YOUR WEBSITE, THE AMERICANS WITH DISABILITIES ACT, AND OTHER NON-DISCRIMINATION REQUIREMENTS
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TODAY’ S AGENDA

• INTRODUCTION
  ► Who we are – the role of lawyers and accessibility experts
  ► What types businesses should be concerned about website accessibility

• Accessible and Assistive Technology 101
• Current Legal Requirements
• Trends Affecting Website Accessibility
• What Businesses Should Be Doing Now
INTRODUCTION
Role of Lawyer & Consultant

• Attorney
  ► Provides advice on legal obligations under federal and state statutes
  ► Oversees privileged review of websites done by consultants
  ► Represents clients in actual or threatened lawsuits and government investigations
  ► Develops legal policies and procedures

• Accessibility Expert
  ► Provides technical expertise to help businesses assess their websites and solutions for accessibility
  ► Provides software & training
  ► Develop strategies for minimizing risk & maximizing opportunity
  ► Helps manage logistics in the event of legal or regulatory attention
WHAT TYPES OF BUSINESSES NEED TO BE CONCERNED?

- **Public Accommodation**: Generally, any enterprise that does business with the public.
  - Covered by ADA Title III Non-discrimination requirements

- **Recipients of Federal Funding**: Universities, health care providers, some non-profits, etc.
  - Covered by Section 504 of Rehabilitation Act’s non-discrimination requirements.

- **Federal Government Contractors & Subcontractors**: Covered by Section 503 of Rehabilitation Act’s non-discrimination requirements.

- **Employers that use online application systems**: Covered by ADA Title I non-discrimination requirements.
ACCESSIBLE & ASSISTIVE TECHNOLOGY 101

• Making digital resources usable to people with disabilities

• Both customer- and employee-facing:
  ♦ Web sites
  ♦ Online applications (e.g. online banking, employment applications)
  ♦ Mobile applications
  ♦ Digital content: documents/statements/videos

• Compatible with assistive technology
• There are objective technical guidelines that denote accessibility compliance.
CURRENT STATE OF THE LAW

• ADA Title III: Applies to public accommodations
  ► Public accommodations must provide auxiliary aids and services necessary to ensure equal access to their goods and services and to ensure effective communication. Accessible electronic and information technology is included in the definition of auxiliary aids and services.
  ► DOJ 2010 ANPRM Statement: Websites that provide goods and services must be accessible to people with disabilities unless the goods and services are available in some other equivalent manner.
  ► Courts have held that the website of a business with a brick & mortar presence is covered under the ADA.
  ► First Circuit & DOJ position: No brick & mortar presence required for coverage.

• Section 504 of the Rehabilitation Act: Applies to recipients of federal funding
  ► DOJ 2010 ANPRM Statement: “[t]here seems to be little debate that the websites of recipients of federal financial assistance are covered by Section 504 of the Rehabilitation Act.”
CURRENT STATE OF THE LAW

• **Section 503 of the Rehabilitation Act:** Applies to federal contractors and subcontractors
  
  ► FAQ that is on the OFCCP website states that contractors are not required to have accessible online application systems as long as people who cannot use the online system have an equally effective means of applying. [http://www.dol.gov/ofccp/regs/compliance/faqs/dir281faqs.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/dir281faqs.htm)
  
  ► OFCCP has proposed to change this rule.

• **ADA Title I:** Applies to all employers with more than 15 employees
  
  ► No formal position taken by EEOC about whether online application websites must be accessible. In an 2/17/03 informal letter, the EEOC said that accessibility of online application systems was an “emerging issue” but stressed that employers must make reasonable accommodations upon request.
EMERGING TECHNOLOGY

How will new technology impact ADA Compliance for web sites in 2013?
For Immediate Release - January 30, 2013

Monster.com First in Industry to Make Website Accessible for Blind Users

Effort a Result of Agreement Between Monster Worldwide and the Attorney General’s Office and National Federation of the Blind; First Job Search Website to Be Fully Accessible

BOSTON – The popular job search website Monster.com will be the first job search and recruitment website in the industry to provide job seekers who are blind with full and equal access to all of its products and services including mobile applications, Attorney General Martha Coakley, Monster Worldwide, Inc. and the National Federation of the Blind (NFB) announced today.
Emerging Technology

First Addendum to MLB Settlement Agreement

The settlement pasted here extends the Agreement between Major League Baseball and the American Council of the Blind and its Massachusetts and California affiliates. This is the first agreement of its kind to address the accessibility of applications for mobile devices. MLB has agreed to use the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA as its standard for mobile applications, and has recently released AtBat™ for the iPhone and iPad with enhanced accessibility.
Emerging Technology
Emerging Technology

• Adoption of Mobile technology

► Mobile driving expansion in scope of compliance activity
The Obama Administration

How will the second term of the Obama Administration impact ADA Compliance for digital resources?
The Obama Administration’s Second Term

“On the issue of civil rights, the disability community has no better friend in Washington than President Obama. He has a very strong record of A.D.A. enforcement…particularly in the areas of their desire to try to enforce the A.D.A. and issues such as access to swimming pools in hotels.”

--Teddy Kennedy, Jr. representing President Obama at the 2012 National Disability Forum, October 9, 2012
January 24, 2013

MEMORANDUM FOR THE CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
CHIEF INFORMATION OFFICERS
SMALL AGENCY COUNCIL MEMBERS

FROM: Joseph G. Jordan
Administrator for Federal Procurement Policy

Steven VanRoekel
Chief Information Officer

SUBJECT: Strategic Plan for Improving Management of Section 508 of the Rehabilitation Act
What will the Department of Justice do in 2013 to impact ADA compliance for websites?
DEPARTMENT OF JUSTICE ACTIVITIES

• Projected date for NPRM under ADA Title II for state and local government websites: July 2013

• Projected date for NPRM under ADA Title III for public accommodations: December 2013

• WCAG 2.0 Level AA likely to be the accessibility standard adopted.
DEPARTMENT OF JUSTICE ACTIVITIES

• Investigations and compliance reviews focused on websites

• Continued demands for website accessibility in agreements resolving non-website related complaints
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

• December 9, 2011: OFCCP issues proposed rule that would require government contractors to “ensure that their use of information and communication technology is accessible to applicants and employees with disabilities.”

  ► Proposed rule refers to WCAG 2.0 and Section 508 Standards.

• April 2013: Final Rule projected date
The States

How will legal and regulatory activities at the state level impact accessibility of bank web sites?
State agencies and Attorney General Offices can exert pressure on banks to require website accessibility under state non-discrimination statutes.

New York AG’s office has been active in this area in the past, for example. The MA AG recently announced the monster.com settlement.

State agencies pay attention to federal ADA mandates and will seek to enforce them through their own state mechanisms.
ADVOCACY GROUPS

How will disability advocacy groups shape ADA compliance for websites in 2013?
AFB Online Banking Accessibility Survey

Thank you for participating in our survey. Banking and financial services are an important part of our everyday lives and here at AFB, we want to find out how well these institutions are meeting the needs of people with vision loss. Additionally, we want to be able to demonstrate to these same institutions that there is still more work to be done to improve online accessibility. The responses you provide will help AFB reach out to the banking industry to improve online accessibility.

Do you use assistive technology to access the Internet?

People with vision loss use a variety of assistive technology including screenreaders and screen magnification.

If you do use assistive technology, please indicate what type of assistive technology you use most often.

People fill in the name of one institution using the whole name and not the initials. You are welcome to complete the survey as many times as you would like using other banks or financial institutions.

Please tell us the name of the bank, credit union, or financial institution where you have an account or accounts.

Technology has made it possible for financial institutions to easily produce account statements in accessible formats such as large print, braille, accessible PDF, or even in audio formats. If you don't already know about these alternative formats, you should ask your institution if they offer this service.

Does your institution provide statements in alternative formats such as large print, braille, accessible PDF, or audio file?
Thank you for participating in our survey. Banking and financial services are an important part of our everyday lives and here at AFB, we want to find out how well these institutions are meeting the needs of people with vision loss. Additionally, we want to be able to demonstrate to these same institutions that there is still more work to be done to improve online accessibility. The responses you provide will help AFB reach out to the banking industry to improve online accessibility.
Blind man files discrimination suit over law school admission test

By Philip Rosenbaum, CNN
May 25, 2011 7:58 p.m. EDT

(CNN) -- A blind Michigan man, rejected by three law schools after scoring poorly on the Law School Admission Test, is suing the American Bar Association, arguing that the group's exam requirements discriminate against the visually impaired.

In a suit filed Tuesday in the U.S. District Court for the Eastern District of Michigan, Angelo Binno alleges the Chicago-based ABA prevents law schools from waiving the admission test, known as the LSAT, for blind applicants. The suit alleges that visually impaired students face considerable difficulties with visually-oriented parts of the exam.

The association's rules require students to take a "valid and reliable" test. Binno's lawsuit counters that the LSAT is the only widely used, commercially available exam for assessing law school applicants, leaving, in effect, no alternative.

The suit says according to ABA policy, schools could face sanctions, be put on probation, or lose accreditation if they fail to comply. Binno says this violates protections for the disabled provided by the Americans with Disabilities Act of 1990.

"I want to help disabled and disadvantaged people who otherwise would struggle to have their voices be heard," Binno said.
Advocacy Groups

• **2012 Recap:**
  ► Disability advocacy groups:
    • Organized, effective, focused on equal opportunity, employment
    • Catalyst for voluntary agreements to make websites and mobile apps accessible

• **2013 trends to watch:**
  ► Continued focus on industry leaders & government agencies
  ► Increased use of social media and web
  ► Inclusion of mobile and digital documents in scope
  ► Watchdog for new rules in industry and state and local govt
  ► Legal activity can originate with groups, or individuals
2013 TRENDS SUMMARY

- The national and state political climates will result in additional ADA enforcement regulation in 2013 that will include web and mobile technology.

- The Department of Justice’s and OFCCP’s rule making process will result in issuing more pointed directives around web accessibility, for industry, employment, and state and local governments.

- Advocacy group momentum will continue to focus on all industries and government agencies.
ALL OF THIS MEANS

• An organized and proactive approach to making websites and mobile apps accessible minimizes risk and cost.

• A reactive approach can result in:
  ► Time tables and milestones being set for third parties
  ► Internal priorities, focus and spend being dictated
  ► Negative PR and brand impact
How can my company be proactive with regard to its website in 2013?
5 things your company can do to be proactive

1. Executives understand the level of risk the organization has—evaluate existing website, and mobile apps for ADA compliance.

2. Consider strategies for protecting internal evaluations of legal compliance from discovery.

3. If any digital resources are not accessible, implement measures to ensure access to your goods and services using alternate channels.

4. Train business leaders and the organization’s technical teams on accessibility best practices and coding.

5. Plan to remediate the accessibility bugs that represent the greatest amount of risk to the organization, using internal resources or a knowledgeable third party.
Path to Accessibility

Awareness  Assessment  Policy & Plan  Audit  Develop & Remediate  Self-Sufficiency
Path to Accessibility

Awareness
- Training - awareness (free), end-users, designers, developers, managers
- Newsletter, Videos
- LMS, Survey (Needs Assessment)
- Ask an Expert

Assessment
- Risk identification and prioritization
- Free Site Scan
- Standard offering (roadmap creation and executive presentations)

Policy & Plan

Audit

Develop & Remediate

Self-Sufficiency

SERVICES

SOFTWARE

FireEyes

WorldSpace Sync
QUESTIONS