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# FCC Considers Extending Waiver of Accessibility Requirements for Video Game Software

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Under the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"), video game consoles and controllers, software and related services must 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 voice chat features, video game equipment, services and software are covered by the CVAA. Over time, the video game industry has come into compliance with the CVAA requirements for equipment and services, but not for video game software.

The Federal Communications Commission ("FCC") may grant waivers of the CVAA's accessibility requirements when the equipment, services or software at issue is designed primarily for purposes other than communication. The FCC previously granted a waiver for "Class III" video game software, which is software designed primarily for game play, that expires on January 1, 2017. The Entertainment Software Association ("ESA") has asked the FCC for a further 12 month waiver, until January 1, 2018.

Under the CVAA and prior FCC waivers, Class III video game software includes playable games on any hardware or online platform, including, but not limited to, dedicated game consoles, computers, mobile devices and the Internet (*i.e.,* browser based games). Examples cited in the ESA petition for waver include *Madden NFL 17*, *Forza Motorsport 6*, *World of Warcraft*, *Call of Duty: Black Ops III* and *Gears of War 4: Ultimate Edition*. In all of these games, players can communicate with each other within the game itself, most often through voice chat functionality.

In its waiver request, ESA discusses the meaningful progress the video game industry has made on accessibility issues but asserts that applying assistive technologies to video game software communications capabilities continues to present substantive technical challenges. Emergent technologies such as speech-to-text features are difficult to adapt to a gaming environment that often includes multiple talkers and significant background noise. Current speech-to-text technology cannot transcribe multiple speakers interacting with each other in real-time without significant latency and a high recognition error rate. Slang specific to each individual game also is a challenge. While, according to ESA, software companies are investing significant resources in overcoming these challenges, the technology is not yet ready.

When ESA asked for the current waiver in June of 2015, the request was not opposed by the disability access community. Assuming the ESA extension request is unopposed, we expect it will be granted by the FCC. If it is opposed, the video game software industry may have to make a stronger case to the FCC. Comments on the waiver are due at the FCC on November 30 and reply comments are due on December 15. We expect the FCC to issue its decision shortly before the current waiver expires on January 1. 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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