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Accessibility Case May Extend ADA Reach to the Web

A Web site that is inaccessible to the blind may violate the Americans with Disabilities Act (ADA). But a federal court in California won't get to make that ultimate determination for the time being because of the settlement of a groundbreaking federal ADA case by the National Federation of the Blind against retailing giant Target.

While the settlement — and the resulting improvements to the accessibility of Target's Web site — is encouraging news for the disabled, the case may have troubling implications for other Web site operators nationwide.

The NFB and blind college student and NFB member Bruce Sexton brought a federal suit against Target in 2006, alleging that Target's Web site, Target.com, is inaccessible to the blind in violation of the ADA and California state law. After about a year of litigation, the parties recently announced settlement of the NFB's claims, but not before the Court denied Target's motion to dismiss the ADA claims.

This novel application of the ADA and state civil rights statutes adds a new layer of compliance for business owners and Web site operators.

The plaintiffs in the case alleged that they had been unable to access the full range of services offered for Target stores through Target.com, including the ability to use Target.com's store locator, online pharmacy to place orders for store pick-up, and Web discount coupons. Screen readers, which translate Web site text into audio for blind users, depend on text tagging of images, image maps and other data to allow users to successfully navigate a Web site. The NFB's suit alleged that Target.com failed to implement sufficient technical devices to allow screen readers to adequately



Expert Advice

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function and keyboard controls to work.

The key issue in the Target case was whether the Target Web site offers a service and benefit of a place of "public accommodation." The ADA applies only to places of public accommodation and their services and benefits.

Judge Marilyn Hall Patel, the judge overseeing the case, had ruled that the ADA is not limited to "services in a place of public accommodation," but also applies to the services of a place of public accommodation, such as Target stores. Judge Patel wrote in her order overruling Target's motion to dismiss that "the purposes of the statute is broader than mere physical access — seeking to bar actions or omissions which impair a disabled person's 'full enjoyment' of services of goods of a covered accommodation."

Essentially, since Target.com offers services for the full benefit and enjoyment of Target stores, the court ruled it must also be ADA compliant.

Many states, including Ohio, have similar provisions that Web site operators need to consider. Ohio's civil rights statute provides that it is an "unlawful discriminatory practice" for "any proprietor ... of a place of public accommodation to deny to any person, ... regardless of ... disability, ... the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation." Like the ADA, the statute does not require the privileges to be those available in a place of public accommodation, but of a place of

public accommodation.

Some large companies are preemptively bringing their Web sites into ADA compliance. On May 1, drugstore giant Rite Aid announced its nationwide initiative to make its Web site more easily accessible to persons with a wide range of disabilities. Rite Aid has already made improvements to its Web site and plans to eventually implement a photo editing page specifically geared to help the visually impaired.

The Target case is limited to the applicability of the ADA to Web sites offering services connected to physical stores, and doesn't necessarily mean that the ADA will be applied to Web sites not associated with physical accommodations. Even with that ambiguity, many purely dot-com sites have made efforts to comply.

Web site operators should employ technology, such as Internet-based free Web site text readers, to see whether their Web site provides enough text information to make sense to a screen reader. If not, they should consider taking steps to tag images and make other site features more accessible.

In the era of the Internet, Web site operators need to consider whether they operate "places of public accommodation" and whether their sites are accessible to those with disabilities. Many Web site developers offer compliance evaluations and tools to make the site accessible. Making a Web site accessible now may help to avoid the potential expense of litigation down the road.

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