

How the ADA Impacts Online Video Accessibility

ADA Overview

The Americans with Disabilities Act (ADA) was signed into law in 1990.ⁱ The act and its amendments guarantee equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. Both public and private entities are affected by the ADA.

In 2008, the ADA Amendment Act broadened the scope of how disability is legally defined; psychological, emotional, and physiological conditions are now included.ⁱⁱ While a disability may limit an individual's capacity, it is the responsibility of both public and private entities to provide equal access through accommodations suiting the disabled individual's needs.

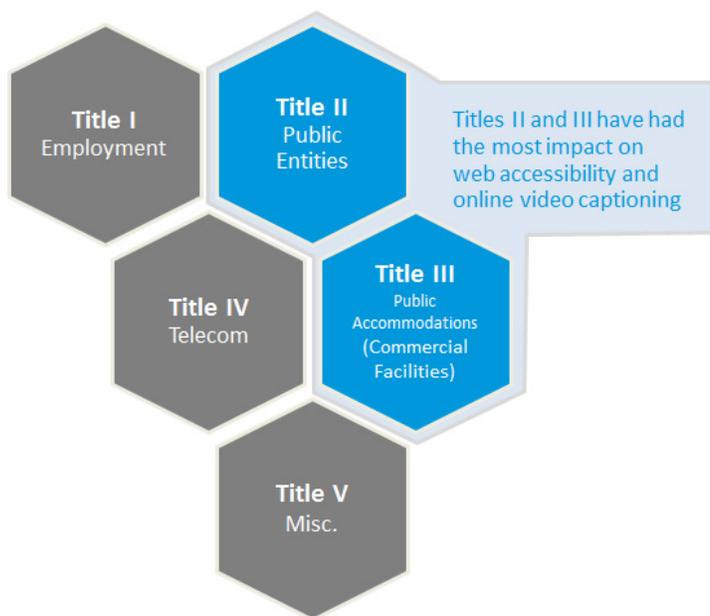
This civil rights statute was created for the sole purpose of limiting discriminatory practices towards disabled individuals. When the ADA passed, it was the first time a law ensured disabled individuals would not be excluded from participation in essential everyday activities. Before this, buildings were not legally obligated to provide handicap ramps, allow entry to service animals, or provide informational signage in Braille.ⁱⁱⁱ

The ADA consists of five sections that cover different aspects of an individual's engagement with society:

- ▶ Title I: employment
- ▶ Title II: public entities
- ▶ Title III: public accommodations
- ▶ Title IV: telecommunications
- ▶ Title V: miscellaneous provisions

Online video captioning and related accommodations are most closely tied to Title II and Title III. While the ADA does not specifically mention online video or video captions, it does call for "auxiliary aids" in communication.^{iv} "Auxiliary aids" assist the disabled, allowing equal access to goods or services provided to the public. Captions are an example of an auxiliary aid that was adopted by movie theaters upon the passage of the ADA.^v

Five Sections of the ADA



ADA Title II: Accessible State and Local Public Entities

Title II prohibits disability discrimination by all public entities at the local and state level. Public entities such as schools, courts, police departments, and many others must comply with Title II regulations as outlined by the U.S. Department of Justice, regardless of whether they receive federal funds.^{vi}

Title II mandates state and local governments:

- ▶ May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.
- ▶ Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- ▶ Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- ▶ Shall operate their programs so that, when viewed in their entirety, they are readily accessible and usable by individuals with disabilities.

The complete list of Title II requirements can be found at: <http://www.ada.gov/t2hlt95.htm>.

Title II also applies to employment in public entities, meaning disabled employees must not be barred from performing responsibilities because of inaccessible processes or procedures. This means state and local entities need to caption videos for internal communication and training^{vii}, as well as public-facing material.

ADA Title III: Online Business Is a “Place of Public Accommodation”

Commercial facilities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, and doctors’ offices, are governed by Title III of the ADA. Under Title III, no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.^{viii} In the past, “a place of public accommodation” was defined as a physical construction whose operation affects the global market.^{ix} Recent case law has broadened this definition and set precedents with crucial effects for online-only businesses.

In the 2010 landmark suit of the National Association of the Deaf (NAD) vs. Netflix, the NAD argued that Netflix was participating in discriminatory practices by excluding deaf and hard-of-hearing viewers from using the popular video streaming service. The complaint was that Netflix did not offer closed captions for much of their video content. With the backing of the Department of Justice, the NAD asserted that this online business was a “place of public accommodation,” despite lacking a physical location.^x The judge agreed and ruled that Netflix does in fact qualify as a “place of public accommodation.”

The decision to move forward with a law suit on these grounds was significant because it was the first time the ADA had been interpreted to apply to an online-only business. In October of 2012, Netflix

decided not to go to court and instead to settle with a legally binding consent decree^{xi} to caption 100% of their videos within two years.^{xii}

Prior to the settlement, Netflix argued that as a streaming video distributor, any legal action should be restricted to the 21st Century Communications and Video Accessibility Act (CVAA), which, at the time, did not call for closed captions. However, the court ruled that these two laws are not mutually exclusive and that Netflix was not protected from ADA prosecution because of compliance with the CVAA.^{xiii}

The landmark Netflix settlement yields two critical takeaways. First, online video accessibility can no longer be ignored. It has become a vital business practice and a legal necessity covered squarely by the ADA. Second, the court's determination that Netflix's streaming video service qualifies as a "place of public accommodation" potentially extends the jurisdiction of the ADA to any organization that publishes video.

In the same way that new buildings must incorporate accessibility features from the outset, ADA case law is laying the groundwork for online businesses to design their sites with universal accessibility as a foundation. Today people live just as much of their lives online as in the physical world. Public entities provide valuable services and information that no citizen should be barred from accessing. With the growing popularity of multimedia and video content, captions are an effective solution to hearing-related accessibility issues.

ADA Lawsuits in Support of Web and Video Accessibility

The ADA does not specifically address online video accessibility. The act was passed in 1990, when neither streaming media nor the Internet as we know it today existed. As the Internet evolved, so did the need for accessibility and legal requirements. In the last decade, several landmark cases involving accessible online media have come before the court. Their rulings reveal an increasing trend in support of web and video accessibility. Even though the ADA hasn't changed substantively, courts are clearly interpreting it as applying to new technology and clearer communications.

2001, *Martin v. Metropolitan Atlanta Rapid Transit Authority*: Several blind riders alleged MARTA was violating the ADA by failing to provide bus schedules and route information in an accessible format online.^{xiv} *Status: Court ruled in favor of the plaintiffs.*

2006, *National Federation of the Blind, et al. v. Target Corporation*: The National Federation of the Blind sued Target in federal court, maintaining that blind people couldn't use the popular ecommerce site.^{xv} *Status: Case was settled. Target made their site fully accessible to blind users.*

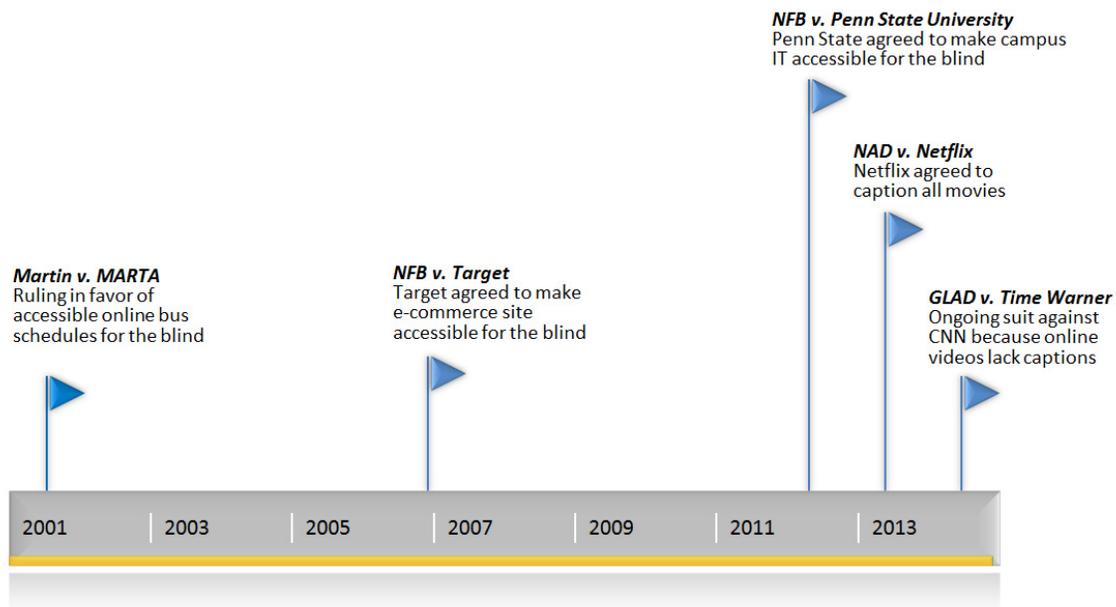
2011, *National Federation of the Blind v. Penn State University*: The National Federation of the Blind sued Penn State University for its failure to provide an appropriately accessible technology environment for students with visual impairments.^{xvi}

Status: Case was settled. Penn State University committed to implementing "a strategy to make all electronic and information technology systems used on its campuses fully accessible to blind students, faculty, and staff."

2012, *National Association of the Deaf, et al. v. Netflix*: The National Association of the Deaf argued that Netflix barred deaf users from enjoyment of their streaming video service by not captioning videos. Netflix unsuccessfully argued that ADA Title III did not apply to their online business. Instead the court ruled that Netflix is a “place of public accommodation” and the ADA does apply.^{xvii}
Status: Case was settled and Netflix agreed to caption all videos by 2014.

2013, *Greater Los Angeles Agency on Deafness (GLAD), et al. v. Time Warner, Inc.*: GLAD is suing CNN because its streaming videos do not have closed captions. CNN’s argument that requiring video captions violates the network’s first amendment rights was rejected. The Judge noted that the lawsuit is not about the content of CNN’s speech, but about the way that speech is delivered to the public.^{xviii}
Status: Case is currently being litigated.

ADA Lawsuits Supporting Web Accessibility



ADA Developments: Title II and Title III Are Becoming More Influential

In July 2013, the Department of Justice released a notice of proposed rulemaking (NPRM) with the goal of revisiting Title II in the near future. This is an attempt to give state and local municipalities more guidance in online accessibility. The notice below highlights the increased understanding of the importance of the Internet as a tool for state and local entities:

“The Internet as it is known today did not exist when Congress enacted the ADA; yet today the Internet is dramatically changing the way that governmental entities serve the public.... Many States and localities have begun to improve the accessibility of portions of their websites. However, full compliance with the ADA’s promise to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of the programs, services, and activities provided by State and local governments in today’s technologically advanced society will only occur if it is clear to public entities that their websites must be accessible.”^{xix}

Additionally, the Department of Justice will release a NPRM in December 2013 to discuss Title III, recognizing that accessibility for commercial entities--websites for ecommerce, social media, entertainment, and online education—is just as important. Because of the critical role of technology in our society today, the DOJ clearly intends to broaden the ADA’s scope by stating:

“Private entities of all types providing goods and services to the public through their websites operate as places of public accommodation under Title III of the ADA.”^{xx}

As the Department of Justice prepares to revisit Title II and Title III, corporations, educational institutions, and government agencies should make ready to embrace new audiences through accessible practices.

Online Video Captioning Standards

Captions allow deaf viewers to understand the spoken content of videos by displaying words in sync with the audio. Below are some generally accepted captioning standards to comply with ADA best practices.

- ▶ Each caption frame should hold 1 to 3 lines of text onscreen at a time, viewable for 3 to 7 seconds. Each line should not exceed 32 characters.
- ▶ Each caption frame should be replaced by another caption.
- ▶ All caption frames should be precisely time-synched to the audio.
- ▶ A caption frame should be repositioned on the screen if it obscures onscreen text or other essential visual elements.

Best Practices for caption style and formatting:

- ▶ Spelling should be at least 99% accurate.
- ▶ When multiple speakers are present, it is sometimes helpful to identify who is speaking, especially when the video does not make this clear.
- ▶ Both upper and lowercase letters should be used.
- ▶ The font should be a non-serif, such as Helvetica medium.
- ▶ Non-speech sounds like [MUSIC] or [LAUGHTER] should be added in square brackets.
- ▶ Punctuation should be used for maximum clarity in the text, not necessarily for textbook style.
- ▶ Captions should preserve and identify slang or accents.

Conclusion

The justice system is adapting to American media consumption habits. The Department of Justice is broadening the scope of Titles II and III, which will impact both public and commercial entities. Recent case law has had profound implications for online-only entities that previously did not have to contend with the ADA. If Netflix was ruled to be a "place of public accommodation," what other entities qualify? Media companies, corporations, private educational institutions, and anyone else with an online presence large enough to "impact a global market" could fall into the same designation.

From the viewpoint of disability advocates, this all makes perfect sense, and it's coming none too soon. In today's multimedia Internet environment, deaf and hard-of-hearing users must rely on websites to access information and participate in society. Their grievances for web accessibility are justified, and providing equal accommodations is consistent with the anti-discriminatory spirit of the ADA.

Endnotes

ⁱ "Americans with Disabilities Act of 1990," Wikipedia, accessed November 20, 2013, http://en.wikipedia.org/wiki/Americans_with_Disabilities_Act_of_1990

ⁱⁱ "ADA Amendments Act of 2008," U.S. Equal Employment Opportunity Commission, accessed November 20, 2013, <http://www.eeoc.gov/laws/statutes/adaaa.cfm>

ⁱⁱⁱ "Enforcing the ADA: Looking Back on a Decade of Progress," U.S. Department of Justice, accessed November 20, 2013, <http://www.ada.gov/pubs/10thrpt.htm>

^{iv} "ADA Title III Technical Assistance Manual; Covering Public Accommodations and Commercial Facilities," Americans with Disabilities Act, accessed November 20, 2013, <http://www.ada.gov/taman3.html>

^v "Captions for Deaf and Hard-of-Hearing Viewers," National Institute on Deafness and Other Communication Disorders, accessed November 20, 2013, <https://www.nidcd.nih.gov/health/hearing/pages/caption.aspx>

^{vi} "Title II Highlights," U.S. Department of Justice, accessed November 20, 2013, <http://www.ada.gov/t2hlt95.htm>

^{vii} "Facts About the Americans with Disabilities Act," U.S. Equal Employment Opportunity Commission, accessed November 20, 2013, <http://www.eeoc.gov/eeoc/publications/fs-ada.cfm>

^{viii} "Part 36 Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," Americans with Disabilities Act Title III Regulations, accessed November 20, 2013, http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm

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- ^{ix} "Title III Highlights," U.S. Department of Justice, accessed November 20, 2013, <http://www.ada.gov/t3highlight.htm>
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- ^{xi} "United States District Court, Civil Action No. 11-30169-MAP," Disability Rights Education & Defense Fund, accessed November 12, 2013, <http://dredf.org/captioning/netflix-consent-decree-10-10-12.pdf>
- ^{xii} Josh Wolford, "Netflix Will Caption All Streaming Videos by 2014, Per Settlement," *WebProNews*, October 11, 2012, <http://www.webpronews.com/netflix-will-caption-all-streaming-videos-by-2014-per-settlement-2012-10>
- ^{xiii} "Federal District Court in Massachusetts First in Country to Hold that the Americans with Disabilities Act Applies to Website-Only Businesses," National Association of the Deaf, accessed November 20, 2013, <http://www.nad.org/news/2012/6/landmark-precedent-nad-vs-netflix>
- ^{xiv} "Metropolitan Atlanta Rapid Transit Authority," Wikipedia, accessed November 20, 2013, http://en.wikipedia.org/wiki/Metropolitan_Atlanta_Rapid_Transit_Authority
- ^{xv} Evan Hill, "Settlement Over Target's Web Site Marks a Win for ADA Plaintiffs," *Law.com*, August 28, 2008, http://www.law.com/jsp/article.jsp?id=1202424114568&Settlement_Over_Targets_Web_Site_Marks_a_Win_for_ADA_Plaintiffs&slreturn=20131020154905
- ^{xvi} "Settlement Between Penn State University and National Federation of the Blind," AccessAbility: Accessibility and Usability at Penn State, accessed November 20, 2013, <http://accessibility.psu.edu/nfbpsusettlement>
- ^{xvii} "Federal District Court in Massachusetts First in Country to Hold that the Americans with Disabilities Act Applies to Website-Only Businesses," National Association of the Deaf, accessed November 20, 2013, <http://www.nad.org/news/2012/6/landmark-precedent-nad-vs-netflix>
- ^{xviii} "CNN Seeks to Strike Lawsuit, Says Closed Captioning for the Deaf and Hard-of-Hearing Infringes Media Corporations Free Speech Rights," Disability Rights Advocates, accessed November 20, 2013, <http://www.dralegal.org/pressroom/press-releases/cnn-seeks-to-strike-lawsuit-says-closed-captioning-for-the-deaf-and-hard-of>
- ^{xix} "Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments," Office of Information and Regulatory Affairs, accessed November 20, 2013, <http://www.reginfo.gov/public/do/eAgendaViewRule?publd=201210&RIN=1190-AA65>
- ^{xx} "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations," Office of Information and Regulatory Affairs, accessed November 20, 2013, <http://www.reginfo.gov/public/do/eAgendaViewRule?publd=201210&RIN=1190-AA61>

About 3Play Media

3Play Media provides cost-effective, premium quality captioning, transcription, and translation solutions to hundreds of customers in higher education, enterprise, media companies, and government. Our mission is to simplify the process by providing a user-friendly account system, flexible API's, and integrations with a multitude of video players, platforms, and lecture capture systems. 3Play Media is based in Cambridge, MA and has been operating since 2007.

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