



FEDERAL GOVERNMENT RELATIONS

To: All Domestic NATO Members
From: Esther Baruh, Director, Government Relations
Date: 22 November 2016; UPDATED December 2, 2016
Re: Department of Justice Final Rulemaking on Movie Captioning and Audio Description

Today, the Department of Justice (DOJ) published its final rule on closed captioning (CC) and audio description (AD). The rule can be read in its entirety here: <https://www.federalregister.gov/documents/2016/12/02/2016-28644/nondiscrimination-on-the-basis-of-disability-by-public-accommodations-movie-theaters-movie>. The rule was published in the Federal Register on December 2, 2016. A summary of the rule's highlights follow. This summary does not contain every detail of the rule and should not be construed as legal advice.

Effective Date: The rule is effective January 17, 2017, 45 days after its publication in the Federal Register.

Compliance Date: Theaters will be required to comply with this rule 18 months from its publication in the Federal Register. Compliance is required by June 2, 2018.

Digital Auditoriums: All digital auditoriums are required to comply with the rule.

Analog Auditoriums: The DOJ has chosen not to require exclusively analog auditoriums to comply with this rule. The DOJ may engage in rulemaking at a later date regarding exclusively analog auditoriums. If a movie auditorium is converted from analog to digital projection after the rule is published in the Federal Register, the theater has either six months or within 24 months of publication in the Federal Register to install CC and AD systems in that auditorium, whichever is later.

Drive-In Theaters: Drive-in theaters are exempted from this rule.

Closed Captioning Scoping Requirements: Theaters covered by this rule are required to have a minimum number of CC devices based on screen count. Those minimums are:

- Single screen: 4 devices
- 2-7 screens: 6 devices
- 8-15 screens: 8 devices
- 16+ screens: 12 devices

Recordkeeping and High Demand: The DOJ did not impose a recordkeeping requirement in this rule, nor did the Department require theaters to increase their minimum device amounts if demand exceeds supply. Instead, the DOJ “strongly encourages” theaters located in places with an “unusually high concentration” of deaf and hard of hearing individuals to work voluntarily with their local communities



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to maintain an appropriate number of devices or adopt other approaches to satisfy this higher demand.

Audio Description Scoping Requirements: Theaters covered by this rule are required to have a minimum number of AD devices based on screen count. Theaters must have one AD device for every two digital auditoriums, with a minimum of two devices per theater. If the calculated number of devices results in a fraction, the next greater whole number of devices must be provided. For example, if a movie theater operates seven digital auditoriums, thus requiring three and a half AD devices, the theater must provide a minimum of four AD devices. Theaters that use two-channel assistive listening receivers that are compatible with AD systems can meet their AD scoping requirements with these two-channel receivers.

Device Maintenance: Theaters must “properly maintain” CC and AD devices so that the devices are fully operational, available in a timely manner, and easily usable. CC devices must be adjustable and must provide clear, sharp images to ensure readability.

Alternative Technologies (Open Captioning): The rule does not require theaters to provide open captioned shows. A theater can use open captioning as an alternative to comply with the requirement to obtain CC devices IF (1) the theater exhibits open captioned movies at all showtimes of all movies available with open captions or (2) the theater turns on open captions at all times it receives a request to turn on open captioning prior to the start of a movie. If a theater holds only some open captioned showtimes, the theater will still have to comply with the requirements to obtain CC devices.

Advertising Captioned and Audio Described Showtimes: Theaters must advertise the availability of CC and AD showtimes in the following ways, if the theater uses these methods to announce showtimes: At the box office and other ticketing locations, on websites and mobile apps, in newspapers, and over the telephone. This provision applies as soon as a theater installs CC or AD systems, even if the date of that installation occurs before the compliance period. Movie theaters that already have CC and AD systems installed must comply with this provision by January 17, 2017, when the rule takes effect.

Staff Training: At least one employee must be available to assist a patron requesting CC and AD devices. This employee must be able to locate, activate, and operate the devices; address any problems with device usage; turn on open captioning if the theater is relying on open captioning to meet the requirements of this rule; and communicate effectively with patrons about how to use, operate, and resolve issues with the devices. This provision applies as soon as a theater installs CC or AD systems, even if the date of that installation occurs before the compliance period. Movie theaters that already have CC and AD systems installed must comply with this provision by January 17, 2017, when the rule takes effect.



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Movies Without Captioning or Audio Description Files: Movie theaters are not prohibited from exhibiting movies that do not come with captioning or audio description files. Movie theaters are not required to add captioning and audio description files to a movie that is not distributed with these features.

Undue Burden: Theater owners should note that per the DOJ’s guidance on the rule, “all movie theaters, regardless of size, status of conversion to digital cinema, or economic viability, continue to have available to them the individualized and fact-specific undue burden limitation” under the ADA. However, the guidance also notes that if it is an undue burden for a theater to install CC and AD systems in all its digital auditoriums, “the movie theater is still obligated to comply with [the ADA’s requirement to provide auxiliary aids and services] and provide alternatives to full compliance by providing captioning and audio description in some of its auditoriums up to the point where the cost becomes an undue burden.”

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