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# ALA American Library Association

November 7, 2013

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Ex parte meeting on Docket CG No. 10-213

Dear Ms. Dortch:

On November 5, 2013, Larra Clark and Carrie Russell of the American Library Association (ALA) met with Elaine Gardner, Karen Peltz Strauss, Rosaline Crawford, Eliot Greenwald, Gregory Hlibok and Suzy Rosen Singleton of the Consumer and Government Affairs Bureau of the Commission.

Consistent with ALA's comments in this proceeding, we expressed our opposition to the proposed waiver from the Coalition of E-Reader Manufacturers and provided additional detail related to the library community's interest in this proceeding.

First, ALA and libraries have a fundamental commitment to equitable access to information for all. We believe the Americans with Disabilities Act, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) and other similar laws and regulations should align as closely as possible. This is philosophical, but perhaps more importantly, practical because progress towards the same objectives is undermined when law and regulation conflict.

Because libraries are "authorized entities" who serve people with print and other disabilities under the Chafee Amendment (U.S. Code 17 §121) and the recently concluded Marrakesh International Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, libraries must make accessible content available to people with print disabilities. Providing equitable access for persons with disabilities to library facilities and services also is required by Section 504 of the Rehabilitation Act of 1973, applicable state and local statutes, and the ADA. These laws impact libraries in a real way. ALA shared examples of two public libraries—the Free Public Library of Philadelphia and Sacramento Public Library—that have been sued by the National Federation of the Blind (NFB) for providing e-readers that are not accessible. Settlements have required that libraries provide accessible e-readers, and moving forward buy *only* accessible e-reading devices (usually tablets),

which are considerably more expensive. This affects which and how many devices the library may purchase and make available for everyone in our communities.

Providing access to e-books and e-readers is a huge growth area in general for our nation's libraries, and the ALA has worked actively to increase access to digital content for all readers in recent years.<sup>1</sup> Thirty-nine percent of libraries offer e-readers for check-out to library patrons,<sup>2</sup> and recent surveys by the Pew Internet Project show particular interest in borrowing an e-reading device from libraries that came loaded with a book they wanted to read.<sup>3</sup> As such, libraries have a particular interest in ensuring these e-reading devices are accessible to people with disabilities so that we may avoid legal action and increase the number of e-reading devices available for use through libraries. The speed of change in digital formats, devices and digital materials available has been dizzying and is still very much in flux as new features and applications continue to emerge. Recent "basic" e-reader models, for instance, now market social media and gaming applications that stretch beyond a "basic" reading function.

We appreciate and discussed with FCC staff, however, that these concerns are largely outside the purview of the FCC's authority and the narrow specifics of the proposed waiver. This background is intended to illustrate the legal uncertainty libraries face when the most popular and affordable e-readers are not fully accessible. When CCVA regulations and ADA legislation—both meant to improve the situation of people with disabilities—conflict, libraries are unable to meet their mission to provide access for all.

ALA shared preliminary, in-progress findings from research conducted by American University law students participating in a clinic supervised by Prof. Peter Jaszi. Early survey findings indicate that some users of basic e-reading devices use them to communicate with others (i.e., use of email, chat, or similar). FCC staff asked that the research be shared when it is complete, including definitions of key terms. ALA and the Association of Research Libraries will follow up with the law students who are conducting the research and provide data in coming months.

In recent years we have seen concerted efforts from the government to address accessibility needs. The U.S. Copyright Office has urged Congress to re-evaluate the Chafee Amendment and update it for the digital age. Libraries have worked with the U.S. delegation to the World Intellectual Property Organization (WIPO) to advocate for an exception to international copyright law to improve access to information for people with print disabilities. The Marrakesh Treaty passed this June was the first exception to copyright law ever agreed to by WIPO nations because they recognized that the treaty was urgent and satisfied a basic human right. The Department of Education led an effort to address accessibility issues at college and universities with the Accessible Instruction Materials (AIM) report. The State Department dropped the Kindle as the selected reader for their Mobile Learning Lab project—a global e-reader program aimed at sharing information about U.S. culture and democracy to students and other young people worldwide—after learning the device was not accessible.

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<sup>1</sup> Background on ALA Digital Content Working Group: <http://www.ala.org/groups/committees/special/ala-dcwg>.

<sup>2</sup> Hoffman, Judy, John Carlo Bertot, and Denise M. Davis. Libraries Connect Communities: Public Library Funding & Technology Access Study 2011-2012.

<sup>3</sup> Pew Internet Project: Libraries, Patrons and E-books. June 2012.

<http://libraries.pewinternet.org/2012/06/22/libraries-patrons-and-e-books/>

Great progress has been made in the United States to ensure accessible materials and devices for people with print disabilities. While this waiver is narrowly defined around ACS, we believe allowing the most popular and affordable e-reader manufacturers a pass on making that same commitment to equal access would be a step backward. It is clear basic e-readers provide browsers and ACS, and manufacturers should do the right thing in making them accessible.

We appreciate the Commission extending its investigation of these concerns and others noted in the Order before making a final determination. At a minimum, we asked the Commission to time limit any waiver that might be granted in recognition of the product lifecycles and frequent updates in technology.

Sincerely,

Larra Clark  
Director, Program on Networks

Carrie Russell  
Director, Program on Public Access to Information  
American Library Association Office for Information Technology Policy

Cc:

Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau  
Gregory Hlibok, Chief, Disability Rights Office  
Suzy Rosen Singleton, Attorney Advisor, Disability Rights Office  
Eliot Greenwald, Attorney Advisor, Disability Rights Office  
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