



SB 400 – Places of Accommodation – Motion Picture Houses - Captioning

Senate Judicial Proceedings Committee

February 16, 2023

Position: Unfavorable

On behalf of Mid-Atlantic NATO, a regional affiliate of the National Association of Theatre Owners (NATO), representing movie theatres throughout Maryland, we respectfully submit these written comments in opposition to SB 400.

Maryland’s movie theaters are committed to access for individuals that are deaf or hard of hearing. For over 25 years, the movie theater industry has collaborated with individuals who are deaf or hard of hearing, advocacy groups, film studios, and technology developers to achieve access to all feature films at all times.

Moviegoers in Maryland seeking captions have the flexibility to view a movie with captions at any showtime, on any day. In 2016, the Department of Justice issued a final rule requiring digital movie theaters to provide closed movie captioning equipment. The DOJ adopted the majority of recommendations set forth in an agreement between the National Association of Theatre Owners and major advocacy groups, including the Hearing Loss Association of America and the National Association of the Deaf. Through these collaborative efforts, today, digital movie theaters in Maryland offer closed movie captioning devices (allowing text to be viewable by an individual moviegoer) that can be used at any show time for any movie that comes with closed movie captions.

Movie theaters in Maryland already work with their local communities to enhance existing access by scheduling open movie captioned shows on a regular basis. In addition to closed captioning offerings, where the demand for open captioned (text on the screen viewable by all moviegoers) showtimes exists, movie theaters in Maryland collaborate with their patrons that are deaf or hard of hearing to develop market appropriate programming and accommodations. A listing of current open movie captioning programs being offered throughout the state is included with this testimony.

Lawmakers should allow the industry to respond to the marketplace instead of passing a “one-size-fits-all” statewide mandate. Our records indicate that the mandate set forth in SB 400 would apply to 51 movie theater locations across the state where owners operate at least two locations. The bill would require these locations to provide open captioning twice per week per film, after the first seven days, for almost every movie played, regardless of local demographics. Based on the 547-screen count across these 51 locations, we estimate this bill would require approximately 800 open captioned shows per week, 41,600 open captioned showtimes per year.

Historically, the industry has found that when open-captioned shows are mandated, instead of scheduled based on consumer demand, theaters see a significant drop in attendance. Despite assertions to the contrary, attendance data demonstrates that open caption showtimes have a very small turnout due to limited consumer demand.



Movie theaters were devastated by the pandemic and are struggling to recover. Despite slight gains over 2020 & 2021 attendance numbers when theatres were shuttered for most of the year, box office admissions in Maryland were still 37.4% lower in 2022 than they were in 2019. Even with the most recent blockbuster releases making national headlines during 2022, our Maryland theatres will likely take years to recover their losses, and the open captioning mandate outlined in SB 400 would further reduce theater attendance at a critical time for movie theaters' recovery. One current Maryland operator is already going through bankruptcy reorganization. Since movie theaters are already 100% accessible and offer enhanced access with open movie caption showtimes, we believe this legislation to be unnecessary and potentially harmful to a theater's financial viability.

SB 400 also has technical issues within the language of the bill that could have unintended consequences on how the rule would be applied to Maryland movie theaters. While lawmakers have described the bill as being based on prior legislation from Hawaii (the only state with a captioning law, with far fewer theater owners covered), Maryland's definition of "closed captioning" in motion picture theaters is unclear. The Bill uses the word "houses" to describe covered locations, which is ambiguous as to whether it relates to movie theater locations or auditoriums contained within a movie theater. Moreover, the requirement to provide "open captioning" for films produced and offered with "closed captioning" creates a mandate that may be beyond a movie theater's ability to comply. Not all films come with closed captioning and even if they do, they may not include an open captioned file to allow a movie theater to meet the mandate.

In its 2016 ruling, the Department of Justice (DOJ) intentionally used the terms "open movie captioning" and "closed movie captioning", instead of "closed captioning", so as not to create confusion with the terms used in the context of television captioning. Television closed captioning is hidden unless specifically initiated by the viewer to enable the captions to be visible. Movie theaters provide closed captioning devices, whereby the captions are only viewable by a single viewer. Conversely, a separate file must be initiated to enable open captions on screen viewable to all viewers. Captioning on television cannot be viewed with the same assistive technology as used in a movie theater, and captioning on a movie screen cannot be accomplished with the same assistive technology as on a television.

Not all films play full-week schedules. As written, SB 400 would require open captioning twice per week for each motion picture it screens, after the first seven days, without allowance for special event films that may only play once per week or once per day. In addition, many films in subsequent weeks after the first few weeks will be held over for just a show or two per day, and may end mid-week to allow space to open a new motion picture. With this limited availability, movie theaters would be unable to meet the legislative mandate or be forced to not show such films to avoid risk of violating the legislative mandates proposed.

For these reasons, we ask for an unfavorable report on SB 400.

For further information, please contact Jenna Massoni (410-935-1470, jmassoni@cgagroup.com) or Ellen Valentino (410-693-2226, evalentino@cgagroup.com) of Cornerstone Government Affairs, registered lobbyists for Mid-Atlantic NATO, or Doug Murdoch, Executive Director of Mid-Atlantic NATO (443.895.1446, doug@midatlanticnato.com).



Open Movie Captioning Programs Maryland Movie Theaters February 2023

Introduction

Mid-Atlantic NATO (Maryland) and the National Association of Theatre Owners (NATO) appreciate the opportunity to work with advocates, state and local governments, and theaters of every size to increase access for individuals who are deaf and hard-of-hearing. While all digital theaters are currently accessible to individuals who are deaf and hard of hearing, NATO members understand consumer desire for access options and are committed to expanding access by the creation and implementation of pilot open movie captioned programming. NATO members are eager to partner with advocacy organizations to promote these showtimes to moviegoers.

In addition to open movie caption programs in Maryland and across the country, NATO members will continue to offer the use of closed movie captioning devices and make these individual devices available at every movie, at every showtime in accordance with the exhibition industry's agreement with the Department of Justice. Staff will continue to be trained on the preparation and use of the devices. NATO is also developing additional training material for its members on proper maintenance of closed movie captioning devices and systems.

This memo outlines select open movie captioning programs currently happening in Maryland theaters, but should not be considered complete, as all locations are scheduling additional open captioned showtimes on a theater-by-theater basis in response to guest requests.

AFI Silver Theatre and Cultural Center

Most U.S. studios now include Open Captioned (OC) files on their DCPs. AFI Silver typically schedules at least one OC show per title per week in those cases.

U.S. specialty and independent distributors are inconsistent in providing OC files. When OC files are provided by these distributors, we also schedule at least one OC show per week.

AFI Silver programming includes a large amount of foreign language titles with English subtitles. We have received positive feedback from the deaf and hard of hearing community that these screenings, while only providing dialogue, and not the full detail of OC titling, are nonetheless of value and sought out for attendance.



AMC Theatres

AMC has a nationwide program with 260 locations currently offering showtimes with open captions. The following Maryland locations are participating in this program:

- AMC Rio Cinemas 18 – Gaithersburg
- AMC Owings Mills 17 – Owings Mills
- AMC White Marsh 16 – Baltimore
- AMC Montgomery 16 – Bethesda
- AMC Columbia Mall 14 – Columbia
- AMC MJ Capital Center 12 – Largo
- AMC Wheaton Mall 9 – Wheaton

For all week-one wide release titles with open captions available, open caption showtimes are scheduled for at least one weekend matinee time and one weekday evening. For all blockbuster titles, theaters will play one show per day in its first full week of release, followed by a second week of one weekend matinee and one weekday prime show.

Cinemark Theatres

Cinemark operates two locations in Maryland, and will offer open captioned showtimes on all films that have a full, daily show schedule as follows:

- Cinemark Egyptian 24 – Hanover – Sunday afternoons and Wednesday evenings.
- Cinemark Towson 15 – Towson – Saturday afternoons and Monday evenings.

Horizon Cinemas

Horizon Cinemas will schedule open caption shows upon advanced request through the accessibility page on their website at. site: <https://horizoncinemas.com/about--contact>. locations include:

- Horizon Aberdeen
- Horizon Beltway Movies
- Horizon Fallston
- Horizon Marley Station Movies
- Horizon Sun Valley Movies



Landmark Theatres

Landmark Theatres Bethesda location provides two open-captioned showings per week (Friday thru Thursday) of each new movie with open captioning available for the first two weeks of a movie's release.

- At least one of these two open-captioned showings for every movie during each of the first two weeks will be scheduled during weekend peak movie hours, which are showtimes beginning after 5:59 p.m. and finishing before 11:01 p.m. on Friday; or, showtimes beginning after 11:59 a.m. and finishing before 11:01 p.m. on Saturday or Sunday.
- The other open-captioned showing may be scheduled at the theater's discretion.
- Beginning in the third week of a movie's release, the theatre will provide at least one open-captioned showing of that movie per week. The open-captioned showing will be scheduled at the theater's discretion.
- If a movie has seven or fewer scheduled showings in a week, may not provide open-captioned showings for that movie.

Old Greenbelt Theatre

With a robust deaf and hard of hearing community, and its proximity to Gallaudet University, the Old Greenbelt Theatre in Greenbelt, MD plays an open captioned show every Sunday around 2pm if the film is available with open caption.

RC Theatres

RC will schedule open caption shows upon advanced request through the accessibility page on their website at <https://www.rctheatres.com/page?id=12302>. Participating locations include:

- R/C Hollywood Cinema 4 - Arbutus
- R/C Lexington Exchange Movies 12 - California
- R/C Westminster 9 - Westminster

Regal Cinemas

Regal has instituted open captioning programs in the following Maryland locations:

- Regal Majestic 20 – Silver Spring
- Regal Westview 16 – Frederick
- Regal Germantown 14 – Germantown
- Regal Royale 14 - Hyattsville

The weekly open captioning lineup features the top three titles per week according to gross. The top-grossing film will play three times a week on a Friday evening, a Sunday matinee, and a Wednesday matinee. The second highest-grossing film in each week will play with open captions during a Saturday matinee and a Tuesday evening. The third film will play in matinee slot on Mondays and Thursdays.



Warehouse Cinemas

Warehouse Cinemas has a long-standing partnership with local deaf and hard of hearing advocates in Frederick, and representatives from the Maryland School for the Deaf. Each week, they work together to select films and showtimes to offer open captioned shows. They have two locations participating as follows:

- Warehouse Cinemas Frederick 10 – Frederick – Seven to ten open captions shows per week on films selected by feedback.
- Warehouse Cinemas Hagerstown 10 – Hagerstown – At least three open caption shows per week. The number of showtimes will increase with demand and additional film product.

ALL LOCATIONS

Marketing of Open Captioned Films

NATO members are clearly displaying which showtimes offer open captioning in each of their theatres when patrons purchase a ticket on a theatre's website or at the box office.

Open Captioning Programs Framework

NATO members operating in Maryland are committed to instituting voluntary open captioning programs on a theater-by-theater basis. A "one-size-fits-all" approach does not reflect the individualized operations of each theater or the markets in which they operate. Consequently, theater operators are seeking to develop open captioning programs that meet or exceed the demands of the market in which they operate and have developed varying programs to meet those goals.

The current open caption programs will run indefinitely, but no less than at least a year from April 1, 2022. Note, based on consumer feedback and the needs of individual companies, the parameters of these programs may change from time to time to reflect the marketplace.

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