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## The Americans with Disabilities Act and Company Websites - the Ever-changing Legal Landscape!

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Whether private company websites are public accommodations under Title III of the Americans with Disabilities Act (the ADA) is a hotly contested issue. In our [November 15, 2000 Internet Alert](#), we reported on the developing legal argument that websites are "places of public accommodation" and, therefore, are subject to the ADA. Many of the cases discussed addressed the factors considered in determining what constitutes a "place of public accommodation" and did not specifically address Internet websites. One of the cases mentioned, a U.S. District Court case from the Southern District of Florida, concluded that a telephone system of selecting participants for a game show was not a place of public accommodation. The Eleventh Circuit Court of Appeals, however, recently overturned and vacated that decision. See [Rendon v. Valleycrest Prod., Ltd.](#), 294 F.3d 1279 (11th Cir. 2002). Specifically at issue in *Rendon* was the means by which contestants qualify to participate in a game show. The court found that the phone quiz was a means of access to a place of public accommodation (participation in the game show), not an end in itself. Therefore, under Title III, the selection procedures for the game show were required to be accessible to persons with disabilities. Based on this analysis, one might assume that websites in general would soon be found to be places of public accommodation. However, this is not what has happened.

### ***Access Now, Inc. v. Southwest Airlines, Co.* : Federal District Court Holds Websites Are Not Public Accommodations**

The *Rendon* decision was distinguished in the more recent case of [Access Now, Inc. v. Southwest Airlines](#), 2002 U.S. Dist. LEXIS 19795 (S.D. Fla. Oct. 18, 2002). According to the

U.S. District Court for the Southern District of Florida, Internet websites do not encompass a physical structure and, as a result, are not places of public accommodation for purposes of Title III. As a result of this determination, websites are not required to be made accessible to disabled persons.

Title III of the ADA requires 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." [42 U.S.C. § 12182](#) (1990). The obligations of Title III of the ADA only extend to *private* entities that are public accommodations. In the suit brought by Access Now, Inc., a Florida non-profit advocacy group, against Southwest Airlines, Co., Access Now claimed that southwest.com, Southwest Airline's internet website, violated Title III because it was a "place of public accommodation", but was not accessible to blind individuals. More specifically, Access Now argued that the website violated Title III of the ADA because the "goods and services offered on southwest.com are inaccessible to blind persons using a screen reader." Southwest Airlines countered by arguing that southwest.com is not a "place of public accommodation," and therefore not covered by Title III.

In reaching its conclusion that southwest.com was not a public place of public accommodation, the Florida court reviewed the twelve (12) categories listed in Title III that qualify as "public accommodations" and determined that, in order to be considered a place of public accommodation, there must be a "physical, concrete structure." Examples of places of public accommodation listed in the regulations include insurance offices, bakeries, restaurants, and museums. The court determined southwest.com was neither a physical, public accommodation nor a means of accessing a concrete structure; the website does not exist in any particular geographical location. Furthermore, Access Now could not demonstrate that access to a physical ticket counter or travel agency was somehow impeded. Therefore, southwest.com was not a place of public accommodation and not subject to the requirements of Title III.

The Florida court addressed the Eleventh Circuit decision in *Rendon* and concluded that its decision was in fact aligned with *Rendon*. The court noted that under *Rendon*, the reasoning behind the Eleventh Circuit's ruling that Title III applied to the automated telephone screening

system was because there was a "nexus between the challenged service and the premises of the public accommodation," namely the concrete television station. It used this same analogy to demonstrate that there was no nexus between southwest.com and a physical, public accommodation.

Access Now immediately appealed the *Southwest Airlines* decision to the Eleventh Circuit Court of Appeals.

### **Similar Suits by Access Now, Inc.**

While the Southwest Airlines suit is similar to other suits filed by Access Now, it appears that the defendants in other suits have chosen to settle the claims brought by Access Now, rather than litigate. For example, the settlement reached between Access Now and the Claire's Stores requires Claire's Stores to modify its Internet website to ensure that it is accessible to disabled persons. *Access Now, Inc. v. Claire's Stores, Inc.* , No. 00-14017-CIV, 2002 WL 1162422 at \*6 (S.D. Fla. May 7, 2002). In noting its approval of the Claire's Stores' settlement agreement, the Southern District of Florida acknowledged that "[n]o court has held that internet websites made available to the public by retail entities must be accessible." The Claire's Stores suit and another similar suit against Barnes and Noble both were settled prior to the decision in Southwest Airlines.

### **Situations Where Websites Must be Accessible to Disabled Persons**

The U.S. Supreme Court has not voiced its opinion on whether private company websites are subject to the requirements of Title III. However, the Federal Government has already determined, under [Section 508 of the Rehabilitation Act](#) regulations, that its Internet websites must be accessible for Federal employees and members of the public with disabilities.

Electronic and Information Technology Accessibility Standards, 36 C.F.R. §§ [1194.1](#), [1194.4](#) (2001). Additionally, in an unpublished U.S. District Court for the Northern District of Georgia opinion, *Martin v. Metro. Atlanta Rapid Transit Auth. (MARTA)*, 2002 U.S. Dist. LEXIS 19650 (Oct. 7, 2002), the court held that the plaintiffs would likely meet their burden in demonstrating that the government transportation agency, MARTA, failed to make information and schedules located on its website available, through accessible formats as required by Title II of the ADA and its regulations, to individuals with disabilities. See [28 C.F.R. § 35.160](#).

While Title II of the ADA only applies to "public entities," such as local governments, these

examples of Internet websites being required to be accessible may influence any future U.S. Supreme Court decision regarding accessibility of private company websites and the requirements of Title III. For now, the wait for a definitive answer on private websites and the ADA still will go on.

Lisa Burton

[lisa.burton@haledorr.com](mailto:lisa.burton@haledorr.com)

Joanne Waters

[joanne.waters@haledorr.com](mailto:joanne.waters@haledorr.com)