

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.

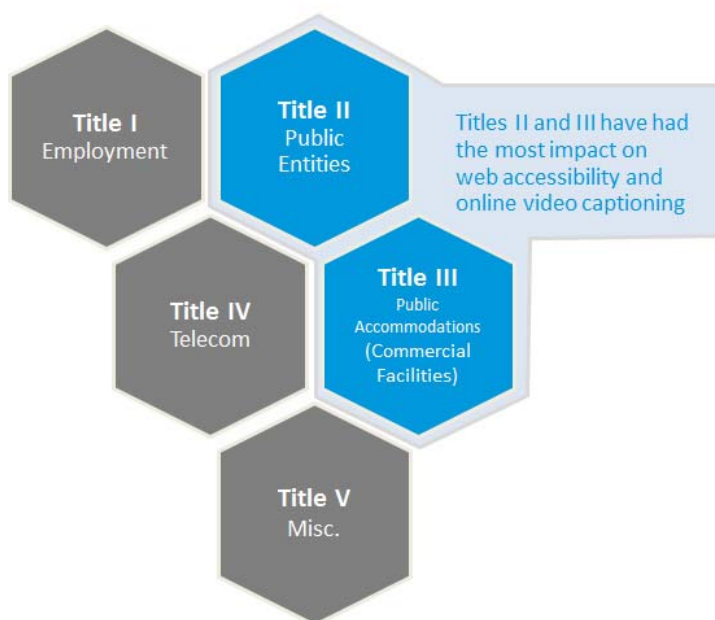
This civil rights statute was created for the sole purpose of limiting discriminatory practices towards disabled individuals. When the ADA passed, it was the first time a law ensured disabled individuals would not be excluded from participation in essential everyday activities. Before this, buildings were not legally obligated to provide handicapped 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

Five Sections of the ADA



to the public. Captions are an example of an auxiliary aid that was adopted by movie theaters upon the passage of the ADA.^v

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 explicitly 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 the laws with a contemporary attitude toward new technologies, media and means of communication.

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}

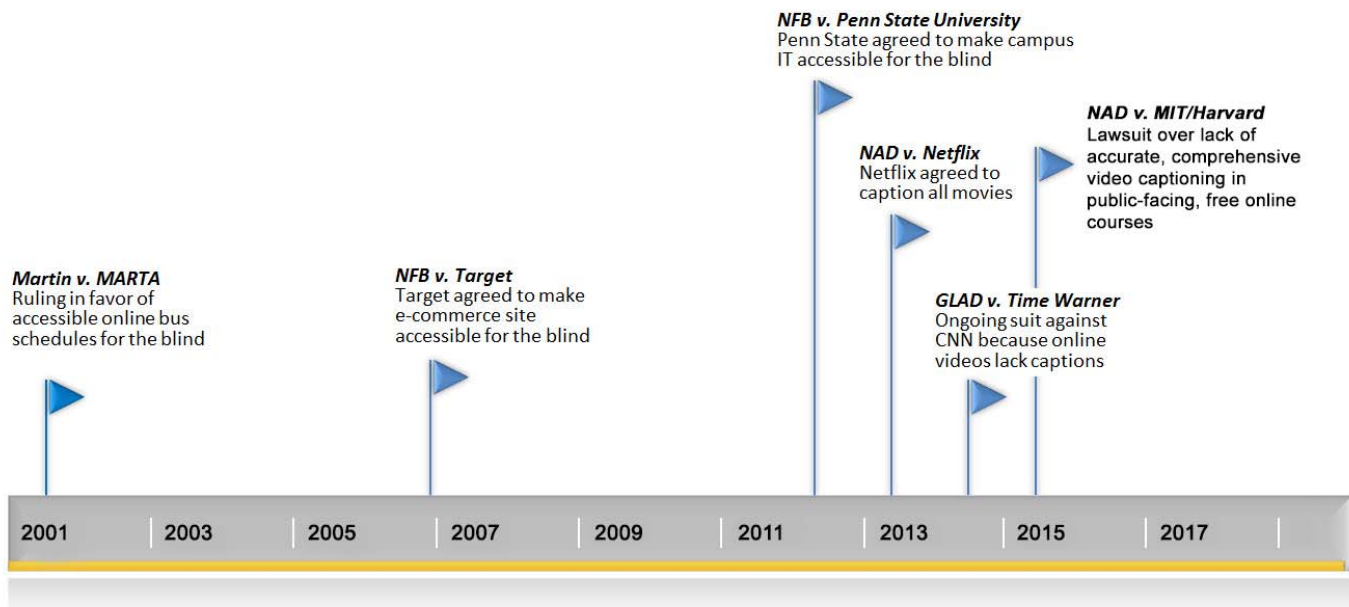
Status: Case was settled. Penn State University committed to implementing "a strategy to make all electronic and information technology systems used on its campuses fully accessible to blind students, faculty, and staff."

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. The case has shifted to California’s Disabled Person Act and whether websites can be considered “places of public accommodation.” ^{xviii} *Status: Case is currently being litigated.*

2015, *National Association of the Deaf, et al. v. MIT/Harvard University*: The National Association of the Deaf argued that both schools are violating the ADA and Section 504 of the Rehabilitation Act for the lack of quality, comprehensive video captioning in the massive open online courses they make available to the public. A motion by both schools to dismiss the case was opposed by the Department of Justice and denied by Federal Magistrate Judge Katherine J. Robertson in February of 2016. ^{xix}
Status: Case is currently being litigated.

ADA Lawsuits Supporting Web Accessibility



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

While the road to a more contemporary ADA that properly addresses web accessibility is not without its speedbumps, the progression towards this milestone is publicly observable.

Updates to Title II: State and Local Entities

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 was an attempt to give state and local municipalities more guidance in web 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.”^{xx}

Nearly three years later on April 29, 2016, the DOJ chose to scrap the NPRM titled “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities” (RIN 1190-AA65).

However, in the same motion that the DOJ discarded the old NPRM, they also issued a new Supplemental Advance Notice of Proposed Rulemaking (SANPRM) in order to solicit additional public comment on various issues to help the DOJ “shape and further its rulemaking efforts” citing evolutions in the internet and assistive technologies.^{xxi}

The deadline for public comment was October 7th, 2016,^{xxii} so assuming no further delays, Title II guidance will hopefully come some time in 2017.

Updates to Title III: Places of Public Accommodation

The Department of Justice also announced it would issue an NPRM in December of 2013 to discuss Title III, recognizing that accessibility for commercial entities--websites for ecommerce, social media, entertainment, and online education—is just as important.

However, the same SANPRM that delayed Title II’s new rules pushed back Title III’s, as well. Web accessibility guidelines for entities that operate web sites considered “places of public accommodation” are slated to come in 2018.^{xxiii}

Despite the slow pace of progress, 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.”^{xxiv}

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. Remember, the ADA does not specifically mention best practices for closed captioning. But a growing body of organizations and government entities have adopted WCAG 2.0 Level AA as the acceptable standard when complying with the ADA. Below are some generally accepted captioning standards used throughout different industries:

- ▶ 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? Will the courts decide that online video content from free public courses will need to be closed captioned after the MIT/Harvard lawsuit? 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

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- ⁱⁱ "ADA Amendments Act of 2008," U.S. Equal Employment Opportunity Commission, accessed October 6, 2016, <http://www.eeoc.gov/laws/statutes/adaaa.cfm>
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- ^{iv} "ADA Title III Technical Assistance Manual; Covering Public Accommodations and Commercial Facilities," Americans with Disabilities Act, accessed October 6, 2016, <http://www.ada.gov/taman3.html>
- ^v "Captions for Deaf and Hard-of-Hearing Viewers," National Institute on Deafness and Other Communication Disorders, accessed October 6, 2016, <https://www.nidcd.nih.gov/health/hearing/pages/caption.aspx>
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- ^{vii} "Facts About the Americans with Disabilities Act," U.S. Equal Employment Opportunity Commission, accessed October 6, 2016, <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 October 6, 2016, http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm
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- ^x "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 October 6, 2016, <http://www.nad.org/news/2012/6/landmark-precedent-nad-vs-netflix>
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- ^{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 October 6, 2016, <http://www.nad.org/news/2012/6/landmark-precedent-nad-vs-netflix>
- ^{xiv} "Metropolitan Atlanta Rapid Transit Authority," Wikipedia, accessed October 6, 2016, http://en.wikipedia.org/wiki/Metropolitan_Atlanta_Rapid_Transit_Authority
- ^{xv} "A Cautionary Tale of Inaccessibility: Target Corporation," The World Wide Web Consortium, accessed October 6, 2016, <https://www.w3.org/WAI/bcase/target-case-study>
- ^{xvi} "Settlement Between Penn State University and National Federation of the Blind," AccessAbility: Accessibility and Usability at Penn State, accessed October 6, 2016, <http://accessibility.psu.edu/nfbpsusettlement>
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^{xviii} “CNN Wins Latest Round in Video Captioning Dispute, But More to Come,” *WileyOnMedia*, accessed October 6, 2016, <http://www.wileyonmedia.com/2014/02/cnn-wins-latest-round-in-video-captioning-dispute-but-more-to-come/>

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About 3Play Media

3Play Media provides closed captioning, transcription, and subtitling services to more than 2,000 customers in higher education, enterprise, media, and government. What sets us apart is our premium quality, fast turnaround, and tools that save time and cut costs. 3Play Media is directly integrated with most video platforms—making the process of captioning as simple as pushing a button. We also provide interactive transcripts that make videos searchable and more engaging.

Having produced captions and transcripts for more than a million videos, we have developed deep expertise in transcribing complex, technical, and academic content. 3Play Media has also developed numerous technologies with 8 patents (granted and pending) to optimize every aspect of the captioning and transcription process.

3Play Media is based in Boston, MA and has been operating since 2007.

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