

Web Accessibility and the Law

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INTRODUCTION

In the past three decades, the method of receiving and conveying information has shifted from paper-based, typewriter-generated, hand-edited, and printing-press-produced publications to more technology-mediated, intelligent, WYSIWYG software-generated forms. Consequently, the concept of access to information has changed to reflect this phenomenon. The new forms of access to information that have made it easier for non-disabled people have often created barriers for people with disabilities.

The notion of access to information involving the civil rights of people with or without disabilities arises from the fact that access to information through technology has increasingly become a necessary tool for success and the source of opportunity in education and employment. With the advent of information technology and the unprecedented opportunities they created for people with and without disabilities, it has become apparent that information technologies have a tremendous potential for allowing people with disabilities to participate in mainstream activities and to support their ability to live independently.

The disability rights movement in the United States originated during the post-World War II era when large numbers of veterans who were disabled in the war joined the efforts of parents seeking education and independent living options for their children with disabilities (Slatin & Rush, 2003). Recently, we have seen a growing body of significant laws, regulations, and standards concerning Web accessibility that impact people with disabilities and their ability to fully overcome digital barriers and participate in the Web environment. In defining Web accessibility, Section 508 of the Rehabilitation Act of 1973 as amended in 1998 documents that “Web sites are accessible when individuals with disabilities can access and use them as effectively as people who don’t have disabilities” (Section 508, 1998). A person with a disability is defined in the Americans with Disabilities Act (ADA) as “someone who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a record of such impairment, or a person who is regarded as having such impairment” (ADA, 1990). The legal foundation for protecting the civil rights of persons with disabilities has been established through a

series of federal and state laws, and court decisions. These laws provide a legal ground on Web accessibility implementation.

LAWS, REGULATIONS, STANDARDS, AND GUIDELINES

Under the provisions of laws, some of the legal milestones that have direct impact on Web accessibility are Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act (ADA) of 1990, and Section 508 of the Rehabilitation Act of 1973, as amended in 1998.

Section 504, Rehabilitation Act, 1973

Signed on October 1, 1973, Section 504 of the Rehabilitation Act is regarded as landmark legislation and the first civil rights law prohibiting recipients of federal funds from discriminatory practices on the basis of disability.

Core areas of the legislation consist of the prohibition of such activities as discriminatory employment practices, and discrimination in the delivery of educational offerings; health, welfare, and social services; or any other type of programs benefit or service supported in whole or in part by federal funds.

Section 504 is currently applied to all entities that receive federal government funds, including states, counties, cities, towns, villages, and their political subdivisions, public and private institutions, public and private agencies, and other entities that receive federal money. Each federal agency has its own set of Section 504 regulations that guide its own programs. Over the years, the Rehabilitation Act has been amended several times to address the constant changes in technology and its impact on society. The amendments most relevant to the access to information technology are those made to Section 508. The significance of the Section 504 lies not only in that it was the first statute applying civil rights protections to people with disabilities, but that it also “furnished the model for major subsequent enactments, including the ADA” (NCD, 2001). Section 504 was legislated too early to specifically address the issue of access to services and programs provided over the Web.

Americans with Disabilities Act (ADA), 1990

Passed on July 26, 1990, the ADA establishes a clear and comprehensive prohibition of discrimination on the basis of disability. While Section 504 applies to federal government agencies and those that receive federal funds, the ADA extends the rights of equal treatment for people with disabilities to the private area, to all places of public accommodation, employers, and entities that deliver government services. The core sections of the law are found in the first three titles: employment, state and local government activities, and public accommodation. Title II of the ADA requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities, such as: public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings. Section 202, Title II indicates that:

“...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” (ADA, 1990)

Title II recognizes the special importance of communication, which includes access to information in its implementing regulation at 28 CFR Section 35.160(a). The regulation requires that a public entity must take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with persons without disabilities. The ADA mandates for “effective communication, reasonable accommodations, and auxiliary aides and services” (ADA, 1990).

However, Web accessibility did not become prominent until 1996 when the Department of Justice (DOJ) responded to Senator Tom Harkin (D-Iowa), the author of the ADA, when he inquired on behalf of one of his constituents on Web page compatibility for the blind and other people with disabilities. In response, DOJ stated that ADA Title II and III do indeed require covered entities to provide “effective communication” regardless of the media used, and that information offered through digital media must be offered through “accessible means” as well. The Internet is an excellent source of information and, of course, people with disabilities should have access to it as effective as people without disabilities (DOJ, 1996). This response involves understanding to what extent the ADA requires Web pages to be accessible to people with disabilities. The DOJ’s ruling explains how the mandate for “effective communication” in ADA should apply to Web pages and Web design.

Section 508 Rehabilitation Act, 1998

Signed into law on August 7, 1998, as part of the Workforce Investment Act, Congress revised Section 508, an amendment to the Rehabilitation Act of 1973. The core area of this amendment is to ensure that all Americans have access to information technology. The law applied specifically to all U.S. government agencies, but it also affects anyone who works with the U.S. government. The law requires that when developing, procuring, maintaining, or using electronic and information technology (EIT), federal departments or agencies should ensure that the EIT allows federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by other federal employees (Section 508, 1998).

Section 508 charges the Architectural and Transportation Barriers Compliance Board (Access Board) with the task of producing accessibility standards for all electronic and information technologies used, produced, purchased, or maintained by the federal government. On December 21, 2000, the Access Board finalized and issued the standards. With its publication, the federal government for the first time set specific access standards for information presented over the Web. According to the law, federal agencies were permitted a six-month period after the standards were issued to demonstrate that their information technology systems met the standards. Federal agencies became subject to civil rights litigation for noncompliance under Section 508 after June 21, 2001. These standards have been folded into the federal government’s procurement regulations, namely the Federal Acquisition Regulations (FAR) to which most agencies are subject. Agencies not covered by the FAR should incorporate the Access Board’s Section 508 Standards into their own procurement regulations. The standards define means of disseminating information, including computers, software, and electronic office equipment. They provide criteria that make these products accessible to people with disabilities, including those with vision, hearing, and mobility impairments. The scope of Section 508 and the Access Board’s standards are limited to the federal sector. It does not explicitly apply to the private sector or to state and local governments.

The statements issued by the U.S. Department of Education and the Access Board support a concept of state government obligations wherein they abide by Section 508 by virtue of their linkage with funding supplied to state governments through the Assistive Technology Act (29 USC 3001). There is a statement in the U.S. Department of Education’s enforcing regulations to the Assistive Technology Act at 34 CFR Part 345, requiring “compliance with Section 508 of the Rehabilitation Act of 1973” (34 CFR 345.31).

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