

Is Your Online Business Accessible To Persons With Disabilities?

Disability Access Advocates Are Using the Americans with Disabilities Act to Push for Better Access to Web- and App-Based Businesses



by Kurt A. Franklin

If brick-and-mortar establishments must be accessible to persons with disabilities, do online companies have to be accessible too? This is a hot topic among the business and disability rights advocate communities, and is becoming a focus of class action attorneys, the courts and the U.S. Department of Justice (DOJ). Potential plaintiffs include persons who are blind or have low vision, persons who are deaf or hard of hearing, and persons who have physical disabilities affecting manual dexterity. Companies with websites or mobile applications must be aware that their accessibility obligations will be increasing in the near future.

The underlying question in the website and app accessibility debate is whether, and to what extent, online and mobile companies must provide additional ways for disabled individuals to access their content and services. Title III of the Americans with Disabilities Act (ADA) guarantees individuals with disabilities "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 USC 12182(a). Historically, places of public accommodation have included physical establishments like retail stores, theaters, restaurants and bars, places of lodging, schools, and hospitals.

So far, the courts have not yet set a clear legal standard regarding website accessibility. Some courts have distinguished between online-only businesses (e.g., Netflix, eBay) and brick-and-mortar businesses that have an online presence (e.g., Gap), while others have acknowledged that the two categories should be treated the same. In the DOJ consent decrees, full and equal access has included closed captioning for video, special programming to ensure compatibility with screen readers or other assistive technologies, special labeling of photographs and other visual displays (text alternatives for non-text content).

But in its formal law-making capacity, the DOJ – the federal agency charged with regulating Title III – has postponed until 2018 finalizing regulations setting forth guidance on how companies can make their websites accessible. Although these regulations are not set to be final for two more years, the DOJ has generally defined the appropriate level of website accessibility by referencing the Web Content Accessibility Guidelines 2.0 ("WCAG 2.0") Levels A and AA, prepared by the

Website Accessibility Initiative of the World Wide Web Consortium ("W3C").

For now, we can be sure of two facts: (1) the internet and mobile apps are here to stay; and (2) advocacy groups and class action lawyers will use the courts to make sure persons with disabilities have access to web- and app-based services. With the rise of Amazon, Uber, AirBnB, and the like, there has been a fundamental shift in the way that consumers do business. At a minimum, companies should begin reviewing their contracts with their website and app developers and insurance companies to ensure sufficient indemnity provisions are in place. Companies can also inquire whether their web and mobile platforms are compatible with adaptive software, such as "screen-reader technology" or navigation through keyboard interface. These initial steps will help companies understand the changes they need to make to increase their accessibility once the courts and the DOJ provide more definite directives.

In summary, following WCAG 2.0 is a good start and demonstrates effort towards web- and app - accessibility. For further information regarding accessibility, please contact Kurt Franklin, Jennifer Foldvary, or your Hanson Bridgett attorney.

For more information, please contact:

Kurt A. Franklin, Partner
415-995-5086
kfranklin@hansonbridgett.com