

## **WEB SITE ACCESS AND THE AMERICANS WITH DISABILITIES ACT: IMPLICATIONS FOR THE HOSPITALITY INDUSTRY**

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*Hospitality operators today view their web sites and the Internet as an essential means of communicating with customers. An interesting legal issue has arisen in recent years which concerns the ability of persons with disabilities to access web sites. The purpose of this research is to provide an overview of the legal climate concerning accessibility to web sites of private entities in the United States today and to provide guidance to hospitality operators in the design of their web sites in light of this emerging climate.*

**KEYWORDS:** *web site access; web site design; Americans with Disabilities Act; public policy*

### **INTRODUCTION**

Reliance on the Internet and the use of web sites in communicating to large numbers of people has grown dramatically in recent years among all businesses and governments around the world. The use of the Internet by businesses and governments is due to its perception as a time-efficient and cost-effective way to communicate.

Within the hospitality industry, many hospitality operators view their web site and the Internet as an essential means of communicating with customers. An interesting issue concerning web site access by persons with disabilities has arisen in recent years. One factor entering into this issue concerns the fact that technology designed to assist persons with disabilities with the ability to understand the information available on the Internet is rapidly emerging. Another factor concerns the growing reliance on the use of the Internet by both businesses and customers in communicating efficiently with one another. The final factor, and the one for which is the basis for this article, concerns the failure of some businesses to design their web sites so that they are compatible with the assistive devices used by disabled persons in communicating on the Internet.

Several legal challenges focusing on the inability of disabled persons to communicate with web sites have arisen in recent years. The basis of the lawsuit has relied upon a belief that the disabled persons are being denied access guaranteed to them under the Americans with Disabilities Act (ADA).

The purpose of this article is to provide an overview of the legal climate concerning accessibility to web sites of private entities in the United States today and to provide guidance to hospitality operators in the design of their web sites in light of this emerging climate.

## **CURRENT LEGAL CLIMATE CONCERNING WEB SITE ACCESSIBILITY UNDER THE AMERICANS WITH DISABILITIES ACT**

The inability of some persons with disabilities to access web sites is significant because of the very nature of web site communication. Web sites in the hospitality industry typically offer special, economical rates, appealing discounts and are viewed by consumers as more time efficient than communicating with hospitality operators in other ways, particularly when they are researching travel options and making comparisons (Murphy, Forrest, Wotrig & Brymer, 1996). To persons with disabilities, denial of access to this information puts them at a severe disadvantage. They have initiated several significant lawsuits in an attempt to resolve the applicability of the Americans with Disabilities Act to web site access.

Resolution of this issue hinges on whether web sites of private companies are “public accommodations” and thus subject to Title III of the Americans with Disabilities Act. This issue, in particular, has been fiercely contested in recent court decisions.

In order to examine the issue, it is necessary to review the language of the relevant Act. Title III of the ADA states:

“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)).

Title III extends only to private entities that are considered public accommodations. For this reason, hospitality operators need to be familiar with the legal climate as it regards accessibility to persons with disabilities to web sites.

### **Judicial Interpretation**

Several cases demonstrate precedent among certain courts rejecting the argument that Title III of the ADA applies to web sites of private businesses. In litigation brought by Access Now, Inc., a Florida non-profit advocacy group, against Southwest Airlines, Co., Access Now claimed that the web site of the Southwest Airlines, southwest.com, was inaccessible to blind persons using screen reading devices. They claimed this was a violation of Title III of the ADA. It based its claim on the premise that the web site, itself, was a “good or service offered” by Southwest Airlines. Southwest Airlines defended on the basis that it was not a “place of public accommodation” and therefore not covered by Title III.

The court agreed with Southwest Airlines and held that the web site was not a place of public accommodation. In reaching its decision, the court relied upon the twelve categories enumerated in Title III that qualify as “public accommodations” and determined that a “physical, concrete structure” was essential for a place to be considered a place of “public accommodation”. Title III identifies hotels, restaurants, travel agencies, spas, theatres and various other establishments as “public accommodations” (Americans with Disabilities Act, Title III, Reg. 28 CFR Pt. 36.104).

The court went on to determine that the web site of Southwest Airlines was neither a physical, public accommodation nor a means of accessing a concrete structure. The court noted that the web site does not exist in any particular geographical location. The court considered it relevant to their decision that Access Now was unable to demonstrate that access to a physical ticket counter or a travel agency was impeded (*Access Now, Inc. v. Southwest Airlines, Co.*, S.D. Fla. 2002).

Interestingly, the Florida court took the added step of including the case of *Rendon v. Valleycrest Prod., Ltd.*, a decision reached by the Eleventh Circuit Court of Appeals. The ruling in

*Rendon* would seem to conflict with the ruling in *Access Now v. Southwest Airlines*. In *Rendon* the facts concerned the means by which contestants were allowed to qualify to participate in a game show. A phone quiz was used to select contestants. The Florida court noted in *Access Now, Inc. v. Southwest Airlines*, that the ruling of the Eleventh circuit in *Rendon*, which held 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”. Interestingly, the Florida court 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.

Contrast these findings with the key decision reached by the First Circuit Court of Appeal, which ruled in *Carparts Distribution Center, Inc. v. Automotive Wholesales Association of New England, Inc.* that public accommodations under Title III of the ADA are not limited to “actual physical structures”. In its decision, the court demonstrated its rationale as follows: “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” (*Carparts Distribution Center, Inc. v. Automotive Wholesales Association of New England, Inc.*, 37 F. 3d. 12, 19 (1<sup>st</sup> Cir. 1994)).

It appears that on appeal, if the Eleventh Circuit Court of Appeal rules against Access Now, there is a good chance that Access Now will seek to appeal their case to <sup>1</sup>the Supreme Court of the United States, given the conflicting ruling by the First Circuit Court of Appeals in *Carparts*. It also is worth considering that the narrow ruling in *Rendon* would apply to the web site of a hotel company wherein the requisite “physical, concrete structure” would be present. Hospitality operators and all other private businesses concerned with accessibility of their web site by persons with disabilities should closely follow the court decisions related to this issue.

### **Comparison to Section 508 of the Rehabilitation Act of 1973**

While it is clear that Title III of the ADA applies only to private entities, it is interesting to consider that under Section 508 of the Rehabilitation Act, Federal governmental entities must make their web sites accessible for federal employees and members of the public who are disabled (Rehabilitation Act, 29 U.S.C.§508 (1973)). This is interesting because it shows that Title II of the ADA, which applies only to “public entities” such as local governments, are required to design their web sites to be accessible to person with disabilities.

The proposed guidelines established by the federal government concerning the web site accessibility of their web sites may prove to have an impact on private entities. During March of 2003, the Architectural and Transportation Barriers Compliance Board (Access Board) proposed accessibility standards for governmental information technology, including web sites. These standards are intended to apply to federal agencies unless compliance would cause an “undue burden”. These guidelines may prove useful in developing accessibility guidelines to private entities in the future. The guidelines make evident the intent of web site design for accessibility by persons with disabilities is to present content in more than one mode of operation; specifically, the goal is to engage more than one sense in communicating. The guidelines recommend:

- 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. (<http://www.access-board.gov>)

This may have influence on future court opinions related to the issues of private company web sites and the application of Title III of the ADA to private entities that are considered “places of public accommodation.”

Another point of interest that may ultimately influence judicial interpretation of such challenges to web site accessibility concerns the U. S. Department of Justice. The U. S. Department of Justice has demonstrated its support for Title III applicability to web sites, including those companies who operate solely on the Internet (*Hooks v. Okbridge, Inc.*, 5<sup>th</sup> Cir. 2000). In fact, the U. S. Department of Justice web site provides specific recommendations on web site design to make web sites more accessible to persons with disabilities. It is clear by the language used in the web site of the U. S. Department of Justice that this issue is viewed seriously. In preparing to provide advice on designing web sites for accessibility, the web site of the U.S. Department of Justice states: “Poorly designed websites can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some from entering” (U.S. Department of Justice).

## **SIGNIFICANCE OF WEB SITE ACCESSIBILITY TO THE HOSPITALITY INDUSTRY**

While some persons might view the current legal climate in a negative light, it is more appropriate to the hospitality operator to view the current situation in regard to the potential business opportunities it creates. With regard to the number of people with disabilities in this country, statistics show that today, 1 in 6 people who are age 45 and older, representing 16.5 million people, are visually impaired to some degree. By the year 2010, this number is expected to rise to 20 million (Lighthouse International).

Further interest in web site use by consumers is evident in the estimate that 68 percent of online buyers are over the age of 40 (Ernst & Young, LLP). Additional insight is gained by the finding that Americans with disabilities spend twice as much time on line as people who are not disabled (Harris Poll #30). It is clear to see that there is merit in analyzing one’s web site for appropriate design based on the volume of customers utilizing the Internet.

When analyzing the high use of the Internet by buyers over 40 years of age, it is also worthy of note that the 97 million Americans aged 45 and older (U.S. Census 2000) represent a cohort of the largest and wealthiest in terms of discretionary income, reported at \$756 billion Balaban, V. & Exter, T., 1999). There are estimated to be 750 million disabled persons worldwide, including 55 million disabled Americans, representing a discretionary income of \$188 billion (Watchfire).

In fact, one of the most significant legal decisions related to the issue of web site accessibility concerned the web site of Southwest Airlines, southwest.com. Southwest Airlines reported that “approximately 46 percent, or over \$500 million, of its passenger revenue for first quarter 2002 was generated by online bookings via southwest.com” and that “more than 3.5 million people subscribe to Southwest’s weekly Klik ‘N Save e-mails” (Southwest).

The hospitality industry has already recognized the value of the Internet in marketing to customers. A review of web sites of hotels in the United States today reveals that they tend to be filled with information. Most web sites are designed to enable interactive use with the customer

while on line. For example, most offer a listing of various properties available, opportunities to make reservations directly on line, a listing of amenities, rates available by dates, photo tours, video cameras, points or miles rewards, surveys, gift certificates, newsletters, opportunities to win dream vacations, special discounts for members of special organizations, such as American Association of Retired Persons (AARP), access to discount coupons, attractions, franchise information, entertainment, recreation and links to vacation ownership opportunities, car rental companies, airline companies.

It is clear that a great deal of thought has gone into the design of the web sites of the various hotel sites on line. Careful planning is essential to the success of a web site within the hospitality industry (Murphy, Forrest, Wotrig & Brymer, 1996).

## **DISABLED PERSONS AND WEB SITE ACCESSIBILITY**

Disabilities that limit one's mobility make it particularly difficult to physically travel to premises to obtain information that would otherwise be available on the Internet. It is obvious that access to the Internet is considered essential to persons with certain disabilities. Many disabilities can potentially hamper an individual's ability to access a web site. Visual impairment, hearing impairment and physical and mobility impairments are common disabilities that cause difficulty in accessing web sites.

Persons with disabilities frequently require the use of adaptive devices that help them communicate over the Internet. These devices, known as "access systems" enable them to render or view information through their computers.

Each type of disability can benefit from existing technology. For example, blind people, and people who are visually impaired benefit from screen readers. Screen readers are devices that speak the text that would normally appear on the monitor. Equipment and software that provides the information on the website in Braille, audio or in large print form is in common use today. Persons with dyslexia can benefit from the large text and spatial adjustments. Simple instructions and clear, concise sentences help with communication. It is apparent that all people, not just disabled persons, would benefit from web site design that is clear and concise.

Persons who are deaf or hearing impaired are able to use technology that provides immediate access via captioning or transcription of audio material. Persons who have physical and mobility disabilities that cause them to have difficulty using paper pages can access the Internet using a modified keyboard that allows them to use a device other than their eyes or mouth to communicate or a voice recognition software that responds to verbal commands. Of course, new, innovative, assistive technology is emerging every day.

## **TYPICAL ACCESS PROBLEMS IN WEB SITE DESIGN**

The availability of state-of-the-art technology, however, is of little benefit to the person with a disability who is unable to access information from a web site when the web site is not compatible with the assistive technology the disabled person is using. This issue is the crux of the problem in terms of defining whether private entities are required to design their web sites so that it will communicate with the assistive technology the disabled person is using.

One typical problem encountered by persons with disabilities in attempting to interface with a web site is the use of information or links presented in graphic form or in a photographic format that makes that information inaccessible to the text readers and screen reading software in use. Colors used and the text form itself can also contribute to difficulty in use for visually impaired persons. Another common problem would be that the material is presented in an audio format only making it inaccessible to people who are deaf or hearing impaired.

On its face, it may appear to be a daunting responsibility for a hospitality operator to design or retrofit its web site to communicate with a variety of assistive devices, but in reality, it is not a very expensive or time consuming task. There are many resources readily available to help the web site designer to design with access to disabled persons in mind. The overall focus should be to simply design the web site with a multitude of senses in mind (Paciello, M., <http://www.samizdat.com>)

The best design will not only make the web site accessible to persons with disabilities, but make it easier for older people to understand the information on the web site. It will also make the web site compatible with the most current technology, such as hand held computers, personal digital assistants and web-enabled cellular phones ([www.usdoj.gov/crt/ada/websites2.htm](http://www.usdoj.gov/crt/ada/websites2.htm)).

## **RECOMMENDATIONS FOR HOSPITALITY OPERATORS**

Hospitality operators should consider the web site design they have in place and determine whether it is accessible to persons with disabilities. There are many testing and repair tools available to detect access problems on web sites. Access Enable, ACCRepair, AnyBrowser.com, Bobby, Aprompt, InSight, PageValet and many others are available for this purpose. If the design is not conducive to the standards set forth by the standards enunciated in the federally regulated guidelines and best practices found in Section 508 of the Rehabilitation Act of 1973, amended in 1998. Section 508 requires Federal agencies to make their web sites accessible to persons with disabilities.

Worldwide, the trend among governments has been to enact laws and regulations that require accessibility to persons with disabilities whenever possible. The standard for web content accessibility has been established in the Web Accessibility Initiative (WAI) of the Worldwide Web Consortium (W3C). It has developed Web Content Accessibility Guidelines (WCAG) 1.0 Released as a W3C Recommendation on May 5, 1999 following a period of extensive review and public consultation. Today, the WCAG is a stable document that may be used reliably as a reference material or cited as a normative reference from other documents. It is rapidly gaining acceptance world wide as the standard for web site accessibility. The intent of the guidelines is to help designers make web sites as accessible as possible for the widest range of users. The Web Content Accessibility Guidelines can be found online (Brewer, J., 2004)

The web site should be re-designed by an expert so that it becomes user friendly to persons with disabilities. For example, it would be advisable to have an e-mail address or phone number on the home page of the web site for persons with disabilities to use if they need to communicate regarding their needs for accessibility. The redesign should have very little effect, if any, on the layout or appearance of the web site.

The hospitality operator should make sure the web site designer is properly trained in the accessibility to persons with disabilities. Many sources of information are available for training purposes. Reputable resources that can provide the designer with guidelines and checklists are: Web Content Accessibility Guidelines 1.0; Section 508 Guidelines and IBM Web Accessibility Checklist.

Perhaps the greatest barrier the hospitality operator will encounter, however, is the resistance of the web site designer with regard to accessibility to persons with disabilities. For this reason, proper training must take place. Proper training is essential to the success of any program in overcoming attitudinal barriers. The undertaking of web site design to enhance accessibility to persons with disabilities should require staff training geared toward attitude awareness and enhancement, as deemed necessary.

## **CONCLUSION**

It is still undecided as to whether private companies must design their web sites and methods of Internet access to accommodate persons with disabilities. However, if courts determine that web sites or their physical locations housing servers are places of public accommodation, application of

Title III of the ADA to private company web sites would be a reality. Based on governmental mandates related to the issue, the trend appears to be moving in the direction of requiring access to persons with disabilities.

In light of the current legal climate with regard to this issue, hospitality operators seeking to prevent lawsuits related to denial of web site access would be well advised to voluntarily comply with the guidelines recommended in this article. They might even view the issue as an opportunity to appeal to a broader customer base. An aging population, with significant disposable income, would also benefit from ease of accessibility to hotel web sites.

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