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The Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") requires video game equipment, software and related services to be accessible to and usable by individuals with disabilities. The CVAA covers equipment and technology that allow for "advanced communications services" and because many video games include live text or "chat" features, video game consoles, services and software are covered by the CVAA.

The Federal Communications Commission ("FCC") is allowed to grant waivers of the CVAA's accessibility requirements when the equipment, service or software at issue is designed primarily for purposes other than communication. Accordingly, in response to an industry request, the FCC previously granted a waiver until October 8, 2015, for the following categories of video gaming services and equipment:

- **Class I** – Game consoles, both home and handheld, and their peripherals and integrated online networks, which are designed for multiple entertainment purposes but with a primary purpose of playing games.
- **Class II** – Game distribution and online game play services designed for the primary purpose of distributing online game software or enabling online game play across a network.
- **Class III** – Software designed for the primary purpose of game play. Game software means playable games on any hardware or online platform, including, but not limited to, dedicated game consoles, PCs, mobile devices, and the Internet (i.e. browser based games).

While consoles and online game play services will comply with the CVAA by October 8, the Entertainment Software Association ("ESA") has asked the FCC for a further 15 month waiver only for Class III video game software.

In its request, ESA cites the technical issues that make adding assistive technology to video games challenging, including consumer expectations for a high level of visual fidelity and the inability of current speech-to-text technology to transcribe multiple speakers interacting with each other in real-time without significant latency and a high recognition error rate. Because exempting video game software from the disability access requirements may severely limit the usefulness of the new accessibility features in consoles and on gaming networks, the disability community may object to this further extension of time. Accordingly, video game software providers may not know until very close to October 8 whether (or not) the FCC will grant the request for additional time to comply.

Comments on the waiver request are due at the FCC on July 9 and reply comments are due on July 20. If you are interested in more information about this FCC proceeding and the FCC's disability access rules, or if you would like to participate in the process, Cooley can assist you—please contact us for more information.

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Key Contacts

Christy Burrow Washington, DC	cburrow@cooley.com +1 202 776 2687
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