the blind and partially sighted

Participation is a purely social notion. The medical model does not directly encourage participation, since its aim is essentially to take measures for the individual with disability to recover from an illness or reach a healthy state. This is clear in the case of physical impairments restricting participation: the medical model will address the cause of the physical impairment and the social participation of the individual will improve if good results are obtained by means of a medical treatment. However, if the physical impairment is permanent and cannot be treated, the medical model will neither detect nor address any impediment to social participation.

Participation in cultural life is a universal right. As such, it must be protected and states are the guarantors of this right. Whenever participation in cultural life is limited, this right is violated, thus causing a situation of discrimination (Casanovas, 2017: 214). Accessibility is the principle that grants this right for all, including those who may find barriers of any kind in their relationship with the environment (persons with disabilities, the elderly, people with temporary injuries, children, migrants, etc.).

In fact, the social and the rights-based models discussed in Section 2, which have been key in the promotion of accessibility, have been largely advocated by persons with disabilities themselves. In this sense, the manifesto published by the Union of the Physically Impaired Against Segregation (UPIAS) in 1976, a British organisation for people with physical disabilities, is considered to be the foundation of the social model (Barton, 2012: 349). The relevance of the manifesto lies beyond its content: for the first time, individuals with disabilities were the ones raising their voices to speak up about their concerns.

In the same way, the CRPD committee established in 2009 was the first to involve a vast majority of experts with disabilities, with 17 in a team of 18. As noted by Degener (2016: 13) “without active and equal participation of disabled people and their representative organisations, development strategies and programmes will perpetuate and exacerbate discrimination against disabled persons”.

The blind and partially sighted have been active in pursuing equal participation in all areas of life, including culture. Evidence of this is the fact that some of the early 20th century organisations specifically devoted to persons with vision disability in Western countries started as education centres, where the blind would typically be employed as teachers – this is the case
of the New York Association for the Blind, which interestingly was the organisation invited to watch the first AD at the cinema in 1929 (Ellis, 2019). As reported in The New York Times (28 August 1929):

**Blind and deaf at movie: One hundred applaud talking film at special showing**

More than 100 members of the New York Association for the Blind and the New York League for the Hard of Hearing attended a special performance of the talking motion picture *Bulldog Drummond* last night at the Theatre Moderne, in the Chanin Building.

An interlocutor explained the visual sequences for the blind when the dialogue was momentarily halted. Those without eyesight seemed to enjoy the performance, especially the humorous parts and there was prolonged applause at the end of the film.

This performance is probably the first talking picture ever shown especially for the blind. Several theatres in and about New York have sound magnifying apparatus attached to the seats for the use of the hard of hearing during a dialogue picture. But to date no provisions have been made for “readers” to help the blind “see” a film.

In the 1944 annual speech delivered at the National Federation of the Blind in the United States – the oldest organisation run by blind and partially sighted people in the country – the well-known disability rights activist Jacobus tenBroek called for the “general participation” of the blind to address their specific needs “since the blind, because of their experience, know their problems better than anyone else, better than social workers or teachers or government administrators, since they alone fully understand the problems of blindness” (Ferguson, 2007: 53). As may be seen, the underlying idea in tenBroek’s address closely resembles the “Nothing about us without us” slogan used from the 90s on in disability activism. The personal experience of the individual with disability is a determining factor not only in terms of the formulation of interventions in accessibility, but also in the way research and accessibility evaluation are approached. The experience of the individual becomes key for accessibility quality and, therefore, user-centric methods of research and evaluation in accessibility become the most desirable (Soler & Chica, 2014: 151–152; Matamala et al., 2018: 4–5).

The World Council for the Welfare of the Blind (WCWB) was created in 1949, immediately after the Universal Declaration of Human Rights was proclaimed in Paris in December 1948. This was a few years after relevant agencies around the globe such as the aforementioned National Federation of the Blind or its counterpart in the UK were founded. The aim of the WCWB was to safeguard the rights of the blind, including equal education opportunities and access to culture. Thus, the organisation promoted initiatives such as Braille press production “to provide most of the institutes of the blind in member states with scientific and cultural books, school textbooks and other needed publications” or “talking book libraries” – books recorded on tapes about different cultural and scientific subjects (Al-Ghanim, 1979: 163). Note that accessibility measures like those just mentioned were taken a few years after the 1975 Declaration on the Rights of Disabled Persons, which consolidated the “right [of persons with disabilities] to live with their families or with foster parents and to participate in all social, creative or recreational activities”. At the time, however, “equality of opportunity in this respect. . . [was] still far away” for the blind (Boulter, 1979: 35).

As can be seen, access to culture and full participation were prioritised in the social movements of persons with vision disability from the start. Their actions played a crucial role in the development of the late 20th century and 21st century national acts and international treaties devised to protect fundamental human rights. As noted by Casserley (2006, para. 4), it was
“as a result of lobbying by blind and partially sighted people” that the UK government passed the Disability Discrimination (Blind and Partially Sighted) Regulations 2003 (SI No 712), to name but one specific example.

The WCWB united with the International Federation of the Blind in 1984 to create the World Blind Union (WBU), a leading organisation today which brings together the major national and international organisations working on issues that affect the life quality of persons with visual disability, under the slogan “Changing what it means to be blind”. The WBU is divided into six regional bodies, namely Europe, Africa, North America and the Caribbean, Latin America, Asia and Asia Pacific. Accessibility is currently the third priority in the strategic planning of the WBU, after human rights and representation and capacity building. Their specific objectives about accessibility are stated as follows (World Blind Union, 2017: 8):

1 improving access to information for blind and partially sighted persons;
2 promoting access to low and high technology solutions for blind and partially sighted persons;
3 promoting full access to consumer and household goods;
4 promoting full access to the environment for blind and partially sighted persons including safe and independent travel and access to transportation.

The medical model mentioned in Section 2 has had a tremendous impact on the shaping and development of organisations working for the rights of the blind. Visual (and further) disability organisations have traditionally been set up in accordance with medical criteria. The medical model serves as an approach to classifying the physical condition of the disabled and, as a result, determines who is eligible for funding or any other form of assistance. According to the ICD-10 (World Health Organisation, 2020), the degree of blindness is defined by means of an evaluation of visual acuity and visual field loss which remain after treatment or standard refractive correction. Visual acuity is understood as the clearness of vision, dependent on the sharpness of the retinal focus, the sensitivity of the nervous elements and the cognitive faculty of the brain. Visual acuity can be measured by the ability to identify black symbols of different sizes on a white surface within a determined distance. The visual field is described as the area perceived by the eye when it is oriented forward. There are several tests to measure how the field of vision is distributed and to which extent. Most organisations worldwide allow affiliation upon confirmation, by means of a medical examination, that the person with disability meets specific visual health conditions. For example, the National Organisation of Spanish Blind Persons (ONCE) specifies the following requirements to apply for membership at their organisation, apart from Spanish citizenship: “At least one of the following visual conditions in both eyes: a) best corrected visual acuity equal to or less than 0.1 (1/10 on the Wecker scale); b) visual field of ten degrees or less” (ONCE, 2020).

Of course, granting aid to a group classified as “disabled” lies far from the idea of granting participation as a right that belongs to everyone. Although this trend has changed in the past few years, disability organisations have traditionally embraced this model of care – their priority has not been to reshape society to make it suitable for everyone, but to accommodate people with disabilities to a certain extent under conditions that are adverse to them (Barnes, 2008; Infante & Matus, 2009).

In the cultural field in which audio description is typically provided, this translates into alternative circuits which become more or less restricted to groups of people with disabilities, so that no progress is made towards a situation of inclusion in which the participation of persons with disabilities is normalised in all cultural spheres (Peters, 2000: 585).
like the aforementioned 70s “talking book libraries” is not envisaged as work toward universal design, but as an adaptation of specific contents. Today’s ebooks, by contrast, are published by incorporating accessible navigation options for all. This is in line with what has been described as the first principle of universal design: ebooks are now “marketable to persons with disabilities” (National Disability Authority, 2020), instead of being the result of adapting an initially non-marketable product. It can be said, therefore, that the scope is now broadened: accessibility is conceived as an indispensable quality in the design of the environment and cultural life, rather than as an addition that gives the product or cultural activity a distinctive – yet dispensable – value. Emphasis is now placed on working on product design based on a broad idea of the conditions of accessibility (Romero-Fresco, 2018: 189–190). Ultimately, achieving this aim would mean that no alternative circuits would be generated to access most cultural products, that the situation of segregation would be ended and, therefore, that full and effective participation of everyone would be granted (Bestard-Bou, 2019: 40).

4. Legislation overview

As noted previously, the movement for the blind and partially sighted has had an impact on legislation. The aim of this section is to draw a legal overview on international law concerning accessibility, AD and visual impairment. The focus is placed on legislation in the United Kingdom, in the United States and in the European Union.

In the UK, the main act related to disability rights protection and non-discrimination is the Equality Act (2010). This act is a general law, in that the Equality Act not only covers aspects related to disability, but it considers different relevant groups that may face discrimination of any kind. These groups are determined by the concept of protected characteristics, developed in Chapter 1. Protected characteristics include age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. It must be noted here that a report written by an ad hoc committee assigned by the House of Lords to give an account of the impact of the EA on persons with disabilities “questioned whether the Act’s provisions disadvantaged disabled people, who, it noted, may require “different treatment” if they are to enjoy access to facilities and services on the same terms as the non-disabled” (Haves, 2018: 2).

In the field of audiovisual media, the Code on Television Broadcast Services (see latest version in Ofcom, 2019), states the requirements for television broadcasters on subtitling, sign language and AD. The Code provides complete definitions about what AD is, who it is intended for, which programmes should be audio described or how AD should be delivered (art. 22 ff.). Interestingly, the Code offers an example of what we mentioned in the Introduction: according to this Code, audio description users are primarily persons with a visual impairment (art. 22), although not all AD users may have a disability.

The Equality Act brings together various previous laws, among which we find the Disability Discrimination Act (DDA) approved in 1995. The definition used to refer to a person with disability is similar in both the DDA and the EA. According to the EA, a person with disability is defined as a person with a physical or mental impairment (art. 6.1.a) and this impairment has a substantial and long-term adverse effect on the possibility to carry out normal day-to-day-activities (art. 6.1.b).

In the United States, the Americans with Disabilities Act (ADA), signed into law in 1990, is the main act protecting the civil rights of persons with disabilities. This law guarantees similar protection to Americans with disabilities as the Civil Rights Act of 1964, which faced discrimination based on race, religion and sex. The main aim of the ADA is to prohibit discrimination in all areas of public life, such as employment, education, transportation, telecommunications
and public or private places open for the general public. These different areas of public life guarantee equal opportunities and protection of civil rights for individuals with disabilities.

As pointed out by Hill (2020: 45), there are many state laws in the United States which establish requirements beyond the ADA. Two examples of this are the California Consumer Privacy Act, in accordance with which website privacy notices must be “accessible to consumers with disabilities”, and the New York City Human Rights Law, which “covers any place or provider of public accommodation”.

The Americans with Disabilities Act Amendments Act (ADAAA) was approved in 2008 and came into force in 2009. The ADAAA modified the previous definition of disability, in accordance with the CRPD. Disability is defined as a physical or mental impairment that substantially limits major life activities. A major life activity is an activity that an average person can perform with little or no difficulty. Accessible information technology is defined as technology that assumes the principles of universal design and that can be used by people with a wide range of abilities and disabilities. Title III in the ADAAA refers to communication with individuals with vision impairment. Title IV alludes to telecommunications and individuals with hearing or speech impairments, but vision impairments are not considered.

In addition, the 2010 ADA Standards for Accessible Design were published by the US Department of Justice in 2010. The Standards revised Section II and Section III of the ADA to set the minimum requirements in accessibility conditions for government facilities, public accommodations or commercial facilities. Chapter VII of the Standards establishes technical parameters in accessible communication addressing Braille, size or contrast of raised characters and tactile signs.

Finally, several laws allude to accessibility conditions beyond the ADA. The Telecommunications Act (1996), for example, establishes requirements for manufacturers of telecommunications equipment, as well as for telecommunications broadcasters to guarantee that usable and accessible services and devices are provided (Section 255 and Section 251).

In the EU, there are various laws related to accessibility approved during the 2010 decade. The most important one is the European Accessibility Act (EAA) – Directive (EU) 2019/882 of the European Parliament and of the Council of 17th April 2019 on the accessibility requirements for products and services. This directive establishes accessibility conditions within the common market.

Finally, concerning AD, the Audiovisual Media Services Directive (AMSD), amended in 2018, is worth mentioning. This directive stipulates the requirement for audiovisual media providers to ensure equal access to social and cultural life by offering accessibility services, especially considering the elderly and persons with a vision or hearing impairment (art. 23 AMSD amend). These accessibility services should include sign languages, subtitling for the deaf, spoken subtitles and audio description (art. 24 AMSD amend). Member States of the EU shall ensure that accessibility services are progressively offered by media providers (art. 11 AMSD).

As we have seen in this section, there are two ways to address disability and accessibility laws. On the one hand, disability and accessibility norms may belong to a broader general act, which is the case of the EA in the UK or the AMSD in the EU. On the other hand, parliaments may approve specific laws related to disability and accessibility, which is the case of the ADA in the US or the EAA in the EU.

5. Final remarks

This chapter has provided an overview of the social and legal context in which access services like audio description emerge and become seen as indispensable assets to grant equal rights for
access services

As has been explained, in the social and human rights-based perspectives of disability, the focus is placed on reaching adequate conditions for access to information, rather than on the individual with disability undergoing changes that should allow them to access such information. In this paradigm, providing accessibility services is a matter of human rights. The CRPD was an inflection point in this sense, since it establishes that everyone must be able to interact with the devices that allow access to content, regardless of their capabilities.

Over the last few decades, legislation has come to protect fundamental rights in the case of persons with disabilities. Participation is increasingly granted to persons with disabilities to make decisions on aspects that directly concern them, and the right to partake in cultural life, intensely sought in the movement for the blind and partially sighted, has been introduced in disability and accessibility legislation.

Access services devised to meet the needs of persons with vision disability, including audio description, are expected to be in increasing demand in the near future. According to the World Health Organisation (2019), population growth and ageing could lead to a growing population with vision disability. In the current context of daily exposure to audiovisual content, this means that perceptible information accessible from easy-to-use devices, such as services devised by following the principles of universal design, will be more needed than ever.

6. Further reading


Notes

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2 ICD-10 is the 10th revision of the International Statistical Classification of Diseases and Related Health Problems. This classification is published by the World Health Organization.

7. References


