

EXHIBIT A

**2008-2009 ALA CD#52 Revised
2009 ALA Annual Conference**

Purchasing of Accessible Electronic Resources Resolution

- Whereas, ALA Policy 54.3.2 states that "library materials must be accessible to all patrons including people with disabilities";
- Whereas, ALA Policy 54.3.2, "Library Services for People with Disabilities" states that "libraries should use strategies based upon the principles of universal design to ensure that library policy, resources and services meet the needs of all people" and "universal design" has a principle of equitable use where, "...design is useful and marketable to people with diverse abilities" (Association of Specialized and Cooperative Library Agencies, (ASCLA) Issues, Universal Design);
- Whereas, The Federal Government has created regulations based on Section 508 of the Rehabilitation Act that ensure that its technology is accessible to its employees and the public;
- Whereas, Public and private academic college and university libraries, public libraries, and other libraries must ensure "effective communication" under Section 504 of the Rehabilitation Act, as interpreted by the Department of Education's Office for Civil Rights, as well as Title II (public libraries) and/or Title III (private libraries) of the Americans with Disabilities Act;
- Whereas, A number of court cases and structured negotiation settlements have upheld the precedent that the Americans with Disabilities Act (ADA) applies to the content of web sites, such as the National Federation of the Blind, et. al., v. Target Corporation, the National Federation of the Blind v. Law School Admissions Council Inc., the National Federation of the Blind v. Connecticut Attorney General's Office (IRS Forms), and American Council of the Blind Staples Accessible Web Site and Point of Sale Settlement Agreement, Rite Aid Web Accessibility Agreement, and Accessible Credit Reports Agreement;
- Whereas, Many libraries receiving state funding must acknowledge the importance of web accessibility issues within state statutes, policies and/or guidelines, through Section 508 and/or WCAG (i.e. Illinois, California, New York, Kentucky, etc.);
- Whereas, "Effective communication" requires that library materials and services provided through library websites be equally accessible to people with disabilities as to people without disabilities, unless doing so would constitute an undue burden or a fundamental alteration of the library program (see ALA Library Services for People with Disabilities Policy (adopted 2001); ADA Title II Regulation, 28 C.F.R. § 35.160-164; ADA Title III Regulation, 28 C.F.R. § 36.303 (www.ada.gov);

Purchasing of Accessible Electronic Resources Resolution/2

Whereas, The World Wide Web Consortium (W3C) has endorsed widely accepted guidelines, Web Content Accessibility Guidelines 2.0, which, the Guidelines state, "will make content accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photosensitivity [and combinations thereof, and in addition] can make Web content more usable to users in general";

Whereas, ALA Council adopted the Office for Information Technology Policy (OITP) Digitization Workgroup's values, through "Resolution on Principles for Digital Content," stating that "[e]quitable access to digital library materials is ensured through maximum accessibility, ubiquity, sustainability, and barrier-free access" (ALA Council Document 20.9, 2007); and

Whereas, ALA Council adopted a Resolution on Accessible Digitization Projects in 2007, which resolves that the American Library Association strongly encourage all libraries engaging in digitization projects to adopt Section 508 regulations to ensure that they are creating versions of materials that are accessible to persons using screen-reader or other assistive technologies; now, therefore, be it

Resolved, That the American Library Association (ALA) strongly recommends:

1. That all libraries purchasing, procuring, using, maintaining and contracting for electronic resources and services require vendors to guarantee that products and services comply with Section 508 regulations, Web Content Accessibility Guidelines 2.0, or other applicable accessibility standards and guidelines; and
2. That all libraries purchasing, procuring, and contracting for electronic resources and services ensure, through their own testing protocols or by requiring vendor guarantees, that electronic products and services have been fully tested and found to be in compliance with applicable accessibility regulations, guidelines, and criteria; and
3. That funding authorities, including private institutions, the federal government and state and local governments, provide adequate funding to allow all libraries purchasing, procuring, and contracting for electronic resources and services the ability to comply with accepted standards and laws of accessibility for people with disabilities.

Adopted by the Council of the American Library Association

Wednesday, July 15, 2009

In Chicago, Illinois



Keith Michael Fiels

ALA Executive Director and ALA Council Secretary

EXHIBIT B

inaccessible to people with print disabilities, including those who are blind, have low vision, have learning disabilities such as dyslexia, or have manual disabilities that make holding a book or turning pages difficult. Until now, people with print disabilities and the libraries that serve them have relied on alternative versions of print books in formats such as Braille or audio. These books are expensive to produce, difficult to obtain, and do not come out until long after the print editions. These barriers hinder literacy, educational attainment, employment, and access to information for people with print disabilities.

Because e-books are files made up of 0's and 1's, they are not inherently visual. They could be accessed by print-disabled individuals through whichever sense (sight, hearing, or touch) is most useful to them. However, the publishers and vendors of e-books and e-book readers are restricting accessibility for people with print disabilities.

For example, Adobe, which offers e-books online through a subscription service to libraries, once provided a text-to-speech option through Adobe Reader that would read the book aloud. But Adobe has turned off the text-to-speech capability, and Adobe's proprietary software for Adobe Digital Editions does not function with screen access software used by the blind and other individuals with print disabilities (screen access software converts text on a computer screen into synthesized speech or displays it on a Braille device). Similarly, the Barnes & Noble e-book reader and Kindle Books for PCs and Mac platforms do not work with screen access software. The Amazon Kindle 2 and Kindle DX, Sony Reader, B&N Nook, and other e-book reading devices have on-screen menus without audio interfaces, so they cannot be used by people who are blind. Some e-book readers offer text-to-speech that can read books aloud, but publishers are demanding that the feature be turned off. As a result, a great opportunity for Americans with print disabilities has become a barrier.

"Separate but equal" has been rejected by the Supreme Court as a legal standard to be used in the United States. In this

case, access to books by individuals with print disabilities is clearly unequal. Individuals without disabilities can access e-books twenty-four hours a day, seven days a week, through the Internet or an e-book reader from the comfort of their own homes or from many other locations. However, individuals with disabilities cannot get many books; or, if they can get them, they must certify their disability, contact the library during business hours, order the book, and wait days or weeks for the book to be found in an accessible format.

Since e-books are readily made accessible, libraries can no longer rely on separate, unequal access for people with disabilities. Vendors also have no excuse for making their e-books inaccessible. Many vendors and publishers simply aren't interested in providing accessible e-books. Libraries, which are major purchasers of e-books, can change that.

In recognition of the purchasing power and the legal obligations of libraries, the American Library Association recently adopted a resolution regarding purchasing accessible electronic resources, which calls upon libraries to require their vendors of electronic resources to verify compliance with accessibility standards and to ensure that electronic resources are user-tested. The Los Angeles Public Library system has already announced that it will suspend purchase of e-books that are compatible with Adobe Digital Editions because these books are not accessible to all of the Library's patrons. This action has gotten Adobe's attention, but a single library system, however large, cannot exert the kind of pressure that will force companies to alter their technology and business models to include accessibility.

We are asking public libraries to make it clear that they will not purchase e-books that can't be used by all of their patrons. If you hold the line on accessibility, vendors will provide accessible e-books. If you don't insist on accessibility, few vendors will provide it. Libraries that purchase inaccessible technology expose themselves to potential liability. On the other hand, when libraries insist on accessibility, accessibility happens.

We would be happy to discuss this critically important issue further with you. Please feel free to contact me by e-mail at officeofthepresident@nfb.org or by telephone at (410) 659-9314. Thank you for your attention to this matter.

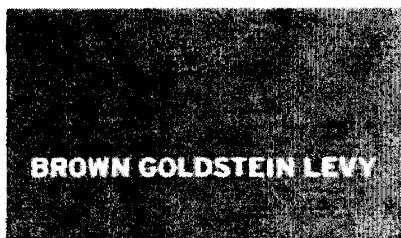
Sincerely,

A handwritten signature in black ink, appearing to read "Marc Maurer". The signature is written in a cursive style with a large, stylized initial "M".

Marc Maurer, President
NATIONAL FEDERATION OF THE BLIND
On behalf of
Reading Rights Coalition

MM/wmb

EXHIBIT C



Daniel F. Goldstein
dfg@browngold.com

December 16, 2011

VIA E-MAIL: reardons@freelibrary.org
AND FIRST CLASS MAIL

Ms. Siobhan A. Reardon
President and Director
Philadelphia Free Library
1901 Vine Street
Philadelphia, PA 19103-1189

Re: Philadelphia Free Library's Violations of the ADA
and Rehabilitation Act

Dear Ms. Reardon:

I represent the National Federation of the Blind (NFB), an organization whose membership includes blind Americans across the country, including blind patrons of the Philadelphia Free Library ("Library"). I have learned that the Library has purchased and is lending more than 60 Barnes & Noble NOOK e-book readers, which are inaccessible to blind and visually-impaired patrons. Because it is technically feasible for e-readers to be accessible to blind and visually-impaired patrons, but the devices purchased by the Library are not, the Library is in violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Section 504").

The NFB is a national nonprofit membership organization of over 50,000 members. The ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. The NFB engages in advocacy, education, research, technology, and programs encouraging the independence and self-confidence of people who are blind or have low-vision.

As you announced last month, the Library has purchased dozens of Barnes & Noble NOOK e-book readers and launched a pilot program in which the Library loads the devices with content and makes them available for aging patrons to borrow for a set amount of time. In the Library's press release, you expressed an interest in expanding device-lending programs to all library patrons. While the NFB recognizes the enormous promise that e-book technology offers, this program, using these devices, violates federal law.

NOOK e-readers are not accessible to blind individuals. The menus and controls are accessed solely through a touch screen interface, without audio or tactile feedback, making them inaccessible. Nor is the device accessible through external applications or devices, such as text-to-speech screen readers or Braille displays. Therefore, if a user cannot see the screen, she cannot know which book she has selected, what the device settings are or how to change them,

BROWN, GOLDSTEIN & LEVY, LLP

Siobhan A. Reardon

December 15, 2011

Page 2

or how to navigate the on-screen menu. Furthermore, although some NOOK devices have a “read to me” feature available for some children’s books that incorporate recorded audio, it does not have a text-to-speech engine to read its electronic books.

Technology advances in general can enable blind Americans to have greater access to books, periodicals, and other materials traditionally only available in print. In the past, when libraries provided only print books, the libraries and their blind patrons had to rely on separate processes to obtain accessible versions of books. However, because e-books, which consist of zeros and ones, are not inherently visual, aural, or tactile, they offer individuals the opportunity to access content through whatever methods are accessible to them.

As Dr. Marc Maurer, the NFB’s President, wrote to you and all other ALA members two years ago, the capability of electronic books to be accessible precludes libraries from continuing to rely on separate, unequal processes for people with disabilities. It is no excuse that a vendor has not made its product accessible. The inaccessibility of the NOOK does not result from the absence of existing technology to make e-books accessible. Rather, it is entirely the product of Barnes & Noble’s lack of interest in providing e-books and e-book devices that are accessible to people who are blind or print-disabled. When libraries insist on the accessibility of the products and services they purchase – as the law requires them to do – manufacturers respond.

In recognition of both the purchasing power and the legal obligations of libraries, the American Library Association recently adopted a resolution regarding Purchasing Accessible Electronic Resources, which calls upon libraries “purchasing, procuring, using, maintaining and contracting for electronic resources and services [to] require vendors to guarantee that products and services comply with Section 508 regulations, Web Content Accessibility Guidelines 2.0, or other applicable accessibility standards and guidelines.” (ALA Policy 52, attached.)

Legal Obligations of the Philadelphia Free Library

The Library is a government entity subject to Title II of the ADA and a recipient of federal funds subject to Section 504 of the Rehabilitation Act. Blind and print-disabled individuals are qualified individuals with disabilities within the meaning of the ADA and Section 504. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3. Therefore, the Philadelphia Free Library may not provide them unequal or separate access to the benefits of services, programs, and activities it offers. 28 C.F.R. § 35.130; 34 CFR § 104.4. Under Title II of the ADA and Section 504, individuals with visual impairments may not be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity based on their visual impairment or other disability. 28 C.F.R. § 35.130(a). In addition, people with vision and print disabilities are entitled to effective communication under the ADA and Section 504. 28 C.F.R. § 35.160.

BROWN, GOLDSTEIN & LEVY, LLP

Siobhan A. Reardon

December 15, 2011

Page 3

In May 2011, the Department of Education released a “Frequently Asked Questions” document clarifying the obligations of educational institutions, including libraries, under the ADA and the Rehabilitation Act with respect to e-books and other technology.¹ In general, the ADA and Section 504 require covered entities that use e-book readers to ensure that the devices are accessible or that students with print disabilities are afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students, with substantially equivalent ease of use.

Although the FAQs focused primarily on schools, these requirements apply equally to libraries. In fact, FAQ Number 14 specifically addresses the obligations of libraries that purchase inaccessible e-reader devices, such as the Barnes & Noble NOOK. It notes that if a library has unintentionally purchased e-book readers to loan that are not accessible to the blind, then the library must also purchase sufficient numbers of equivalent devices that are accessible for individuals with print disabilities. Of course, the better course is to acquire accessible e-book readers initially. But even an initial mistake does not excuse a library’s later violation of the law by expanding an inaccessible program.

When the Library offers its patrons the use of an inaccessible device such as the NOOK, it discriminates against patrons who are blind or print-disabled because the device is inaccessible to, and hence unusable by, those patrons. Although the Library offers some accessible downloadable e-books to eligible individuals through Overdrive, that program is not an equal alternative to lending devices because those books can only be used by individuals who have access to a computer or other compatible device. As the Library frequently notes, many of its patrons do not have computers or internet access at home. This is particularly true of Philadelphians with disabilities, who, research has shown, are less likely than those without disabilities to have access to computers or the Internet. As you noted in the Library’s press release, the NOOK lending program is intended to “bridge the digital divide” for older patrons. Ironically, it is older patrons who are more likely to be affected by vision loss and blindness, and thus will be unable to take advantage of the pilot program.

The NFB is willing to meet to discuss a resolution that ensures that the Philadelphia Free Library will cease to engage in unlawful conduct and will use technology that is accessible and compliant with federal law. However, because the library has already purchased inaccessible NOOK devices, and is therefore denying access to individuals with disabilities, any meeting should happen quickly. While we are confident an agreement can be reached, we will pursue litigation if necessary.


¹ This document is attached to this letter.

BROWN, GOLDSTEIN & LEVY, LLP

Siobhan A. Reardon
December 15, 2011
Page 4

Please contact me by the end of this calendar year if you wish to discuss this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. F. Goldstein', with a long horizontal flourish extending to the right.

Daniel F. Goldstein

DFG/tt
Enclosures

VIA E-MAIL ONLY

cc: Marc Maurer, President, National Federation of the Blind (w/ encl)
Anne Langford, Esq., U. S. Department of Justice, Civil Rights Division (w/ encl.)
Bradley Feuer, Esq., Vice President & Assistant General Counsel,
Barnes & Noble, Inc. (w/ encl)