

Accessible Web Design

What Is Accessible Web Design?

Accessible web design is the practice of designing web pages so that they can be navigated and read by everyone, regardless of location, experience, type of computer technology, or disability. Tim Berners-Lee, credited as the inventor of the World Wide Web and Director of the World Wide Web Consortium has stated that, “The power of the Web is its universality. Access by everyone regardless of disability is an essential aspect.”

There are accepted principles of web design that can be used in the design process to ensure a site that is easy to navigate, pleasing to the eye and accessible to all. Many businesses, non-profits and law firms are increasingly using the Internet as a means of providing large numbers of people with access to information and other services in a timely and cost effective way. Designing your website with accessibility in mind will help you reach a wider audience and communicate in a more effective manner. Since commercial website designers do not always create sites to be accessible, businesses with websites must make access a priority when selecting a web designer and developing the content of their website.

Equal Access And The Web: What Does It Mean?

The Internet has become a significant source of information for conducting business and for performing everyday activities such as shopping and banking. For many persons with disabilities and the aging population, the Internet is providing access to information and services on a broader and more efficient level. But what does it mean to have an “accessible” website? Most people understand providing accessible physical space, but how do people with disabilities obtain accommodations for websites?

People who are blind, or who have more serious visual impairments, often use keyboards in conjunction with screen-reading software that vocalizes visual information on a computer screen. There are also people who access computers, and thus the Internet, using voice controls instead of a keyboard alone.

COPYRIGHT 2015 by Disability Rights NC. All rights reserved. This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.

Problems can arise for these individuals, however, if proper design protocol is not followed. Text readers and screen-reading software are not able to interpret information or links presented only in graphics or photographic format. Material provided only in audio format will not be accessible to people with hearing impairments unless an alternative format is provided. Although users can determine many aspects of color, size and print font themselves, some approaches to text form or color will render access difficult or impossible for users with vision impairments (and this often affects readability for others as well).

Thus, accessibility isn't just about meeting technical requirements. It is important to consider the way in which information is presented. Documents that are presented in an image-based format will not be accessible to people who rely on Braille or synthetic speech output to read computer screens. Even the popular *.pdf (portable document format) file is a relatively inaccessible format, unless the document is prepared to include accessible features, such as "optical character recognition" and "alt+text" for images.¹

The Web Accessibility Initiative (WAI), a project of the World Wide Web Consortium, provides widely accepted guidelines for assessing the accessibility of websites and also represents current international best practice in accessible web design (<http://www.w3.org/WAI/>) The Web Content Accessibility Guide (WCAG) 2.0 provides 12 detailed guidelines to achieve the following four aims, and breaks websites down into three levels of compliance (A, AA, AAA) with the guidelines:

1. **Perceivable:** through text alternatives, captioning and sufficient contrast
2. **Operable:** through keyboard accessibility, sufficient timing functions and easy navigation functions
3. **Understandable:** through readable text and predictable functions
4. **Robust:** allowing compatibility with present and future technologies

Section 508 of the Rehabilitation Act describes web accessibility standards that the federal government has adopted for its websites. The guidelines recommend several basic components:

- the use of alternative text, referred to as alt-text, for use when the image is not being displayed;
- ensuring that all functions can be performed using a keyboard and not just a mouse;
- ensuring that image maps are accessible; and
- adding headings so that people with visual impairments can easily navigate the site.

Section 508 standards for federal government websites are currently being reviewed to conform to WCAG 2.0 and other model guidelines.

What Does The Law Require?

¹ To learn more about how to create an accessible *.pdf file visit http://www.adobe.com/enterprise/accessibility/pdfs/acro6_pg_ue.pdf

- **Rehabilitation Act Sections 504 and 508 and Title II of the ADA**

In 1998, Congress amended Section 508 of the Rehabilitation Act to require federal agencies to make their electronic and information technology accessible to people with disabilities. Section 508 was enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. While Section 508 law applies only to federal agencies and departments, the standards are available for anyone to incorporate, in whole or in part.

A non-federal entity (such as a university or a city, county, or state government) that receives federal monies needs to comply with the Section 504 of the Rehabilitation Act requirements to provide reasonable accommodations for people with disabilities. Although Section 504 has not been interpreted at this time to require accommodations to be provided by conformance with Section 508 accessibility standards, adherence to Section 508 requirements can be used as a way to meet Section 504 obligations.

In addition, Title II of the Americans with Disabilities Act (ADA) requires the programs, services, and activities of state and local governments (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings) to be accessible to people with disabilities. Again, access to the programs may be provided through individual accommodations versus adherence to the Section 508 standards.

The U.S. Dept. of Justice (DOJ) is expected to make a Notice of Proposed Rulemaking in June 2015 regarding the website accessibility standards that may be applied to state and local governments and places of public accommodation under Title II and Title III of the ADA. Despite the absence of standards, since 2004 the DOJ has included a clause on WCAG 2.0 Level AA as an accessibility standard in many settlements and consent decrees.

- **North Carolina General Statute § 168A-7**

Section 168A-7 of The North Carolina Persons with Disabilities Protection Act, "Discrimination in Public Service," reads as follows:

(a) It is a discriminatory practice for a covered governmental entity to exclude a qualified person with a disability from participation in or deny the benefits of services, programs, or activities because of a disability or to refuse to provide reasonable accommodations, including auxiliary aids and services necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the accommodations do not impose an undue hardship on the entity involved. This subsection includes equivalent

services provided via information technology.²

By specifically including services provided “via information technology” in the above section, North Carolina has signaled a need for accessible technology as we move forward in the 21st century. The United States Department of Justice has a helpful guide for state and local governments at <http://www.ada.gov/websites2.htm>.

- **Title III of the ADA: Places of Public Accommodation**

Under Title III of the ADA:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.³

Discrimination includes:

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations; (iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.⁴

Thus, a person with a disability may claim that unequal access to a website of a public accommodation denies them the full enjoyment of the goods and services offered at the place of business, or that they are being denied access to the public accommodation itself.

Courts are split in how they view whether a company’s website is a place of public accommodation under the law, and thus required to be accessible. In a recent case to speak on this issue, the Northern District of California held that discrimination under the

² N.C. Gen. Stat. § 168A-7 (2011) (emphasis added).

³ 42 U.S.C. § 12182(a); 42 U.S.C. § 12181(7)(F) (2009).

⁴ 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii).

ADA is not limited to the denial of physical access to a place of public accommodation but can include the denial of the benefits and privileges of a website that are services of a physical store.⁵

However, in another case, the Eastern District Court of Virginia court held that AOL chat rooms are not places of public accommodation under the ADA, saying: "In sum, whether one relies on the Title II case law or looks to the broader ADA definition of public place of accommodation, it is clear that the logic of the statute and the weight of authority indicate that 'places of entertainment' must be actual physical facilities."⁶

The Southern District of Florida had a different take when it found that Southwest Airlines' website is not a place of public accommodation.⁷ However, it is worth noting, the Court did not look at the website as a service of a store that is certainly a place of public accommodation under the law, but rather examined the website *itself* as a place of public accommodation. In dismissing the appeal on other grounds, the Eleventh Circuit Court of Appeals indicated that

The Internet is transforming our economy and culture, and the question whether it is covered by the ADA—one of the landmark civil rights laws in this country—is of substantial public importance. Title III's applicability to web sites—either because web sites are themselves places of public accommodation or because they have a sufficient nexus to such physical places of public accommodation—is a matter of first impression before this Court."⁸

In 2010, the U.S. Department of Justice reached an agreement with Hilton hotels that not only required physical accessibility at Hilton owned and joint venture hotels (approximately 900 nationwide), but also required website accessibility. This website accessibility included the online room reservation system. For more information about this agreement, see <http://www.justice.gov/opa/pr/justice-department-reaches-agreement-hilton-worldwide-inc-over-ada-violations-hilton-hotels>.

⁵ *Nat'l Federation of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006); see also *Carparts Distrib. Ctr., Inc. v. Automotive Wholesalers Ass'n of New England, Inc.*, 37 F. 3d 12, 18-20 (1st Cir.) (holding that a trade association which administers a health insurance program, without any connection to a physical facility, can be a "place of public accommodation"); *Doe v. Mutual of Omaha Ins. Co.*, 179 F. 3d 557, 559 (7th Cir. 1999) (stating, in dicta, that Title III reaches "the owner or operator of a store, hotel, restaurant, dentist's office, travel agency, theater, website, or other facility (whether in physical space or electronic space)"). *Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532 (E.D.Va. 2003).

⁶ *Noah*, 261 F. Supp. 2d at 544).

⁷ *Access Now, Inc. v. Southwest Airlines Co.*, 227 F. Supp. 2d 1312, 1318, 1321 (S.D. Fla. 2002) (holding that for Title III to apply it must be a physical, concrete structure place of public accommodation or have a nexus with a physical, concrete place of public accommodation); see also *Torres v. AT&T Broadband, LLC*, 158 F. Supp. 2d 1035, 1037-1038 (N.D. Cal. 2001) (dismissing claim by visually impaired plaintiff that digital cable menu is a public accommodation and thus must be accessible).

⁸ *Access Now, Inc. v. Southwest Airlines Co.*, 285 F.3d 1324, 1335 (11th. Cir. Fla. 2004).

In 2012, the DOJ filed an *amicus* brief in a case brought by the National Association of the Deaf against Netflix, Inc. for its failure to provide video captioning of its contents. The court denied Netflix's Motion for Summary Judgment, a decision which was the first judicial recognition that Internet-only businesses are obligated under the ADA to make their websites accessible.⁹ Settlement of this case included requiring Netflix to close caption its entire inventory in the next two years and reimburse attorneys fees.

Thus, businesses should be aware that if it qualifies generally as places of public accommodation, it may be subject to litigation if their website is not accessible.¹⁰ In any case, website accessibility is easily and inexpensively achieved.

Beyond the Law: Why Accessibility Makes Good Business and Marketing Sense

Designing an accessible website is technologically simple and not economically prohibitive. Most businesses, and indeed law firms and legal organizations, use their websites to reach more people. Thus, it only makes sense to make your website user-friendly for a broad audience that includes people with disabilities. As the Judge in the case against Southwest Airlines stated, "It is especially surprising that Southwest, a company which prides itself on its consumer relations, has not voluntarily seized the opportunity to employ all available technologies to expand accessibility to its website for visually impaired customers who would be an added source of revenue."¹¹ Finally, websites for professional offices, such as a law firm, may be subject to the licensing or professional organization's rules on advertising and opinions on ethics regarding websites.

Additional Sources of Information

A number of resources conveniently accessed via the Internet can help guide you on website accessibility. The North Carolina Office of Disability and Health has a guide that addresses website accessibility in the general context of Accessible Communication, entitled: "Removing Barriers: Tips and Strategies to Promote Accessible Communication."¹²

The Southeast ADA Center is a federally funded ADA and IT Center that may be able to provide additional information. You can reach them at 800-949-4232 (V/TTY/Spanish) or

⁹ Nat'l Ass'n of the Deaf v. Netflix, Inc., 2012 U.S. Dist. LEXIS 84518 (D. Mass. June 19, 2012).

¹⁰ The "office of an accountant or lawyer" is explicitly included as a private entity considered a public accommodation under 42 U.S.C. § 12181(7)(F). Please also note that the North Carolina Persons with Disabilities Protection Act also prohibits discrimination in public accommodations and defines such as including, but not limiting to, "any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person." N.C. Gen. Stat. §§ 168A-6, 168A-3(8).

¹¹ *Access Now*, 227 F. Supp. 2d at 1321.

¹² http://fpg.unc.edu/sites/fpg.unc.edu/files/resources/other-resources/NCODH_PromoteAccessibleCommunication.pdf

visit their website at <http://www.adasoutheast.org/>. The Southeast ADA Center serves North Carolina, along with Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee.

The Web Accessibility Initiative website, www.w3.org, has several resources that may be helpful when trying to evaluate whether a website meets accessibility guidelines. The site has a list of web accessibility resources, <http://www.w3.org/WAI/eval/>, and a list of web accessibility evaluation tools, <http://www.w3.org/WAI/ER/tools/>, among other resources.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

Disability Rights North Carolina

3724 National Drive, Suite 100
Raleigh, North Carolina 27612
www.disabilityrightsncc.org

919-856-2195
877-235-4210 (toll free)
888-268-5535 (TTY)
919-856-2244 (fax)