



# FEDERAL GOVERNMENT RELATIONS

To: All Domestic NATO Members  
From: Esther Baruh, Director, Government Relations  
Date: 2 December 2016  
Re: Department of Justice Final Rulemaking on Movie Captioning and Audio Description - Advertising and Training Requirements

On November 22, 2016, 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.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-28644.pdf>.

Today, December 2, 2016, the rule was published in the Federal Register. It will take effect January 17, 2017, 45 days from publication.

## **Rule Summary**

The rule requires all digital movie theater auditoriums to be equipped with CC and AD systems and enumerates minimum device requirements for both systems. The rule also contains various obligations and requirements regarding advertising and staff training.

The rule allows for an alternative option with regard to captioning systems. Instead of installing CC systems, the rule permits a theater meet their accessibility obligation by either (1) showing all movies at all showtimes with open captions (OC), provided the movie comes with those files, or (2) turning on open captions whenever a request is received prior to the start of a movie. This means that whenever a patron asks for open captions, regardless of the number of patrons making the request or when the movie is being shown, the theater would be obligated to turn on the open captions. If a theater decides to adopt one of these options, the theater would not be obligated to provide CC devices. However, if the theater only makes some showtimes available with OC, the theater must comply with the requirement to provide CC devices.

The rule also recognizes that in the future, new technology may provide an alternative means of captioning. The rule provides the flexibility to adopt new technologies as long as the new technology meets the needs of patrons with disabilities.

## **Compliance Date**

The rule gives movie theaters 18 months from the date it was published in the Federal Register to comply with the rule. Theaters must be compliant with the rule by June 2, 2018. However, for theaters that already have CC and AD systems, the provisions regarding advertising and staff training apply as soon as the rule goes into effect on January 17, 2017. If theaters do not yet have CC and AD systems in place, the provisions regarding advertising and staff training apply as soon as the systems become available to patrons, even if the date of that installation occurs before June 2, 2018.

**Theater owners should note that movie patrons and advocacy groups have engaged in litigation regarding staff training and proper operation of CC and AD devices. Theater owners can expect close scrutiny on these matters.**



# FEDERAL GOVERNMENT RELATIONS

This memo seeks to clarify these provisions. This memo should not be construed as legal advice.

## **Advertising Captioned and Audio Described Showtimes**

Section 36.303(g)(8) addresses a theater's obligation to provide notice to patrons of the availability of CC and AD movies. The section reads as follows:

Section 36.303(g)(8) Notice. On or after January 17, 2017, whenever a public accommodation provides captioning and audio description in a movie theater auditorium exhibiting digital movies, it shall ensure that all notices of movie showings and times at the box office and other ticketing locations, on Web sites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description. This paragraph does not impose any obligation on third parties that provide information about movie theater showings and times, so long as the third party is not part of or subject to the control of the public accommodation.

The section does not address how a theater that chooses to show all movies at all times with OC, or make OC captions available upon request, is obligated to advertise such availability. However, it is likely that the DOJ would require a theater using the OC option to advertise this in the same manner and method as CC and AD advertising.

## **Who**

Movie theaters covered by this rule must provide notice of CC and AD availability for all movies that come with these technologies.

Third parties that provide notice of movie showtimes are not covered by this rule, as long as the third party is not under control of the movie theater.

## **Where**

In the guidance on the rule, the DOJ stated that notice of CC and AD showtimes is not necessary on all forms of communications and advertisements used by a movie theater. The DOJ requires theaters to 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
- Websites
- Mobile apps
- Newspapers
- Telephone recordings

Other forms of advertising movies and showtimes that are not included in the above list—like marquees, one-sheets, and standees, for example—do not need to have CC and AD availability listed.



# FEDERAL GOVERNMENT RELATIONS

## **How**

Theaters can comply with the rule by using the acronyms “CC,” “OC,” “AD,” or “DV” where applicable. The DOJ does not require movie theaters to use any particular acronyms or symbols in order to indicate CC and AD availability (or OC availability, if a theater is making use of this alternative). The DOJ notes that since most theaters routinely use “CC” to indicate closed captioning, “OC” to indicate open captioning, and “AD” or “DV” to indicate audio description/descriptive video, they are not imposing a particular method of notice.

## **When**

This provision applies as of January 17, 2017 for theaters that currently have CC and AD systems available.

For theaters that don’t have such systems, as soon as the theater does make CC and AD systems available to its patrons, even if the date of that installation occurs before June 2, 2018, the theater must also advertise the availability of CC and AD movie showings.

## **Staff Training**

Section 36.303(g)(9) addresses a theater’s obligation to have adequate staff training. The section reads as follows:

(9) Operational requirements. On or after January 17, 2017 whenever a public accommodation provides captioning and audio description in a movie theater auditorium exhibiting digital movies, it shall ensure that at least one employee is available at the movie theater to assist patrons seeking or using captioning or audio description whenever a digital movie is exhibited with these features. Such assistance includes the ability to—

- (i) Locate all necessary equipment that is stored and quickly activate the equipment and any other ancillary systems required for the use of the captioning devices and audio description devices;
- (ii) Operate and address problems with all captioning and audio description equipment prior to and during the movie;
- (iii) Turn on open movie captions if the movie theater is relying on open movie captioning to meet the requirements of paragraph (g)(3) of this section; and
- (iv) Communicate effectively with individuals with disabilities, including those who are deaf or hard of hearing or who are blind or have low vision, about how to use, operate, and resolve problems with captioning devices and audio description devices.

## **Who**

Movie theaters covered by this rule must always have at least one employee available to assist a patron requesting CC and AD devices. That employee must be available at all times when the theater is open to the public.



# FEDERAL GOVERNMENT RELATIONS

If a movie theater decides to rely on the open captioning alternative, instead of installing a CC system, the same obligation applies: There must be at least one employee available at all times who can turn on open captioning.

The DOJ declined to require all movie theater personnel be trained in operating CC and AD equipment, as they felt that as long as there is one employee at the theater at all times who has knowledge of these systems, that would be sufficient.

Additionally, the DOJ did not include in the rule any specific requirements by what methods or how often theaters must train employees in the use of CC and AD systems. In the guidance on the rule, the DOJ notes that it would be a “good idea” for theaters to implement “reasonable staff training programs and periodic refresher courses.”

## **What**

The employee must be able to perform the following functions:

- Locate and activate CC and AD devices.
- Operate the equipment, and address any problems with the devices that may occur prior to and during the movie showing.
- Communicate effectively with patrons with disabilities who are requesting the devices about how to use, operate, and resolve issues with the devices.
- If the theater is making use of the open captioning alternative, in addition to the above, the employee must be able to turn on the captions.

## **How**

This section requires an employee to be able to “communicate effectively” with a patron requesting CC and AD devices. The DOJ notes in the rule guidance that this obligation does not require a theater to hire a sign language interpreter in order to communicate with a deaf patron. The DOJ believes that such communication is a relatively simple and short exchange, and can be accomplished through signage, instructional guides, or written notes.

## **When**

This provision applies as of January 17, 2017 for theaters that currently have CC and AD systems available.

For theaters that don’t have such systems, as soon as the theater does make CC and AD systems available to its patrons, even if the date of that installation occurs before June 2, 2018, the theater must also have adequate staff training.

###