Kilpatrick

Insights: Alerts

Website Access for the Disabled: Build It Now

MARCH 31, 2016 Written by

The Americans with Disabilities Act was passed years before the Internet was widely available to the general public. Even after websites became ubiquitous, it would have been a stretch to argue that the ADA legally compels companies to make their websites accessible to the blind and deaf, as a "place of public accommodation" similar to a restaurant, retail shop, or other real world 'brick and mortar' location.

It is no longer a stretch. A federal district court judge in California recently granted summary judgment in favor of a blind plaintiff who argued that the website of Colorado Bag'n Baggage failed to comply with the ADA (and a state California anti-discrimination law), because the website lacked sufficient screen-reading software that aids the disabled in traversing the Internet. The ruling ordered the retailer to make changes to the website and pay the plaintiff $4,000. The plaintiff's attorneys are also expected to submit a request for payment of their fees.

Courts generally have split on the question of whether the ADA should apply to websites, and until this recent case, no case had gone through trial or even summary judgment to find either way. On motions to dismiss cases brought by the disabled, some courts found that a claim could potentially be justified as long as a 'nexus' exists between a company's physical stores and its website. Indeed, it was another federal district court judge within the Ninth Circuit (the circuit in which the California court in the Bag'n Baggage case sits) back in 2006 who ruled, on a motion to dismiss, that the ADA could very well apply to websites if a nexus was present in the operations of the defendant.[1] Other district courts went even further, ruling in response to motions to dismiss that no 'nexus' was needed for the ADA to legally apply to websites, and that even online only companies such as Netflix[2] and Scrib'd[3] must have their services comply with the ADA.

The Bag'n Baggage case, however, appears to be the first ruling that went all the way through to summary judgment, to find in favor of the plaintiff. The key legal question is whether websites are "places of public accommodation" under the ADA, which in the 'brick and mortar' real world, requires, for example, that stores and shops be accessible to people in wheelchairs.

Given the depths to which the Internet has penetrated the existence of everyday life for most people, and the extent to which companies specifically integrate their websites into their routine consumer communications and operations, it should not be surprising that courts are holding that company websites are, in fact, "places of public accommodation" that must be accessible to the disabled just as their brick and mortar stores must be.

To become ADA compliant, a website must have screen reading coding that permits the software that the disabled use to have their computers "speak" what appears on each webpage. Every item on a website must be properly coded – the text, images, videos, fields, data entry points, etc. If not all items are properly coded, and screen readers cannot properly interpret what appears on the page, the disabled cannot "access" the page and a violation of the ADA could arguably ensue. An organization called the World Wide Web Consortium (W3C) has issued "Web Content

Accessibility Guidelines" that set forth technical standards for making Internet content accessible to the disabled, although they do not have the force of law and do not address whether, and to what extent, the Guidelines should apply to websites as places of public accommodation.

Advocates for the disabled will obviously become more emboldened by the recent ruling in California. The U.S. Department of Justice has extended the time frame to issue definitive guidance until the year 2018, but their litigation arm has weighed in on a few cases on the side of the disabled. Given the plethora of legal demand letters being sent to companies by plaintiffs lawyers, the complexities and costs of litigation, and the public relations effect for not having a website accessible to the disabled, companies would do well to implement updates to their websites sooner rather than later. The trend is fast moving towards ADA compliance for websites.

[1] *Nat'l Fed. of the Blind v. Target Corp*., 452 F.Supp.2d 946 (N.D. Cal. 2006).
[2] *Nat'l Ass'n of the Deaf v. Netflix*, 869 F.Supp.2d 196 (D. Mass. 2012).
[3] *National Fed. For the Blind v. Scribd*, 2015 WL 1263336 (D.Vt. Mar. 19, 2015).