Commentary: An Update on Disabled Access Laws and the Internet

By Aaron P. Silberman[1]

Overview

Federal and state laws require that places of public accommodation be accessible to persons with disabilities. In a commentary three years ago, this author predicted that at least some courts would decide that these laws apply to commercial websites. In 2006, a federal trial court in San Francisco became the first court to do just that, holding that the Americans with Disabilities Act and its California counterparts apply to some commercial websites. That non-precedential decision joins *dicta* in a Seventh Circuit case, analogous case law from the First Circuit, and arguments advanced by the United States Department of Justice in supporting the position that the ADA applies to at least some, if not all, commercial websites.[2] On the other hand, at least one reported district court decision expressly rejected a plaintiff's attempt to sue a commercial website for alleged ADA violations, and analogous case law in the Third, Sixth, Ninth, and Eleventh Circuits and other district courts indicates that those courts would take a similar view.

The author's prior commentary also addressed what accessibility standards businesses would have to meet if, in fact, disabled access laws were applied to websites. While there are still no court decisions on this issue, Section 508 of the federal Rehabilitation Act and guidance issued under that section may provide the answer. Sales of Internet-based products to the federal government and an increasing number of state governments are subject to accessibility guidelines under Section 508, making it more and more likely that courts would look to those standards to determine whether commercial websites are accessible to persons with disabilities.

Website Ownership and Services

Whether disabled access laws apply to a website depends on who owns and operates the site and may also depend on the types of services the site provides.

Public Sector Websites

Websites owned or operated by the federal government are subject to Section 508 of the federal Rehabilitation Act (29 U.S.C. § 794d), which requires that those sites be accessible to persons with disabilities. An increasing number of state governments are adopting Section 508 or similar standards as well; at least 24 states had adopted Section 508 standards by 2006.[3] In addition, websites for other public facilities, such as public transportation systems, are subject to requirements under Title II of the ADA, and its implementing regulations, that public entities make "adequate communications available, through accessible formats and technology, to enable users to obtain information and schedule service."[4]

Private Sector Websites

The private, commercial sector is generally subject to Title III of the ADA (42 U.S.C. § 12101, *et seq.*). The ADA requires that "public accommodations" be made accessible to persons with disabilities unless doing so would fundamentally alter the goods or services provided or would be an undue burden. A place of public accommodation is covered by the Act if it "affects commerce" (*i.e.*, provides goods or services to the public) and falls within one of 12 enumerated categories listed at 42 U.S.C. § 12181(7)(C).[5] The listed categories include places of exhibition or entertainment, sales or rental establishments, service establishments, places of public display or collection, places of recreation, and places of education. Private clubs are not public accommodations.

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[2] For a comprehensive discussion of this issue, and an argument in favor of application of Title III to websites, *see* "When the Americans with Disabilities Act Goes Online: Application of the ADA to the Internet and the Worldwide Web,'' National Council on Disability, July 10, 2003, at www.ncd.gov/newsroom/publications/2003/pdf/adainternet.pdf.

[3] The following states have adopted 508 standards: Arizona, Arkansas, California, Colorado, Florida, Georgia, Indiana, Kentucky, Louisville, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, Oklahoma, Oregon, Texas, Virginia, West Virginia, and Wisconsin.

[4] *Martin v. Metro. Atlanta Rapid Transit Auth. (MARTA)*, 15 AD Cases 1284, 225 F. Supp. 2d 1362, 1377 (N.D. Ga. 2002) (holding that MARTA's website violated Title II of the ADA because it was not accessible to persons with visual impairments).

[5] *See also* 28 C.F.R. §36.104 (defines public accommodation as a ''place'' or a ''facility'' affecting commerce and falling in one of the 12 categories).

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If a business qualifies as a place of public accommodation, then it is prohibited by the ADA from discriminating against any person based on disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" of that place of public accommodation (42 U.S.C. § 12182(a)). Specific ADA access requirements and guidance on how a public accommodation can meet these requirements are provided in regulations created by the Architectural and Transportation Barriers Compliance Board ("the Access Board") and promulgated at 28 C.F.R. § 36.101, *et seq.*

It is unclear whether Title III of the ADA would apply to commercial websites. Whether those laws apply will likely depend on the types of services the site provides. [6] Websites providing means of physical access to places of public accommodation are most likely to be covered by the ADA, while private websites with no connection to a physical place of public accommodation are least likely to be covered. Open sites, with or without a connection to a physical place of accommodation, lie somewhere in the middle. To date, only one court has held that any type of commercial website must be accessible to persons with disabilities,[7] but more are sure to come.

Sites Providing Access to Physical Public Accommodations

A site that provides access to a physical place that itself qualifies as a public accommodation probably should be subject to disabled access law requirements. For example, a theater's website, which allows patrons to purchase tickets on-line, should be covered by the ADA. The reasoning is that, even if the websites themselves are not public accommodations (an unsettled question discussed below), to the extent they are inaccessible to persons with disabilities, they are barriers to physical access to places that clearly are public accommodations, *e.g.*, theaters, sports arenas, museums, etc.

The Eleventh Circuit applied this reasoning in an analogous situation. In *Rendon v. Valleycrest Productions, Ltd.*, 13 AD Cases 404, 294 F.3d 1279 (11th Cir. 2002), plaintiffs with visual and upper torso mobility impairments sued the production company for the game show "Who Wants to Be a Millionaire?" alleging that the show's "fast finger" telephone dial-in system for selecting contestants was inaccessible to them. The district court dismissed plaintiffs' claims, agreeing with the defendants' argument that the dial-in system was not covered by the ADA. The circuit court reversed, holding that the dial-in system was a barrier to access to participation in the game show, which took place in a public accommodation, *i.e.*, a TV studio.

The U.S. Department of Justice, the agency charged with enforcing the ADA's access provisions, has taken a similar position regarding websites.[8]

Most recently, the U.S. district court decision in *National Federation of the Blind (NFB) v. Target Corp.*, 18 AD Cases 1148, 452 F. Supp. 2d 946 (N.D. Cal. 2006), indicates indirectly that websites providing means of physical access to places of accommodation would be covered by the ADA. In that case, the NFB sued Target, alleging that Target's website was inaccessible in violation of the ADA and California disabled access laws.[9] The court granted in part and denied in part Target's motion to dismiss the NFB's complaint. Target argued that the ADA only prohibits "denial of physical entry to, or use of, a space," and that its website was not covered by the ADA because, even if it were inaccessible, it would not deny anyone physical access to Target stores.[10] While the court held that denial of physical access was not required to allege a violation, no one – including Target – disputed that a website denying physical access to brick and mortar stores would violate the ADA.[11]

Sites Providing Services Related to a Physical Place

Whether a website that is related to a physical place of public accommodation, but does not offer services that actually provide physical access to that place of accommodation, is a much closer question. The answer will likely depend on whether courts view websites themselves as either (a) "goods, services, facilities, privileges, advantages, or accommodations" of a public accommodation, or (b) "auxiliary aids or services" of that public accommodation. In *NFB v. Target Corp.*, the court addressed these issues but left some important questions unanswered.

In *Target*, the court denied Target's motion to dismiss those claims that alleged Target's website violates the ADA because its inaccessibility "impedes the full and equal enjoyment of goods and services offered *in Target stores*."[12] The court agreed with the NFB that, because Target stores are themselves places of public accommodation, Target is prohibited under the ADA from denying customers with disabilities all services offered by those stores, including services offered through

[6] If a website includes job postings, it would be subject to Title I of the ADA, which prohibits disability discrimination in employment. If a job applicant with a disability found such a website to be inaccessible, then the website owner might be obligated, at the applicant's request, to modify the website as a reasonable accommodation.

[7] *Nat'l Fed'n of the Blind (NFB) v. Target Corp.*, 18 AD Cases, 1148, 452 F. Supp. 2d 946 (N.D. Cal. 2006); *see also Access Now, Inc. v. Claire Stores, Inc.*, No. 00-14017-CIV-MOORE, 2002 WL 1162422, at *5 (S.D. Fla. 5/7/02) (noting in approving a Title III class settlement, prior to the *Target* decision, that "no court has held that internet [sic] websites made available to the public by retail entities must be accessible'').

[8] Sept. 9, 1996 letter to U.S. Senator Tom Harkin (D-Iowa) signed by Assistant Attorney General Deval L. Patrick (http://www.usdoj.gov/crt/foia/tal712.txt).

[9] 452 F. Supp. 2d at 949.

[10] *Id.* at 952-53.

[11] *Id.* at 952-54.

[12] 452 F. Supp. 2d at 956 (emphasis added).

the Target website, such as coupons, ordering, store information, etc.[13] The court rejected Target's argument that the ADA only prohibits discrimination occurring in a place of public accommodation and that discrimination is limited to denial of physical entry to or use of that space. First, the court noted that the plain language of the ADA prohibits discrimination regarding "the services *of* a place of public accommodation, not services *in* a place of public accommodation."[14] Second, the court stated that no case had limited ADA access violations to services that prevent physical access to a public accommodation and that the clear purpose of the ADA is broader, seeking to ensure "full enjoyment" of the goods and services of the public accommodation.[15] In denying this part of Target's motion, the court found that the NFB's complaint alleged that "many of the privileges and benefits" of the Target website "are services of the Target stores" and that the website "operates in many ways as a gateway to the stores."[16]

Target also argued in its motion that its website is an auxiliary aid. The ADA's auxiliary aid provision only requires places of public accommodation to use such aids as is necessary to communicate effectively with customers with disabilities and allows accommodations to choose the format of those communications. As such, Target argued that its website would not violate the ADA, even if it were inaccessible, so long as Target communicated the same information to disabled customers through other means (such as telephone).[17] The court did not decide this issue, stating that for Target to prevail under this provision it ultimately would have to prove as an affirmative defense both that its website was an auxiliary aid and that Target communicated the same information to customers with disabilities through other means.[18]

Sites With No Connection to a Physical Place

Of course, every website has a connection to a physical place in the sense that it is located on a server or servers in real space, but what if that is the site's only connection to a physical space? Does the ADA apply, for example, to amazon.com, the same way it applies to a bricks and mortar book store? What if the site is connected to a physical place that does not qualify as a public accommodation?

Again, *Target* addresses the issue. In that case, the court dismissed those claims which related to portions of Target's website that "do not affect the enjoyment of goods and services offered in Target stores," *i.e.*, goods and services offered exclusively through the website.[19] The court based its decision on the Ninth Circuit decision in *Weyer v. Twentieth Century Fox Film Corp.*, 10 AD Cases 65, 198 F.3d 1104, 1114-16 (9th Cir. 2000), which held that a plaintiff must allege a nexus between the challenged service and a place of public accommodation and that only a physical place may qualify as a place of public accommodation under the ADA.[20] The claims the *Target* court dismissed would presumably be those which concerned portions of the website, if any, that enable customers to order goods or services online without involving brick and mortar Target stores. For example, under the court's order, the ADA would not require that the Target webpage for refilling prescriptions be accessible if customers would receive their refills by mail delivery from a Target warehouse, but it would require that webpage be accessible if customers would have to visit a Target store to pick-up their refills.

Access Now Inc. v. Southwest Airlines, Co., 13 AD Cases 1186, 227 F. Supp. 2d 1312, 1314 (S.D. Fla. 2002), is also directly on point. In that case, the district court granted the defendant Southwest Airlines' motion to dismiss plaintiffs' claims that Southwest's website violated Title III of the ADA. Significantly, the court noted that the plaintiffs could not argue that the website denied them access to aircraft because aircraft are explicitly exempt from Title III (42 U.S.C. § 2181(10)).[21] The court concluded that Title III does not apply to websites based primarily on the plain language in Title III (42 U.S.C. § 2181(7)) and the implementing regulations (28 C.F.R. §§ 6.101, 36.104), which both define "places of public accommodation" in terms of "physical, concrete places."[22] It rejected the plaintiffs' argument that websites fall within examples of public accommodations listed in the statute that are not necessarily physical structures, such as places of "exhibition, display and a sales establishment," because it found that those terms, when read in context, are "limited to their corresponding specifically enumerated terms [in the Act], all of which are physical, concrete structures."[23] Finally, the court found that the plaintiffs could not establish a nexus between the website and a physical place.[24]

Another district court reached a similar conclusion in *Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532 (E.D. Va. 2003). In *Noah*, the issue before the court was whether Internet chat rooms were "places of public accommodation" under Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a, *et seq.*) ("the CRA"). The

[13] *Id.* at 949-50.
[14] *Id.* at 953 (emphasis in original).
[15] *Id.* at 953-54.
[16] *Id.* at 954-55.
[17] *Id.* at 955-56.
[18] *Id.* at 956.
[19] *Id.*
[20] *Id.* at 952.
[21] *Id.* at 1321 n.12.
[22] *Id.* at 1317-8.
[23] *Id.* at 1318-9.
[24] *Id.* at 1319-20. In this regard, the court distinguishes the defendant's website from the telephone dial-in contest in *Rendon v. Valleycrest Prods., Ltd.*, 294 F.3d 1279, 1284-6 (11th Cir. 2002), discussed above.

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court dismissed the plaintiff's claim that AOL, an Internet service provider (ISP), violated the CRA by refusing to prevent chat room participants from posting anti-Islamic comments, holding that the CRA limits places of public accommodation "to actual, physical places and structures" and cannot include "virtual forums of communication," such as chat rooms.[25] The court noted that the CRA's list of establishments that qualify as places of public accommodation (like the list in Title III of the ADA), includes facilities which without exception are actual, physical structures.[26] Finally, the court looked to the cases interpreting the "analogous" provisions in Title III of the ADA, finding those cases instructive and ultimately supporting the conclusion that places of public accommodation "must consist of, or have a clear connection to, actual physical facilities or structures."[27]

The U.S. District Court for the Northern District of California (the same court that decided *Target*) dealt with a very similar issue in *Torres v. AT&T Broadband LLC,* 158 F. Supp. 2d 1035 (N.D. Cal. 2001). In that case, a visually-impaired subscriber to AT&T's digital cable service sued under the ADA and California's disabled access statute, the Unruh Act (Cal. Civ. Code §54, *et seq.*), alleging that the service's channel listing program was not accessible to him. The court granted AT&T's motion to dismiss on the ground that its cable system was not a "public accommodation" under either act. The court reached its conclusion based on the plain meaning of the statutes and their implementing regulations, which it found to define public accommodations as being limited to physical places. It found that a digital cable system is not analogous to any of the categories of accommodations listed in the ADA, and, since the cable service only provides entertainment in a subscriber's home, the subscriber's TV is not a place of public entertainment.

At least one court has taken the position that the ADA does apply to all commercial websites that are open to the public. In *Doe v. Mutual of Omaha Insurance Co.*, 9 AD Cases 657, 179 F.3d 557 (7th Cir. 1999), a case involving an ADA challenge to an insurance policy, the court states: "The core meaning of [Title III of the ADA], plainly enough, is that the owner or operator of a store, hotel, restaurant, dentist's office, travel agency, theater, *Web site*, or other facility (whether in physical space or in electronic space, *Carparts Distribution Center, Inc. v. Automotive Wholesalers Ass'n of New England, Inc.* [3 AD Cases 1237], 37 F.3d 12, 19 (1st Cir. 1994)) that is open to the public cannot exclude disabled persons from entering the facility and, once in, from using the facility in the same way that the non-disabled do."[28]

The DOJ has taken the same position. In *Hooks v. OKBridge*, 232 F.3d 208 (5th Cir. 2000) (decision without published opinion), the plaintiff sued a commercial website on which customers can play bridge for a fee, alleging that his membership at the site was terminated because he has bipolar disorder. In an unpublished opinion, the U.S. District Court for the Western District of Texas dismissed the case, ruling that a company providing services over the Internet is not a physical place of public accommodation under the ADA and that the defendant was exempt from the ADA as a "private club."

On appeal, the DOJ filed an amicus brief with the Fifth Circuit arguing that public accommodations under Title III are not limited to companies providing services to customers at a physical location and that the entertainment or recreation services provided by OKBridge make it a place of public accommodation.[29] The Fifth Circuit did not reach the issue of ADA Internet coverage, ruling that OKBridge did not violate the ADA because it was not aware of the plaintiff's alleged disability when it terminated his membership.[30]

In addition to *Hooks*, a disabled plaintiff also challenged the accessibility of a website in *NFB v. America Online Inc.*, No. 99CV12303EFH (D. Mass. 1999). In that case, the NFB sued AOL, claiming that AOL's then-current version 5.0 software was not accessible to visually-impaired persons. That case settled, with AOL agreeing to make its version 6.0 accessible.

Several circuits have looked at the broader issue of whether the ADA's definition of public accommodation requires that it be a physical place in the context of employee health insurance plans. The courts are split, with the Third, Sixth, and, most recently, the Ninth Circuits holding that a physical place is required, such that the challenged plans are not covered.[31] The First Circuit, on the other hand, has held that a physical place is not required.[32]

Subscriber-Only Websites

A website that is accessible to subscribers only is analogous to a private club and probably would not be covered. The district court dismissed the plaintiff in *Hooks v. OKBridge* in part because it considered the

[25] 261 F. Supp. 2d 532, 544-5.

[26] *Id.* at 541-2 (citing *Welsh v. Boy Scouts of America*, 993 F.2d 1267, 1269 (7th Cir. 1993) (holding Boy Scouts is not a place of public accommodation under the CRA because it is not "closely connected to a particular facility"); and *Clegg v. Cult Awareness Network*, 18 F.3d 752, 755 (9th Cir. 1994) (holding Network is not a place of public accommodation because it has "no affiliation with any public facility").

[27] 261 F. Supp. 2d at 543-4.

[28] 179 F.3d at 559 (emphasis added).

[29] *See* DOJ amicus brief at www.usdoj.gov/crt/briefs/hooks.htm.

[30] For a description of that case, *see* www.usdoj.gov/crt/ada/aprsep00.htm.

[31] *Ford v. Schering-Plough Corp.*, 8 AD Cases 190, 145 F. 3d 601 (3d Cir. 1998); *Parker v. Metro. Life Ins. Co.*, 6 AD Cases 1865, 121 F.3d 1006, 1015 (6th Cir. 1997); *Weyer v. Twentieth Century Fox Film Corp.*, 10 AD Cases 65, 198 F.3d 1104, 1114-16 (9th Cir. 2000).

[32] *Carparts*, 3 AD Cases 1237, 37 F.3d at 18-19 (1st Cir. 1994); *see also Doe v. Mutual of Omaha Ins. Co.*, 9 AD Cases 657, 179 F.3d 557 (7th Cir. 1999).

challenged website, a members-only gaming site, to be the equivalent of a private club. Subscriber-only sites are also very similar to the digital cable service that the district court found not to be a "public accommodation" in *Torres v. AT&T Broadband LLC*, 158 F. Supp. 2d 1035 (N.D. Cal. 2001).

Where Are the Courts Headed?

In sum, it is unclear whether websites are themselves public accommodations under the ADA. The Department of Justice believes they are, and it is likely that the First and Seventh Circuits would agree. On the other hand, decisions by the Third, Sixth, and Ninth Circuits indicate those courts would be more likely to reject application of the ADA to websites without a meaningful connection to a physical place.

On the one hand, it is clear that Congress did not have websites in mind when the ADA was enacted in 1990. On the other hand, applying the ADA to websites would serve the general purposes of that statute of making public commerce accessible to persons with disabilities.[33] In the opinion of this author, as courts see more and more ADA challenges to inaccessible websites, at least some of those courts will find ways to read website accessibility requirements into the ADA, just as the district court did in *NFB v. Target Corp.*

Application of Disabled Access Laws

Who Would Be Liable?

The ADA requirements apply to entities that own or operate public accommodations. Thus, if a website is a public accommodation, the party or parties that own and operate the site will be liable for any access violations of that site. While some cases also hold design professionals, such as architects, liable under the ADA, the majority view is that they are not *directly* liable under the Act.[34] Regardless, such professionals still need to be concerned about access requirements due to indemnity obligations they may have to site owners.

ADA Regulations

The Department of Justice, as the federal agency responsible for implementing the ADA, has promulgated detailed regulations on how a public accommodation must make architectural features accessible, but it has created no such regulations for websites or similar technologies. However, courts can look to detailed regulations applicable to federal government websites under Section 508 for guidance on what website features are or are not accessible (discussed below).[35] Commercial guidelines, though not legally binding, are also available.[36]

Section 508 of the Rehabilitation Act

Section 508 (29 U.S.C. § 794d) provides a model for the future if and when other laws, like the ADA, are applied to commercial websites. Section 508 provides that agencies can only purchase electronic and information technology ("EIT") that provides access to government employees and members of the public with disabilities "comparable" to that provided to persons without disabilities. EIT must meet applicable accessibility standards of the Access Board at 36 C.F.R. Pt. 1194 (issued 12/21/00).

Subpart A of the regulations defines the types of technology covered. The application section (§1194.2) outlines the scope and coverage of the standards, providing that they apply to EIT which is defined as "any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information." If no product meets all of the regulations' accessibility standards, then the agency may procure one that *best* meets standards (not necessarily the one that meets the *most* standards). The regulations incorporate the concept of "equivalent facilitation," which permits vendors to use designs or technologies that differ from those prescribed in the standards so long as they result in substantially equivalent or greater access (§ 1194.5); this effectively converts the accessibility standards into performance criteria.

Subpart B provides "technical standards" regarding various categories of EIT, including Web-based

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[33] For recent testimony for both sides of this argument, see ''Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites, Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee'' (2/9/00), available at http://commdocs.house.gov/committees/judiciary/hju65010.000/hju65010_0f.htm.

[34] Decisions holding that architects are not directly liable under Title III of the ADA include: *Lonberg v. Sanborn Theaters Inc.*, 12 AD Cases 205, 259 F.3d 1029, 1032 (9th Cir. 2001); *Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs (''PVA'')*, 5 AD Cases 1494, 945 F. Supp. 1, 2 (D.D.C. 1996), *aff'd on other grounds*, 117 F.3d 579 (D.C. Cir. 1997); *United States v. Days Inns of America, Inc. (''Days Inns IV'')*, 8 AD Cases 1178, 22 F. Supp. 2d 612 (E.D. Ky. 1998); and *United States v. Days Inns of America, Inc. (''Days Inns I'')*, 8 AD Cases 491, 1998 WL 461203 at *2-4 (E.D. Cal. 1/12/98). Decisions holding that architects may directly be liable include: *United States v. Days Inns of America, Inc. (''Days Inns III'')*, 8 AD Cases 678, 151 F.2d 822 (8th Cir. 1998), *cert. denied*, 119 S. Ct. 1249; *Johanson v. Huizenga Holdings Inc.*, 6 AD Cases 532, 963 F. Supp. 1175, 1177-8 (S.D. Fla. 1997); *United States v. Days Inns of America, Inc. (''Days Inns II'')*, 7 AD Cases 1617, 997 F. Supp. 1080, 1083-4 (C.D. Ill. 1998); *United States v. Ellerbe Becket Inc.*, 7 AD Cases 1719, 976 F. Supp. 1262, 1267-8 (D. Minn. 1997). The United States has also taken the position that architects may be directly liable. *See* Department of Justice, Technical Assistance Manual, Section III-5.1000 (Jan. 1993).

[35] 36 C.F.R. § 1194.1, *et seq.*

[36] *See, e.g.*, Web Content Accessibility Guidelines 1.0, at http://www.w3.org/TR/WCAG10/.

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intra- and Internet information and applications (§ 1194.22).[37] Many of the criteria provided ensure access for persons with visual impairments who rely on assistive technology such as screen readers and refreshable Braille displays. The standards require certain conventions such as verbal tags or ID of graphics and format devices, like frames, which are necessary so assistive devices can read them for the user in a sensible way. The standards do not prohibit graphics or animation but, where used, require that the same information be available in accessible format, which generally means the use of text labels or descriptors for graphics and certain format elements.

Subpart C of the regulations provides functional performance criteria for technologies or components for which there are no specific requirements under technical standards in Subpart B. For example, one provision requires that at least one mode allow operation by individuals with low vision (between 20/70 and 20/200) without relying on audio input (since those individuals may also have a hearing loss).

Subpart D regulates information, documentation, and support, including user guides, installation guides, customer support, and tech support communications. Such items must be made available in alternative formats upon request at no additional charge. Alternative formats include Braille, cassette recordings, large print, electronic text, Internet postings, TTY access, and captioning and audio description for video materials.

In addition to the formal regulations, the Section 508 interagency steering committee has issued detailed, informal guidance in the form of a "frequently asked questions" ("FAQs") document, which is regularly updated.[38] The document provides, for example, that EIT meeting the "technical" criteria" in Subpart B of the regulations must still meet the broader "functional criteria" in Subpart C (FAQs §B.2.ii.).

Making Websites More Accessible

If disabled access law requirements do apply to websites, then how can site owners and operators make their sites more accessible?

Barriers to Access

Persons with disabilities commonly encounter the following barriers to access in websites:

- Visual features (*e.g.*, photos, graphics) with no text equivalents or special coding, including graphics essential to navigating the site or imparting vital information (such as a table or image map).
- Color cues (*e.g.,* links that change from red to green once they have been used).[39]
- Text that is too small, too little contrast, etc.
- Audio or video features with no text equivalents, *e.g.,* sounds to indicate the user has made a mistake.
- Features only accessible by typing in text.
- Features only accessible by mouse clicking on a target.

Technological Remedies

People with disabilities can use many technologies effectively, including websites, through the use of adaptive equipment or software, also known as "assistive technology." Examples of assistive technology include:

- Screen reader technology— allows persons with visual impairments to use websites by converting text to speech or refreshable Braille display.
- Voice recognition technology— allows persons with certain physical or dexterity impairments to input commands.
- Closed captioning— allows persons with hearing impairments to follow audio content.

Finally, websites can be made more accessible by providing accessible information about how to access website features (*e.g.,* including an access instruction page for site visitors and providing help desk assistance knowledgeable about assistive technology and accessibility features of the site).

Conclusion

Every day, websites are becoming a more significant part of how we do business. This means that access barriers in sites are increasingly depriving people with disabilities from this means of doing business. Businesses should consider the accessibility of their sites to the disabled, whether they are legally obligated to do so or not. The applicability of disabled access laws to commercial websites is unsettled, but more legal challenges — like the one pending in *NFB v. Target Corp.*— are sure to come. And it is likely that when they do, other courts will follow the *NFB* court's lead and find the laws do apply to at least some sites.

[37] The other categories of EIT covered in the regulations are software applications and operating systems (§ 1194.21); telecommunications products (§ 1194.23); video or multimedia products (§ 1194.24); self-contained, closed products, such as information kiosks (§ 1194.25); and desktop and portable computers (§ 1194.26).

[38] Available at http://www.section508.gov/index.cfm?FuseAction=Content&ID=75.

[39] To check websites for readability by persons with some forms color-blindness, visit www.vischeck.com.