

ALDA, Inc.
8038 MacIntosh Lane, Suite 2
Rockford, IL 61107-5336



815-200-9339 Voice
TTY Users dial 711
Email: info@alda.org
www.alda.org

ALDA, Inc. is a 501(c)(3) nonprofit organization

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Re: HB 1238, Open Captioned Movies

Dear Maryland Legislature:

The Association of Late Deafened Adults (ALDA) writes in support of HB 1238, a modest but important step towards providing deaf and hard of hearing people with the opportunity to fully enjoy movies. ALDA's members have lost some or all of their hearing, many after having acquired spoken language.

The Americans with Disabilities Act (ADA) requires "places of public accommodation," specifically including movie theaters, to provide effective communication for people with sensory disabilities. For deaf and hard of hearing patrons, this is done through captioning -- putting the dialogue and other aural information into written form so that they can "hear" with their eyes. Few if any of ALDA's members are able to enjoy movies without captioning.

After a number of successful court cases, some involving ALDA as an organizational plaintiff, the federal Department of Justice issued regulations in 2016 requiring all movie theaters to provide individual viewing devices, which the major theater chains were already doing. In theory, patrons who want captioning can use those devices without altering the movie-going experience for others. This method is referred to as closed captioning (CC), because the captions are visible only to those who choose to see them.

While the viewing devices can deliver captions, experience has shown that they frequently provide an unacceptable experience. Glasses that show the captions on the lens are heavy and physically uncomfortable, and are designed to rest on top of the ear, where hearing aids or cochlear implants are located. Devices attached to a

MISSION STATEMENT: To Support the Empowerment of Deafened People

flexible arm on a base that theoretically fits into the cup-holder frequently fall out of alignment or out of the holder altogether. All of the devices must be properly maintained and charged, and that requirement is often overlooked. The devices must be checked out and returned, and many users are uncomfortable with the conspicuous nature of the devices.

For those reasons, deaf and hard of hearing patrons greatly prefer open captions (OC), in which the captions appear on the screen like subtitles for foreign-language films and provide a hands-free and hassle-free experience.¹ The ADA does not require OC, but the ADA explicitly states that state and local laws providing greater protection for people with disabilities are valid.

In 2015, Hawaii became the first state to require OC showings, passing a state law essentially identical to HB 1238, and that law is now permanent. In 2021, New York City passed an ordinance requiring four OC showings each week for most movies. A pending ordinance in the District of Columbia would require that a minimum of 12% of all movie showings be OC.²

The theaters believe that some hearing people find on-screen captions distracting and avoid those showings. Attendance figures do indicate lower attendance at OC showings than at other showings. But those numbers, in and of themselves, prove almost nothing.

People who want to avoid OC likely go to another showing of that movie, or to a different movie at the same theater, and in those cases, the theaters lose no revenue. On the other hand, some people who attend OC showings would otherwise not be in the theater at all, and those patrons, even if their numbers are modest, represent revenue the theaters would otherwise not realize at all. The question is not attendance at individual OC showings, but rather, whether a modest number of OC showings adds to or detracts from total revenue.

Some tantalizing data comes from a pre-pandemic experiment in D.C., where a number of theaters began offering some OC showings. The National Association of Theatre Owners (NATO) engaged Ernst & Young to develop an economic model that would predict movie attendance based on variables like showtime and type of movie. Sometimes, when a movie was showing in more than one auditorium, an OC showing would take place within an hour of a non-OC showing of the same movie. In those

¹ In an admittedly unscientific survey taken by the Wisconsin Association of the Deaf in connection with the proposed federal regulations, 95% of respondents preferred OC to CC showings.

² The federal CC requirements remain in place in those jurisdictions as they would in Maryland.

cases, attendance at the OC showing was usually lower than at the non-OC showing. But combined attendance at both showings was **higher** than the predicted attendance at those two showings.

Deaf and hard of hearing patrons are not trying to impose their movie-going preferences on everyone. A movie is typically shown 31 times per week in each auditorium -- a blockbuster being shown in three auditoriums will have roughly 90 showings per week. Requiring two of those showings be OC will not meaningfully limit the choices available to people who don't want on-screen captions but will provide real and important benefits for those who prefer the OC format.

For the foregoing reasons, ALDA believes HB 1238 is modest in scope, but a big step towards equitable treatment for the substantial population of deaf and hard of hearing movie-goers. We urge your support.

Very truly yours:

John F. Waldo
ALDA Counsel
Law Office of John F. Waldo
2108 McDuffie Street
Houston, TX 77019
(206) 849-5009
johnfwaldo@hotmail.com

cc: Ken Arcia, ALDA President
Carrie Levin, ALDA Vice President
ALDA Board of Directors