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## Web Access for the Disabled Under the ADA

The ADA has been recently been extended to include cyberspace. According to a recent court decision, ADA accessibility requirements can now be the basis for a lawsuit requiring websites to be accessible to disabled persons.

Earlier this month, in *National Federation of the Blind v. Target Corporation*, a court in the Northern District of California determined that certain websites are subject to the Americans with Disabilities Act (the ADA) when it allowed a lawsuit against Target.com to survive a motion to dismiss. This decision marked a dramatic shift in the way the Court now requires websites with a nexus to physical stores to comply with the ADA, much like brick and mortar facilities.

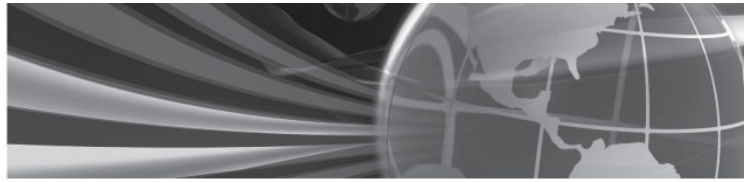
“According to a recent court decision, ADA accessibility requirements can now be the basis for a lawsuit requiring websites to be accessible to disabled persons.”

### The ADA

Title III of the ADA states that “[n]o 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 accommodations by any person who owns, leases (or leases to) or operates a place of public accommodation.” 42 U.S.C. 12182(a). Discrimination under the ADA encompasses the denial of the opportunity, by the disabled, to participate in programs or services, and providing the disabled with separate, but unequal, goods or services. 42 U.S.C. 12182(b)(1)(A)(i-iii).

### Background

Most of us make extensive use of a mouse to navigate the Internet. Many disabled persons, e.g. the visually impaired or those with limited hand functions, simply can't. Without accessible protocols being built into a website, the experience would be like surfing the web blindfolded. Protocols for designing an accessible website use “alternative text” - invisible code embedded beneath the graphics. A visually impaired individual can use screen reader software that vocalizes the alternative text and describes the content of the webpage. Many of these readers convert the screen text to something either audible or tactile. For



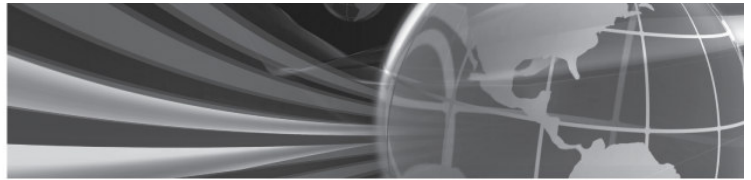
example, if there is a button to push to advance to the next screen, the screen readers say "NEXT-BUTTON." If presented with a form in which to enter a name and address, the screen reader will say "NAME" in the name field, or "COMBO BOX" to move through the choices until the numeric or alpha abbreviation desired is found.

Seven years ago the National Federation of the Blind (NFB) and several site impaired individuals sued America Online, Inc. (AOL) in Massachusetts, alleging that AOL's website was inaccessible to persons with disabilities. The plaintiffs claimed that, unlike other ISPs, AOL's website was not compatible with the screen-access software commonly used by the blind. The suit alleged ADA violations, and sought an injunction against AOL and a mandate that AOL change its software and website. However, AOL agreed to make certain changes, the lawsuit was settled, and the novel legal issue was not addressed.

In recent years, the Courts have split as to whether "places of public accommodation" as defined by the ADA must be actual, physical places or whether "places of public accommodation" has a more expansive meaning, including virtual facilities. The Third, Sixth and Ninth Circuits have held that places of public accommodation are limited to actual physical places. See *Parker v. Metropolitan Life Insurance Co.*, 121 F.3d 1006 (6th Cir. 1997) (holding that "the clear connotation of the words in §1218(7) is that a public accommodation is a physical place"); *Ford v. Schering- Plough Corp.*, 145 F.3d 601 (3rd Cir. 1998) (holding that "the plain meaning of Title III is that a public accommodation is a place"); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104 (9th Cir. 2000) (holding that places of public accommodation are actual, physical places). The First and Seventh Circuits have indicated that places of physical accommodation are more than actual physical structures. See *Carparts Distribution Center, Inc. v. Automotive Wholesalers Assoc. of New England, Inc.*, 37 F.3d 12 (1st Cir. 1994) (holding that public accommodations encompass more than actual physical structures); *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999) (noting in dicta that a place of public accommodation encompasses facilities open to the public in both physical and electronic space, including websites).

### ***National Federation of the Blind v. Target Corp***

In *National Federation of the Blind v. Target Corporation*, Case No. C 06-01802 MHP (N.D. Cal. Sep. 6, 2006), the Plaintiffs alleged that Target.com lacked features that would make it compatible with screen reader software; hence it was inaccessible to the blind. Defendant, Target



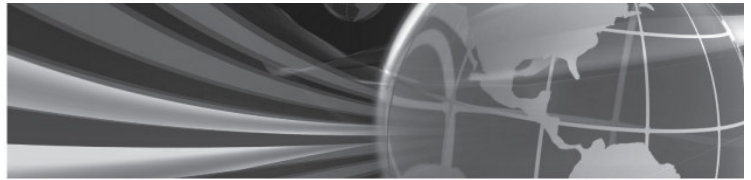
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Corporation, claimed that Target.com is not a “place of public accommodation” within the meaning of the ADA, therefore the lawsuit should be dismissed. Specifically, Target claimed that the Plaintiffs failed to state a case because they did not allege that any individual was denied access to a physical, or “brick and mortar” store. Previous Ninth Circuit law required a plaintiff to allege a “nexus” between the challenged service and the place of public accommodation. However National Federation of the Blind argued that unequal access to the website, Target.com, denied the blind full enjoyment of the goods and services offered at the “brick and mortar” target stores, which are places of public accommodation.

The court unequivocally rejected the argument that the ADA applies only to services *in* a physical place. The court observed that the statute applies, by its literal language, to services *of* any place of public accommodation and therefore applies to online goods and services as well. The court did, however, reason that the discrimination from the online services still must in some way deny physical access to a store.

### The Effects

Any business that utilizes a website to promote its goods and services should take note of this case and audit its website to insure that all reasonable steps are being taken to permit accessibility by the disabled. While this recent case, when read narrowly, applies only to businesses with both online and brick and mortar operations, it demonstrates a significant trend toward greater appreciation by the court of on-line access for all. Although the ADA does not mention the internet or the world wide web, because the law is vintage 1990, just as retailers are evolving to address business challenges in the internet realm, so too will the courts grapple with legal challenges for virtual sales and services sites. As the issues proceed through the courts, website accessibility is well situated to become the next cottage industry for ADA plaintiffs and class action lawyers.



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