



A Tangled 'Web'
THE COURTS ARE DIVIDED AGAIN ON AN
ADA ISSUE: ACCESSIBILITY TO WEBSITES

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Several years ago, theatre owners held their breath while the courts grappled with the issue of wheelchair seating locations in stadium-style theatres. While movie theatres sought to accommodate wheelchair patrons in compliance with the Americans With Disabilities Act (ADA), the language of the legislation was vague and ambiguous on this issue.

The appellate courts offered conflicting opinions and, as a result, theatre owners spent millions of dollars to defend litigation and retrofit their theatres in the absence of any clear guidelines from the Department of Justice. Although settlements have been reached in litigation, the courts have still offered no dispositive ruling on the accessibility of wheelchair seating locations for disabled patrons under the current ADA standards.

Today, yet again, the courts find themselves divided on an issue that involves the accommodation of disabled patrons under the ADA. That issue involves the accessibility of Internet websites. The application of the ADA to one of the most popular forms of new media presents a significant issue and neither the Courts nor the Department of Justice have provided a clear answer. As a result, theatre owners are again faced with an ADA dilemma. Now, theatre owners must decide what action, if

any, is necessary to make their websites accessible.

Visually impaired or blind individuals are able to utilize the internet through the use of "screen reader" software, which is a program that converts graphic and textual information on the monitor into synthesized speech that users can hear through their computer's speakers. Although there are many websites that are accessible to the visually impaired, there are still a significant number of sites on the web with unlabeled graphics and other sources of data, that make it extremely difficult for the blind to access with screen reader programs. Those sites are considered to be inaccessible.¹

The question that has arisen through litigation is whether a website is a "place of public accommodation," which, under Title III of the ADA, is required to be accessible to disabled individuals. The courts are split on this concept, but some recent cases suggest a test that may lay the path for future guidelines.

Some courts view a place of public accommodation as solely a physical, tangible

¹ The technical specifications for website design that properly interfaces with screen reader software are beyond the scope of this article and it is advised that theatre owners contact a computer specialist in order to make such a determination.

structure such as the four walls of the theatre and everything within the four walls. Other courts have decided that a public accommodation can extend into physical or electronic space. However, there is a third rationale that is, in essence, a compromise between the two extremes and relevant to movie theatre operations.

Under the third rationale, if there is a connection, or “nexus,” between the functions of a website and its corresponding physical location, such as a movie theatre, then that may qualify the website as a part of a place of public accommodation and subject to compliance with the accessibility requirements of the ADA. For example, if a theatre owner’s website contains the means, or link, to purchase movie tickets online that the filmgoer will receive at the movie theatre itself, either through a kiosk or the ticket counter, then there may be a sufficient connection to classify the website as part of a place of public accommodation. Consequently, it will be required by the ADA to offer accessibility to visually impaired or other disabled users. Even if a website merely directs the filmgoer to a particular theatre and showtime, that may still be enough of a “nexus” to establish it as a place of public accommodation for purposes of Title III of the ADA.

In a recent case, which underscores the impending shift towards accessible websites for the over 1.5 million visually impaired internet users, the National Federation of the Blind sued AOL claiming that websites are a place of public accommodation and subject to the ADA. Although the case was settled and the court did not decide the issue, AOL agreed to make its web browsing technology accessible to the visually impaired.

In addition to the courts and the text of the ADA, movie theatre owners can look to

the Access Board for guidance on how to operate a disability-friendly website. The Access Board is an independent Federal agency devoted to accessibility for people with disabilities and publishes guidelines that the Department of Justice must consider in its enforcement of the ADA. Furthermore, although the current Access Board guidelines on websites do not apply to the private sector, Congress has expressed its intent that ADA regulations be consistent with the Access Board’s minimum requirements.

Since the ADA does not include a definition of an accessible website, the Access Board’s accessibility standards for electronic and information technology, issued under section 508 of the Rehabilitation Act of 1973, should be carefully considered. Section 508 requires in part that the federal government provide its disabled employees access to electronic technology such as the Internet and establishes functional standards for web accessibility.

As the courts wrestle with the ambiguity of the term “public accommodation” as it applies to websites, and in lieu of uniform federal guidelines that require internet sites to be accessible to disabled individuals, it is suggested that theatre owners review their website with counsel and, for the benefit of its visually impaired patrons, consider establishing a site that is accessible to their disability.

The rapid growth of Internet technology is constantly spurring new opportunities for motion picture exhibitors to interact with its consumers. Visually impaired filmgoers can be expected to litigate to enforce their possible right to enjoy these online opportunities to the best extent possible through the use of accessible websites.