RECOMMENDATION

RESOLVED, That the American Bar Association urges that websites provided by lawyers, judges, law students, and other individuals or entities associated with the legal profession, including law firms, the courts, other legal employers, law schools, and legal publishers be created and maintained in an accessible manner which is compatible with reasonable technologies (known as assistive technology) that permit individuals with visual, hearing, manual, and other disabilities to gain meaningful access to these web sites.
REPORT

Introduction

In May 2006, Michael S. Greco, the Immediate Past President of the American Bar Association, at the first ever ABA National Conference on the Employment of Lawyers with Disabilities (ABA National Conference), emphasized the “importance of ensuring that people with disabilities are fully integrated into the legal profession.” Full integration is a fundamental component of the ABA’s long-standing commitment in the Association’s Goal IX to “promote full and equal participation in the legal profession by . . . lawyers with disabilities.” In today’s technologically-driven world, making legal websites and the information on those websites fully accessible to lawyers, paralegals, clients, and the public who use those websites is one of the most important aspects of disability integration. This resolution, therefore, calls on the entire legal profession to create and maintain websites that are fully accessible to persons with disabilities.

What Does the Resolution Cover?

The resolution is intended to cover “all websites that are intended for lawyers, judges, law students and other individuals or entities associated with the legal profession, including law firms, the courts, other legal employers, law schools, legal publishers and clients.” In other words, all legal websites should be included, whether they are publicly or privately supported. The intent is to be as broad as possible, recognizing that both the legal profession itself and law students, lawyers, judges, clients, and the public who rely on the legal profession will benefit if the legal profession is accessible to all.

Why Is This Resolution Necessary?

There is a direct link between the accessibility of legal websites and the ability of people with disabilities to find employment with legal employers, work as lawyers and paralegals, access legal information and services, and obtain competent legal representation. If lawyers, judges, law students, paralegals, clients, and the public cannot use most, many, or even some legal websites, the legal profession is weakened as result because all the individuals with disabilities who are excluded view the profession as being less than it could or should be.

Based on the Commission’s experience working inside the ABA and with outside legal groups, including bar examiners, law schools, law firms, the federal government, and legal publishers at the ABA National Conference, it is clear that website accessibility is a goal that is recognized as being necessary by many in the legal profession, but has not yet been attained. Part of the difficulty is that many entities within the legal profession are not yet prepared to take the necessary steps to ensure that their websites are fully accessible, either because they are unaware of the limitations of their websites and/or are not yet comfortable in making the necessary changes. One of the important purposes of this resolution is educational: to make the legal profession fully aware of website accessibility problems and to provide resources to ensure that legal entities have the means at their disposal to ensure that they consider and implement accessibility principles when websites are being developed and modified.
In addition, there have been several publicized incidents, in which website accessibility problems have resulted in litigation or threats of litigation. Perhaps the most notable example is *National Federation of the Blind v. Target Corp.*,¹ in which a California federal court held that a major American corporation was subject to liability under Title III of the Americans with Disabilities Act (ADA) if its website was shown to be inaccessible to its patrons. The point is not so much that there is a likelihood of litigation if legal websites are not accessible—to date no such lawsuits have been reported—but that such inaccessibility problems persist and violate the spirit of the ADA and the Association’s commitment to make the legal profession accessible.

**Relevant ABA Policies and Initiatives**

The ABA has a long history of working for the inclusion of lawyers and citizens with disabilities. In February 1991, the ABA’s House of Delegates resolved to make member benefits accessible to members with disabilities “to the maximum extent feasible.”² At that time, the ABA created a Task Force on Member Benefits for Disabled Lawyers, which presented guidelines on how to best implement the ADA within the ABA and the legal profession, and to make the ABA’s programs and activities accessible to lawyers with disabilities. Moreover, the ABA’s Board of Governors changed the name and mission of the Commission to include both mental and physical disabilities, rather than mental disabilities alone.

As discussed above, the ABA in 1999 amended Goal IX to add lawyers with disabilities. As a result, it has been ABA policy to work towards the “full and equal participation” of lawyers with disabilities in the legal profession.³ At the same time, the Commission’s mission was changed to “promote the ABA’s commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession.”

Also, in February 2002, the ABA’s House of Delegates adopted a resolution to make all courthouses and court proceedings accessible to people with disabilities.⁴ The report to this resolution made it clear that courthouses and court proceedings should be viewed broadly to include “lawyers, judges, jurors, litigants, court employees, witnesses, and observers.” This recommendation that courthouses and court proceedings be accessible encompasses the websites of courts and the lawyers who practice in those courts.

**Relevant Laws**

A number of federal and state laws support the principle that in general legal websites should be accessible to persons with disabilities. In particular, Titles I-III of the ADA and Section 508 of the Rehabilitation Act are the most pertinent, although various state laws also pertain.

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¹ 452 F. Supp. 2d 946 (N.D. Cal. 2006).
² ABA Res. 102 (1991).
³ The ABA’s goals can be found at [http://www.abanet.org/about/goals.html](http://www.abanet.org/about/goals.html).
⁴ ABA Res. 110 (2002).
Because the ADA was enacted in 1990, it does not mention websites and the Internet specifically, but its broad principles clearly apply in a number of respects. Title I deals with employment and making places of employment accessible to persons with disabilities. As part of President George W. Bush’s New Freedom Initiative, the federal government issued proposals in 2002 to make telework opportunities more available to people with disabilities. The next year, the Equal Employment Opportunity Commission, as part of its charge to implement Title I, issued a fact sheet discussing telework as a reasonable accommodation. That guidance made clear that the federal government endorses the proposition that computers and things, like the Internet, which have sprung out of computer-related technology and become a major part of the work environment, are covered by Title I.

Title II covers all non-employment programs, services, and activities provided by state and local governments. When discussing ways that these requirements may be satisfied, the statute mandates “the removal of architectural, communication, or transportation barriers.” The Internet is clearly a “mode of communication”; in fact, many state and local governmental entities in some situations require that citizens communicate over the Internet using websites. Moreover, whenever state and local governments or their contractors receive federal funding, they are supposed to comply with the accessibility requirements of Section 508 of the Rehabilitation Act.

The critical language of Title III states: “No individual shall be discriminated 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.” Recently, in National Federation of the Blind v. Target Corp., supra, the California federal court found that that blind customers stated a claim under ADA Title III by alleging that Target’s website was inaccessible to them. The court explained that Target’s argument that Title III only covers brick-and-mortar stores was misplaced. Not only has the Eleventh Circuit held in Rendon v. Valleycrest Prod. Ltd. that an off-site screening process discriminated against contestants with disabilities who wanted to participate in a television show, but a Florida federal court determined that Southwest Airline’s inaccessible website violated Title III by preventing customers with disabilities from purchasing tickets online at virtual ticket counters. Similarly, with regard to Target, the California federal court concluded that many of the website’s benefits and privileges are services of the Target stores and, thus, the plaintiffs’ allegations that they were denied such access stated a cognizable cause of action under Title III.

Finally, in 1998, Congress amended the Rehabilitation Act of 1973 to require that federal agencies make their electronic information technology (EIT) accessible to people with

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6 Telework As a Reasonable Accommodation, at http://www.eeoc.gov/facts/telework.html.
7 42 U.S.C. §12132.
8 Id. at §12131 (2).
9 Id. at §12182 (A).
10 294 F.3d 1279 (11th Cir. 2002).
disabilities. As a general rule, the law applies to all federal agencies when they develop, procure, maintain, or use EIT. Under the provisions of Section 508, federal agencies must give disabled employees and members of the general public access to information that is comparable to the access that is given to non-disabled employees and citizens. The law further requires that the Architectural and Transportation Barriers Compliance Board develop, and periodically update, compliance standards.

Making Websites Accessible

Website accessibility means altering websites or files linked from websites in order to make the content contained in them readily available to people with disabilities. Most website accessibility problems pertain to people with visual impairments, although they also affect persons with hearing and manual impairments. A few of the more common problems and solutions are discussed below.

People with visual impairments use two different types of software to navigate the Internet. Those who have some useable vision typically use screen magnification programs (which enlarge the images that appear on the screen), while those with little or know vision typically use screen-reading programs (which verbalize, through synthesized speech output, the contents of the screen).

For those who use screen magnification software, the key is to make sure that there is a high degree of contrast between the text of a website and its background. Many websites have added accessibility features to their websites that allow users to select their own personal color schemes. A good example of this is found on the website of the American Foundation of the Blind at http://www.afb.org.

Making web content accessible to people who use screen-reading programs is, for the most part, relatively simple. It usually involves adding some small strings of code to the underlying website code. The most common accessibility problems faced by screen reader users are “missing alt-text attributes” and a lack of “label tags.” The alt-text attribute is a textual alternative to information that is primarily provided through visual means. By using alt-text attributes, a webmaster can provide users of screen readers access to information that appears as textual links, graphical links, image maps (a series of links combined into one image), to provide captions for pictures and more. Adding the alt-text attribute to websites does nothing to alter the site’s visual presentation, except that the text that comprises the alt-text attribute will appear as a pop-up when a mouse is moved across an item that contains such an attribute.

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14 The Access Board's web accessibility standards have been codified at 36 C.F.R. §1194.22(a). For more information about Section 508 and its requirements visit http://www.section508.gov. For information about the Access Board's compliance standards visit http://www.access-board.gov.
The primary use of the label tag is to communicate what response is required in form fields. Form fields are, mostly, boxes on websites that ask users to enter data such as their names and addresses. However, form fields can be presented as either check boxes or combo boxes as well. Adding label tags to these three kinds of form fields will do much to make a website accessible to people who use screen readers. The tags can also be used to provide textual descriptions of buttons that are part of websites. Adding both the alt-text attribute and label tags require nothing more than the small amount of time it takes a trained web designer to type the additional code.

Many legal and non-legal organizations use Adobe’s PDF file type as their preferred method of document delivery on the Internet. However, using PDF files can present severe problems for blind and visually impaired lawyers who are trying to read those documents using screen readers. While many PDFs can be made accessible, the process, depending on the complexity of the document, can be very difficult. For documents created with “style tags,” Adobe’s “accessibility assistant” does a good job of adding the needed accessibility tags automatically. However, if the document contains tables, images, and other more intricate details, accessibility tags will need to be added to each document individually using Adobe’s accessibility tools. Also, PDFs that originate as scanned images cannot be made accessible without first running the file through an optical character recognition program (software that turns images of letters and words into text) and then manually editing any mistakes made by the software during the translation process. Given these complexities, a number of people and organizations choose instead to offer their online documents in HTML. For more information on creating accessible PDF files, visit http://www.adobe.com/accessibility.

People with hearing impairments have a very different problem with regard to web-based content—accessing information that is provided strictly through audio means. This problem can be overcome by adding captions to any file on a website that contains audio. The Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH television in Boston, Massachusetts, has created Magpie, a free media access generation tool that will enable persons to add captions to video presentations. Magpie can also be used to add video description (narrations of what is happening on the video) to files that contain video. More information about Magpie can be found at http://ncam.wgbh.org/webaccess/magpie.

One final accessibility problem to consider is that any task that only can be completed by using a mouse is not going to be accessible to people with certain manual and visual impairments. By allowing dual options (mouse or keyboard) for completing web-related tasks, websites will not exclude people who cannot use a mouse.

What Existing Guidelines Are Relevant to Website Accessibility?

There are several relevant sets of guidelines for making websites accessible. Two of the most prominent are described below. Adhering to either guideline will guarantee that a website is, at least close, to being fully accessible. Experience and feedback from website users will help determine whether a particular set of guidelines is incomplete with regard to a particular website or website page. The first set of guidelines details what is necessary to be compliant with federal
requirements, while the second, more universally accepted guidelines details what is needed to be fully accessible as a practical matter.

As was mentioned earlier, the federal Architectural and Transportation Barriers Compliance Board develops, and periodically updates, compliance standards to implement Section 508 of the Rehabilitation Act. The Access Board has promulgated guidelines for federal agencies to follow when creating websites and web-related content. For more information about the Access Board’s compliance standards, visit http://www.access-board.gov.

The World Wide Web Consortium, which was founded by Tim Berners-Lee, the inventor of the World Wide Web, developed the Web Accessibility Initiative (WAI). These accessibility guidelines are considered to be more comprehensive than those for Section 508 compliance. Also, the WAI guidelines are updated more frequently than are the Section 508 guidelines. For these reasons, the WAI guidelines have become the most referenced and used guidelines. For information about the WAI guidelines, visit http://www.w3c.org/wai.16

Conclusion

For over 15 years, the ABA has been committed to making the legal profession accessible to persons with disabilities. As the attendees of the ABA National Conference on the Employment of Lawyers with Disabilities found, our profession still has a long way to go. One critical component of making the legal profession accessible to people with disabilities is universal website access. This resolution is an essential step towards this goal.

Respectfully submitted,

Scott C. LaBarre, Chair
Commission on Mental and Physical Disability Law
August 2007

16 To read the settlement reached between the blind and visually impaired community and Bank of America, visit http://www.icdri.org/ATMs/bank_of_america_atm_settlement_a.htm.
1. **Summary of Recommendation(s).**

The resolution urges those in the legal profession to make their websites accessible to persons with visual, hearing, manual, and other disabilities. The resolution is broad in scope so that entities from all areas of the legal profession are covered; however, the resolution is not intended to tell legal entities how their websites should be constructed. Rather, the resolution is intended to make legal entities aware of the problems associated with inaccessible websites, to encourage them to make their websites accessible and to give the Commission the authority to assist interested legal entities in making their websites more accessible.

2. **Approval by Submitting Entity.**

Our Commissioners approved the resolution by E-mail during the week of January 24.

3. **Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?**

No

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

The ABA's Goal IX promotes the "full and equal participation" of lawyers with disabilities in the legal profession. In 1991, ABA Res. 102 was adopted which promised that the ABA would work to provide the benefits of membership to lawyers with disabilities to the "maximum extent feasible." Our proposed resolution fits nicely with the goals discussed in Goal IX and resolution 102, because it urges legal entities to make their websites accessible to people with disabilities; thus, making the legal profession more accessible to people with disabilities.

5. **What urgency exists which requires action at this meeting of the House?**

Websites are an increasingly important part of the legal profession. In today’s technologically-driven world, making legal websites and the information on those
websites fully accessible to lawyers, paralegals, clients, and the public who use those websites is one of the most important aspects of disability integration. The longer the profession delays in achieving accessibility, the longer justice is delayed.

6. **Status of Legislation.** (If applicable.)

   The Americans with Disabilities Act and the Rehabilitation Act of 1973 may, in certain circumstances, already cover the websites of some legal entities. Many states and local governments have also adopted statutes governing the accessibility of websites.

7. **Cost to the Association.** (Both direct and indirect costs.)

   To the extent that ABA entities (as a result of our resolution being adopted) work with Information Systems and our Commission on making their websites accessible, the cost should be minimal. The general ABA web design is reasonably accessible, so much of what entities would need to do has already been done for them. To the extent that ABA entities need to make changes to their websites, the cost associated with most changes is usually nothing more than paying for some additional code to be added to the website.

8. **Disclosure of Interest.** (If applicable.)

   N/A

9. **Referrals.** (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

   The recommendation was referred to all ABA Sections, Divisions, Forums, Special Committees, and Commissions on April 27.

10. **Contact Person.** (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. **Contact Person.** (Who will present the report to the House. Please include email address and cell phone number.)

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