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# Application of the ADA to Websites: Congress Should Rely on the Standards Created by the World Wide Consortium

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## INTRODUCTION

Congress enacted the Americans with Disabilities Act (“ADA”) in 1990 to assure equality of opportunity and independent living to those with physical or mental disabilities.<sup>1</sup> Although the Internet was growing rapidly when Congress passed the ADA,<sup>2</sup> Internet use did not become widespread until the mid-1990s.<sup>3</sup> Congress has not yet updated the ADA to explicitly cover websites, and current regulations ensuring that disabled persons have access to physical locations do not clearly apply to websites. The Department of Justice (“DOJ”) invited public comment on access to websites under the ADA from both website developers and disabled persons in July of 2010,<sup>4</sup> closing the comment period six months later,<sup>5</sup> but has not yet issued new guidance.

Tim Berners-Lee, the inventor of the World Wide Web, created the World Wide Web Consortium (“W3C”) in 1994 to develop specifications and guidelines to “lead the Web to its full potential.”<sup>6</sup> W3C launched the Web Accessibility Initiative (“WAI”) to help the Internet meet that potential by promoting and achieving web functionality for disabled persons.<sup>7</sup> Governments, businesses, and web developers widely regard the guidelines developed by the W3C through its WAI as the international

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1. 42 U.S.C. § 12101 (2006).

2. Leonard Kleinrock, *The History of the Internet*, UCLA (June 7, 2010), [http://www.lk.cs.ucla.edu/personal\\_history.html](http://www.lk.cs.ucla.edu/personal_history.html).

3. Mark Ward, *How the Web Went World Wide*, BBC NEWS (Aug. 3, 2006), <http://news.bbc.co.uk/2/hi/science/nature/5242252.stm>.

4. Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 142, 43460 (proposed July 26, 2010) (to be codified at 28 C.F.R. pt. 35–36), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2010-07-26/pdf/2010-18334.pdf> [hereinafter *Nondiscrimination on the Basis of Disability*].

5. *Id.*

6. Tim Berners-Lee, W3C, <http://www.w3.org/People/Berners-Lee/> (last visited Nov. 14, 2012).

7. *World Wide Web Consortium (W3C) Launches International Web Accessibility Initiative*, W3C (Apr. 7, 1997), <http://www.w3.org/Press/WAI-Launch.html>.

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standard for web accessibility.<sup>8</sup>

In this paper, I argue that the DOJ and Congress should follow the lead of foreign nations, such as the European Union and Australia, and rely on the standards set by the W3C to determine compliance with the ADA.<sup>9</sup> The first part of this paper discusses the history of the ADA and the Internet. The second part examines how courts have applied the ADA to the Internet. The third and final part explains why using the W3C recommendations as the legal standard for ADA access to websites is the best method.

## I. BACKGROUND OF THE ADA

In 1990, Congress found that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”<sup>10</sup> Based on these findings, Congress created the ADA to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities”<sup>11</sup> and “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”<sup>12</sup>

Congress made no mention of the Internet or anything resembling a global network in the original version of the ADA.<sup>13</sup> Instead, Congress emphasized access to physical locations.<sup>14</sup> Since 1990, Congress has revised Title III of the ADA twice, on September 25, 2008 and on September 15, 2010.<sup>15</sup> Neither revision amended “place of public accommodation” to include the Internet or websites. After Congress held its first and, thus far, only inquiry into whether a place of public accommodation should include online “places,” it chose not to amend the ADA to explicitly include websites.<sup>16</sup> At the hearing, Mr. Hayes, Chairman of the United States Internet Industry Association, stated that, “the Internet is an evolving media, not a physical structure. . . . If we apply regulations based on the technologies and possibilities of today, we may in fact limit the development of better access tools simply because we couldn’t conceive of them when the regulation was drafted.”<sup>17</sup>

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8. Shawn Lawton Henry & Judy Brewer, *WAI Mission and Organization*, W3C (Oct. 31, 2012), [http://www.w3.org/WAI/EO/Drafts/standards/standards\\_harmon](http://www.w3.org/WAI/EO/Drafts/standards/standards_harmon).

9. *Policies Related to Web Accessibility*, W3C (Aug. 25, 2006), <http://www.w3.org/WAI/Policy>.

10. 42 U.S.C. § 12101(a)(2) (2006).

11. *See* 42 U.S.C. § 12101(b)(1) (2006).

12. *See* 42 U.S.C. § 12101(b)(2) (2006).

13. AMERICANS WITH DISABILITIES ACT OF 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990).

14. 42 U.S.C. §§ 12181–12189 (2006).

15. Act of Sept. 25, 2008, Pub. L. No. 110-325, 122 Stat. 3554.

16. *See* 42 U.S.C. § 12181 (2006).

17. *Applicability of the Americans with Disabilities Act to Private Internet Sites*:

## II. THE IMPACT OF DISABILITIES ON INTERNET USE

The ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of [an] individual.”<sup>18</sup> “Major life activities” include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communication, and working.”<sup>19</sup> Although this list is not exclusive, the areas of major concern regarding Internet usage are seeing, hearing, speaking, reading, concentrating, communication, and working.<sup>20</sup>

The 2010 Census reported that 56.7 million Americans have a disability and that 12.6% of those reported qualified as severely disabled.<sup>21</sup> Of respondents aged 15 or older, 3.3% had difficulty seeing and 3.1% had difficulty hearing.<sup>22</sup> The Census also found that nearly half (46%) of all households headed by someone with a disability lacked computers, whereas only 20% of households headed by a non-disabled person lacked computers.<sup>23</sup>

The inability to access the Internet puts a person at a great disadvantage. The Internet provides an unprecedented amount of information and educational materials immediately available with a few keystrokes. Shoppers may purchase goods and services without leaving home. Stores can operate online and avoid paying overhead on a brick and mortar building, resulting in lower operating costs and thus cheaper prices for online purchases. People now have the option of working from home or even creating their own online businesses. The Internet’s flexibility and plethora of information benefits all Americans.

For disabled persons, Internet use can yield even greater benefits. Deaf persons may communicate with hearing persons without the aid of a sign language interpreter, removing significant communication barriers for those with hearing disabilities. Persons with mobility disabilities may shop online for groceries and other household needs as well as entertainment. Students with learning disabilities can take online courses structured to their special needs.

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*Hearing Before the S. Comm. on the Constitution of the H. Comm. on the Judiciary*, 106th Cong. 72 (2000) (statement of Dennis Hayes, Chairman, U.S. Internet Ass’n).

18. 42 U.S.C. § 12102(1)(A) (2006).

19. See 42 U.S.C. § 12102(2)(A) (2006).

20. Shadi Abou-Zahra, *Diversity of Web Users: How People with Disabilities Use the Web*, W3C (Aug. 1, 2012), <http://www.w3.org/WAI/intro/people-use-web/diversity>.

21. MATTHEY W. BRAULT, U.S. CENSUS BUREAU, *AMERICANS WITH DISABILITIES: 2010, HOUSEHOLD ECONOMIC STUDIES*, 4 (2010), available at <http://www.census.gov/prod/2012pubs/p70-131.pdf>.

22. *Id.*

23. ECONS. AND STATISTICS ADMIN. & NAT’L TELECOMMS. AND INFO. ADMIN., U.S. DEPT. OF COMMERCE, *EXPLORING THE DIGITAL NATION: COMPUTER AND INTERNET USE AT HOME* 16 (2011), available at <http://www.esa.doc.gov/sites/default/files/reports/documents/exploringthedigitalnation-computerandinternetuseathome.pdf>.

Blind persons gain considerably from access to the Internet. Before books were widely available in digital format, the imposition of going to a bookstore was just the beginning of the barriers to access a blind person faced. After reaching the store, blind people would be lucky to find readable books because few publishers make books available for visually-impaired readers. Peter White, a blind writer and the BBC's Disability Affairs Correspondent, notes that, prior to the Internet, he had to limit his voracious appetite for books to those available in Braille.<sup>24</sup> Publishers make well under 1% of the world's literature available in Braille form.<sup>25</sup> With the advent of modern technology, blind people may more easily find books, magazines, and other sources of information online. Screen-reader devices are able to read these documents aloud to the visually-impaired,<sup>26</sup> greatly expanding the range of literary material available to such readers. For example, Project Gutenberg has scanned over 40,000 royalty-free books,<sup>27</sup> and McGraw-Hill now provides 95% of its higher education titles in digital format, making them available to screen readers.<sup>28</sup>

Other assistive technologies include speech recognition software that blind persons use to navigate a website; captioning, which allows deaf persons to access information in videos; and tools that enable persons with limited manual dexterity to interact with websites.<sup>29</sup> Web developers must specifically modify websites to interact with the assistive tools, such as by providing alternate text for images and creating commands that respond to keystrokes as well as to a mouse. The W3C provides guidance on how to accomplish this interactivity.

### III. COURTS' APPLICATION OF THE ADA TO WEBSITES

Currently, the ADA does not provide clear standards for the Internet. Therefore, courts have struggled to apply the ADA to the Internet. In the few cases on point, courts have primarily addressed the threshold issue of whether a website is a "place of physical accommodation," as required by the ADA, without further applying the ADA to websites.

Title III of the ADA prevents discrimination against disabled persons in places of public accommodation: "No individual shall be discriminated

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24. Peter White, *Digital Books May Not Be for Everyone. But for Blind People They're a True Revolution*, THE GUARDIAN (Aug. 17, 2012), <http://www.guardian.co.uk/commentisfree/2012/aug/17/peter-white-books-braille-ereaders>.

25. *Id.*

26. Mary Frances Theofanos & Janice Redish, *Guidelines for Accessible and Usable Web Sites: Observing Users Who Work With Screen Readers*, REDISH (Dec. 2003), <http://www.redish.net/content/papers/interactions.html>.

27. *Free eBooks by Project Gutenberg*, PROJECT GUTENBERG, <http://www.gutenberg.org> (last updated Oct. 27, 2012).

28. Tom Stanton, *McGraw-Hill Education Meets California's Requirement for Postsecondary Digital Textbooks Ten Years Ahead of Schedule*, PR NEWswire (Mar. 18, 2012), <http://www.prnewswire.com/news-releases/mcgraw-hill-education-meets-californias-requirement-for-postsecondary-digital-textbooks-ten-years-ahead-of-schedule-88391517.html>.

29. *Nondiscrimination on the Basis of Disability*, *supra* note 4, at 43464.

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*.”<sup>30</sup>

The ADA defines “public accommodation” by using an enumerated list of private entities.<sup>31</sup> The listed entities range from hotels, restaurants, theaters, and stores to parks, museums, shelters, and gymnasiums.<sup>32</sup> Notably, the statute also includes broad language that applies the ADA to “other places of public gathering” and “other places of recreation.”<sup>33</sup> The statute, however, does not explicitly discuss whether websites are included in these broad categories. The courts have split in determining how, if at all, the statute covers websites.

#### A. FACEBOOK AND SOUTHWEST: COURTS THAT FOUND THAT THE ADA DOES NOT APPLY TO WEBSITES

The enumerated list of Section 12181(7) does not make clear whether websites count as “places of public accommodation.” In *Young v. Facebook, Inc.*<sup>34</sup> and *Access Now, Inc. v. Southwest Airlines Co.*,<sup>35</sup> the courts found that websites were not “places of public accommodation.”

In *Facebook*, the plaintiff alleged that she suffered from bipolar

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30. 42 U.S.C. § 12182(a) (2006) (emphasis added).

31. The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

42 U.S.C. § 12181(7) (2006).

32. *Id.*

33. *Id.*

34. *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110, 1116 (N.D. Cal. 2011).

35. *Access Now, Inc. v. Sw. Airlines Co.*, 227 F. Supp. 2d 1312, 1317 (S.D. Fla. 2002).

disorder and that Facebook violated the ADA by not providing reasonable customer service to assist with her disability.<sup>36</sup> The court dealt with the matter of “place of public accommodation” swiftly, noting that Facebook operates solely in cyberspace and is thus not a place of public accommodation.<sup>37</sup> While the headquarters of Facebook clearly occupies a concrete space, the physical building was not the location to which the plaintiff claimed Facebook was denying her access.<sup>38</sup> The plaintiff tried to establish a nexus between Facebook’s sales of gift cards in physical stores and her lack of access, thus grounding Facebook’s activity to something outside of cyberspace.<sup>39</sup> The court rejected her argument, stating that Facebook does not own or operate the stores that sell gift cards.<sup>40</sup>

In *Southwest*, an Eleventh Circuit case, the plaintiff alleged that the inability of a blind person to purchase airline tickets from the Southwest.com website violated the ADA. The court relied on the Code of Federal Regulations to define a “place of public accommodation” as a “facility operated by a private entity whose operations affect commerce and fall within at least one of the [twelve enumerated categories].”<sup>41</sup> The court noted, “the Eleventh Circuit has recognized Congress’ clear intent that Title III of the ADA governs solely access to physical, concrete places of public accommodation.”<sup>42</sup>

The *Southwest* court found that Southwest’s website was neither a physical space as defined by the ADA, nor a means to access a concrete space.<sup>43</sup> The court rejected the plaintiff’s claim that the Southwest.com website represented a physical ticket counter and found no nexus between the website and the physical counters.<sup>44</sup> The court reasoned that “the Supreme Court and the Eleventh Circuit have both recognized that the Internet is a unique medium—known to its users as ‘cyberspace’—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.”<sup>45</sup>

The court concluded that because the website does not exist in any particular geographical location, the plaintiff could not show that the website impeded the access of disabled persons to a specific, particular airline counter or travel agency.<sup>46</sup> Moreover, the court noted that “[i]t is the

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36. *Young v. Facebook, Inc.*, 790 F. Supp. 2d at 1114.

37. *Id.* at 1116.

38. *Id.* at 1115.

39. *Id.*

40. *Id.* at 1116.

41. *Access Now, Inc. v. Sw. Airlines Co.*, 227 F. Supp. 2d 1312, 1317 (S.D. Fla. 2002).

42. *Id.* at 1318.

43. *Id.* at 1321.

44. *Id.*

45. *Id.* (citing *Voyeur Dorm, L.C. v. City of Tampa*, 265 F.3d 1232, 1237 n.3 (11th Cir. 2001) (quoting *Reno v. ACLU*, 521 U.S. 844, 851 (1997) (emphasis in original; internal quotation marks omitted)).

46. *Id.* at 1321.

role of Congress, and not this Court, to specifically expand the ADA's definition of 'public accommodation' beyond physical, concrete places of public accommodation, to include 'virtual' places of public accommodation."<sup>47</sup>

### **B. TARGET AND NETFLIX: COURTS THAT FOUND THAT THE ADA DOES APPLY TO WEBSITES**

Courts disagree on whether the ADA applies to websites. The Northern District of California split from the Eleventh Circuit's decision in *Southwest*, finding the ADA applicable to websites when there is a connection between a concrete location and a website.<sup>48</sup> The District of Massachusetts split even further, finding the ADA applicable to websites without the additional need of a concrete location.<sup>49</sup>

The Northern District of California, in *Nat'l Fed'n of the Blind v. Target Corp.*,<sup>50</sup> found that websites may be "places of public accommodation" when there is a suitable nexus between the website and a physical store. In *Target*, the plaintiff alleged that her inability as a blind person to purchase goods from the Target website violated Title III of the ADA.<sup>51</sup> When it addressed the public accommodation question, the *Target* court focused on a nexus test. The court held that a connection between the challenged service and a physical place of public accommodation would bring a service under Title III of the ADA.<sup>52</sup> "Although a plaintiff may allege an ADA violation based on unequal access to a 'service' of a place of public accommodation, courts have held that a plaintiff must allege that there is a 'nexus' between the challenged service and the place of public accommodation."<sup>53</sup>

The nexus in the *Target* case was the similarity of the products sold at the physical store to those sold on the website. The court also observed that Target integrated the services available at the brick-and-mortar store into its website and that, in fact, the website acted as a gateway to the physical stores.<sup>54</sup> The court found that the inaccessibility of the website denied the plaintiff the ability to enjoy the services of a physical Target store.<sup>55</sup> The court ultimately held that Title III of the ADA covered only those goods that customers could purchase online or at the physical location. The court

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47. *Access Now, Inc. v. Sw. Airlines Co.*, 227 F. Supp. 2d 1312, 1321 n.13 (S.D. Fla. 2002).

48. *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 952–53 (N.D. Cal. 2006).

49. *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–01 (D. Mass 2012).

50. *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d at 952.

51. *Id.* at 949–50.

52. *Id.* at 952.

53. *Id.*

54. *Id.* at 955.

55. *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 956 (N.D. Cal. 2006).

did not require the entire website to be completely accessible to disabled persons, but rather only those parts that were also available at the brick-and-mortar location.<sup>56</sup>

Six years after *Target*, in *Nat'l Ass'n. of the Deaf v. Netflix, Inc.*,<sup>57</sup> the U.S. District Court for the District of Massachusetts found that websites were “places of public accommodations.”<sup>58</sup> In *Netflix*, organizations representing deaf persons brought an action against Netflix, a provider of streaming videos on the Internet, for violating the ADA.<sup>59</sup> The organizations claimed that only a small portion of the titles available for viewing on Netflix contained captioning text.<sup>60</sup> In response, Netflix filed a motion to dismiss, partly based on the claim that Netflix was not a place of public accommodation as defined by the ADA.<sup>61</sup>

The court denied the motion, holding that Netflix’s website was a place of public accommodation.<sup>62</sup> To reach this decision, the court relied on the plaintiff’s contention that a website falls within the scope of four of the twelve categories of entities that qualify as a place of public accommodation: “place of exhibition and entertainment,” “place of recreation,” “sales or rental establishment,” and “service establishment.”<sup>63</sup> The court also relied on earlier courts that had applied the ADA to non-physical locations and found that places of public accommodation are not limited to actual physical structures.<sup>64</sup> The *Netflix* court explained that a person entering an office to purchase a service has the same protections as a person attempting to buy the same service via a phone or the Internet.<sup>65</sup>

The court expressed concern that excluding online businesses from the ADA would “run afoul of the purposes of the ADA.”<sup>66</sup> Though the court acknowledged that the web did not exist when Congress passed the ADA, the court found that the legislative history of the ADA made it clear that Congress intended the ADA to adapt to changes in technology.<sup>67</sup> The court did not mention that Congress had failed to amend the ADA to bring it in line with the needs of modern technology.<sup>68</sup>

In its motion, Netflix argued that it was merely a distributor and not an

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56. *Id.*

57. *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–01 (D. Mass 2012).

58. *Id.*

59. *Id.* at 196.

60. *Id.* at 199.

61. *Id.* This case also contains a long discussion regarding the Communications and Video Accessibility Act, Pub. L. No. 111–260, 1224 Stat. 2751 (2010), which is beyond the scope of this paper.

62. *Id.* at 200–01.

63. *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200 (D. Mass 2012).

64. *Id.* at 200–01.

65. *Id.* at 200.

66. *Id.*

67. *Id.* at 200–01.

68. *Id.* at 200.



owner of the video programming.<sup>69</sup> Therefore, because Netflix did not hold the copyright for the videos, it would be unable to make the necessary changes to the captioning of the videos as required by the ADA.<sup>70</sup> The court, however, chose not to address Netflix's argument.<sup>71</sup>

One month after *Netflix*, on July 13, 2012, the Northern District of California heard a similar case entitled *Cullen v. Netflix, Inc.*<sup>72</sup> The plaintiff was a deaf individual who also sued Netflix for lack of captioning on the site.<sup>73</sup> The court adhered to the precedent set by the district court in *Target* and found that Netflix was neither a place of public accommodation nor was there any nexus between Netflix and a place of public accommodation.<sup>74</sup>

### C. ANALYSIS OF COURTS' DISPARATE APPROACHES

The recent decisions regarding the ADA reflect courts' varying approaches when applying the ADA to websites. The judiciary is not in agreement on how best to apply the current ADA to modern technology. These broadly differing opinions indicate that Congress must take action to resolve the dispute.

Further, the circuit split leaves web developers without notice and clear guidance on how the ADA applies to websites. Due to the national reach of the Internet, a developer in California who follows the ruling of courts in the Northern District of California and does not comply with the ADA may find himself liable in another jurisdiction. Congress must clarify how the ADA applies, relying on the W3C's WAI guidelines to provide web developers with the necessary standards for compliance.

## IV. THE DIFFICULTY WEBSITES FACE WHEN COMPLYING WITH THE ADA

Without clear standards provided by Congress or the courts, web developers must speculate about how to comply with the ADA when designing a website. This may result in costly development, while still leaving the developer or site owner open to liability under the ADA. The following section discusses how the current ambiguity surrounding ADA liability raises undue costs and requires congressional resolution.

### A. THE BLURRED LINE BETWEEN ACCESS AND PRODUCT

The ADA and cases addressing the ADA are generally concerned with promoting access to physical locations. Buildings need access ramps for wheelchairs, signs need Braille text, and audible alarms need visual

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69. Nat'l Ass'n of the Deaf v. Netflix, Inc., 869 F. Supp. 2d 196, 202 (D. Mass 2012).

70. *Id.*

71. *Id.*

72. Cullen v. Netflix, Inc., 880 F. Supp. 2d 1017 (N.D. Cal. 2012).

73. *Id.* at 1020–22.

74. *Id.*

indications. However, the ADA does not directly regulate actual products in physical locations. For example, a bookstore must provide access to the physical store but does not have to provide all books in Braille if doing so would fundamentally alter its business.<sup>75</sup> According to the “Reasonable Modification” section of the ADA:

A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.<sup>76</sup>

Under the ADA, it is difficult to distinguish between access to a website and the accessibility of particular goods and services on the website. In the physical world, the distinction is clearer. Courts have held that theaters do not necessarily have to provide closed captioning to movies shown at their locations because it would fundamentally alter the nature of the service<sup>77</sup> or constitute an undue burden.<sup>78</sup> Theaters must merely assure disabled persons access to the theater itself. Similarly, a video store does not have to provide closed-captioned videotapes, but must be wheelchair accessible.<sup>79</sup> A restaurant menu does not have to be available in Braille—having a waiter or staff person available to read the menu to a customer is sufficient.<sup>80</sup>

The lack of physicality on the Internet blurs the distinction between access to a website and accessibility of goods and services on the site. For example, many restaurant websites use Flash. Flash is not compatible with most screen reading devices, meaning a blind person cannot “enter” a Flash website. However, restaurant websites using Flash often include a text-based address and phone number. Therefore, a blind person using a screen reader is able to obtain the phone number and call the restaurant to access the same information available on the site. It is not clear whether this would comply with the ADA if, in fact, the ADA applies to websites.

The W3C provides programmers with techniques for using software such as Flash to develop websites.<sup>81</sup> The W3C guidelines acknowledge that, although Flash continues to increase the number of accessibility tools in its software, Flash does not meet all of WAI standards for accessibility.<sup>82</sup> The W3C recommends that website programmers provide alternative

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75. See 28 C.F.R. § 36.303(g) (2012).

76. 28 C.F.R. § 36.302 (2012).

77. See, e.g., *Arizona ex rel. Goddard v. Harkins Amusement Enter., Inc.*, 603 F.3d 666 (9th Cir. 2010).

78. See, e.g., *Todd v. Am. Multi-Cinema, Inc.*, CIV.A. H-02-1944, 2004 WL 1764686 (S.D. Tex. Aug. 5, 2004).

79. See 28 C.F.R. §§ 36.301-03 (2012).

80. See 28 C.F.R. § 36.303 (2012).

81. *Flash Techniques for WCAG 2.0.*, W3C, <http://www.w3.org/TR/WCAG20-TECHS/flash.html> (last visited Dec. 6, 2012).

82. *Id.*

website views to accommodate disabled users.<sup>83</sup>

Under the ADA, it is also unclear how websites such as YouTube,<sup>84</sup> which provide space for videos created by individuals unaffiliated with the site to be viewed by the public, would have to comply with the ADA. For instance, a video may contain embedded advertising, potentially turning a 30 second short of a cat dancing like a human into an item of commerce. YouTube, similar to Netflix, also hosts entire movies, television shows, and music videos. The ADA currently does not address whether both personal and professional providers of videos to YouTube must provide captions, or if only professional videos must have captions. The line between a personal and professional video is unclear, making the issue more complicated. YouTube users may embed ads into any video they upload. If a video of a dog performing tricks receives enough views, or a home-based personal video blog becomes popular, the video owner can make over six figures.<sup>85</sup>

One solution for YouTube could be a view threshold. Once the video receives a certain number of views, captions would be required. The user who uploaded the video would be responsible for the captioning, as he or she enjoys the commercial profits of the video. If the user does not add captions to the video in a given amount of time, YouTube would have to disable access to the video until captions were added.

Captioning does not address the barriers that blind persons face when accessing online videos. It is unclear whether YouTube must provide textual descriptions depicting each video or scene by scene descriptions, and who should provide those descriptions. YouTube licenses most videos from the person posting the content.<sup>86</sup> The YouTube terms of service also states that the person posting the content is solely responsible for the content.<sup>87</sup> This potentially makes each individual uploading a video liable for noncompliance with ADA standards.

Every minute, 48 hours of video are uploaded to YouTube, resulting in nearly eight years of content uploaded every day.<sup>88</sup> It is currently unclear what, if anything, YouTube or video posters must do to comply with the ADA. The W3C covers uploaded media and specifically refers to YouTube in the WAI specifications.<sup>89</sup> Congress should rely on the W3C WAI specifications as the ADA standard to which YouTube and video posters should conform.

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83. *Id.*

84. YOUTUBE, <http://www.youtube.com> (last visited Mar. 26, 2013).

85. See Brian Stelter, *YouTube Videos Pull in Real Money*, N.Y. TIMES (Dec. 10, 2008), [http://www.nytimes.com/2008/12/11/business/media/11youtube.html?\\_r=0](http://www.nytimes.com/2008/12/11/business/media/11youtube.html?_r=0).

86. *Terms of Service*, YOUTUBE, <http://www.youtube.com/t/terms> (last revised June 9, 2010).

87. *Id.*

88. *Frequently Asked Questions*, YOUTUBE, <http://www.youtube.com/t/faq> (last visited Oct. 21, 2012) (responding to “How many videos are on Youtube?”).

89. *Multimedia Accessibility Faq*, W3C, <http://www.w3.org/2008/06/video-notes#q6> (last updated Dec. 7, 2012).

## B. THE LITTLE THINGS ADD UP

Disabilities impact the way a person experiences the web in many ways. A blind person uses a screen reader to interpret text on the screen.<sup>90</sup> A deaf person relies on captioning.<sup>91</sup> Mobility issues render a mouse unusable, forcing a user with limited mobility to rely on a keyboard to navigate the web.<sup>92</sup> For a web developer, making sure every page of a website conforms to each type of disability and each accessibility tool is daunting. Without guidance, web developers may find this task impossible.

Websites that aggregate data, products, or documents from various external locations face a domino effect. Amazon.com (“Amazon”), a website that sells products from various online and physical stores, has hosted large company sites such as Target, Borders, and Sears, but also hosts products for individuals selling single items such as used law school books. In 2009, Marketwatch reported that Amazon claimed over 1.6 million active sellers.<sup>93</sup>

If the ADA applied to Amazon, Amazon would face significant costs and oversight. The ADA does not establish whether Amazon would be required to insure that every one of its sellers complied with the regulation. It is not clear to which aspects of a seller’s goods or webpage the ADA would apply. It may only apply when the individual seller has a nexus to a physical store. Sellers often include videos to sell their product. The ADA does not specify if captions must be included in those videos. As suggested for YouTube, Amazon could require content posters to comply with WAI guidelines or have their content disabled until they do so. Because of the large numbers of sellers, Congress should require users to first notify Amazon, or similar aggregate businesses, of non-complying content.

The ADA provides no guidance on the impact of various disabilities on assorted types of websites. A game site primarily consisting of mouse-based entertainment may be unusable by a person with a mobility disability. A colorblind person may be unable to discern certain images or text, which could lose their meaning if modified. In cases such as these, compliance with the ADA would fundamentally alter the business. These websites, or portions of a website, should be exempt from the ADA.<sup>94</sup>

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90. See Theofanos & Redish, *supra* note 26.

91. See *Ensuring Access to the Internet*, NAT’L ASS’N OF THE DEAF, <http://www.nad.org/issues/technology/internet-access-and-broadband> (last visited Oct. 21, 2012).

92. See *ADA Compliance and Web Content Accessibility*, STATE OF CALIFORNIA, DEPARTMENT OF CONSERVATION, <http://www.conservation.ca.gov/Index/Pages/accessibility.aspx> (last visited Oct. 21, 2012).

93. Dan Gallagher, *Third-Party Sales Fuel Overall Amazon Growth*, MARKETWATCH (June 11, 2009), [http://articles.marketwatch.com/2009-06-11/industries/30739785\\_1\\_tom-szkutak-amazon-lower-prices/2](http://articles.marketwatch.com/2009-06-11/industries/30739785_1_tom-szkutak-amazon-lower-prices/2).

94. See Adam M. Schloss, *Web-Sight for Visually-Disabled People: Does Title III of the Americans with Disabilities Act Apply to Internet Websites?*, 35 COLUM. J.L. & SOC. PROBS. 35, 52 (2001) (“Through the use of complex textual images or fonts, other websites add value to their web pages. To create brand equity websites that advertise products or services use complex textual and graphical images. If Title III required such websites to

The W3C addresses the myriad possible accessibility issues in the WAI standards. The standards address cost and difficulty, provide reasonable means to help web developers conform to the standards, and acknowledge instances in which accessibility is not possible.<sup>95</sup> If Congress were to adopt the WAI as the ADA standard, web developers would face a less daunting task to meet the regulatory minimums.

### C. THE HIGH PRICE OF COMPLIANCE

Creating a website can be very expensive. The burden of ADA compliance would be heavy even to the largest companies. In an article on creating handicap-accessible websites, Karen Klein, a small-business writer for Bloomberg Businessweek, found that the cost could be \$5,000 to \$15,000 dollars per site. This number does not include the cost of modifications each time a developer updates a site. It also only addresses modifications for the visually-impaired, not for all of the disabilities covered by the ADA. To a small business, even \$5,000 could be significant. Karen Klein also noted that there are few web developers familiar with developing a site compatible with screen readers and other accessibility tools.<sup>96</sup>

When the changes require more than software modifications, the costs increase further. Netflix provides streaming service online via a browser. It also provides services for game consoles such as PS3, Wii, and XBOX 360; phones and tablets running Android or iOS; streaming players such as TiVo and Roku; built-in HDTV applications; Blu-ray players; and more.<sup>97</sup> The captioning already in place works on most, but not all, of these devices.<sup>98</sup> The settlement that Netflix and the National Association of the Deaf reached after the *Netflix* decision requires Netflix to obtain 100% device compatibility within the next few years, even though it does not control either the movies or the hardware.<sup>99</sup> Because the ADA does not account for company size or profit, compliance may be impossible for smaller companies.

Some proffered solutions could make the situation far worse. After the *Netflix* decision, a commenter on a Huffington Post article suggested that since Netflix does not hold the copyrights to the movies it streams, it would

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modify the images on their sites, perhaps Title III would undermine the essential purposes of the websites.”).

95. See *Developing a Web Accessibility Business Case for Your Organization*, W3C (Sept. 7, 2012), <http://www.w3.org/WAI/bcase/Overview>.

96. Karen Klein, *Is Your Web Site Handicap-Accessible?*, BLOOMBERG BUSINESSWEEK (Dec. 17, 2007), [http://www.businessweek.com/smallbiz/content/dec2007/sb20071217\\_774630.htm](http://www.businessweek.com/smallbiz/content/dec2007/sb20071217_774630.htm).

97. *Connect your TV to Netflix*, NETFLIX, <http://signup.netflix.com/Watch> (last visited Oct. 21, 2012).

98. Joe Mullin, *Netflix Settles with Deaf-Rights Group, Agrees to Caption All Videos by 2014*, ARS TECHNICA (Oct. 10, 2012), <http://arstechnica.com/tech-policy/2012/10/netflix-settles-with-deaf-rights-group-agrees-to-caption-all-videos-by-2014/>.

99. Consent Decree, Nat'l Ass'n of the Deaf v. Netflix, Inc., No. 11-30168 (W.D. Mass. Oct. 9, 2012), available at <http://dredf.org/captioning/netflix-consent-decree-10-10-12.pdf>.

be legally unable to provide captions for the movies. The author of the article replied, "Netflix could have refused to accept titles without captioning."<sup>100</sup> If the author's logic were applied to physical bookstores, those stores would have to refuse books not available in Braille. Video stores would have to refuse to sell or rent DVD's without verbal action tracks for the blind. Movie theaters would be unable to show movies without closed captions.

Though society should strive to make all media available to all persons, removing that which is not accessible to some from the reach of all is not the solution. The highest possible cost resulting from undiscerning application of the ADA to websites would be complete loss of content because website owners would find compliance too costly.

#### D. ADA TROLL LAWSUITS

Perhaps the most concerning result of applying the ADA to websites without further guidance would be ADA troll suits. Because application of the ADA to the Internet creates so many unanswered questions for web developers, the field is ripe for abuse by plaintiffs' lawyers.

ADA "shakedowns" are fairly common in the realm of physical structures. For example, Thomas Frankovich specializes in suing small businesses for failing to comply with the ADA.<sup>101</sup> One judge accused him of practices "bordering on extortionate shysterism."<sup>102</sup> Scott Johnson, a California attorney and disabled person, makes his living filing hundreds of ADA suits a year on his own behalf.<sup>103</sup> One business he sued, Ford's Real Hamburgers ("Ford's") in Sacramento, had used its building for more than 60 years.<sup>104</sup> The modifications to the restaurant's old restroom required to reach ADA-compliance proved too costly, and Mr. Johnson's suit forced the business to close.<sup>105</sup>

According to David Peters, general counsel at Lawyers Against Lawsuit Abuse, these ADA trolls target small businesses because small businesses will settle rather than face expensive lawsuits, often going out of business in the process.<sup>106</sup> Mr. Peters has said that an ADA troll can make

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100. Courtney O'Donnell, *Federal Judge Slams Netflix's Motion to Dismiss Closed Captioning Case*, HUFFINGTON POST (July 8, 2012), [http://www.huffingtonpost.com/courtney-odonnell/federal-judge-slams-netfl\\_b\\_1623393.html](http://www.huffingtonpost.com/courtney-odonnell/federal-judge-slams-netfl_b_1623393.html).

101. Tom McNichol, *Targeting ADA Violators: Critics Call Him a Shakedown Artist, but Tom Frankovich Considers Himself a Private Attorney General Fighting for the Rights of the Disabled*, CALL A LAWYER (Jan. 2012), <http://www.callawyer.com/clstory.cfm?eid=919801>.

102. *Id.*

103. *Professional ADA Disability Troll Scott Johnson Forces Ford's Real Hamburgers In Sacramento Out of Business*, ALASKA PRIDE (Sept. 30, 2012), <http://alaskapride.blogspot.com/2012/09/professional-ada-disability-troll-scott.html>.

104. *See id.*

105. *See id.*

106. McNichol, *supra* note 101.

up to \$50,000 in one afternoon.<sup>107</sup>

Often, these trolls target businesses that operate in very old buildings where modifications are impossible without excessive cost.<sup>108</sup> Some business owners lease their spaces, which means they may lack permission to remodel the building yet can still face liability under the ADA.<sup>109</sup> Owners may believe that the building is grandfathered in, as no changes to the building have been made since the ADA was enacted.<sup>110</sup> Business owners may have valid defenses that could relieve them of liability at trial, but trolling lawyers rely on defendants settling rather than risking the cost and uncertainty of litigation.<sup>111</sup> These lawsuits are referred to as “drive-by lawsuits” or “legalized extortion.”<sup>112</sup> Although some of these cases may have merit, small businesses find it too costly to present a defense and therefore settle rather than go to trial.

On October 1, 2012, California Governor Jerry Brown signed a bill into law that protects small businesses from these predatory claims and provides businesses with time to fix ADA violations, but the bill did not pass in time to save Ford’s.<sup>113</sup> It is not yet clear if this new state law applies to websites. The law does not directly address websites, and parties have yet to test it in court.

ADA trolls like Mr. Johnson and Mr. Frankovich would have an even easier time harassing small online businesses if the ADA applied to websites. Without further direction from Congress, troll lawyers could come up with hundreds, if not thousands, of suits. Just like small business owners in physical buildings, small website owners will be more likely to pay the money to make the suit disappear than challenge the case.

## V. THE SOLUTION: THE WORLD WIDE WEB CCONSORTIUM AS THE ADA STANDARD

In order to reduce the uncertain surrounding ADA liability and keep costs from skyrocketing, Congress should rely on the W3C’s expertise, along with that of disabled persons and web developers, to craft detailed new rules specifically for websites. The W3C can provide web developers with the necessary guidance to create accessible websites at reasonable costs.

Businesses will have incentivizes to help websites become more accessible in order to gain more customers and more sales. They will also want to avoid online retribution. For example, Mr. Shandrow, a blind

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107. *Id.*

108. Thomas K. Pendergast, *More ADA Lawsuits Slam Richmond District Businesses*, SUNSET BEACON (Apr. 12, 2012), <http://sunsetbeacon.com/archives/richmondreview/2012editions/April12/adalawsuits.html>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. 2012 Cal. Legis. Serv. 3847 (West).

student, shames websites that are not disabled-friendly by publicly ridiculing the offenders on Twitter,<sup>114</sup> a social media site that ranks among the top 10 most visited websites on the Internet.<sup>115</sup>

#### A. THE HISTORY OF THE W3C AND THE WAI

The World Wide Web Consortium is an international community where “[m]ember organizations, a full-time staff, and the public work together to develop Web standards.”<sup>116</sup> Tim Berners-Lee, the inventor of the World Wide Web, and Dr. Jeffrey Jaffe, the W3C CEO, lead the W3C.<sup>117</sup> MIT, the European Research Consortium for Informatics and Mathematics (ERCIM), and Keio University in Japan administer the organization via a joint agreement.<sup>118</sup>

The W3C focuses on the standardization of web technologies.<sup>119</sup> W3C members, the advisory committee, business groups, and community groups work together to research and create high-quality standards.<sup>120</sup> The W3C has free, open community groups that enable anyone to publicize ideas about the web and future web standardization.<sup>121</sup>

The W3C community uses a detailed process to develop web standards.<sup>122</sup> The process begins when a W3C member or a member of the public generates interest on a particular topic.<sup>123</sup> When there is enough interest, the director of the Advisory Committee announces a proposal for developing a standard.<sup>124</sup> Experts and members then work together to create specifications and guidelines, which subsequently undergo cycles of revision and review by other members and the public, ultimately resulting in a recommendation.<sup>125</sup> This thorough process creates standards that are valid, stable, widely implemented, and promote the W3C goals of quality and fairness.<sup>126</sup>

In 1997, the W3C created the Web Accessibility Initiative to develop guidelines and provide resources to help make the web accessible to

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114. Marc Parry, *Colleges Lock Out Blind Students Online*, THE CHRONICLE OF HIGHER EDUCATION (Dec. 12, 2010), <http://chronicle.com/article/Blind-Students-Demand-Access/125695/>.

115. *Most Visited Web Sites*, NETCRAFT, <http://toolbar.netcraft.com/stats/topsites> (last visited Oct. 21, 2012).

116. *About W3C*, W3C, <http://www.w3.org/Consortium> (last visited Oct. 20, 2012).

117. *Id.*

118. *Facts About W3C*, W3C, <http://www.w3.org/Consortium/facts> (last visited Nov. 16, 2012).

119. *Id.*

120. *Id.*

121. *Id.*

122. *W3C Process Document*, W3C, <http://www.w3.org/2005/10/Process-20051014/intro> (last visited Nov. 16, 2012).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*



disabled persons.<sup>127</sup> The W3C consults with disability organizations, the government, accessibility research organizations, and other groups to develop support materials and ensure that the core technologies of the web support accessibility.<sup>128</sup>

## B. THE WAI IS RECOGNIZED AS AN INTERNATIONAL AUTHORITY ON WEB ACCESSIBILITY

The governments of Australia, Canada, the European Union and its Member States, and New Zealand have adopted the WAI guidelines.<sup>129</sup> The standards also form the basis of the web provisions in the U.S. Government's Section 508 rules, which require that federal agencies ensure that their electronic and information technology is accessible to people with disabilities.<sup>130</sup> Although Congress limits the application of this legal standard to government websites, the DOJ recommends that web developers rely on the WAI when creating websites.<sup>131</sup>

In addition, the U.S. Government, the U.S. Department of Education, the National Institute for Disability and Rehabilitation Research, the National Science Foundation, the European Commission Information Society Technologies Programme, the Government of Canada, and several businesses including IBM and Microsoft have provided funding for the WAI.<sup>132</sup> These organizations assist the W3C with its goal of "bring[ing] together a unique partnership of industry, disability organizations, national governments, and research organizations in a coordinated effort to improve the accessibility of the web for people with disabilities."<sup>133</sup>

## C. THE WAI WEB ACCESSIBILITY GUIDELINES

The W3C recognizes that accessibility depends on the collaboration of several components.<sup>134</sup> The WAI addresses these components using three sets of guidelines.

### 1. The Web Content Accessibility Guidelines ("WCAG")

The WCAG explain how to make websites more accessible to disabled persons.<sup>135</sup> The recommendations deal directly with the end user and include guidance regarding alternate text for non-text content such as

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127. *Web Accessibility Initiative*, W3C, <http://www.w3.org/WAI/Resources/Overview> (last visited Oct. 20, 2012).

128. *Id.*

129. *Id.*

130. 29 U.S.C. § 794(d) (2006).

131. *Accessibility of State and Local Government Websites to People with Disabilities*, U.S. DEPT. OF JUSTICE (Oct. 9, 2008), <http://www.ada.gov/websites2.htm>.

132. *Sponsoring WAI*, W3C (Oct. 31, 2012), <http://www.w3.org/WAI/Sponsor.html>.

133. *Id.*

134. *Essential Components of Web Accessibility*, W3C (Aug. 2005), <http://www.w3.org/WAI/intro/components.php> [hereinafter *Essential Components*].

135. *Web Content Accessibility Guidelines (WCAG 2.0)*, W3C (Dec. 11, 2008), <http://www.w3.org/TR/WCAG20/>.

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images and media, captions for prerecorded audio, keyboard accessibility for all functionality in a website, and programming designed to avoid triggering seizures.<sup>136</sup>

The guidelines include website conformance requirements and also provide guidance on what to do when a user claims that a website does not conform.<sup>137</sup> The guidelines create three levels of conformance throughout the document (A, AA, and AAA), allowing governing bodies to select the most appropriate level for individual situations.<sup>138</sup> For example, the European Union requires compliance with the WCAG at level AA, the mid-level compliance standard.<sup>139</sup>

## 2. The Authoring Tool Accessibility Guidelines (“ATAG”)

The W3C created the ATAG to address the software and services people use to create web pages and content.<sup>140</sup> The ATAG define how web development tools should help website developers produce content that is accessible and conforms to the WCAG.<sup>141</sup>

Web developers can use the ATAG compliant tools to create accessible websites and to verify that content is accessible. The tools themselves should also be accessible to disabled persons.<sup>142</sup> The ATAG compliant software reduces the effort needed by web developers to produce accessible websites.<sup>143</sup> As software developers create more tools conforming to the ATAG, web developers’ costs of compliance will be reduced.

## 3. The User Agent Accessibility Guidelines (“UAAG”)

The UAAG explain what is required for the accessible design of user agents.<sup>144</sup> User agents are web browsers, media players, and assistive technology software that disabled persons use to interact with computers.<sup>145</sup> Some requirements include full keyboard support for mouse commands and easily locatable directions on how to use built-in browser accessibility features.<sup>146</sup>

The WCAG, ATAG, and UAAG work together to make the web accessible.<sup>147</sup> For example, consider alternative text on images. The

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136. *Id.*

137. *Id.*

138. *Id.*

139. *Web Accessibility*, THE EU INTERNET HANDBOOK (June 9, 2012), [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm).

140. *Authoring Tool Accessibility Guidelines (ATAG) 2.0*, W3C (Apr. 10, 2012), <http://www.w3.org/TR/ATAG20/>.

141. *Id.*

142. *Id.*

143. *Id.*

144. *User Agent Accessibility Guidelines (UAAG) 2.0*, W3C (Oct. 4, 2012), <http://www.w3.org/TR/UAAG20/>.

145. *Id.*

146. *Id.*

147. *Essential Components*, *supra* note 134.

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WCAG would require that images be accompanied by descriptive text, the ATAG would require that web design software verify that images contain alternate text, and the UAAG would require the browser to display the alternate text in a manner compatible with screen reading software.<sup>148</sup> The combination of these guidelines provides clear direction to web developers at all stages of web design.

#### D. CONGRESS SHOULD RELY ON THE W3C'S WAI GUIDELINES FOR ADA ENFORCEMENT

Congress could amend the ADA to apply to websites without using W3C guidelines, but it would take a great deal of work and the guidance would soon be outdated. The W3C has already created standards, using the expertise and experience of hundreds of web users over almost two decades, that offer clarity and guidance to website developers.

In *Southwest*, the court stated that the WAI guidelines were obsolete, as the guidelines were over three years old.<sup>149</sup> In its brief to the court, the W3C replied that the court's assumption was simply incorrect.<sup>150</sup> W3C policies, including the WAI standards, are under continual development.<sup>151</sup> Statutory provisions created by Congress during legislative sessions could never match the flexibility or reach of the W3C standards.

#### CONCLUSION

The United States must strive to provide equal access to the Internet for those living with disabilities. Congress, relying on the W3C, must provide clear, consistent, and enforceable standards for web developers. Congress should take advantage of the thoroughly vetted guidance offered by the W3C in its Web Accessibility Initiative. The W3C is the leading standards organization on the web and creates enforceable law in many nations. The W3C continually modifies these standards to match the needs of the disabled community in a manner that the legislative process could not match. This clear guidance, combined with the tools available from the W3C, would assist website developers in designing accessible websites while avoiding violations of the ADA.

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148. *Id.*

149. *Access Now, Inc. v. Sw. Airlines Co.*, 227 F. Supp. 2d 1312, 1315 (S.D. Fla. 2002).

150. Brief of the World Wide Web Consortium Supporting the Appellant at 6, *Access Now, Inc. v. Sw. Airlines Co.*, 227 F. Supp. 2d 1312, 1315 (S.D. Fla. 2002) (No. 02-16163-BB).

151. Judy Brewer & Shawn Lawton Henry, *Policies Relating to Web Accessibility*, W3C (Aug. 25, 2006), <http://www.w3.org/WAI/Policy/>.