

The ADA And Your Company's Website

A recent lawsuit against Target Corporation claims that Target's website is incompatible with assistive software used by the blind and is therefore in violation of the Americans with Disabilities Act (ADA). Currently, the ADA does not mention the Internet.

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With Internet sales projected to reach \$316 billion by the year 2010, companies' ability to reach all consumers, including the 18% of the U.S. population reporting some form of disability, will become an even more essential part of every company's business. The outcome of this case therefore may have a significant impact on the way companies conduct business over the Internet as well as on the lives of consumers with disabilities.

Americans with Disabilities Act

The Americans with Disabilities Act was introduced in 1990 to legally protect individuals with disabilities from discrimination in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. The ADA defines a "place of public accommodation" as a facility, operated by a private entity, whose operations affect commerce and fall within at least one of 12 specified categories. The statute was enacted before the Internet became a universal tool and does not address companies providing goods or services via Internet websites. Nor does it expressly state whether the Internet is a place of accommodation.

National Federation for the Blind v. Target

In 2006, National Federation for the Blind ("NFB") filed a class-action lawsuit against Target Corporation. *National Federation of the Blind v. Target Corporation*, No. 3:06-CV-01802-MHP (N.D. Cal.). The plaintiffs allege that Target violates the ADA and corollary California statutes because its website is not accessible to blind customers. Under Title III of the ADA places of public accommodation, including hotels, restaurants, stores, museums, movie theaters etc., must be equally accessible to persons

with disabilities. The plaintiffs argue that as a place of public accommodation Target's website must be accessible for all customers, including those with disabilities. On Target.com customers can purchase products available in the stores and exclusive web only products, as well as access information on store hours and locations, refill prescriptions and print coupons to be redeemed in Target stores. Plaintiffs claim that some of the website's features and internal coding are not compatible with the assistive technology that helps blind individuals navigate the Internet and thus the website and the services it offers are inaccessible.

Target moved to dismiss the complaint arguing that a website was not a place of public accommodation and was not covered by the ADA. The Court denied Target's motion and held that the inaccessibility of the website may impede a customer's full enjoyment of the goods and services available at the "brick and mortar" Target stores. The Court did, however, dismiss the plaintiffs' claim to the extent it related to any goods or services not connected to Target's stores.

In October 2007, the Court certified a class consisting of "all legally blind individuals in the United States who have attempted to access Target.com and as a result have been denied access to the enjoyment of goods and services offered in Target stores." And so the case continues.

Assistive Technology and The Internet

For individuals with disabilities the Internet provides a valuable resource that allows them to conduct business, to shop, to live independently and to communicate with others in a way they may not have been able to previously. Additionally, from a company's perspective, the economic impact of excluding disabled people from using the company website may be quite significant.

Assistive technology, including text-to-speech screen readers, Braille display, captioned video or audio or magnification software, brings these two groups together by allowing individuals with disabilities to navigate the Internet in the same way as the non-disabled. Not all websites are designed with the use of assistive technology.

gy in mind. For instance, a website split into frames in a certain way actually prevents screen readers from working. Similarly, the use of links to another page without underlying textual descriptions cause difficulties, as can pdfs, tables, and incorrectly coded links.

In the website planning stage, modifications that allow assistive technology to work are relatively easy and inexpensive to implement. Several sources publish website design guides that help designers take into account the needs of individuals with disabilities. (For example, World Wide Web Consortium guidelines available at <http://www.w3.org/TR/WAI-WEBCONTENT/>.) Such changes can also be implemented with website redesigns.

Other Attempts to Resolve the Issue

Although the outcome of the Target case will be significant, the issue of accessibility of websites is almost as old as the Internet itself. In 1996, the Department of Justice issued a legal opinion in which it stated companies providing goods or services over the Internet should comply with the ADA and make those goods and services equally available to persons with disabilities. In 1998, Congress mandated that all federal agency websites be accessible for persons with disabilities. States have subsequently passed similar laws. In Illinois, for example, the Illinois Web Accessibility Standard holds Illinois agencies to an even higher standard than that imposed by federal law. In England, under the Disability Discrimination Act of 1995, implemented in 1999, all websites must be equally accessible to the disabled and non-disabled and the statute provides penalties for websites found to be inaccessible.

Courts in the U.S. that have addressed this issue are split. In 2004, the New York Attorney General brought an action against Ramada and Priceline.com alleging that neither company's website complied with the ADA. Rather than face court action on the issue both companies settled the matter by agreeing to make changes to their websites to make them accessible. In 1999, the Seventh Circuit Court of Appeals stated that Title III of the ADA prohibits owners or operators of websites from excluding disabled persons or from preventing them from using the site in the same manner as non-disabled people. On the other hand, in 2002 a judge in the Southern District of Florida ruled that

Southwest Airlines did not have to modify its website to make it accessible to the blind because the ADA is not applicable to "virtual spaces."

Significantly for the legal profession, in 2007 the American Bar Association issued a resolution calling for all websites operated by lawyers, judges, law firms and other law-related entities to be created and maintained in a way that makes the sites accessible to individuals with disabilities. In arriving at this resolution, the ABA pointed to Title III of the ADA as well as other federal laws and cases, including the Target case.

Potential Impact

The cases that have addressed the ADA's application to the Internet have left many unanswered questions. Many view the Target case as a turning point for companies and for individuals with disabilities navigating the Internet. The Target case involves only one aspect of Internet sales – a company hosting a retail website in conjunction with its physical stores. Even after the resolution of the Target case there will be no answer to whether the ADA covers businesses providing Internet sales only, sales of services or information instead of products, or websites providing educational services and seminars. What is clear, however, is that advocacy groups, judges, lawmakers and individuals are paying closer attention to this issue. The outcome of the Target case and subsequent cases may leave companies across the country faced with designing their websites to work with a wide-variety of assistive technology or undertaking large scale redesigns to revise existing websites to comply with the ADA.

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