

Reply Comments of the Association of Research Libraries to the Federal Communications Commission in Opposition of GC Docket No. 10-213, Petition for Class Waiver Regarding Access to Advanced Communication Services in E-Readers for People with Disabilities

In reviewing the Petition submitted by the Coalition of E-Reader Manufacturers (the “Manufacturers”), the Federal Communications Commission (the “Commission”) is considering whether to grant a waiver that would exempt e-readers from the Commission’s requirement that equipment used for advanced communication services (“ACS”) be accessible to, and usable by, individuals with disabilities.

In the initial round of comments, which closed on September 3, 2013, more than 500 submissions were received, indicating that this matter is one of considerable interest and importance. However, it is notably more significant that all but a few submissions opposed the waiver. An overwhelming majority – in fact, nearly all – of the replies supported the Commission’s denial of the Manufacturer’s Petition.

The Association of Research Libraries (“ARL”) supports the majority’s views and urges the Commission to deny the Manufacturer’s waiver request.

I. ARL believes that all users of e-readers are entitled to effective access to educational and scholarly resources in post-secondary education.

The missions of the member libraries of the ARL are to preserve and provide effective access to a diverse array of scholarly and research resources. To this end, research libraries strive to make their library collections and services accessible to students, researchers, faculty, and oftentimes, the public. Consistent with the values of the research library community, and in compliance with long-standing legal requirements, ARL supports the denial of the Manufacturer’s Petition.

Now more than ever, an increasing number of Americans have conditions that adversely affect their ability to process printed text. In fact, the Reading Rights Coalition estimates that collectively, there are “30 million Americans who cannot read print because of blindness, dyslexia, spinal cord injury, and other print disabilities.”¹ Access to ACS is vital to the lives of individuals in this growing and diverse population. In particular, access to ACS is critically

¹ Reading Rights Coalition Website, <http://www.readingrights.org/>.

important in order to provide meaningful educational opportunities to print-disabled students in post-secondary education.

Recently, there have been discernable increases in the number of students in post-secondary education with cognitive disabilities, such as dyslexia and autism. Additionally, an increasing number of print-disabled individuals, including veterans, returning students, and elderly life-long-learners, are attending school later in life.² Without access to ACS on e-readers, print-disabled students will have inferior access to educational resources than other students.

E-readers are revolutionary devices that can enhance the lives of all students. Their unique characteristics make them a suitable substitute for paper books and journals. They have long battery life for continuous use (in contrast to the mere hours available on a tablet or laptop), and they are lighter than most paperbacks. Students use e-readers for reference in class and as a study aid during final exams. They have the capacity to run browsers and social media apps which allows students to instantly share information with their classmates and friends. For sighted students, e-readers have the additional advantages that their sharp, clear text and image displays can be read anywhere and at any angle without glare.³ If these devices are equipped with accessible controls and enabled to generate text-to-speech outputs, they can provide all the same functional advantages to print-disabled students as well.⁴

Since it is the Commission's responsibility to make sure such access occurs,⁵ the Commission must deny the Manufacturer's waiver request and ensure that print-disabled scholars are entitled to access these valuable educational resources.

² Government Accountability Office, *Higher Education and Disability: Education Needs a Coordinated Approach to Improve its Assistance to Schools in Supporting Students*, report GA-10-33 (Washington, DC: GAO, Oct. 2009), <http://www.gao.gov/new.items/d1033.pdf>.

³ Furthermore, some businesses view proficiency in e-readers as a valuable, or even required, skill. Inability to access, understand, and use the device may indeed harm a print-disabled individual's career prospects in today's modern business environment where "going green" and using portable reading devices are popular strategies to reduce overhead costs, condense paper files into electronic documents, and collaborate in real time with clients and colleagues. BookRix Blog, *Business and the E-Reader*, BookRix (Oct. 12, 2010), <http://blog.bookrix.com/2010/10/12/business-and-the-e-reader/>.

⁴ In Amazon Kindle Website, <https://kindle.amazon.com>.

⁵ In the US, there are a number of laws that are the basis of federal policy for persons with disabilities, including the American with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and Section 508 of the 1998 amendment to the Rehabilitation Act.

II. At the most basic level, this issue is a matter of fulfilling existing legal requirements and important public policy goals.

At its most basic form, the accessibility of e-readers is not an issue of economics or convenience – it is an issue of ensuring meaningful and effective access to needed information resources. By rejecting the requested waiver, the Commission will fulfill the letter and spirit of long-standing legal requirements ensuring equality of access to essential services – including information resources. The movement towards equal rights for the disabled began with the Rehabilitation Act of 1973, which provided that “the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to . . . achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency”.⁶ Congress expanded further upon this goal when it passed the Americans with Disabilities Act of 1990 (“ADA”), manifesting their intent “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities”.⁷ This law remains as vital today as the day it was passed, having recently been cited by the Federal District Court for the Southern District of New York to rule in favor of several ARL member libraries which were sued for copyright infringement for making works available to print-disabled students in accessible formats.⁸

The 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled, the most recent global diplomatic effort in support of facilitating information access for the print-disabled, which the United States took a leading role in negotiating,⁹ echoes these values, commencing its Preamble by recalling “the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society.”¹⁰ The Marrakesh Treaty is a reminder that it is important to be mindful of the challenges that are prejudicial to the complete development of persons with print disabilities, including the freedom to seek, receive, and impart information on an equal basis with others in both basic communication and higher education.

⁶ 29 U.S.C. § 701(a)(6)(B) (2010).

⁷ 42 U.S.C. § 12101(b)(2) (2010).

⁸ *Author’s Guild v. Hathitrust*, 902 F.Supp.2d 445 (S.D.N.Y. 2012).

⁹ *The 2013 Marrakesh Treaty: Providing Access to Copyrighted Works for the Blind and Print Disabled*, **Washington College of Law, Program on Information Justice and Intellectual Property** (Sep. 12, 2013), <http://www.pijip-impact.org/events/marrakesh/>.

¹⁰ World Intellectual Property Organization [WIPO], *Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons With Print Disabilities*, pmb1., WIPO Doc. VIP/DC/8 Rev. (July 31, 2013).

III. E-readers are being marketed to colleges and universities; however, these educational institutions risk violating the letter and spirit of the ADA by adopting technology that is not accessible to print-disabled students.

The Commission's grant of the Petition would exacerbate the untenable position in which educational institutions find themselves when the Manufacturers market their devices to educational institutions yet fail to make the devices accessible to all students, including the growing population of print-disabled individuals. These educational institutions are either unable to adopt the latest technology or, if they do adopt the technology, violate the letter and spirit of the ADA.

The ADA requires students with disabilities to "receive all the educational benefits provided by the technology in an equally effective and equally integrated manner," and the federal government has consistently endorsed and promoted the idea that "accessibility" is good public policy.¹¹ In June 2010, the Department of Education and the Department of Justice jointly issued a letter to all college and university presidents emphasizing that institutions were at risk of violating Section 504 of the Rehabilitation Act of 1973 and the ADA if they did not provide students with disabilities access to e-readers and other existing or emerging technologies. In May 2011, a second similar communication was sent that specifically indicated that the needs of students with disabilities must be taken into account when schools consider implementing new technology into the education environment.¹²

Some e-reader manufacturers argue that there are other devices available for use by print-disabled students; however, the availability of alternative devices that have capabilities that make text accessible to print-disabled individuals does not alleviate the responsibility of educational institutions to ensure that print-disabled students are able to benefit from a range of existing as well as emerging technologies. Higher education institutions must also meet the requirements of the Departments of Justice and Education guidance to the higher education leadership which is based on existing law and technology. Print-disabled students will not be adequately served if

¹¹ U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights. "Joint 'Dear Colleague' Letter: Electronic Book Readers" 29 June 2010. Online at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html> (accessed September 12, 2013).

¹² U.S. Department of Education, Office of Civil Rights. "'Dear Colleague' Letter: Electronic Book Readers" 26 May 2011. Online at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.pdf> (accessed September 12, 2013)

institutions of higher education can offer them only a limited range of relatively less portable (and more expensive) reading technologies

IV. The burden on Manufacturers to make their devices ACS accessible is minimal and would not outweigh the benefits to the print-disabled community.

One of the principal arguments made by the Manufacturers is that if they made e-readers ACS accessible, the price to produce an e-reader would increase drastically. The Manufacturers argue, “rendering ACS accessible for disabled persons on e-readers would impose substantial and ongoing engineering, hardware, and licensing costs because the devices would first have to be redesigned and optimized for ACS.”¹³ However, commenters have noted that many e-readers already have ACS capabilities as they include web browsers and social media functionality.¹⁴

Regardless of whether the cost to produce an e-reader would increase or not, Manufacturers are required under law to render their e-reader devices to be accessible if “achievable.”¹⁵ There is no question as to whether this is technologically and economically possible – thus, for example, Amazon’s intermediate-priced Kindle DX, currently on the market, already has ACS capabilities and potentially accessible audio features. Moreover, as the comments from the National Federation of the Blind pointed out, earlier basic versions of the Kindle had been routinely outfitted with text-to-speech functionality, even though they lacked accessible controls. However, in 2012, Amazon discontinued its efforts to provide even rudimentary accessibility when it released the Kindle Paperwhite, a device without any audio output.¹⁶

Amazon’s product history amply demonstrates that essential accessibility features could be incorporated into e-readers without difficulty or excessive expense.¹⁷ Nevertheless, whatever the costs may be, ARL finds such costs to be inconsequential when compared to the relative benefits to the print-disabled community and others with disabilities.

¹³ Coalition of E-Reader Manufacturers Petition for Waiver (“Petition”), Docket No. CG 10-213, (filed May 16, 2013) at 8-9.

¹⁴ National Federation of the Blind, Opposition to Petition for Waiver, CG Docket No. 10-213 (filed September 3, 2013) at 8.

¹⁵ 47 U.S.C. § 617 (2010).

¹⁶ See National Federation of the Blind, Opposition to Petition for Waiver, CG Docket No. 10-213 (filed September 3, 2013) at 15.

¹⁷ Amazon, http://www.amazon.com/gp/product/B007HCCNJU/ref=topnav_storetab_kstore (last visited September 12, 2013).

V. Conclusion

For the reasons set forth above, on behalf of the Association of Research Libraries, we oppose the Petition for Waiver submitted by the Coalition of E-Reader Manufacturers. Granting this waiver would be contrary to the public interest of the American people, long-standing US law, and would impede the member libraries of ARL in providing meaningful access to the widest variety of materials to all students and scholars.

Respectfully submitted,

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