

The Internet - The Next Frontier for the ADA: Will Your Website Comply?

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The Americans With Disabilities Act ("ADA") prohibits discrimination against people with disabilities and requires public accommodations to be accessible. Most of us see the ADA in action every day when we encounter ramps at store entrances, Braille signage at elevators, and parking spaces reserved for individuals with disabilities.

The ADA, however, was adopted in 1990, long before the Internet was commonly used to purchase airline tickets, obtain music, or file tax returns. The ADA does not mention the Internet at all. Less than a decade after the ADA was adopted, however, Internet usage had greatly increased. Beginning in the late 1990's, several ADA lawsuits were filed asserting that websites were not accessible. In some of the cases, courts ruled that the ADA was intended to regulate actual physical locations. In other cases, courts ruled that the ADA required that disabled persons be provided "access" and that included access to "electronic spaces" just as much as "physical spaces." Early on, the Department of Justice ("DOJ"), the federal agency tasked with enforcing the ADA, took the position that the ADA does require Internet sites to be accessible.

Now the DOJ is taking more formal steps to require websites to become accessible. On July 26, 2010 the DOJ published a notice that it is considering adopting accessibility rules that would apply to most businesses' websites. Some "barriers to accessibility" that the DOJ has identified are:

- websites that do not allow font color and size to be adjusted to accommodate the visually impaired;
- websites that rely heavily on images without captions, such that "screen readers" or other assistive technology cannot read the information aloud to persons who cannot see the images;
- websites that require timed responses from users, but do not provide an option for a user to indicate that more time is needed; and
- CAPTCHAs (Completely Automated Public Turing Test to Tell Computers and Humans Apart), the distorted text that websites may require a user to input before completing a transaction, which may be impossible for a person with a visual impairment.

The DOJ has stated that most of these barriers can be removed without difficulty or cost, and without changing the appearance of a website.

From now until January 24, 2011, the DOJ will accept public comments in reaction to nineteen questions that the DOJ has posed about what the DOJ should include in the rules, how the rules should be put into effect, and how broadly the rules should apply. Although the DOJ's formal action is just starting,

businesses should be aware that in the future their websites will have to comply with accessibility requirements. Businesses that want to have input into the rule-making process can see the full text of the DOJ's notice and submit comments by visiting www.regulations.gov and searching for "CRT Docket No. 110." Don't you wonder how accessible that website is?

If you have questions about the ADA's requirements for public accessibility or how to structure your company's website in anticipation of the expected ADA regulations, please contact McNees Wallace & Nurick LLC for assistance.

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