



**Statement of Position  
National Association of Theatre Owners  
750 First Street, N.E., Suite 1130  
Washington, D.C. 20002  
January 24, 2011**

**Department of Justice: CRT Docket 2010-0007**

**Nondiscrimination on the Basis of Disability;  
Movie Captioning and Video Description**

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Statement of  
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Department of Justice: CRT Docket No. 2010-0007,  
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I. Captioning of Motion Pictures and the ADA

When Congress passed the ADA, it provided legislative history that specifically stated that the ADA did not require motion picture theatres to show open captioned films. At no place in the statute, the legislative history or the implementing regulations was there any reference to closed captioning of motion pictures.

For many years, the Department of Justice (DOJ) and the Access Board both concluded that the ADA did not require motion picture theatres to show open or closed captioned films. In various ADA settlements with motion picture theatre operators, the DOJ made no attempts to include a closed captioning requirement as part of the settlements.

In the DOJ's NPRM in Docket 105, published June 17, 2008, Question 24 asked for comments regarding captioning of motion pictures. In response to that question, NATO provided a comprehensive analysis of the legislative history supporting the ADA, the statute, the regulations, case law, and positions taken by the DOJ and the Access Board showing that the ADA does not require motion picture theatres to show open or closed captioned films.<sup>1/</sup>

Subsequently, the United States District Court in the case of *Arizona v. Harkins Amusement Enterprises, Inc.*, 2008 WL 19222979 (D. Ariz. 2008) issued an order confirming that the ADA does not require motion picture theatres to show open or closed captioned films.

The *Arizona v. Harkins* case was appealed to the United States Court of Appeals for the 9<sup>th</sup> Circuit. The 9<sup>th</sup> Circuit sent the case back to the District Court (*Arizona v. Harkins Amusement Enterprises, Inc.*, F.3d, 08-16075, 2010 WL 1729606, 9<sup>th</sup> Cir., April 30, 2010)

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<sup>1/</sup> See Attachment A, NATO's response to Question 24.

asking the District Court to obtain evidence in order to determine whether requiring closed captioning and video description would amount to a fundamental alteration or undue burden under the ADA.

NATO filed an *amicus* brief in the *Harkins* case<sup>2/</sup> arguing that closed captioning and video description would constitute a fundamental alteration under the ADA and therefore cannot be required. NATO still believes that this is the correct interpretation of the ADA.

NATO has been working with members of the Society of Motion Picture and Television Engineers (SMPTE), members of the Motion Picture Association of America (MPAA), disability rights groups and others to develop and implement voluntary digital cinema standards. These standards now include uniform formats for closed captioning and video description files for motion picture theatres. The standards have formed the basis for the development of compatible digital cinema technology systems by equipment manufacturers.

The standardized digital cinema systems are now being put in use. The adoption of the voluntary industry standards including closed captioning and video description has eliminated the need for any DOJ standards. Following the publication of the SMPTE Digital Cinema Package (DCP) Standards in late 2010, all of the MPAA member companies have announced that in 2011, almost all of their theatrical releases in digital format will include closed captioning. MPAA studios are hopeful that technological developments will soon allow closed captioning for 3D version releases. Further, the MPAA studios are working to significantly increase the number of digital releases that include video description in 2011 and beyond. By the end of 2013, more than 30,000 of the 40,000 screens in the United States will have installed digital cinema systems meeting the voluntary standards.

NATO urges the DOJ not to move forward with motion picture captioning or video description standards at this time. NATO does not believe that the ADA authorizes the DOJ to mandate closed captioning or video description of movies. Furthermore, adoption of the voluntary industry standards as part of the industry conversion to digital cinema will achieve the

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<sup>2</sup> See Attachment B, NATO's Brief before the 9<sup>th</sup> Circuit in *Arizona v. Harkins Amusement Enterprises, Inc.*

level of accessibility that not only meets but exceeds the needs of movie patrons who could benefit from closed captioning or video description.

However, if the DOJ does propose a rule, the rule proposed in the ANPRM is much broader than needed and does not reflect a full understanding of the comprehensive changes in the industry that will occur within the next several years as a great majority of the motion picture screens in the United States switch to digital cinema.

The ANPRM also does not recognize the adverse consequences that will fall on those theaters that do not switch to digital cinema. Unfortunately, many of these theatres will be small theatres in rural communities meeting the ANPRM definition of “small business.” Some of these theatres will be theatres with a short time remaining on leases or theatres that are no longer economically viable. If these theatres survive at all, they will no longer exist as first run theatres featuring new releases from major studios. It is highly questionable whether the product available to them will include closed captioning or video description.

The positive effects of the conversion to standardized digital cinema and the potential negative effects on those theatres that do not convert dictate that any rule that is proposed has the following parameters:

1. A motion picture theatre equipped with digital cinema systems should not be required to have equipment needed to display closed captioning and video description on more than 25% of its screens. Motion picture theatres should have a period of five years from the time a rule becomes final to complete the installation of digital cinema equipment with closed captioning and video description capabilities.
2. Any motion picture theatre that does not convert to digital cinema within five years of the time that any DOJ rule becomes final should be exempt from any closed captioning or video description requirements unless and until such theatre does convert to digital.

## II. Current State of Transition to Digital Cinema

The motion picture theatre industry is currently in the process of converting from film to digital cinema. The conversion is a combined effort of the major studios who are members of MPAA, motion picture theatre operators who are members of NATO and industry vendors. The studios, with the cooperation of NATO, established a series of digital cinema specifications. These specifications are known as the DCI specifications. NATO produced a companion set of digital cinema requirements, which called for the inclusion of closed captions and video description in the digital cinema standards. NATO, MPAA and others working through SMPTE have proposed voluntary standards to ensure the inter-operability of the required hardware and software to enable the transition from film to digital cinema to occur successfully.

In simple terms, digital cinema requires that the motion picture distributor transmit a digital “movie” to a theatre in a standardized digital format. The theatre must have servers and projectors that meet NATO requirements, Digital Cinema Initiatives (DCI) specifications, and SMPTE standards and can read the digital product provided by the distributor and display that product on the screen. The requirement of compliant servers and projectors ensures that the theatre is able to receive product from all distributors that meet industry specifications and that such product is secured and protected from piracy. The voluntary standards published by SMPTE include tracks for closed captioning and video description when provided by the distributors as requested by NATO. As noted above, the MPAA member companies have announced that in 2011, almost all of their theatrical releases in digital format will include closed captioning. MPAA studios are hopeful that technological development will soon allow closed captioning for 3D version releases. Further, the MPAA studios are working to significantly increase the number of digital releases that include video description in 2011 and beyond.

Although motion picture theatres are public accommodations covered by the ADA, motion picture distributors are not public accommodations and are not covered by the ADA. Theatre operators are concerned that the independent distributors may not provide theatre operators with product which includes captioning and video description.

As an example, the six studios comprising the MPAA distributed 140 films in 2010. The independent studios released an additional 473 films. MPAA members captioned approximately 86% of their film products. By contrast, the majority of the independent product was not provided with captioning or video description. Although MPAA films certainly take the largest segment of U.S. screen play dates, independent films are very popular with U.S. theatre patrons. Based on current practices, it is doubtful whether the independent studios will start to provide captioning or video description on a regular basis.

The major server manufacturers providing digital cinema servers are Sony, Doremi, Dolby and GDC. The major manufacturers providing digital cinema projectors are BARCO, Sony, Christie Digital and NEC.

The major server manufacturers now have, or soon will have, servers with the capacity to drive closed caption systems that incorporate cupholder or glasses-type display devices. The servers will have the capacity to drive video descriptions to earphones to be worn by theatre patrons.

There are currently four options for digital captioning display devices that are either on the market or reportedly close to being on the market. These are Rear Window® Plexiglas cupholder captioning display devices, CaptiView (Doremi) and USL cupholder captioning display devices and captioning display eyewear that has been shown in prototype format by Sony. None of these devices have had a significant digital cinema trial period with consumers viewing captioned movies in a U.S. theatre environment.

The Rear Window® system uses infrared technology to display captioning on a Plexiglas cupholder display unit. The system is reported to work with most of the servers on the market. The server transmits the captioning to a display panel in the rear of the auditorium. The patron adjusts the cupholder display unit to pick up the reflected captioning. Rear Window® technology has been used in theatres for many years.

The USL system also uses infrared technology and is reported to work with most of the servers on the market. The server sends the captioning to an infrared transmitter located in the front of the theatre. The infrared captioning then can be read on a cupholder display unit placed in any seat in the theatre with a direct line of sight to the sending unit. The USL system was recently introduced to the U.S market.

The Captiview system currently only works with Doremi servers although it is reported that work is in progress to permit the Captiview display unit to function with other servers. Unlike the Rear Window® and USL systems, the Captiview system uses Wi-Fi technology to transmit closed captioning directly from the server to a cupholder display unit. There is no need to adjust the display unit to pick up an infrared transmission.

The Captiview system was introduced in 2010 in Canada and Australia and has recently been introduced in the U.S. market.

Sony captioning glasses have been demonstrated at industry showings and are currently in field testing. The movie patron is provided with lightweight eyeglasses that are placed on the face or worn directly over regular glasses. The glasses are attached to a PDA type receiver that can be worn on a lanyard or placed in the shirt pocket of the user. The receiver picks up a Wi-Fi signal from a transmitter. The new SMPTE standards will allow these glasses and future closed captioning display devices to be used with all compliant servers on the market.

All four of these devices have been designed to work with digital cinema closed caption systems and all have recently been made available to theatre operators for testing and evaluation. Theatre operators are currently examining these devices and determining how they will integrate into the theatre operators' digital system and whether these devices are user-friendly in a theatre environment.

There are approximately 40,000 motion picture theatre screens in the United States. It is estimated that 14,000 of these screens have already been converted to digital. However, the equipment in most of these theatres is not compliant with the NATO requirements, DCI

specifications, and SMPTE standards and needs to be upgraded in order to become compliant. Most of this equipment is not capable of directly transmitting closed captioning without upgrading or the addition of supplemental hardware. It is expected that this equipment will be upgraded within the next two years and after upgrading will have the capacity to drive whichever closed caption systems that theatre operators find most satisfactory.

The theatre chains and equipment vendors have experimented with the digital closed captioned movies but with no uniform degree of success. There is need for further work before the digital display devices, video description headsets, servers and digital cinema files become sufficiently integrated to work seamlessly in a theatre environment.

In summary, at the present time, the 14,000 digital screens in place only have a limited capacity to display digital closed captioned product; there are relatively few captioning display devices on the market, these devices need further evaluation; and digital closed captioned products or digital products with video description are just now being introduced to the market on a wide scale basis.

For implementation of a rule that would require widespread availability of closed captioning in motion picture theatres, the digital systems now in theatres must be upgraded; additional digital systems must be installed in theatres that have not been converted; new cupholder display devices or eyewear designed to play SMPTE standardized digital closed captioning must be tested and put on the market; and distributors must provide widespread availability of digital cinema product which complies with DCI specifications, NATO requirements, and SMPTE closed captioning and video description standards. Until these conditions occur, no DOJ rule can be implemented.

It is NATO's belief that all of these conditions will all be met within the next three to five years.



### III. A Three to Five Year Outlook - - A Major Change

By the end of 2013, the industry estimates that more than 75% of the screens in the United States will be digital. These screens will either be new installations or existing digital systems that have been upgraded. Almost all of the digital cinemas will comply with the voluntary industry standards. There will be compliance with the SMPTE standards for closed captioning, and video description and the major distributors have announced that they are shipping product with both closed captioned content and video description. It is believed that some independent distributors will also be shipping digital product with closed captions and video description.

The four largest theatre chains, Regal Entertainment Group, AMC Entertainment, Inc., Cinemark USA, Inc., and Carmike Cinemas, Inc. operate approximately 18,000 screens in the United States. These chains report that they expect almost all of their first run theatres to be all digital by the end of 2013, if not earlier.<sup>3/</sup> NATO has established a Cinema Buying Group in order to assist smaller members convert to digital cinema. NATO estimates that at least 7,000 screens represented by the Cinema Buying Group will be converted to digital cinema by the end of 2013, if not earlier. In addition, many other NATO members have negotiated contracts to convert their screens to digital within the next several years. An estimate of 30,000 digital screens by the end of 2013 is a very realistic estimate.

Some industry contracts for digital equipment financing require that once a theatre begins to convert to digital cinema, all screens within that theatre be converted to digital within a 12-to-24 month period. Thus, for purposes of this analysis, we assume that once a theatre has been converted to digital, all the screens in the theatre will be converted. Any regulation proposed by the DOJ must recognize that within several years, the great majority of theatres will be all digital and will not show 35 mm film.

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<sup>3/</sup> Certain chain operated theatres that are scheduled to be closed based on lease considerations, low attendance or other performance related issues, may not be converted to digital within five (5) years of the time that a DOJ rule is published. Other chain theatres that play second-run films also may not be converted immediately. Theatres that are not converted to digital should be exempt from any closed captioning or video description requirements until such time as they may be converted to digital.

#### IV. Availability of Film Product after Digital Conversion

By the end of 2013, it is estimated that more than 30,000 screens will have been converted to digital. Significant issues exist regarding the economic viability of theatres that do not convert. It is unknown whether the major studios or the independents will continue to provide first run film product in traditional film format once a majority of theatres have converted to digital. It is also unknown as to whether any new film product that will be made available will include either closed captioning or video description.

Generally, a decision as to whether or not to convert to digital will be based on whether or not the theatre operator can qualify to obtain digital virtual print fees. The larger, newer, more profitable theatres will qualify for virtual print fees and generate sufficient revenue to pay for a major portion of the cost of digital equipment. However, many smaller, older theatres, theatres with short terms remaining on leases, or theatres that under perform, will not qualify and will have great difficulty staying operational let alone accessing captioned product or product with video description. It is unreasonable to expect these theatres to invest in closed captioning equipment for film when it appears that the only equipment available will be the proprietary Rear Window® system and there is no way of knowing whether the distributors will support Rear Window® captioning for films after the digital conversion. Theatres that do not convert to digital will have trouble staying in business and probably will not have access to closed captioning or video description. These theatres should be exempt from any closed captioning or video description standards.

#### V. Additional Issues

A. Right to Show Open Captioned Movies. Although the proposed DOJ rule only applies to closed captioned movies, any rule adopted should permit any motion picture theatre to show open captioned movies as an alternative to closed captioned movies.

B. Right to Show Movies without Captions when Distributor Does Not Provide Captioning. It is anticipated that since the SMPTE standards have been published, the major studios will provide closed captioned files for almost all of the digital movies that they distribute.

However, some independent distributors may not provide closed captioning. Motion picture theatres have a First Amendment right to show whichever movies they believe best meets the interests of their patrons. As long as a theatre has the capacity to show closed captioning on 25% of its screens, the fact that at any time less than 25% of the presentations offered have been provided with closed captioning by distributors, should not affect compliance with the DOJ regulations. As an example, theatres that traditionally are classified as “art houses” and show primarily independent films may have difficulty getting closed captioned product. These theatres should not be required to change their business model in order to meet a DOJ standard.

C. Video Description. It is also likely that absent a change in current practices, certain movies selected by theatre operators, such as those with limited releases, will not come with video description provided by the distributor. As long as the theatre has the capacity to present video description on 25% of its screens, the fact that at any one time less than 25% of the presentations offered have video description should not affect compliance with the DOJ regulations.

D. IMAX or Large Screen Format. As a general rule, closed captioning systems for digital cinema work equally well with IMAX or other big screen format presentations and in auditoriums featuring in-house dining. Where a theatre has one or more digital IMAX, digital in-house dining, or digital big screen auditoriums, those auditoriums should be included within the totality of auditoriums within the complex for determining when the theatre has 25% of its screens with the necessary equipment for showing closed captioning and video description. A theatre operator should be free to choose which 25% of the screens in a theatre are equipped with closed captioning and video description systems.

E. Drive In Theatres. Issues relating to captioning and drive in theatres will be addressed by United Drive In Theatre Owners Association. NATO supports the position taken by that association.

F. 3D Movies. At the present time, theatre operators have not had the opportunity to test digital captioning technology with 3D closed captioned movies. Until such testing is done, it

would be premature to regulate closed captioning of 3D movies. If the distributor of digital 3D movies provides video description for the 3D movie, then there is no reason to treat digital 3D movies as a separate category for purposes of video description.

V. Argument

The ANPRM proposes that within five (5) years of the date that a final regulation is published 50% of the movie screens in America be equipped to display closed captioned movies and include systems to transmit video description. The DOJ explains its rationale for the 50% proposal by stating that some disability rights groups recommend that 100% of theatres be equipped with these systems and the industry recommended that there be no mandatory requirements. Therefore, the DOJ proposed that 50% of the theatres be equipped with these systems and requested comments related to both the number of systems needed and the costs of those systems. The DOJ did not present any evidence to support its 50% proposal based on anticipated usage. However, NATO has data to show that the DOJ's 50% proposal far exceeds the needs of the population that such systems are designed to benefit.

A. Number of Systems

NATO believes that the DOJ proposal that 50% of the screens in the United States be equipped with closed captioning systems is excessive, unnecessary and cannot be supported by substantial evidence. The motion picture theatre industry has the benefit of 20 years of experience in providing assistive listening systems to patrons with impaired hearing and more than 10 years of experience in dealing with patrons with severe hearing loss of such a nature that assistive listening systems are not adequate for their hearing loss and therefore they rely on closed captioning.

Utilizing the data obtained during that time period, NATO can make realistic projections regarding the number of theatre screens that need to be equipped with closed captioning systems. NATO can also estimate the number of video description headsets required in order to meet the needs of patrons with disabilities.

B. 25% Is a Reasonable Number

Industry reports and NATO surveys confirm that by the end of 2013, there will be 30,000 digital motion picture theatre screens in the United States. All of the major theatre circuits will be substantially converted to digital cinema. The equipment in these theatres will meet industry standards and will have the capacity to drive closed captioning and video description systems.

Further, MPAA studios have announced that in 2011 they will be providing closed captioning on almost all of their theatrical releases in digital format. They have indicated that they are hopeful that technological developments will soon allow closed captioning for 3D version releases. They have also announced that they are looking to significantly increase the number of digital releases that include video description. Finally, indications are that a variety of good quality closed captioning display units and video description headsets will be available for purchase by theatre operators.

If 25% of the 30,000 digital screens have equipment for displaying closed captions and video description that is 7,500 screens. These screens will be found in theatres throughout the country. Based on the analysis set out below, 7,500 screens will clearly meet the needs of patrons with hearing and visual impairments.

In 1991, the DOJ issued a final standard requiring that motion picture theatres install assistive listening systems in all theatres. Based on the assumption that there were 28 million hearing-impaired persons in the United States, the standard required that each theatre auditorium have an assistive listening system consisting of an emitter and a number of headsets equaling 4% of the number of seats in the auditorium. There are currently approximately 40,000 motion picture theatre auditoriums in the United States. Most auditoriums have between 170 and 200 seats, or an average of 185 seats. According to the ANPRM, data from the Department of Health and Human Services indicates that there are about 36,000,000 people in the United States with some degree of hearing loss.

The charts below indicate the ratio of auditoriums and ratio of assistive listening headsets to the total number of hearing-impaired people in the population.

**Chart 1**

Theatre Auditoriums	Seats Per Auditorium (185)	Total Seats	Number of Headsets
40,000	185	7,400,000	4% 296,000

**Chart 2**

Number of Hearing Impaired Persons	Ratio of Auditoriums to Hearing-Impaired Persons	Ratio of Headsets to Number of Hearing-Impaired Persons
36,000,000	1 Auditorium per 900 persons	1 Headset per 121.6 persons

As the charts show, the current DOJ standard requires one assistive listening headset for every 121.6 hearing-impaired persons.

Does the current standard provide sufficient assistive listening systems to meet the needs of hearing-impaired persons? In fact, the number of assistive listening headsets in movie theatres greatly exceeds the needs of hearing-impaired persons. The number of required headsets could be reduced by 50% or more and still meet the demand by hearing-impaired patrons.

In comments filed with the Department of Justice on multiple occasions, the motion picture theatre industry has provided data that has proven again and again that assistive listening headsets in theatres are rarely used. Most NATO members report that they have boxes and boxes of unused headsets sitting in theatres. In response to the 2008 DOJ NPRM, NATO cited its prior experience and requested a substantial reduction in the required number of assistive listening headsets. No contrary data was submitted, but the DOJ essentially ignored NATO's request and the 2010 revised standards contain only minimum reductions in the number of required headsets.

NATO's experience with assistive listening system usage has been repeated with theatres that have installed Rear Window® closed captioning. NATO has excellent data relating to the low usage of Rear Window® closed captioning equipment when such equipment has been made available.

Several major motion picture chains have installed Rear Window® closed captioning in auditoriums in selected theatres. Auditoriums equipped with Rear Window® systems usually show first-run closed captioned films during all showings if the film being shown in the auditorium has been provided with closed captioning by the distributor. The availability of captioned films utilizing the Rear Window® system in specific theatres is widely publicized on the website of MOPIX, the WGBH subsidiary; on the websites of the major motion picture theatre chains with Rear Window® closed captioning systems, in newspaper theatre listings and in information put out by disability rights groups.

Some of the theatre chains that have installed Rear Window® systems have tracked the usage of such equipment by recording the number of requests that the theatres receive for the Plexiglas screens used to display the closed captioning. The data shows that this equipment is rarely used.

A typical study over a multi-year period showed that the number of Rear Window® cupholder display devices requested per showing averaged 0.08 headsets per showing. That study was made in theaters with Rear Window® equipment showing closed captioning films on a regular basis every day of the week. This data is typical of the industry experience. To require closed captioning in 50% of the auditoriums in a theatre in light of this data is arbitrary and capricious and completely unrealistic.

Since the industry's experience with assistive listening systems and Rear Window® captioning has shown that these features are rarely used by hearing-impaired persons, NATO's position is that if the DOJ does adopt a new standard on closed captioning that standard should require at a maximum that 25% of the motion picture theatre auditoriums equipped with digital cinema systems have the equipment needed to display closed captioning. NATO proposes that each auditorium equipped to display closed captioning have one closed captioning seat display unit. The seat display units can be moved from auditorium to auditorium. Therefore, in a multi-auditorium theatre, there would be sufficient flexibility to meet the needs of multiple users attending the same showing.

Based on the DOJ’s own estimates of 500,000 to 750,000 deaf persons in the United States, NATO’s proposal will result in providing a higher ratio of accessibility for persons needing closed captioning than is currently provided for persons who could benefit from assistive listening systems even though the data cited above proves that the number of assistive listening systems required greatly exceeds actual demands.

**Chart 1**

Theatre Auditoriums with Closed Captioning	Seats Per Auditorium	Total Seats	Total Display Units
7,500	185	1,387,500	7,500

**Chart 2**

Number of Persons Using Closed Captioning	Ratio of Auditoriums to Deaf Persons	Ratio of Display Units to Number of Deaf Persons
625,000 <sup>4/</sup>	1 Auditorium for every 83.33 persons	1 Display Unit for every 83.33 persons

These charts show that the NATO recommendation of closed captioning in not more than 25% of digital cinema auditoriums would result in one closed captioning display unit for every 83.33 individuals with severe to profound hearing loss or deafness.

Even though the assistive listening headsets are rarely used and even though the industry’s experience with closed captioning systems are that those systems are rarely used in motion picture theatres, NATO has suggested that the ratio of closed captioning display devices per hearing-impaired person be increased from 1 headset per 121.6 persons with impaired hearing for assistive listening headsets to 1 display unit for every 83.33 persons when dealing with persons with such severe hearing loss that closed captioning is required.

This is certainly a reasonable position and will clearly meet the needs of patrons with hearing impairments. Further, in multiplex theatres, it is anticipated that all the display units will be able to be used in all auditoriums equipped with closed captioning so if more than one person

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<sup>4/</sup> DOJ ANPRM states population benefitting from closed captioning is estimated to be 500,000 to 750,000 persons.



wanted to use such equipment in any equipped auditorium, multiple display units would be available.

NATO also has data regarding usage of video descriptions. Video descriptions benefit patrons with such severe visual impairments that they cannot see what is occurring on the screen. These patrons can hear the dialog from the theatre sound system. However, video description is designed to enhance their theatre experience by providing an audio description of the action occurring on the screen.

NATO's data indicates that when video description has been made available, it is used even less than closed captioning. Further, an informal survey of theatre chains indicates that most theatres have not had patrons request video description and that the number of patrons with severe visual impairments who attend movies is very small. Finally, it is clear that video description requires that a fundamental change be made in the product offered by theatres. The ADA does not require such a fundamental change.

If the DOJ does propose a standard for video description, NATO recommends that the standard be limited to theatres that have been converted to digital cinema. The standard should require that no more than 25% of the screens in the theatre be equipped with video description equipment and that each screen so equipped have at least one headset capable of picking up the video description. These headsets would be able to be moved from auditorium to auditorium so in the event that a theatre had multiple auditoriums equipped with video description, multiple headsets would be available for use in any one auditorium in the event needed.

This would provide 7,500 video description headsets for use at every showing in 7,500 auditoriums. NATO believes that this would greatly exceed demand.

Any regulation could also provide that theatres monitor usage and if the demand existed, additional headsets could be added.

## VI. Cost Analysis

Under NATO's concept, 7,500 digital screens would be equipped with one closed captioning and one video description system per screen.

These screens would have a total of 7,500 closed captioning display devices and 7,500 video description headsets.

Each of the 7,500 screens would require a closed captioning transmitter and an audio sound system with tracks for amplified sound and video description.

NATO estimates that the costs of equipping a digital auditorium with a modified server, including a closed captioning transmitter and an audio transmitter for both amplification and video description (including installation) will average between \$2,500 and \$3,500 per screen. This includes the cost of one cupholder closed captioning display unit and one video description headset per equipped screen.

Installation and Purchase of 7,500 digital closed captioning and video description systems @ \$2500 to \$3500 per screen = \$18,750,000 to \$26,250,000

This estimate is based on 25% of 30,000 digital screens being equipped with digital closed captioning and video description systems including one cupholder closed captioning display unit and one video description headset per screen.

### A. Consumer Notice Requirements

Motion picture theatres negotiate with film distributors regarding which auditoriums in a multiplex theatre will show which films. Generally, films expected to be very popular will open in the largest auditorium or in several auditoriums within a multiplex theatre. As the popularity of a film decreases, the film will be moved from larger auditoriums to smaller auditoriums and from multiple auditoriums to single auditoriums. The timing of such moves will vary from theatre to theatre and also vary from film to film.

Movie patrons can find out what is playing at their local theatre by checking the website of the theatre owner; going online at various websites not controlled by the theatre operator; checking certain proprietary websites, such as Fandango.com; calling the theatre; or checking show time listings in local newspapers.

Theatre operators have control of their own websites, recordings at the theatre information call-in number, and to some extent local newspaper show-time listings. They do not control other media.

If theatres were required to post notices of the availability of closed captioning and video description on websites, theatre information recordings and possibly newspaper listings, there would be significant costs involved. Input would be required from the theatre operators' film booking department, advertising staff, local theatre manager, website staff and others. These costs will vary from company to company. NATO does not have an estimate of what these costs would total for the industry on an annualized basis.

#### B. Training and Maintenance

In addition to the equipment costs and costs for consumer notices, the industry would have substantial costs for education and training of staff and for equipment maintenance. The costs will vary depending on the type of equipment purchased and the number of units installed. The costs will also vary from company to company. At this time, NATO does not have an estimate of what these costs would be for the industry on an annualized basis.

The DOJ must recognize that purchasing, installing and maintaining closed captioning and video description systems is expensive and any regulation requiring such systems must be based on a realistic appraisal of need. As an example, a digital closed captioned cupholder display unit will cost approximately \$500. Under the DOJ's proposed regulation, 20,000 theatre auditoriums will be required to have closed captioning and if the regulations required one cupholder display unit per auditorium, the cost for such units would total \$10 million. If the DOJ issues a regulation requiring two cupholder display units per screen, the cost to the industry would be an additional \$10 million. However, the DOJ would not have an adequate basis for

requiring such an expenditure without hard data supporting the need. In fact, the only hard data is NATO's data that demonstrates that one display unit in each of 7,500 motion picture theatre auditoriums will more than meet the needs of deaf patrons.

C. Exemption for Non-Digital Theatres

Within five (5) years from the time the DOJ's proposed rule will become effective, the great majority of motion picture theatres will have switched to digital and the remaining film theatres will have extremely limited access, if any, to first-run films. The majority of the "films" available to these theatres will already be available at video stores in DVD format or downloadable in VOD format, both of which include captioning.

Recently, websites have been created that may offer free captioning "apps" for current movies. Once intellectual property issues with the studios are resolved, a person who would like closed captioning for a motion picture may be able to download the captioning on a PDA and take the PDA to the theatre of his/her choice and get the benefit of closed captioning.

After the digital conversion, captioned versions of older movies displayed on film in these non-digital theatres will be available in DVDs and on the Internet. However, the theatres that do not convert to digital have no way of knowing whether film with closed captions or video description content will be available from distributors. It is questionable whether distributors will continue to provide closed captioning or video description for film products. Therefore, it makes no sense to apply any proposed captioning or video description rule to theatres that do not convert to digital.

Most of the theatres that do not convert to digital will be smaller theatres, underperforming theatres or theatres with short-term leases. It is expected that a large proportion of these theatres will be small one or two screen theatres located in rural areas. The cost for traditional closed captioning systems for these theatres, i.e., the Rear Window® system, has been between \$12,000 and \$15,000 per screen including installation. These theatres can barely stay in existence and often need community support to break even. To require them to install expensive closed captioning technology at this time is an undue financial burden that may result in these theatres

closing. Furthermore, it may well be that these theatres have difficulty getting film product with closed captioning or video description.

Thus, theaters that do not convert to digital should be exempt from any DOJ closed captioning or video description regulation.

## VII. Conclusion

The ANPRM proposes that within five (5) years of the time that a final rule becomes effective, 50% of motion picture theatres be equipped with closed captioning and video description systems. NATO has shown that the industry has already adopted voluntary standards that will result in motion picture theatres having closed captioning and video description systems that will more than meet the needs of the population that will benefit from such systems.

NATO has also shown that the technology involving certain facets of these systems still needs to be tested in a theatre environment but that the digital transition including existing, closed captioning and video description standards is rapidly being implemented.

NATO therefore recommends that the DOJ hold off on any closed captioning or video description regulations for a period of two years and work with the industry and disability rights groups in evaluating how the voluntary closed captioning and video description systems are placed into operation.

However, if the DOJ does decide to move forward with a regulation, the regulation should be limited to theatres with digital cinema and should be based on a 25% of screens requirement over a five (5)-year period. Further, the rules should recognize that technology in this area is developing rapidly and any rule must be sufficiently flexible to enable theatre owners to incorporate new technologies for the benefit of their disabled patrons. If the rule is not flexible, it will stifle innovation and work to the disadvantage of the disabled community and the industry.

The DOJ must recognize that the theatres that do not convert to digital cinema may not be able to get product with closed captioning or video description and certainly will not be able to afford the equipment needed to provide such services.

NATO's Responses to the 26 questions raised in the ANPRM are attached. NATO appreciates having the opportunity to submit these comments and would be glad to answer any questions that the DOJ may have regarding these matters.