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Captioned Movie Access Advocacy – Timeline

- 1927** – The first talking picture, *The Jazz Singer*, was produced. Talking pictures replaced silent films, making the movie going experience inaccessible to people with hearing loss.
- 1947** – Emerson Romero develops the first captioning of a film by putting captions between picture frames.
- 1948** – **Captioned Films for the Deaf (CFD)** organized. First open-captioned film, *America the Beautiful*, produced.
- 1959** – CFD begins acquiring and captioning educational films.
- 1968** – CFD writes its first lesson guide for open captioned educational films.
- 1971** – **The Caption Center** was established at WGBH, a PBS affiliate in Boston.
- 1982** – **Tripod Captioned Films** (the original source for open-captioned film prints) was established. Tripod Captioned Films, an outreach program of the Tripod Education Program, was created to bring the big screen experience to deaf and hard of hearing movie going audiences. Tripod screened an open captioned version of *The Big Chill* at a Hollywood premiere.
- 1984** – CFD introduces their open-captioned videocassettes and becomes Captioned Films and Videos (CFV).
- 1988** – The Caption Center establishes Consumer Affairs Department to education deaf and hard of hearing viewers how to advocate for more [television] captioning.
- 1990** – Passage of the **Americans with Disabilities Act (ADA)**.
Section 301(7)(C) defines “a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment” as a “public accommodation.”
Section 302(b)(2)(a) states that discrimination includes:
(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden . . .

1991 – US Department of Justice issues **ADA regulations** for Title III (public accommodations).

Section 36.306(b) includes “open and closed captioning” as examples of “auxiliary aids or services.” However, the guidance for the regulations (the “Section-by-Section Analysis and Response to Comments,” published as Appendix B to the regulations) includes the following statement:

Movie theaters are not required by Sec.36.303 to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities.

1991 – The Caption Center establishes the Media Access Research and Development Office, a pioneering facility dedicated to examining the needs and desires of underserved viewing audiences.

1993 – The National Center for Accessible Media (NCAM) is formed as the research arm of the Corporation for Public Broadcasting and WGBH-TV.

Tripod Captioned Films begins captioning feature films for special open-captioned movie screenings in theaters. Tripod relied mostly on open-captioned film prints donated by movie studios and arranged with local non-profit organizations to rent theater space. Between 1993 and 1997 the total number of films donated to Tripod was 25, with three to five open-captioned prints per title.

1996 – **Movie Access Coalition**, a subcommittee of the National Association of the Deaf (NAD) was established. Movie Access Coalition developed a White Paper on the need for vastly increased captioning of first-run movies in theaters. The White Paper included a proposed schedule to make all movies available with captions within three years.

1997 – At a January 1997 meeting in California of representatives from the Movie Access Coalition, motion picture studios, National Association of Theater Owners (NATO), and Tripod Captioned Films, the studios agreed to increase the number of open captioned movies. In July, *A Simple Wish*, produced by Universal Pictures, was shown at Cineplex Odeon Theaters in four cities – New York, Chicago, Los Angeles and Washington, DC. This was the first time an open captioned first-run movie was booked from a major studio *directly* to theaters via regular distribution channels, without any intermediaries or nonprofit organizations involved in the process.

Rear Window[®] Caption (RWC) display system debuted in California. *The Jackel* and the *Titanic* movies were shown with RWC captions.

1998 – Direct-studio distribution of open-captioned movie prints began. Since 1998, about 300 films have been produced with open captions and the number of prints per title has increased.

CFV changes its name to Captioned Media Program (CMP).

1999 – The Caption Center at WGBH closed captioned five movies for 10 RWC equipped theaters.

MultiMedia Designs, Inc., develop captioning glasses in which captions appear on a screen inside the lens of one eye.

2000 – Movie Access Coalition renamed the **Coalition for Movie Captioning (CMC)**. CMC is a consortium of the major national organizations that addresses the theater access needs of 28 million deaf, hard of hearing, late-deafened and deaf-blind consumers. CMC's goal is to make all first-run movies available to people with hearing loss. CMC charter member organizations were:

- Alexander Graham Bell Association for the Deaf and Hard of Hearing
- American Society for Deaf Children
- Association of Late-Deafened Adults
- Cochlear Implant Association, Inc.
- Consumer Action Network
- Deaf Seniors of America
- League for the Hard of Hearing
- National Association of the Deaf
- Self Help for Hard of Hearing People
- Telecommunications for the Deaf, Inc.

Oregon Case – Complaint filed; case dismissed in 2002 (see below).

DC Case – Complaint filed; case settled in 2004 (see below).

2001 – CMC adopted a “Position Paper and Statement of Expectations: Access for Moviegoers who are Deaf, Hard of Hearing or Late-Deafened” outlining its expectations for movie captioning in America. The CMC demands that captions (closed or open) must be available on the day and date of release of new movies. It is not enough to just have captions; the movie theatres must also follow certain professional standards for readability, such as appropriate color, font, size, and background.

Connecticut legislation introduced – General Assembly Bill 6929, An Act Ensuring the Availability of Captioned Movies to Persons Who are Deaf and Hard of Hearing. Legislation did not pass.

DTS Cinema Subtitling System (DTS-CSS) demonstrated with pilot showing of *Pearl Harbor* at TDI Conference.

2002 – CMC Theater Watch – Memorial Day Weekend:
34,490 indoor movie screens in the U.S.
5 to 14 screens showing open-captioned movies.
14 to 15 screens showing movies with RWC captions.
30 states with 0 screens showing a captioned movie.

CMC member organizations:

- Alexander Graham Bell Association for the Deaf and the Hard of Hearing
- Association of Late-Deafened Adults
- Consumer Action Network
- League for the Hard of Hearing
- National Association of the Deaf
- Self Help for Hard of Hearing People
- Telecommunications for the Deaf, Inc.

InSight Cinema, a non-profit open-captioned film distribution company, was formed to carry the mission of Tripod Captioned Films forward. Films are distributed to over 50 major cities, and subsequently “bicycled” to nearby, smaller cities.

Texas Case – Complaint filed; case against motion picture defendants dismissed in 2003; and case against movie theater operators dismissed in 2004 (see below).

48 InSight Cinema open-captioned movies were produced; and 39 movies were captioned for display with RWC systems.

2003 – Movies begin to be produced with captions that can be projected on the screen in movie theaters with DTS-CSS caption display systems.

40 InSight Cinema open-captioned movies were produced; 66 movies were captioned for display with RWC systems; and 16 movies were captioned for display with DTS-CSS systems.

2004 – CMC supported federal legislation creating an incentive for movie studios and theaters to caption movies and install movie captioning technology by providing a substantial tax break. The movie captioning amendment, proposed by Senator Mark Dayton of Minnesota, was included in the Senate JOBS Act, which passed the Senate. Senator Dayton’s amendment would give a tax credit of 50% to both movie studios and theaters for making captioned movies available. Unfortunately, the amendment was not included when the House of Representatives passed its version of the bill.

New Jersey – Action taken by Attorney General resulted in agreements with 4 movie theater chains in 2004 and a lawsuit against Regal Cinemas that was settled in 2006 (see below).

New York – Action by Attorney General resulted in agreements with 8 movie theater chains in 2005 (see below).

____ InSight Cinema open-captioned movies were produced; 81 movies were captioned for display with RWC systems; and 78 movies were captioned for display with DTS-CSS systems.

About 190 RWC caption display systems installed; and 50 DTS-CSS caption projection systems installed.

2005 – CMC member organizations:

- Association of Late-Deafened Adults (ALDA)
- Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
- Deaf Seniors of America (DSA)
- Hearing Loss Association of America (HLAA)
(formerly Self Help for Hard of Hearing People)
- National Association of the Deaf (NAD)
- Telecommunications for the Deaf, Inc. (TDI).

Connecticut – Connecticut Association of the Deaf filed complaints with the Connecticut Human Rights Office against 33 movie theaters (see below).

____ InSight Cinema open-captioned movies were produced; 94 movies were captioned for display with RWC systems; and 106 movies were captioned for display with DTS-CSS systems.

About 270 RWC caption display systems installed; and 150 DTS-CSS caption projection systems installed.

2006 – **Regal Cinemas**, the largest theater chain in the country, recognizes and acknowledges the preference for screen-based (on-screen) captions and is committed to providing movie captions through Insight Cinema and DTS-CSS systems. Most Regal theaters with DTS-CSS systems will display captions one time every day during the day (a matinee); one time during the evening Sunday through Thursday; and sometimes (for popular movies being shown on multiple screens) one time during the evening on Friday and Saturday.

By the end of 2006, it is expected that there will be about 360 RWC caption display systems installed, and 210 DTS-CSS caption projection systems installed.

Captioned Movie Access Advocacy – Cases

Oregon Case –

Cornilles v. Regal Cinemas, Inc., 2002 WL 31469787 (D.Or.). Case against Regal, Century, Carmike, and Cinemark theater chains.

2000 – Complaint filed.

2001 – Coalition for Movie Captioning (CMC) filed *amicus curiae* (friend of the court) brief.

2002 – Case dismissed.

“. . . defendants need not install Rear Window Captioning Systems in all of their movie theatres to comply with Title III of the ADA. . . . anticipated costs of \$6 million to \$36 million per defendant is unreasonable as a matter of law.”

Texas Case –

Todd v. American Multi-Cinema, Inc., 222 F.R.D. 118 (2003 S.D.Tex.) and 2004 WL 1764686 (S.D.Tex.). Case against (1) “movie theater operators” – AMC, Cinemark, Regal, and Century; and (2) “motion picture defendants” – MGM, 20th Century Fox, Paramount, Warner Bros., Sony Pictures, Universal City Studios, Miramax, and Buena Vista.

2002 – Complaint filed.

2003 – Case against motion picture defendants dismissed.

2004 – Case against movie theater operators dismissed.

“The plaintiff has failed to refute the defendants’ evidence that the remedies sought here would not constitute an undue burden under the ADA.” “Equal access does not mean equal enjoyment. . . . Although section 36.303 [of the ADA regulations] includes in its definition of ‘auxiliary aids and services’ open and closed captioning, the plaintiff has not offered any or significant rebuttal evidence that precludes summary disposition of this case on the basis that access has been granted as a matter of law.”

DC Case –

Ball v. AMC Entertainment, Inc., 246 F. Supp. 2d 17 (2003 D.D.C.) and 315 F. Supp. 2d 120 (2004 D.D.C.). Case filed against AMC and Loews Cineplex Entertainment Corporation; class action for deaf or hard of hearing people in the Washington DC metropolitan area.

2000 – Complaint filed.

2001 – Court certified matter as a class action.

2002 – Defendants moved for summary judgment, to dismiss the case.

2002 – CMC filed *amicus curiae* (friend of the court) brief.

2003 – Court denied defendants’ motion for summary judgment.

Summary: (1) requiring exhibition of closed captioned films was not explicitly excluded from ADA; (2) rear window captioning (RWC) was auxiliary aid or service that could be required as a reasonable accommodation; (3) exhibition of RWC films would not change nature or mix of services provided by defendants; and (4) fact questions existed regarding degree of burden that requiring installation of RWC would impose on defendants.

2003 – Plaintiffs and defendants requested the Court to approve a proposed settlement.

2004 – Court preliminarily approved the Proposed Settlement Agreement and held a Fairness Hearing. CMC, DHHCAN, NAD and others participated in the Fairness Hearing.

2004 – Court approved the settlement.

Result – Added RWC caption display systems to 6 AMC and 6 Loews theaters (50% of existing AMC and Loews theaters in the Washington DC area); about 5% of their screens would be equipped to show captions.

New Jersey –

2004 – The Attorney General (AG) learned about lack of movie access at disability law conferences held in the spring. In August, CMC learned the AG was taking action; with possible lawsuits against movie theater chains. CMC sent a letter to the AG and met with AG representatives, but it was too late. In September, the AG announced agreements (consent orders) with 4 theater chains.

Result – 4 theater chains (AMC, Clearview, Loews, and National Amusements) with 35 theaters in New Jersey, about 383 screens, will have 39 RWC systems (about 10% of screens).

2004 – In September, the AG announced filing a New Jersey Law Against Discrimination lawsuit against Regal.

2005 – In February, CMC, NJAD, and Ms. Rainone requested the Court’s permission to participate in the lawsuit. The AG opposed the request; Regal did not. In March, Regal filed its Answer to the lawsuit, announcing its plan to install DTS-CSS caption display equipment and show movies with captions at least 12 times a week. In April, CMC, NJAD, and Ms. Rainone withdrew their request to participate in the lawsuit.

2006 – In March, the AG settled the lawsuit against Regal.

Result – Regal will show movies with DTS-CSS captions at least 8 times a week in 10 of its 12 movie theaters in New Jersey.

New York –

2004 – In September, the New York AG’s office contacted the NAD and inquired about captioned movies. NAD provided information and contacts for many New York deaf and hard of hearing associations.

2005 – In December, the AG announced agreements with 8 movie theater chains.

Result – Agreements made with 8 theater chains in New York with about 129 theaters and 1,132 screens. New York will have 38 theaters/screens with some caption access:

20 RWC systems, 9 DTS-CSS systems, and 9 locations with Insight Cinema showings. This represents about 30% of these 129 theaters and about 3% of their 1,132 screens.

Theater chains with RWC systems (AMC, Carmike, Clearview, Loews, and National Amusements) must monitor and report to the AG about RWC use for several years. The AG may negotiate with those theater chains to add more caption display systems if the AG thinks more are needed. This suggests that some significant number of people need to attend and use RWC at the one movie shown with captions at these theaters to indicate a need for access to other movies or a choice of movies.

Connecticut –

2005 – In September, the Connecticut Association of the Deaf filed complaints with the Connecticut Human Rights Office against 30 movie theaters. Complaints against 3 more movie theaters were later filed.