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## Does Your Web Site Need to Comply with the Americans with Disabilities Act?

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In November 1999, the National Federation of the Blind, Inc. ("NFB") sued America Online, Inc. ("AOL"), claiming AOL was in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., which may be viewed by clicking [here](#), because its proprietary software did not function with screen access programs that would make AOL's content accessible to the blind. Seven months later, the suit was settled without resolving whether Title III of the ADA applies to Internet Service Providers ("ISPs"), companies with a web presence and/or companies that operate wholly over the Internet. It remains an open question whether companies must change or supplement their web pages and means of Internet access to meet the needs of people with disabilities.

### **What Does the ADA Require?**

Title III of the ADA provides that:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation.

Title III requires reasonable modifications in policies, practices and procedures if those modifications are necessary to make a service or facility accessible to disabled persons. It requires companies to provide auxiliary aids and services, such as listening devices, Braille materials or closed captioning, if necessary to prevent disabled persons from being excluded or otherwise treated differently. Title III of the ADA also requires the removal of structural communications barriers, such as the lowering of pharmacy counters to enable pharmacists to converse with people in wheelchairs.

In its suit, the NFB argued that AOL violated several subsections of Title III by failing to redesign its service to permit the blind to access its website through screen access programs. Those programs monitor the computer screen and read textual information in synthesized speech or generate a Braille version of the textual information. In theory, Title III could be applied to web page proprietors and ISPs if courts decide that websites or the physical locations housing servers are places of

public accommodation. In either case, the services provided over the web would then have to be provided so as not to discriminate against disabled persons.

### **Is This Threat Real?**

The NFB likely brought suit against AOL in the First Circuit because that court already had stated that public accommodations under Title III of the ADA are not limited to "actual physical structures." (Click [here](#) to review *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Association of New England, Inc.*, 37 F. 3d 12, 19 [1st Cir. 1994]). In that case, the court noted that if Title III is viewed narrowly, many conventional businesses which must treat members of the public on a nondiscriminatory basis at a store or office location could act in a discriminatory manner if the potential customer was not on the premises. "It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not."

The Department of Justice also believes that the ADA's accessibility requirements apply to Internet websites and services, including companies that operate solely on the Internet. Click [here](#) to see Brief of the United States as Amicus Curiae in Support of Appellant at 6, *Hooks v. OKBridge, Inc.*, No. 99-50891, 2000 U.S. App. LEXIS 23035 (5th Cir. 2000).

In contrast, other federal courts have taken a more literal approach to the application of Title III in the insurance context and have applied accessibility requirements only in connection with physical facilities. See *Ford v. Schering-Plough Corp.*, 145 F.3d 601 (3d Cir. 1998), and *Parker v. Metropolitan Life Insurance Co.*, 121 F.3d 1006 (6th Cir. 1997). Similarly, the U.S. District Court for the Southern District of Florida implicitly used a literal approach to Title III in *Rendon v. Valleycrest Productions, Ltd.*, No. 00-0830, 2000 U.S. Dist. LEXIS 15776 at 3 (S.D. FL., Oct. 30, 2000). In that case, four disabled plaintiffs alleged that ABC and the producer of the hit show "Who Wants To Be a Millionaire?" violated the ADA through a telephonic application process. The District Court dismissed the claims finding the application process was not a service provided by a "place" that was properly subject to Title III (unlike "the studio where the show is taped").

Since the NFB/AOL lawsuit was settled, the threat of ADA liability for businesses on the Internet appears to be dormant, for now. However, the settlement agreement allows the NFB to file suit again after July 2001 if it so chooses. Furthermore, the fact that the issue has been raised suggests that it is only a matter of time before the next claim is made.

### **Considerations Going Forward**

It is hard to determine what a court will do when finally faced with the issues raised by the NFB in its suit against AOL. However, the proposed guidelines established by the federal government for its own web pages may help shape the requirements for private web pages. In March, the Architectural and Transportation Barriers Compliance Board ("Access Board") proposed "[accessibility standards](#)" for governmental information technology, including web pages. Because these standards will soon apply to federal agencies (unless compliance would result in an "undue burden"), it is probably only a matter of time before courts attempt to apply the standards to business in general. The proposed guidelines provide:

- color coding must not be used as the sole means of conveying information;
- instead of mouse-only menu access, websites must permit keyboard access in order to accommodate the limitations of blind persons and individuals with fine motor skill difficulties;
- graphic icons that represent an interface element will have to be textually encoded and text equivalents for non-text elements will have to be provided in one of several acceptable formats;
- programming will have to support accepted "assistive technology";
- moving text will have to be displayed in "at least one static presentation mode at the option of the user"; and
- "equivalent alternatives for any multimedia presentation" will have to be "synchronized with the presentation" itself.

Basically, the Access Board is proposing to present content in more than one mode of operation, so as not to rely solely on any one of the five senses. For example, the proposed standards call for governmental web pages to have at least one mode of operation and information retrieval that does not require users to have sight, visual acuity greater than 20/70 and/or fine motor control.

Content providers concerned about litigation under the ADA should consider voluntarily complying with these proposed governmental accessibility standards. Following these standards will not bar claims under the ADA, of course, but it may reduce the chances of such claims.

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