

NATO Responses to DOJ ANPRM Captioning Questions
January 24, 2010

Question 1: The Department is considering proposing a regulation that contains a sliding compliance schedule whereby the percentage of movie screens offering closed captioning and video description increases on a yearly basis, beginning with 10 percent in the first year any such rule becomes effective, until the 50 percent mark is reached in the fifth year. Please indicate whether this approach achieves the proper balance between providing accessibility for individuals with sensory disabilities and giving movie theaters and owners sufficient time to acquire the technology and equipment necessary to exhibit movies with closed captioning and video descriptions. Also, if you believe that a different compliance schedule should be implemented, please provide a detailed response explaining how this should be accomplished and the reasons in support. Should a different compliance schedule be implemented for small businesses? If so, why? What should that schedule require?

Response to Question 1:

If the DOJ does issue a regulation, NATO supports a five year compliance schedule. As indicated in our Statement, it is expected that 75% of the industry will be digital by the end of 2013. However, a majority of the 14,000 screens that already have been converted to digital will need to have system upgrades to display files with SMPTE DCP closed captions and video description. It is not known when such upgrades will be put in place. Further, it is not known how fast certain smaller members who are not participating in the NATO Cinema Buying Group will be able to convert to digital. Thus, there will be different time frames for different companies to convert to digital. We do know that once a company begins the process, it is unlikely that it will take five years to complete the process. The equipment needed to convert to digital cinema is not equipment that is available off the shelf at the local big box electronics store. This equipment is produced by a limited number of vendors. There are no large inventories sitting on shelves. Theatre operators will not be able to control delivery schedules. In many instances, theatre operators will not be able to control the timing of when existing system upgrades or new digital equipment will be available for installation. Thus, the concept of rolling out captioning at 20% a year over a five year period is not applicable to the economic realities of the market.

It is realistic for a regulation to establish a five year end point for regulatory compliance based on conversion to digital cinema. Theatres that convert to digital should have 25% of their screens equipped with closed captioning and video description systems within the five year period. This will provide widespread access for persons with disabilities and will recognize how theatre operators will actually be acquiring digital cinemas systems.

Currently, many chains have installed some Rear Window® units and do provide closed captioning options to theatre patrons. These units are expensive and are less efficient when compared with alternative closed captioning products becoming available for digital cinema. Some theatre operators may convert the existing Rear Window® units to digital cinema when possible. Other operators may replace the Rear Window® units. We recommend that theatre chains that are in the process of converting to digital cinema be exempt from any requirement

that a certain percentage of their screens have captioning or video description within a given time period if they can provide reasonable evidence that at least 25% of their screens will have closed captioning and video description within five (5) years of the time that any proposed regulation becomes final.

With regard to small, independent theatre operators with less than 50 screens, we recommend that if the theatre operators install digital equipment, at least 25% of the screens in which digital equipment is installed be required to be capable of showing closed captioning and video description. However, we do not believe that any time schedule should be applied to these independent operators. If they do not convert to digital cinema within five years, they will probably be limited to showing independent films or product that is second or third run product. The second or third run product from the major studios will be available to consumers on DVDs which include captioning. Although the majority of the product shown in U.S. theatres is distributed by the major studios, a majority of the films released in the United States are films that are independently produced and distributed. We have no way of knowing whether these films will include closed captioning or video description. Currently, most of these films do not include closed captioning or video description. Any proposed rule should recognize that theatre owners are not required to provide closed captioning or video description in situations where the film's distributor did not include these features as part of the product licensed to the theatre operator.

There are an estimated 83 U.S. theatre operators who have more than 50 screens. These companies operate 30,432 of the 36,644 U.S. screens, listed in a NATO database. The other 931 theatre companies in the database operate 1,513 theatres with an average of 4.1 screens per theatre. Unless these companies install digital cinema, NATO recommends that they be exempt from installing captioning or video description services. The costs involved will be too high and there will be a lack of film product available with captioning or video description. Captioning will be available on DVD's that will be available at the same time this product is shown in theatres.

Question 2: The Department is considering proposing regulatory language requiring movie theater owners and operators to exhibit movies with closed captions and movies with video description so that, after any sliding compliance scale has been achieved by the final year (e.g., at year 5), all showings of at least one-half of the movie screens at the theater will offer captioning and video description. We seek comment on the most appropriate basis for calculating the number of movies that will be captioned and video described: Should this be the number of screens located in a particular theater facility, the number of screens owned by a particular movie theater company, the number of different movies being screened in a particular theater facility, or some combination thereof? Should a different basis be used for small business owners? If so, why? What basis should be used? Please include an explanation of the advantages and disadvantages of each option and the reasons a particular option is preferred over another.

Response to Question 2:

In questions 2 through 6, the Department of Justice seeks information as to whether any regulation that is issued should be based on the number of screens in a theatre; the number of

screens owned by a particular movie theatre company; the number of movies being screened in a particular theatre facility or some combination thereof. In question 5, the Department asks whether the number of movies being screened in a particular theatre facility is the preferred option.

NATO believes that as a matter of law, the number of movies being screened in a particular theatre facility can never be considered as an option.

Motion picture theaters license the right to show copyrighted movies from motion picture distributors pursuant to what are known as master film licensing agreements. These agreements license the theatre owner to display the film in the format provided by the distributor. The theatre owner is specifically prohibited from copying, altering, changing or using the film in any way unless specifically permitted to do so in the master film licensing agreement. It is clear that the theatre owner could not set up its own system for closed captioning a film or for providing video description.

After the publication of the final SMPTE DCP standards in late 2010, the major U.S. distributors announced that during 2011 and going forward almost all of their films released in digital format will include closed captioning and video description tracks. Prior to that time, many major distributors have been providing closed captioning and to a lesser extent video description discs for use by theatres that have the equipment needed to display the closed captioning and transmit the video description, in the context of 35 mm film.

The ADA makes it clear that public accommodations are not required to purchase special products for disabled patrons. As an example, the legislative history specifies that a book store does not have to stock books in Braille. To the extent that distributors provide movies to theatre operators with available closed captioning and descriptive video content, NATO understands that an argument could be made that theatres must install equipment to make such content available to movie patrons.¹

However, theatres cannot be required under the ADA to show or not show a movie based solely on whether the movie is provided with closed captioning or descriptive video content. If distributors make film or digital cinema available without such content, the ADA does not require theatre operators to provide the closed captioning or video description or to refuse to show the movie. Theatre owners have a First Amendment right to show whatever product they believe that movie patrons want to see.

The most that any Department of Justice regulation could propose under the ADA would be to require that theatres be equipped to show movies provided by distributors with closed captioning and video description on a certain percentage of their screens. Theatre owners and distributors have a First Amendment right to display and/or distribute cinema products regardless of the availability of captioning or video description.

Question 3: If the number of screens located in a particular theater facility is the preferred option, please explain whether the fact that some theaters show the same movie on multiple

¹ NATO does not agree with such a position.

screens poses any concerns with regard to the number of movies being screened with captions and video descriptions, and if so, what they are and whether there are any ways to address those concerns. Does this option pose particular concerns to small businesses? If so, what are they? Please indicate whether the Department should include specific language in the regulation that states that the basis for calculating the number or percentage is the number of captioned and video described movies the theater receives from the movie producers in order to make clear that the owner has no independent obligation to caption or describe movies.

Response to Question 3:

As indicated above, NATO recommends that the Department should include specific language in the regulation that states that the basis of calculating the number or percentage used to determine compliance is based on the number or percentage of digital screens in the theatre that have the capacity to show captioning and video description. It should not be the number or percentage of captioned and video described movies that the theatre receives from the movie distributors. It also should be clear that the theatre owner has no independent obligation to caption or describe movies. The number of screens presenting the same movie is not a relevant consideration as long as the required percentage of screens have closed captioning and video description capacity.

Question 4: If the number of screens owned by a particular movie theater company is the preferred option, please explain whether there are any concerns about the geographic distribution of movies being screened with captions and video descriptions, and if so, what they are and whether there are any ways to address those concerns. Does this option pose particular concerns to small businesses? If so, what are they? Please indicate whether the Department should include specific language in the regulation that states that the basis for calculating the number or percentage of movies is the number of captioned and video described movies the theater receives from the movie producers in order to make clear that the owner has no independent obligation to caption or describe movies.

Response to Question 4:

The number of screens in each theatre that have been scheduled for conversion to digital cinema is the appropriate option. NATO'S larger members report that almost all of their theatres will be completely digital by the end of 2012. This means that more than 50% of the screens in the United States will be digital. These screens are geographically dispersed. In addition, NATO has established the Cinema Buying Group. The Cinema Buying Group is an organization that enables smaller independent theatre owners to combine their purchasing power and obtain the necessary financing to convert to digital cinema. The Digital Cinema Buying Group has a total of 7,000 screens operated by smaller companies all across the United States. These screens will be converted to digital cinema. Therefore, there is no need to include a geographic distribution criteria in the regulations. Such a criteria would be difficult to apply as some theatre operators are national, others are regional, and most are local.

Basing the rules on the number of digital theatres operated by a motion picture theatre exhibitor will protect small business adequately, provided that the number of captioning display units and the number of video description headsets required is realistic as proposed by NATO.

If the Department adopts NATO's proposal to utilize a five (5) year rule based on conversion to digital cinema, small business will be protected. However, if the rule is based on the number of movies being screened in a particular movie theatre facility without excluding theatres that have not been converted to digital, there will be a significant and unfair burden placed on smaller theatres. As stated above, the rule should make it clear that theatre owners have no obligation to caption or describe movies as they have no legal right to do so.

Question 5: If the number of movies being screened in a particular movie theater facility is the preferred option, please indicate whether the Department should include specific language in the regulation that states that the basis for calculating the number or percentage of movies is the number of captioned and video described movies the theater receives from the movie producers in order to make clear that the owner has no independent obligation to caption or describe movies. Does this option pose particular concerns to small businesses? If so, what are they?

Response to Question 5:

See Responses to Questions 3 and 4.

Question 6: If some combination of these three methods is the preferred option, please explain that option and how it would be implemented. Should a different combination or percentage be used for small business owners? If so, why? What combination or percentage should be used for small business owners? Please indicate whether the Department should include specific language in the regulation that states that the basis for calculating the number or percentage is the number of captioned and video described movies the theater receives from the movie producers in order to make clear that the owner has no independent obligation to caption or describe movies.

Response to Question 6:

See Responses to Questions 1 through 4. From NATO's perspective, the test should be based solely on screens equipped to show digital cinema. It is estimated that within three to five (3-5) years of the date that any proposed DOJ regulation on captioning becomes final, at least 75% of the screens in this country will be showing digital cinema. If 25% of those screens have the capacity to show captioning and video description, then more than 7,500 screens across the country will be accessible to patrons with severe hearing impairment and sight impairment within the five (5)-year period. This will be a very significant achievement and provide ready access to patrons who use these services.

Question 7: Should any such regulation require that the same number or percentage of movies with video description be exhibited as required for movies with captioning or should a different number or percentage be imposed? If the latter, what would be the justification for distinguishing between these forms of access? Should small businesses use a different ratio or

percentage of video described movies or should they also be required to exhibit the same number or percentage of video described and captioned movies as other entities?

Response to Question 7:

The major digital systems complying with the NATO/SMPTE standards and DCI specifications being offered on the market have the ability to transmit not only closed captioning but also video description. Either the video description will be able to be picked up on assistive listening systems headsets currently in use, or theatres will have to purchase additional headsets in order to pick up the video description. These headsets could be used in any auditorium in the theatre. All theatres that have digital cinema capable of showing closed captioned cinema should also be equipped for showing cinema with video description. NATO recommends that auditoriums that provide closed captioning also provide video description.

Question 8: Should the Department adopt a requirement that movie theater owners and operators exhibit captioned and video described movies beginning on the day of their release? If not, why not (e.g., could such a requirement impose additional burdens and if so, what are they)? Should a different requirement be imposed on small business owners? If so, why? What should that requirement be?

Response to Question 8:

This question assumes that all theatres get all new movies on the day of their release. This is not so. Some theatres are able to book movies on the day of their release. Other theatres are not able to book movies on the day of their release. We recommend that any Department regulation be tied to the date a movie is first displayed in a theatre not the day a movie is released. There should be no difference between large and small operators. It makes no sense to tie a regulation to the date of a movie's release when a theatre may not get the movie until a later date. Smaller theatres most often do not get movies on the day a movie is released.

Question 9: While the Department is not considering requiring the use of open captioning, should movie theater owners and operators be given the discretion to exhibit movies with open captioning, should they so desire, as an alternate method of achieving compliance with the captioning requirements of any Department regulation? If theaters opt to use open captioning, should they be required to exhibit movies with such captioning at peak times so that people with disabilities can have the option of going to the movies on days and times when other moviegoers see movies?

Response to Question 9:

Any regulations should permit theatre owners to substitute open captioning for closed captioning at the theatre owner's discretion. There should be no restrictions on the use of open captioning on a voluntary basis. Any such restrictions would have the affect of curtailing the use of all open captioning. If DOJ requires theatres that opt to use both open and closed captioning to use open captioning at peak times, no theatre will use open captioning at all. Industry data shows that auditoriums that display open captioned films suffer a substantial loss in revenue.

Theatre companies can not afford such losses and therefore will choose not to show open captioned films if a regulation requires that such films be shown at peak times.

Question 10: How many movie theater owners or operators have converted, in whole or in part, to digital cinema? How many have concrete plans to convert 25 percent of their theaters in the next five years? Next ten years? How many have concrete plans to convert 50 percent of their theaters in the next five years? Next ten years? How many have concrete plans to convert 75 percent of their theaters in the next five years? Next ten years? What are the estimates for the cost for a movie theater to convert a movie auditorium to digital cinema? Are these costs different for small businesses? Have small businesses entered into any cost-sharing agreements or other financing arrangements to assist in such a conversion?

Response to Question 10:

See NATO's Statement of Position.

Question 11: Have specific protocols or standards been developed for captioning and video description for digital cinema and, if so, what are they?

Response to Question 11:

See NATO's Statement of Position.

Question 12: Do the closed captioning and video description technologies currently available require the use of a digital sound system or digital cinema? Have technologies been developed that do not require the use of either a digital sound system or digital cinema in order to display open or closed captions and offer video description? If any new technologies have been developed, please explain how they work and what, if any, additional costs are associated with the purchase or use of such technologies? Are there technologies in development that will not require the use of a digital sound system or digital cinema in order to display captions or video description? If so, what are they and when are they expected to be available for use by movie theater owners and operators? Please explain what, if any, additional costs are associated with the purchase or use of such technologies.

Response to Question 12:

See NATO's Statement of Position.

Question 13: Is the existing closed captioning and video description equipment in use for digital sound systems compatible, or able to be integrated, with digital cinema systems? If not, why not? Are there additional costs associated with using this equipment with digital cinema systems? If so, please provide details. Are the costs different for small businesses? If so, why? What are they?

Response to Question 13:

The existing closed-captioning and video description equipment in use for digital sound systems can be modified to integrate with digital cinema. However, where such a closed-captioning system is based on the Rear Window® technology, the rear wall digital display will still be required. When converting to digital cinema, the costs of utilizing new closed captioned options that claim to be useable from every seat in the auditorium must be evaluated in light of the fact that an existing "Rear Window" system still requires a rear wall digital display and may not be useable from every seat in the auditorium. However, the distributor of Rear Window® has indicated that its system has been improved for use with digital cinema. NATO does not have sufficient information to provide the cost analysis requested.

Question 14: With regard to closed captioning systems, is the ability to read the captions equally good throughout the movie theater or are there certain seats in the theater that provide an enhanced level of readability or line of sight both to the screen and the adjustable panel affixed at or near the patron's seat? If certain seats enable individuals who are deaf or hard of hearing to view movies more effectively, which seats are they and why are they better (e.g., the image is better, there are fewer obstructions, there is less need to continually adjust the panel, etc.)? Should movie theater owners and operators be required to hold such seats for individuals with disabilities who wish to use the theater's closed captioning system? Since movie theater seating is usually first-come, first-serve, is there an effective system that movie theaters would be able to implement to hold back releasing such seats? Should movie theater owners and operators be allowed to release such seats if they are not requested within a certain amount of time before the start of the movie? Should movie theater owners and operators be allowed to release such seats to the general movie going audience once all of the other seats in the theater have been sold out? Are there alternatives for seating that minimize the cost but still provide patrons who are deaf or hard of hearing with effective and efficient readability of the captions and lines of sight to the screen?

Response to Question 14:

With the possible exception of the Rear Window® system, the ability to read the captions provided by the new closed caption systems is reported to be equally good throughout the movie theatre. With the Rear Window® system, it is our understanding that the reflected caption varies in size depending on how far the seat is from the rear wall digital display. As noted in the Question, movie seats are available on a first-come, first-served basis. Many moviegoers prefer to sit in the middle of the auditorium rather than in the front or the back. Some prefer to sit on an aisle because they have long legs. Others prefer to sit in the back because they are far-sighted. The industry does not reserve seats for persons who have personal preferences even though some may be dictated because of physical characteristics. All movie patrons are aware that in order to get the seat of their choice, they must arrive early at the theatre. Since even with the Rear Window® system, the great majority of seats within an auditorium will give patrons an equal opportunity to view captioning, we do not believe there is any need to have assigned seats or reserved seats for people who use captioning. Developing such a system would involve a great cost and basically provide no benefit. In this respect, there is no need to treat persons who have hearing impairments any differently than other patrons. If a person with

a hearing impairment wants to be in a certain section of the auditorium, he or she should get to the theatre as early as possible.

Question 15: Are there other factors that the Department should include with regard to the display of captions or the use of video description? What is the cost of purchasing/incorporating video description equipment per screen/theater? Are the costs different for small businesses? If so, why? What are they?

Response to Question 15:

For estimates of costs for both closed captioning and video description systems, see NATO's Statement of Position.

Question 16: Has any specific equipment been developed or is there equipment in development for use with digital cinema that would be necessary to exhibit closed captioned movies or movies with video description? If so, is that equipment included in the general cost of the conversion to digital cinema or is an additional fee imposed? If an additional fee is imposed, please provide details. Are the costs different for small businesses? If so, why? What are they?

Response to Question 16:

The major closed caption systems for theatres are offered by Sony, USL, Doremi and MOPIX / Rear Window®. The manufacturers of these systems claim that the systems will meet SMPTE standards and be able to display closed captioning tracks provided with digital cinema that meet DCI specifications. Additional equipment is available for descriptive video. See NATO's Statement of Position for cost information.

Question 17: Are there any other technical requirements that the Department should consider for inclusion in any regulation? If so, please provide details.

Response to Question 17:

All digital captioning and descriptive video programs should comply with applicable NATO requirements, DCI specifications and SMPTE standards.

Question 18: Should the Department include a requirement that movie theater owners and operators establish a system for notifying individuals with disabilities in advance of movie screenings as to which movies and shows at its theaters provide captioning and video description? If so, how should such a requirement be structured? For example, should the Department require movie theater owners and operators to include, in their usual movie postings in the newspaper, on telephone recordings, and on the Internet, a notation or some other information that a movie is captioned, the type of captioning provided, or that the movie has video description? Should the Department require movie theater owners and operators to

establish a procedure or method for directing individuals with sensory disabilities to where in each movie theater they should go to obtain any necessary captioning and video description equipment? Should movie theater owners and operators have the discretion to determine what notification procedure or method is most appropriate or should the Department specify how and where individuals with disabilities can obtain such equipment at each theater? What are the costs for these types of notifications? Are there any alternative types of notifications possible? Are these costs different for small businesses? If so, why? What are they?

Response to Question 18:

Currently, it is common practice for motion picture theatres to have signage in box offices indicating the availability of assistive listening systems and the availability of wheelchair seating. Theatres that currently offer captioning and video description usually include such information on theatre websites describing which auditoriums and which movies will offer these amenities. Many theatres include a similar type of a notice in newspaper show time listings. In the future, it is expected that more and more consumers will utilize websites as a means of accessing information regarding the availability of films at various theatres. Although exhibitors currently provide this information to websites, NATO members have reported that purveyors of movie show time information sometimes neglect to publish or inaccurately publish captioning and/or descriptive narrative information associated with specific movies and show times. NATO staff has met with representatives of the leading companies that furnish movie show time listings to the websites. They agreed to address these concerns and to encourage media clients to display captioning information in movie show time listings. We recommend that any regulation requiring theatre owners to give consumers reasonable notice of movies with closed captioning and video description, allows discretion in providing such notice. Options could include website postings, postings in movie show time listings or notices on telephone recordings. We do not believe there is a need to require this information on telephone recordings as individuals with severe hearing loss usually use online information rather than telephones.

As a general rule, theatre operators do not advertise motion pictures in newspapers. The newspaper ads are placed by the distributors and paid for by the distributors. Theatre operators do not control the context of the ads.

Captioning and video description equipment will be available either at the theatre box office or the theatre guest relations desk. In larger theatres, such equipment will probably be available at the guest relations desk. In smaller theatres, such equipment will be available at the box office. Since all people entering the theatre have to enter through either a box office or a point where tickets are taken, signage indicating that captioning and video description equipment can be obtained at a definite location within the theatre should be displayed at the entry point. Theatre personnel should be trained so that an individual with sight impairment can question a theatre employee and determine where video description equipment may be obtained. The cost of these types of notifications will not be significant. The cost will be similar for both large and small businesses.

Question 19: Should the Department consider including a training requirement for movie theater personnel? Should the Department require that movie theater owners and operators ensure that at least one individual working any shift at which a captioned or video described movie is being screened be trained on how any captioning and video description equipment operates and how to convey that information quickly and effectively to an individual with a disability who seeks help in using that equipment? What are the costs and burdens to implementing such a training requirement? Are these costs different for small businesses? If so, why? What are they? Would written and recorded explanations of how the equipment works be a better alternative?

Response to Question 19:

There is no need for any proposed regulation to include a requirement that theatre personnel be trained regarding how the particular theatre's captioning and video description equipment operates and how to convey that information quickly and effectively to an individual with a disability who seeks help in using that equipment. It is currently part of the general training programs utilized by theatre operators to teach staff how to deal with motion picture theatre patrons. Theatre operators also train staff how to use the equipment in the theatre including assistive listening devices. There is no need for government to regulate training of employees with regard to closed captioning or video description systems. We do not believe that it would be cost effective or practical to have a recorded explanation of how video descriptive equipment works. We think that theatre staff can instruct consumers on how such equipment works by following instructions provided by the theatre operator or the company manufacturing the equipment. The level of usage of this equipment is expected to be extremely low. Therefore, purchasing a device to play a recorded message doesn't seem to be justified in light of the fact that staff education has been shown to be effective with existing assistive listening systems and Rear Window® closed captioning systems. Further, a recorded explanation will not be of value to deaf patrons.

Question 20: The Small Business Administration size standard for small movie theatres is \$7 million dollars in annual gross revenues. Does the public have estimates of the numbers of small entities that may be impacted by future regulation governed by this ANPRM? How many small entities presently provide movie captioning or video description? How many small entities already have, or have plans to convert to, digital cinema? How many small entities presently have, or plan to convert to, digital sound systems? How much would it cost each small entity to provide movie captioning and video description technology using digital sound? How much would it cost each small entity to provide movie captioning or video description if the entity converted to digital cinema?

Response to Question 20:

NATO has a database identifying approximately 1,000 U.S. theatre operators. About 450 of these companies operate 4 screens or less and will probably fall under the \$7 million definition of small business. Many of these companies will not be able to afford the \$70,000 to \$100,000 per screen to convert to digital cinema. As indicated in NATO's Statement of Position,

theatres that do not convert to digital, or which meet the SBA definition of small business, should be exempt from any captioning or descriptive video requirement. The digital sound systems that are associated with film are not utilized in digital cinema. Theatres with digital sound systems that do not convert to digital cinema will have difficulty getting film product with closed captions and video description for such digital sound systems.

Question 21: Currently, what are the general costs per movie theater owner or operator to display movies with closed captioning? How many small entities offer this feature? What are the general costs to small entities to display movies with open or closed captioning? For all entities, is that figure per auditorium, per facility, or per company? Do these costs change for showing IMAX or 3D films with captions? Are there any cost-sharing or cost-allocation agreements that help mitigate these costs for movie theater owners or operators? Is most or all of this expense a one-time fee? If not, please explain.

Response to Question 21:

A movie theatre owner or operator that wants to display films with closed captioning must purchase and install closed captioning equipment. It is estimated that the cost of purchasing and installing such equipment for 35 mm film is approximately \$12,000 - \$15,000 per screen. The theatre operator must then train theatre employees how to operate the equipment. Theatre personnel must also be trained as to how to instruct theatre patrons to use the equipment. Since the devices in question include display units that are placed in cup holders, signage must be purchased and displayed indicating where the theatre patron can pick up the device and a place must be assigned for storage of the equipment. Such a place must be easily accessible by theatre employees and must also be lockable so that the devices can be secured in order to prevent theft. Some maintenance is required.

It is unknown how many small theatre operators currently offer closed captioning or open captioning. However, a review of the MOPIX website which lists theatre operators using "Rear Window®" equipment indicates that the majority of users are the largest theatre chains.

Small entities may have to pay more for captioning equipment than larger entities. Larger entities may be offered a discount based on volume. NATO does not have specific data showing the amount of any discount.

With regard to open captioning, NATO members report that theatre auditoriums that offer open captioned films generally have a reduced attendance in comparison to similar auditoriums in the same theatre offering the same film at the same time but without captioning. Motion picture patrons have indicated that they object to attending an open captioned film and would prefer to attend the same film without open captioning whenever possible. Data has been collected in theatres where two similar-sized auditoriums will run the same film at relatively the same time. In one auditorium, the film will be shown with open captioning. In the second auditorium, the film will be shown without captioning. Theatre patrons will be given the option to attend the film in the auditorium with open captioning or the film in the auditorium with no captioning. It is reported that a large majority of the patrons given an option of going to the open captioned theatre or the theatre without captioning will pick the theatre without captioning.

Some patrons will not attend the open captioned showing. As a result, the motion picture theatre chain that features open captioning in many of its theatres, came to a decision not to show open captioning on Friday evening or Saturday evening performances. It was believed that showing the open captioned film on Friday evening or Saturday would result in a very significant reduction in theatre revenue.

For motion picture theatre companies, the cost of showing closed captioned 35 mm films is always predicated on a cost per auditorium basis. The Rear Window® equipment available to transmit the captioning can only be used in a single auditorium. It is not feasible to move it from auditorium to auditorium. Although the reflective device placed in the cup holders to display the captioning could be moved from one auditorium to another, the cost of such devices are not a substantial part of the cost of the total system.

IMAX films can only be shown in auditoriums equipped to display such films. Such auditoriums must have special configurations and special projection equipment. Theatres that show 3-D films must also have special equipment. Theatre companies install an IMAX system or a 3-D system in one auditorium in a complex at a time. Such equipment cannot be moved from auditorium to auditorium without much difficulty. After conversion to digital cinema, closed captioning should be available for 3D presentations assuming that the distributor includes SMPTE/DCP standardized closed captioning and video description tracks as part of its digital cinema file. However, at the present time, theatre operators have not had the opportunity to test SMPTE/DCP closed captioning systems with 3D closed captioned movies. Until such testing is done, it would be premature to regulate closed captioning for 3D movies. We simply do not have adequate experience or data to know what is feasible and what is not.

There are no cost sharing or cost allocation agreements that might help mitigate the cost for putting in a captioning system. Most of the expense is a front-loaded one-time fee. The base equipment (except for cup holder display units) cannot be moved from one auditorium to another on a reasonable basis. Thus, if there were two small single screen theatres in a rural town, it would not pay to move captioning equipment from theatre to theatre on a weekly or monthly basis.

Question 22: Currently, what are the general costs per movie theater owner or operator to display movies with video description? How many small entities offer this feature? What are the general costs to small entities to display movies with video description? For all entities, is that figure per auditorium, per facility, or per company? Are there any cost-sharing or cost-allocation agreements that help mitigate these costs for movie theater owners or operators? Is most or all of this expense a one-time fee? If not, please explain.

Response to Question 22:

The responses to Question 22 with regard to video description are similar to the responses to Question 21 with regard to closed captioning. Generally, where video description is made available by a film distributor, a theatre needs to have special equipment in order to provide theatergoers with the benefit of this function. NATO's Statement of Position includes pricing

information for video description systems in a digital cinema auditorium. It is questionable whether video description will be available for film products after the digital conversion occurs.

Question 23: Currently, what are the general costs to convert to digital cinema? Are the costs different for small entities? If so, why? What are the costs for small entities? Is that figure per auditorium, per facility, or per company? Are there cost-sharing or cost-allocation agreements that help mitigate these costs for movie theater owners or operators?

Response to Question 23:

It costs between \$70,000 - \$100,000 per screen to install digital cinema. Theatre operators and motion picture distributors are both interested in quickly converting theatres to digital cinema. Currently, a distributor may open a major motion picture simultaneously in 3,000 screens across the country. This means that the distributor will have to make 3,000 prints of the film. If each print has an average cost of \$1,000, the distributor must pay \$3 million just to make the prints. Then the distributor must establish a logistics program to actually ship the print to individual theatres. The prints are made on 35 mm film and are bulky and heavy. There is significant cost in shipping the film to the theatre and getting the film back from the theatre at the end of the run. If the film is successful, a certain number of prints will be then sent for use in the sub-run and international markets. Film degrades as it is used. A print that is being shown for the first time will have a clearer and sharper image, than a print that is being shown for the 100th time. Finally, when film is distributed to a theatre, the film arrives on multiple reels. The projectionist at the theatre generally unwinds the film from the several reels on which it is delivered, splices the film segments together and then winds the film on a large platter. It is not unusual for film to be nicked or suffer splice damage during this process and therefore when the film is returned to the distributor or film lab, it must be checked out and repaired where necessary.

Thus the distribution companies have significant costs in making prints and setting up the logistics for distributing prints. These costs will be virtually eliminated with digital transmission of cinema. Theatre operators will have a better quality product for theatre patrons. As a result, distributors and exhibitors working together, and utilizing the services of third-party financing organizations have established a system whereby the theatres will obtain third-party financing for digital cinema equipment in a theatre and the distributors have agreed to pay a "virtual print fee" to the financing entities to partially subsidize the equipment, installation, and maintenance. The members of MPAA have established DCI (Digital Cinema Initiatives) specifications for equipment in order to ensure that the equipment will show standardized cinema distributed digitally by all complying distributors and include proper security measures. Some theatre operators have dealt directly with equipment providers in acquiring equipment to meet their needs. Other theatre operators have joined together and established a buying entity. Finally, in order to assist smaller members, NATO has established the Digital Cinema Buying Group. The Digital Cinema Buying Group is a consortium of smaller NATO members combining their buying power to obtain competitive pricing for digital equipment. The Digital Cinema Buying Group represents about 7,000 screens.

There are several different manufacturers offering digital equipment to theatre operators. Approximately 14,000 digital installations have been made in U.S. theatres. Most of this equipment needs to be upgraded to meet the industry standards. The industry has made a general commitment to make digital cinema available to as many theatres as possible. However, it is uncertain as to what the actual schedule for the digital rollout will be. NATO estimates that by the end of 2013, 75% of U.S. screens will be showing digital cinema.

In 2010, 613 films were released in the United States. 140 of these films were distributed by MPAA members. The MPAA members have announced that during 2011 almost all of their films released in digital format will include closed captioning and descriptive video. However, in 2010, 473 films were released by independents not affiliated with MPAA. It is not known whether these independent distributors will release their films with closed captioning and video description.

Although there is a general consensus that all theatres that wish to switch to digital cinema should have the opportunity to do so, it is obvious that a small, one-screen theatre in a rural area that is open Friday evening, Saturday matinee, Saturday evening and perhaps Sunday evening may not have sufficient revenue to justify the cost of digital cinema. Such a theatre may currently be a second-run or third-run facility. However, the cost of the equipment to convert that theatre to show digital cinema is the same as the cost of the equipment to install digital cinema in a similar sized auditorium in the industry's most profitable and biggest grossing theatre. NATO is doing all that it can to ensure that every American theatre that wants the opportunity to convert to digital cinema gets that opportunity. However, some industry experts are predicting that many smaller theatres will be unable to convert to digital and will close.

Question 24: What impact will the measures being contemplated by the Department requiring captioning and video description of movies have on small entities? Please provide information on: (a) Capital costs for equipment needed to meet the regulatory requirements; (b) costs of modifying existing processes and procedures; (c) any effects to sales and profits, including increases in business due to tapping markets not previously reached; and (d) changes to market competition as a result of the proposed rule.

Response to Question 24:

The measures being contemplated by the Department requiring captioning and video description of movies will have a significant adverse financial effect on the many small theatre operators existing throughout the country. Current NATO data indicates that there are approximately 1,014 separate theatre operators in the United States. Of this number, 362, more than a third of the total, operate at one site with one or two screens. Many of these theatres operate primarily on weekends and barely break even. Hopefully, many of them will be given the opportunity to participate in the digital conversion. However, for those theatres that do not have the opportunity to move into the digital world, a requirement that they purchase \$15,000 - \$20,000 worth of equipment per screen in order to show 35 mm film with closed captioning and video description would create a significant undue financial burden. In the towns served by these theatres, there could be no reasonable expectation of any significant increase in attendance

resulting from the installation of this equipment. At the same time, if it is anticipated that they will be showing film product rather than digital cinema, it is questionable as to how long such product would be available. In most instances, these theatres are the only theatres located in their towns. If the proposed rule requires the expenditure of \$15,000 - \$20,000 per theatre, the rule may be the straw that breaks the camel's back and forces these theatres out of business. These facilities operate on a very marginal basis and economically their survival depends on them being able to maintain extremely low costs. If another newer theatre is built within a reasonable distance, these theatres often go out of business. NATO recommends that theatres that do not convert to digital be exempt from closed captioning or video description requirements.

Question 25: Should any category or type of movie theatre be exempted from any regulation requiring captioning or video description? For example, the Department now considers it likely that drive-in theaters will not be subject to this rule because the Department is not aware of any currently available technology that would enable closed captioning or video description of movies shown in drive-in theaters. Are there other types of movie facilities that should be exempted and why?

Response to Question 25:

NATO recommends that any U.S. theatre that does not convert to digital cinema be totally exempt from any regulation requiring captioning or video description.

NATO further recommends that any proposed regulation makes it clear that a theatre operator's obligation to show films with captioning or video description is limited to those situations where the distributor of the film makes captioning or video description available in accord with the SMPTE standards.

Special consideration must be given to 3D, IMAX and similar presentations. If technology exists that will permit auditoriums equipped with 3D systems or IMAX systems to display closed captioning and video description from digital cinema feeds in the same manner as 2D digital cinema presentations, no special rules are required. However, if the same technology does not apply, each type of presentation must be evaluated on a case-by-case basis.

With regard to drive-in theatres, NATO supports the position taken by the United Drive In Theatre Owners Association.

Question 26: If an exemption is provided, how should such an exemption be structured? Should it be based on the size of the company? To determine size, should the Department consider (a) using the Small Business Size Standard of \$7 million dollars in annual gross revenue so that movie theater owners who fall within those parameters should be exempt?; (b) using factors such as whether the movie theater owner is an independent movie house (not owned, leased, or operated by, a movie theater chain), or small art film house in order to be exempt?; or (c) using some other formula or factors to determine if a movie theater owner should be exempt? Should the Department consider the establishment of different compliance requirements or timetables

for compliance for small entities, independent movie houses, or small art film houses to take into account the resources available to small entities? What are other alternatives for small businesses, independent movie houses, or small art film houses that would minimize the cost of future regulations?

Response to Question 26:

As indicated above, NATO believes that the regulation should be applied based on whether any particular theatre has been converted to digital cinema and whether the closed captioning and video description provided by the distributor meets industry standards and is capable of being displayed or transmitted on the equipment in the theatre that meets industry standards.

If the theatre has been converted to digital cinema, no more than 25% of the screens should be required to display closed captioning and video description. These screens should offer closed captioning and video description 24/7 provided that the product coming from the distributor offers standardized closed captioning and video description. At the same time, the theatre should have the option of playing cinema from distributors that do not offer captioning or video description. There should be no limits on the number of movies offered without captioning and/or video description. As long as 25% of the screens in the theatre are capable of showing product with standardized closed captioning and video description, and do so 24/7 when the distributor provides the content, this should constitute compliance with the regulation.