

The ADA and Web Accessibility: Legal Overview

**2008 Accessible Technology Seminar:
ADA and Website Accessibility**

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Overview of Congress' Findings and Purposes

When Congress passed the ADA it found:

- society isolates and segregates people with disabilities
- discrimination against individuals with disabilities is a serious and pervasive social problem

Purposes of the ADA include:

- assure equality of opportunity
- full participation
- independent living
- economic self sufficiency for people with disabilities

Citation: 42 U.S.C. 12101(a)(8)

Inaccessible Websites and the ADA

Barriers:

Many people with disabilities are unable to access information on websites because of a variety of barriers that exist.

ADA Silent on Websites:

The ADA does not specifically reference websites because the Act was passed in 1990 before the Internet became such an integral element of our society.

Application of Websites under Different Titles of the ADA

There are three different contexts in which an ADA claim could arise when a website is inaccessible:

Title I – Employment

Title II – Public Services

Title III – Public Accommodations

Title I - Website Accessibility Issues in Employment

- **Title I:** prohibits discrimination in job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment
- **No Cases Yet:** Currently, there are no reported Title I cases involving website accessibility.
- **Likely Case Scenario:** Employer requires all job applicants to apply via an application on its inaccessible website.

Title II - Website Accessibility Issues in Public Services

- **Title II covers services by public entities**
- **Title II prohibits:**
 - exclusion from participation in or be denied benefits of the services, programs, or activities of a Title II entity
 - discrimination by a Title II entity
- **Subtitle A:** covers services by state and local governments (federal government services covered by the Rehabilitation Act)
- **Subtitle B:** covers public transportation

Title II - Website Accessibility Case Example

Martin v. Metropolitan Atlanta Rapid Transit Authority

- People with disabilities sued Atlanta public transportation system under Title II of the ADA
- Suit cited numerous ADA violations, including MARTA's inaccessible website
- **Court:** Failure of MARTA to provide the blind community with equal access to its website violated Title II

Title III - Website Accessibility Issues in Public Accommodations

Coverage: Title III of the ADA covers public accommodations (i.e. private businesses open to the public).

What's Prohibited? Under Title III, people with disabilities may not be discriminated 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(a)

Title III - *Place of Public Accommodation*

Issue: Is a physical space required for a “place” of public accommodation?

Physical Space Required: Some courts require a physical space in order to be covered by Title III, which would likely mean that websites are not covered.

Physical Space Not Required: Other courts do not require a physical space. In *Doe v. Mutual of Omaha*, the 7th Circuit did not require a physical space and listed websites among the entities that are covered by Title III.

Title III - Website Accessibility Case Examples

Access Now v. Southwest Airlines

- **Issue:** group sued Southwest Airlines claiming its website was inaccessible violating Title III.
- **Case dismissed:** website did not exist in a geographical location, so it was not a **place** of public accommodation.
- **On Appeal:** plaintiffs changed their argument claiming that the website was part of a “travel service” and therefore, covered by Title III. Appeal dismissed because new argument was inappropriately first raised on appeal.

Title III - Website Accessibility Case Examples (cont'd)

National Federation of the Blind v. Target Corp.

Claim: Target violates Title III and state law because its website is inaccessible.

Court Decision: Target's Motion to Dismiss was denied.

Rationale: to the extent that the inaccessibility of Target's website impeded full and equal enjoyment of goods and services offered in Target stores, the plaintiffs stated an ADA claim. Target's website has a "nexus" to Target stores, which are places of public accommodation.

Title III - Website Accessibility Case Examples (cont'd)

National Federation of the Blind v. Target Corp.

Class Action Status: Following the ruling on the Motion to Dismiss, the court issued another order certifying the case as a class action.

Class Definition: The class is defined as “all legally blind individuals in the United States who have attempted to access [target.com](https://www.target.com) and as a result have been denied access to the enjoyment of goods and services offered in Target stores.”

Website Accessibility Achieved Via Structured Negotiations

Some changes to website accessibility have been achieved via **structured negotiations**:

- **LaSalle Bank** agreed to update its websites to make them more accessible. See: www.equipforequality.org/programs/assistivetechology/lasallebank_settlement.doc
- **Radio Shack** agreed to change its website to make it accessible. See: www.radioshackcorporation.com/ir/release_details_main.php?id=918

Conclusion

Case Law: The case law is still developing as to whether there is a cause of action under the ADA for inaccessible websites.

Best Practice: Employers, public entities and private businesses should make their websites accessible to achieve the underlying purpose of the ADA to promote the full participation of people with disabilities in our society.

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QUESTIONS?