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When Will Video Game Software Need to Meet FCC Accessibility Requirements?

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Since 2010, equipment and technology that allow consumers to communicate with each other using "advanced communications services" (ACS) has been required to provide access for consumers with disabilities. For video games, this requirement applies to near real-time communication features – such as live text and audio chat – found in video game consoles, services and software. Currently, disability access requirements apply to video game consoles, game distribution and online game play services, but not to video game software, which has received a series of administrative waivers.

The current waiver for video game software expires on December 31, 2017, but the Entertainment Software Association (ESA), representing major video game companies, has requested a final one-year extension of its class waiver. Absent the extension, the disability access rules would apply to ACS-capable video game software beginning on January 1, 2018. Without a waiver, for example, new video game software allowing players to talk to each other in-game over the internet must include communications accommodations for deaf or hard-of-hearing players. Although the Federal Communications Commission may grant the ESA waiver request, video game software developers should assume that the general waiver of the FCC's disability access rules would expire sometime between the end of 2017 and the end of 2018. The FCC could grant ESA's request for a full year, but it could also extend the waiver for a shorter period or deny it altogether.

"Final waiver" sought for 2018

ESA is seeking "one final waiver" of the disability access requirements for video game software through the end of 2018. ESA asserts that the communications features found in video game software remain incidental to game play functions and that significant obstacles remain to coming into full compliance. Recognizing that the industry has made solid progress toward compliance, ESA asserts that this request for a waiver will be its last. The FCC, which oversees compliance with the ACS disability access requirements, has asked for public comment on the ESA request by December 1, 2017.

When the final waiver ends

Prior "blanket" waivers have exempted all ACS-capable video game software from compliance with the obligations, performance objectives, and most recordkeeping and certification requirements of the Twenty-First Century Communications and Video Accessibility Act. Without a waiver, developers must meet the access objectives for disabled persons in the Accessibility Act rules or be able to demonstrate to the FCC's satisfaction that those objectives are not achievable with reasonable effort or expense.

Obligations

Accessibility Act obligations begin at the design stage. Among other things, software developers must identify barriers to accessibility and usability, avoid features and functions that could impede accessibility and usability, and ensure that the software delivers any industry codes and protocols used to provide advanced communications services in an accessible format. Developers may meet these requirements with features usable by all consumers. The rules do not require special disability access features if the original design of the game meets the specified access objectives for persons with disabilities. Software developers also must provide, at no extra cost, product support and related information on the software and its accessibility features for individuals with disabilities.

Performance objectives

ACS-capable video game software also must meet performance objectives. These objectives include input, control and mechanical functions that persons with disabilities may locate, identify and operate, including persons without vision and hearing, with low vision and limited hearing, with little or no color perception, with limited manual dexterity, with a prosthetic device, without time dependent controls, and with limited cognitive skills. The software also must meet a series of tests for compatibility with peripheral devices and specialized customer premises equipment that people with disabilities may rely on. Individuals with disabilities must have access to the full functionality of the product, including accessible product information and technical support functionally equivalent to what is provided to individuals without disabilities.

Recordkeeping and certification

The FCC's rules also impose recordkeeping and certification requirements. Without a waiver, a producer of ACS-capable video game software must keep records of its efforts to implement the Accessibility Act requirements, including consultations with individuals with disabilities, descriptions of product accessibility features and information on the compatibility of its products with devices commonly used by individuals with disabilities to access communications services. Each software developer must have an officer of the company sign an annual compliance certificate and file it with the FCC, confirming under penalty of perjury that the software developer has maintained the required records in the preceding year.

Going forward

Video game software developers should begin to take steps to comply with the Accessibility Act requirements. If you have questions about the requirements or the FCC's processes in general, please be in touch with your Cooley relationship attorney or one of the attorneys on this alert.

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