

Access, Advocacy, and “The Avengers”

by Darrel Tillar Mason

The Virginia Office for Protection and Advocacy (VOPA) is a small but energized state agency. It is part of a nationwide network of such agencies that receive federal grants to assist individuals with disability-related issues. Sometimes these issues are life changing and involve problems such as abuse, neglect, employment, or housing discrimination. Other times these issues are life enhancing and involve something as simple as going to the movies on the show’s opening weekend and enjoying the show.

Steven M. Traubert is an attorney who works for VOPA and he is a movie buff. Thus he was especially motivated to help a movie-loving deaf client. Arguably this client had illegally been denied accommodation at a movie theater because of an industry practice of not offering a captioned showing of a new movie until the third or fourth week after its original release.

Following the age of silent films, individuals with hearing impairments have faced challenges to fully enjoying a movie in a movie theater. Various technologies (including both open and closed captioning) have been developed to address this concern. Open captioning in a film theater is accomplished through burned-in captions which project the text of what words are being spoken on the screen. These captions are visible to everyone, like subtitles in a foreign film. Movie theater chains have been reluctant to make open captioned showings universally available partly from a belief that use of the technology would negatively affect the experience of movie-goers not dependent on the captioning and thus reduce theater revenue.

Closed captioning refers to any technology that allows as few as one member of the audience to view the captions. In recent years, the best-known

closed captioning option for movie theaters has been the “rear window” captioning system. This technology works by providing movie patrons requiring captions with a panel device that reflects captions for the viewer, but is nearly invisible to surrounding patrons. The panel can be positioned so that the viewer watches the movie through the panel and captions appear either on or near the movie image. A problem for the movie-goer using this technology is that it is sometimes necessary to sit in a certain area of the theater to obtain the best angle for reflecting the backward text. A major problem for movie theaters has been the cost of the hardware and license fees charged by the distributors of the proprietary software.

Special effort has been made to build accessibility features into newer digital projection systems. A digital captioning device called the DTS-CSS (Cinema Subtitling System) is a combination of a laser projector which places the captioning (words, sounds) anywhere on the screen and a thin playback device with a compact disc that holds many languages. This eliminates the proprietary caption distributions required for film and the associated royalties. Film distributors have largely underwritten the cost of movie theaters converting to digital films because of the enormous savings realized by the distributors in being able to produce a master digital version that can be inexpensively reproduced and delivered to theaters in lieu of tapes.

With digital films, the captioning technology is already embedded at no extra cost to the theater—it is simply a question of when the theater wants to turn on the captioning. The hearing impaired moviegoer only needs a special pair of glasses available at the theater

and she can sit where she wants and not be a distraction to her neighbors.

However, according to the National Association of the Deaf’s “Movie Access Coalition,” even with the new technology, only a small percentage (less than 5 percent) of all the movies being shown nationally in movie theaters are shown with captions, and mostly well past the show’s opening weekend.¹ Past litigation efforts in different parts of the country to require captioning at all theaters (but not on all screens at a multiplex theater) were not successful based largely on the cost of the technology and the projected lost revenue.

Traubert took the position that in light of the new technology eliminating the cost barriers, this was indeed an issue that came within the reach of the Americans with Disabilities Act.² Instead of arguing that it was a reasonable accommodation to require that all theaters provide a captioned option for all opening shows, he took the position that it was reasonable to require that a captioned option for an opening show be available on a rotational basis. This argument was based on regulations involving physical accessibility of theaters where a movie theater was not required to make all of its theaters handicapped accessible. Rather, they were required to rotate films so that each new film was eventually available at an accessible theater.

Put in terms of Traubert’s client’s position, if he wanted to see “The Avengers” with captions on opening weekend, he should be able to go to at least one theater in his locality and see the film with his friends. After all, participating in new releases of popular films such as the “Harry Potter” series, or the “Batman” movies, has become a cultural experience.

Through its advocacy efforts, VOPA was able to reach out to Regal Cinemas and provide demographic information regarding the population of deaf and hard of hearing individuals in the Norfolk and Richmond Areas. As a result, Regal Cinemas has made captioning technology widely available in Norfolk and Richmond, enabling millions of Virginians to have access within an hour's drive to captioned films at any showing at a Regal Theater using digital format.

This is a win for Traubert's client and is a win for Regal Cinemas as well.

Endnotes:

- 1 <http://www.nad.org/issues/technology/movie-captioning>
- 2 Americans with Disabilities Act of 1990. Pub. L. 101-336, July 26, 1990, 104 Stat. 327 (42 U.S.C. 12101 et seq.)



Darrel Tillar Mason, a disability rights attorney and member of the Virginia State Bar Council, was elected chair of the board of the Virginia Office for Protection and Advocacy effective July 1, 2012.

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