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ALM

Do Web Sites Need to Be Accessible to the Blind?

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An advocacy group has sued Target Corp., claiming that Target's Web site is incompatible with software used by the blind and that such incompatibility is a violation of the Americans with Disabilities Act (ADA).

In *National Federation for the Blind v. Target Corp.* (___ Supp.2d ___, 2006 WL 2578282 [N.D. Cal. Sept. 6, 2006]), the U.S. District Court for the Northern District of California refused to dismiss those claims, leaving many questions unanswered for entities operating Web sites.

TITLE III OF THE AMERICANS WITH DISABILITIES ACT

In 1990, Congress enacted the ADA to establish a comprehensive prohibition of discrimination on the basis of disability and, in certain circumstances, to require affirmative efforts to accommodate individuals with disabilities. Title III of the ADA provides for accessibility of places of public accommodation.

The ADA defines a "place of public accommodation" as a facility, operated by a private entity, whose operations affect commerce and fall within at least one of 12 specified categories. 42 U.S.C. §12181(7).

The statute and implementing regulations were enacted before the Internet became an everyday tool and do not expressly state whether the Internet is a place of public accommodation. The Department of Justice has consistently taken the position that it is — for example, through the filing of amicus briefs.

Courts have split on the issue. The U.S. Courts of Appeals for the 6th and 9th Circuits and a district court in Florida have held that a public place of accommodation must be a physical location. (See, for example, *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000); *Access Now, Inc. v. Southwest Airlines Co.*, 227 F.Supp.2d 1312 (S.D. Fla. 2002), appeal denied, 385 F.3d 1324 [11th Cir. 2004].)

In contrast, the 1st U.S. Circuit Court of Appeals has stated that Title III of the ADA is not limited to purely physical structures, although that court did not address the Internet specifically. (*Carparts v. Automotive Wholesaler's Ass'n.*, 37 F.3d 12, 22-23 (1st Cir. 1994).)

The 7th U.S. Circuit Court of Appeals, in dicta, has stated that a Web site can be a place of public accommodation. (*Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999).)



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Similarly, the 11th U.S. Circuit Court of Appeals held that an automated method of selecting television show contestants was an intangible barrier to a physical location in *Rendon v. Valleycrest Productions*, 294 F.3d 1279 (11th Cir. 2002).

In 2002, the United States District Court of the Northern District of Georgia granted a preliminary injunction against the Atlanta public transit agency in favor of several individuals who alleged violations of the ADA, including nonaccessible information technology. (*Martin v. Metropolitan Atlanta Rapid Transit Authority*, 225 F. Supp. 2d 1362 (N.D. Ga. 2002).) However, the *Martin* case involved Title II of the ADA dealing with “public agencies” as opposed to Title III, which deals with “public accommodations.”

THE TARGET DECISION

The plaintiffs in *Target* argued that Target’s Web site allows customers to purchase many of the items available in Target’s “brick and mortar” stores and to perform other functions related to those physical stores, such as accessing information on store locations and hours, refilling a prescription, ordering photo prints for pick-up at a store or printing coupons to redeem at a store. Therefore, due to the nexus between the Web site and the physical stores, the plaintiffs argued that the court need not decide whether the Internet, as a stand-alone entity, constituted a “public place of accommodation.”

Target sought to dismiss the complaint, maintaining that Title III of the ADA applied only to a physical place. Target disagreed that there was a strong nexus between the services provided by the Web site and Target’s brick-and-mortar stores. Target also argued that its toll-free phone system, which was available 24 hours a day, 365 days a year, was a sufficient alternative to Target’s Web site.

The court agreed with the plaintiffs that there was a nexus between the Web site and the stores to make Target’s Web site a “service, privilege or advantage” of Target’s physical retail stores. The court held that Title III of the ADA required accessibility to all benefits of a place of public accommodation, not merely physical entry. The court, however, distinguished information and services of Target’s Web site, “which do not affect the enjoyment of goods and services offered in Target stores,” and held that there was no claim for those services under Title III of the ADA.

While the court denied Target’s motion to dismiss the complaint, the court also refused to grant plaintiffs motion for a preliminary injunction, finding that there were substantial

questions of fact. Such questions included the extent that Target’s Web site was inaccessible to the blind as a general matter and whether there were reasonable alternatives in light of the ability to call a toll-free number that required discovery and further proceedings.

THE IMPACT OF THE ‘TARGET’ DECISION

Whether other courts will agree with the decision in *Target* remains to be seen. Target also does not address many other questions, such as whether Title III of the ADA covers: entities that engage in Internet retail from centralized warehouses, but without any physical retail stores; entities that provide only services or information, as opposed to products; and Webcasts or educational seminars presented over the Internet. *Target* also does not address whether alternatives to Web sites, such as Target’s toll-free number system, are sufficient alternatives.

Private entities that host Web sites need to closely monitor developments in this area of the law. In the meantime, these entities should consider the compatibility of their Web sites with the software used by the blind.

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