Communications Accessibility in Games: What Game Developers Need to Know

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Starting January 1, 2019, any new video game software that is capable of accessing or using an advanced communications service (ACS) must include solutions to eliminate barriers to accessibility for people with disabilities. The Federal Communications Commission's (FCC's) current waiver of the obligation to have accessible ACS in video game software products will expire at the end of the year. This document will help video game software developers become better informed, plan appropriately, and keep adequate records for the purpose of meeting this new obligation.

What is the Scope of the Video Game Software Waiver?

Video game software has been exempt from ACS accessibility requirements since 2012. However, at the end of 2017, the FCC granted the Entertainment Software Association (ESA) a final extension of the waiver of ACS accessibility requirements for video game software. Both the FCC and ESA have agreed that no additional waivers will be needed or granted. As a result, following the waiver expiration, any new video game software released will need to be compliant with the ACS requirements.

The waiver applies to video game software as a class of products which includes all "playable games on any hardware or online platform, including game applications that are built into operating system software." The FCC concluded that the rules should be waived because video game software allows access to ACS but is designed primarily for the purpose of game play not ACS. Other classes of video game products, consoles and distribution platforms, have been required to comply with the ACS rules since the end of the initial waiver in 2015.

All products and services that are introduced while the waiver is still in effect will be exempted from the ACS requirements for the life of that particular product or service. New products and services including substantial upgrades to an existing game will be expected to comply with the ACS accessibility rules. Given the typical video game development cycle, game developers need to begin planning for inclusion of ACS accessibility now.

What is ACS?

The 2010 Twenty-First Century Communications and Video Accessibility Act (CVAA) requires providers of ACS and developers of equipment used for ACS to make their services accessible to and usable by individuals with disabilities, unless doing so is not "achievable." ACS refers to

- interconnected VoIP (i.e., voice calling services that connect to the traditional phone network);
- non-interconnected VoIP (e.g., in-game voice communications);
- electronic messaging (e.g., text messaging, instant messaging, chats and e-mail); and

- interoperable video conferencing service (may include video calling services).

The ACS accessibility obligations are broadly written and encompass a wide variety of products and services that may include a single feature or capability that involves ACS. There is some ambiguity about whether a particular feature meets the definition of ACS and assessments are made on a case-by-case basis.

Is Video Game Software Really a Communications Product that has to Comply?

As noted above, the CVAA language was written to be comprehensive and allow the FCC to consider its applicability to a broad swath of services and products that provide its users communications capabilities now, or may incorporate such features in the future. In the current landscape, a rapidly increasing number of digital devices and software are not only incorporating features that connect to communications networks, mainly the Internet, but also offer users the option to communicate with each other using ACS. Many IoT devices, for example, are expected to incorporate ACS features in the design.

As games become more connected, ACS obligations will arise. Both the FCC and ESA have acknowledged that since the CVAA passed ACS has assumed a greater role in video game products and services. A common example of ACS in a number of video game software is chat functionality. This functionality can encompass features that allow players to communicate with each other via text, voice, and video. Some specific cases include *Destiny 2* and *Pro Evolution Soccer 2018* with chat functionality; Microsoft Xbox One offering video chat capability while playing games; and *Halo Wars 2* which allows players to communicate with friends and play as a group. These elements present the possibility of satisfying three different categories of ACS depending on the specifics of how the feature operates in the software.

While the FCC previously concluded that ACS capabilities in games were primarily for another purpose, the FCC noted “a clear trend [in video game software] towards marketing the ACS features and functions of gaming equipment and services.” As a result, the FCC has determined that there is a public interest for video game software to become compliant to afford consumers with disabilities the opportunity to use ACS to communicate with others in the game environment and experience these new and immersive features on equal terms with other users. Additionally, as gaming grows in use and prominence, those with ACS features may have applications in employment and educational contexts, impacting access for people with disabilities beyond entertainment purposes.

Game developers should understand that adopting more inclusive design principles to be compliant with the new ACS compliance obligations can serve as a great market opportunity. Consumers with disabilities are a large part of the marketplace that many businesses may not recognize is untapped. More than one billion individuals around the world identify as having a form of disability, and within the United States approximately 60 million people have hearing and/or vision impairments. Often designing to help address the needs of consumers with disabilities will not only expand the customer base for a product but provide features and options that all consumers find beneficial.

Indeed, many upcoming games offer core gameplay that may inherently address some accessibility issues. In 2017, Human Interact, for example, announced the development of *Starship Commander,* a sci-fi virtual reality game featuring voice control as core game play. 2018’s *A Way Out* is a mandatory two-player co-op that will require communications and coordination between players. These creative gameplay features can double as accessibility features if done right.

As a result, game developers will need to consider the needs of people with disabilities when designing future games with ACS features, where achievable.

How Do You Make ACS Accessible?

Compliance with the disabilities access obligations will require video game software developers to consider any possible ACS feature and how it could be made accessible for the different types of consumer disabilities. It is worth noting that video game software developers do not have to design every game containing an ACS feature to be accessible for all limitations experienced by people with disabilities. We expect that certain common features will become standard and that some measure of incremental advances will be acknowledged as sufficient in the near term.

The broad categories of functional limitations that should be considered are visual, hearing, mobility, and cognitive challenges. These functional limitations are experienced at different levels by consumers with disabilities. Design features that accommodate one limitation may not work for another or more importantly, may serve as a challenge to another.

A game developer should consider the ACS features it plans to offer and how it might address each of these limitations within the game in a way that does not hinder the game play functionality. Some examples of design elements that have been adopted by video game providers to accommodate and improve the experience for people with disabilities include

- Microsoft recently released an update to the software development kit for Xbox One that includes the capability for developers to incorporate real-time text transcription of audio chat and have written text read aloud into the audio chat. This change enables users with speech or hearing disabilities to communicate via text with someone who does not have a disability while using a game. Microsoft tested “speech to text” functions in its 2017 release of *Halo Wars 2*.
- *Destiny 2*, a first-person action game, has adopted options that allow users to have subtitles, various visual display modes, key remapping, and controller and mouse sensitivity. These features improve experiences for consumers with visual, cognitive and mobility limitations by affording users significant control over the user experience with the game.
- Some developers have designed messaging apps specifically for games (e.g., Discord, Clan HQ) that sync with the chat functionality in a mobile game to allow the game to take advantage of the accessibility settings designed into most mobile phone operating systems.

What Does it Mean for ACS Accessibility to Be Achievable?

ACS providers do not have to meet the accessibility requirements if doing so is not “achievable.” Under the CVAA, achievable means it can be done with reasonable effort or expense, as determined by the FCC. When doing an achievability analysis, the FCC will consider the following factors:

- nature and cost of the steps needed to meet the requirements;
- technical and economic impact on the operation of the developer and the specific equipment or service;
- type of operations of the developer; and
- extent to which the service provider offers accessible services or equipment with different functionalities and price points.

In the FCC's achievability analysis, each factor is considered equally and assessments are made on a case-by-case basis. The achievability assessment will consider the entire lifecycle of a product. The FCC can assess whether compliance is achievable not only during the design and development stage but at other natural opportunities that may occur at later stages including after delivery to market. As a result, the achievability analysis will be highly fact-specific and likely not predictable. Game developers will face an inherent risk in any determination that a particular ACS accessibility feature is not achievable.

What Should Video Game Developers Know To Ensure They Are Compliant?

First, game developers need to do their homework. There is no definitive checklist a game developer can follow to become accessible but there are a few important tips to keep in mind. To be considered compliant, game developers should demonstrate a commitment and interest at the design stage in making future products accessible.

The primary way a provider can demonstrate a good faith effort towards inclusive and accessible design is to keep a record of discussions and actions aimed at considering and addressing the needs and interests of consumers with disabilities. Entities that are covered by the rules, including ACS providers, have an obligation to maintain records of efforts taken to implement accessibility requirements. In addition, covered providers must register a contact with the FCC and annually submit certifications that they are complying with the duty to keep records.

There are some important steps game developers can keep in mind to indicate compliance and efforts toward accessibility. Here is how to get started:

- **Seek Specific Legal Counsel –** A game developer that is considering or has begun designing a product or service that has ACS capabilities should seek legal guidance to assess the applicability of the rules for that specific feature. As noted above, the definition of what is ACS, what is accessible and what is achievable is not static and will require independent case-by-case analysis of overall compliance and risk of enforcement. In addition, the provider needs to consider a variety of functional disabilities and get guidance about which ones it could address most effectively.

- **Adopt Inclusive Design Principles –** Something the FCC, disability advocates, and industry have encouraged to better facilitate accessibility is the adoption of inclusive design principles so these issues are considered throughout the design, development and production cycle. Considering accessibility early and throughout the design process will limit burdens from trying to retrofit after the fact and help with understanding where minor considerations in the code can provide major gains for consumers with disabilities. "Customization" of the game should be used as an opportunity to select accessibility options. For example, the availability of "silent mode," "black and white mode," "easy mode" and similar settings may act as a way to incorporate ACS capabilities into your game.

- **Use Toolkits and Features Enabled by the Console, Browser, or Mobile Operating System**. If designing a game for a major console, be sure to check the API made available by the console provider. Similarly, your mobile game should use the accessibility tools enabled by Apple's iOS or Google's Android software. Failure to use these readily available features may fall short in satisfying a game developer's obligations under the CVAA.

- **Consult with the Disability Community –** A fundamental aspect of becoming compliant with

accessibility obligations will be understanding the challenges and interests of consumers with disabilities. To accomplish this, game developers are encouraged to consult with members of the disabled community. This can mean consultations with groups advocating on behalf of individuals with different types of limitations from both the policy and technical perspectives. In addition, providers should refer to the last principle and identify ways to incorporate the input of specialists and consumers in their design and development process.

- **Engage with Industry Colleagues -** For many game developers, the FCC, CVAA, and general accessibility issues may be completely unfamiliar terrain. However, there are many industry participants, within and outside of the video game sector, that understand these requirements, the community, and the best steps to take to ensure compliance. Therefore, developers should consider participating in trade associations and attending conferences to gain knowledge and insight on how to meet their new obligations.

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With the upcoming expiration of the ACS waiver, the issue of communications accessibility in games is coming to the forefront. Although substantial uncertainty remains, at least in the short term, game developers would be wise to demonstrate effort to comply with the obligations. Over time, more guidance and understanding will come. In the meantime, at least showing incremental progress in incorporating communications accessibility features may be important to demonstrate compliance.

Disclaimer: The above discussion is intended for general educational purposes only and does not constitute legal advice. For specific advice regarding your game or other assistance, please contact us.