



CITY OF IOWA CITY MEMORANDUM

Date: September 25, 2020

To: Iowa City Business Owners

From: Kristin Watson, Human Rights Investigator

Re: Websites as Places of Public Accommodation

In 2020, the Americans with Disabilities Act (ADA)¹ turned 30. Written and sponsored by Iowa's own Senator Tom Harkin, the ADA is a landmark piece of legislation. Prior to the ADA's passage in 1990, there was no requirement for businesses to accommodate people who have disabilities. Now, "places of public accommodation," which are essentially businesses offering goods or services for a price,² must comply with the Act's accommodation mandates. Congress listed several examples to illustrate its definition, including restaurants, stores, and movie theaters.

Does the ADA require websites to be accessible?

No. In 1990, the internet was in its infancy, and legislators could not imagine how important websites would be to people doing business in the 21st century. Especially given COVID-19, people now do everything from ordering groceries to working online. But the ADA only contemplates brick-and-mortar businesses. In defining places of public accommodation, Congress omitted websites, apps, and social media.

If the ADA does not require it, why should businesses make their websites accessible?

In recent years, there have been a growing number of court cases filed by people with disabilities over website accessibility. In cases such as National Federation for the Blind v. Scribd, Markett v. Five Guys Enterprises, LLC, and Andrews v. Blick Art Materials, LLC, US District Courts have sided with the Plaintiff and found that websites are places of public accommodation. In the Scribd case, the court reasoned that it would not make sense to determine otherwise, as the law should not vary depending upon whether a person buys a good or service online or in person.

However, in other cases, courts have reached the opposite conclusion by relying on a strict reading of the ADA's language. An example is Cullen v. Netflix, where the court found that "because Netflix's services are not connected to any actual physical place, Netflix is not subject to the ADA."³ This sort of split in decisions often leads to a US Supreme Court decision. However, that Court declined to hear Domino's Pizza v. Robles in 2019, leaving intact the lower court's decision in favor of Mr. Robles, a customer unable to order food from Domino's website because he is blind. While this is a victory for Mr. Robles, the Supreme Court declined this opportunity to resolve the ambiguity in the ADA. However, it appears that courts are trending toward ruling that websites, apps, and company social media accounts should be covered under the ADA, on the reasoning used in the Scribd case: it shouldn't matter how or where a person buys from a business. Updating your business media is far less expensive than gambling on how your local court might rule.

¹ The ADA is now technically the ADA, the Americans with Disabilities Act as Amended, due to significant amendments made in 2008. However, it is still referred to as the ADA.

² The definition also includes other entities under certain circumstances. Examples are charitable or religious organizations while holding events at which goods or services are offered for a fee, such as pancake breakfasts, and non-profits whose services are free due to governmental funding.

³ Unpublished opinion of the U.S. District Court for the Northern District of California, 2015.

What makes a website accessible?

Dreamhost, a large website hosting company, offers helpful tips on its blog. Find full details here: www.dreamhost.com/blog/make-your-website-accessible/

- Make sure your website can function without using a mouse. Many assistive devices only work with keyboards. Therefore, test your website by trying to navigate it using only the keyboard. If you can't use "tab" to navigate to and choose its options, the site is not accessible.
- Beware of issues with dynamic content. Many assistive devices only "read" the screen as it first appears. Therefore, if your site has, for example, a shifting display of several coupons, users' assistive devices may only be able to "see" the first one displayed. This can be fixed by adding "ARIA landmarks," which signal to assistive devices that there is changing content. (See the blog entry for more information.)
- Provide text content for all images. This will allow an assistive device to describe the image. This can also help improve your site's Search Engine Optimization, which is like free advertising for your business.
- Consider color contrast. Online tools exist to evaluate how your website looks to people who are color blind. Certain color combinations are much harder to decode than others. Even people without color-blindness perceive color differently and often cannot distinguish between text and background if colors are too similar. (Blog entry contains links to color-checking sites.)
- Use headings to structure your page logically, which helps assistive screen readers interpret pages.
- Design forms for accessibility. Make field labels clear and logical, and place answer fields adjacent to their labels, so a screen reader will understand what is required and where to place entered information. There are also tools for designing accessible forms, one of which is referenced in the blog entry.
- If your site contains tables, use them only for presenting data. Any other use of a table will confuse a screen reader. Keep tables as simple as possible.
- Be sure that resizing text will not make your site unusable. Try resizing the text on your site. What happens? If you can't magnify the type and still easily navigate the site, it is not accessible. Tips for fixing this problem are contained in the blog entry.
- Avoid automatic media. Videos that begin automatically when the site is opened are jarring for many viewers. Imagine how much more jarring, even frightening, the sudden noise may be for a user who is blind, and how annoying for that person to have to figure out how to turn it off using a screen reader. Similarly, automatic slide shows may move too quickly for some people to absorb the content before the next screen appears. Annoyed customers are not repeat customers.
- Finally, create your content with accessibility in mind. Spell out acronyms, give links descriptive names, and try to view the content as if you know nothing about your business—would you understand your site?

Accessible websites are not only a defense against possible ADA-related lawsuits; they are simply good business. The Centers for Disease Control and Prevention reports that slightly more than one in four adults in the United States has a disability.⁴ That's 61 million potential customers.

The City of Iowa City Office of Equity and Human Rights has been providing memos to businesses on areas of discrimination since August of 2016. Please send topics you would like to receive guidance on in the future, or inquiries regarding discrimination issues, to humanrights@iowa-city.org.

⁴ https://www.cdc.gov/ncbddd/disabilityandhealth/documents/disabilities_impacts_all_of_us.pdf