

Improving Access to Commercial Websites Under the Americans with Disabilities Act and the Twenty-First Century Communications and Video Accessibility Act

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ABSTRACT: In 1990, Congress enacted the Americans with Disabilities Act (“ADA”)—one of the most comprehensive sets of antidiscrimination laws to date. Title III of the ADA requires private businesses to make reasonable efforts to ensure that disabled individuals are able to access their “place[s] of public accommodation.” However, as the Internet has grown more ubiquitous in Americans’ lives, scholars have debated whether a commercial website constitutes a place of public accommodation under Title III. Twenty years after Congress enacted the ADA, Congress passed the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) to help ensure that the disabled community is not left behind as the nation’s dependence on web-based technology increases. This Note examines conflicting interpretations of Title III, and how the CVAA may affect the ADA’s application to commercial websites. This Note concludes by arguing that a broad definition of “place of public accommodation” is consistent with the history and purpose of the ADA, and because the CVAA does not go far enough in its effort to improve Internet accessibility for the disabled population, federal regulations imposing uniform technical accessibility standards are needed in order to diminish the accessibility barriers to websites that fall within the scope of Title III.

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I. INTRODUCTION

The Internet plays an increasingly indispensable role in American society.¹ It has become one of the most popular tools for individuals to access commercial, entertainment, and educational services.² While eighty-one percent of American adults living without disabilities³ enjoy access to goods and services offered over the Internet, only fifty-four percent of adults with disabilities use the Internet.⁴ One potential reason for this disparity is

1. See *Trend Data (Adults): What Internet Users Do Online*, PEW INTERNET & AM. LIFE PROJECT, [http://pewinternet.org/Static-Pages/Trend-Data-\(Adults\)/Online-Activites-Total.aspx](http://pewinternet.org/Static-Pages/Trend-Data-(Adults)/Online-Activites-Total.aspx) (last updated May 2013) (noting that as of May 2013, 85% of adults in the United States use the Internet for a number of different activities, including, but not limited to, communicating over e-mail, buying products, watching or sharing videos, using social networking sites, performing job-related research, and using online dating websites); *Trend Data (Teens): Online Activities: What Teens Do Online*, PEW INTERNET & AM. LIFE PROJECT, [http://pewinternet.org/Static-Pages/Trend-Data-\(Teens\)/Online-Activites-Total.aspx](http://pewinternet.org/Static-Pages/Trend-Data-(Teens)/Online-Activites-Total.aspx) (last updated May 2012) (noting that as of July 2011, 95% of teens in the United States use the Internet for activities including, but not limited to, using social networking sites, searching for news or information on current events, recording and uploading videos, and using Twitter).

2. See COMSCORE, U.S. DIGITAL FUTURE IN FOCUS 2012, 24 (2012), available at http://www.comscore.com/Insights/Presentations_and_Whitepapers/2012/2012_US_Digital_Future_in_Focus (select “Download Whitepaper”) (noting that in 2011, “[m]ore than 100 million Americans watched online video content on an average day . . . representing a 43-percent increase” from the previous year, and “[i]n December 2011, 28.5 million mobile users accessed online retail content on their mobile devices, up 87 percent from the previous year”); *Online Education Grows Up, and for Now, It’s Free*, NPR (Sept. 30, 2012, 5:41 PM), <http://www.npr.org/2012/09/30/162053927/online-education-grows-up-and-for-now-its-free> (noting that 1.5 million students are taking online courses through Coursera, a tech company working with the world’s top universities—including Princeton, Stanford, and Oxford—to offer online classes from their course offerings).

3. The ADA’s definition of “disability” covers a wide-range of physical impairments; defining “disability” as “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1) (Supp. V 2011); see *infra* notes 42–46 and accompanying text. This Note focuses on two of the most common conditions that prominently interfere with an individual’s ability to access commercial websites: auditory and visual disabilities. The major accessibility barriers people with auditory disabilities face include access to audio content, media players that do not allow users to control the volume, and websites that do not offer sign language to convey important information. See *Web Content Accessibility Guidelines 2.0*, W3C (Dec. 11, 2008), <http://www.w3.org/TR/WCAG20/#intro> [hereinafter *WCAG 2.0*] (describing alternatives to audio content and different ways a user may need to manipulate audio content to achieve access to a website’s auditory information). Examples of accessibility barriers that individuals with visual impairments face include websites that do not allow the user to resize images or change the color or contrast of the text, images that do not contain text descriptions that are compatible with screen reader technology, and websites that do not allow a user to navigate using only a keyboard, instead of a mouse. See *id.* (describing different ways a user may need to manipulate images to improve access to a website’s visual content).

4. SUSANNAH FOX, PEW INTERNET & AM. LIFE PROJECT, AMERICANS LIVING WITH DISABILITY AND THEIR TECHNOLOGY PROFILE 3 (2011), available at http://www.pewinternet.org/~media/Files/Reports/2011/PIP_Disability.pdf.

that disabled⁵ individuals are often economically disadvantaged in comparison to the able-bodied population and simply cannot afford access to the Internet or new technology.⁶ However, even if physical access to broadband and assistive technology is not an issue a disabled individual faces, many commercial websites are so poorly designed that actual access to the website's marketed goods or services remains impossible.⁷ These Internet-accessibility barriers have prevented disabled individuals from enjoying a number of commercial, entertainment, educational, and travel services available to able-bodied Internet users.

Ensuring that disabled individuals have full access to the goods, services, and advantages available to other members of the public was Congress's primary goal when it passed the Americans with Disabilities Act ("ADA") in 1990.⁸ The ADA was the first comprehensive set of laws prohibiting discrimination against the disabled community in the private sector.⁹ Title

5. Politically correct vocabularies are constantly changing and scholars may legitimately debate whether "disabled" is the most sensitive term to use in this context. The terms "disabled" and "disability" were used in this Note merely to remain consistent with the Americans with Disabilities Act.

6. LEX FRIEDEN, NAT'L COUNCIL ON DISABILITY, WHEN THE AMERICANS WITH DISABILITIES ACT GOES ONLINE: APPLICATION OF THE AMERICANS WITH DISABILITIES ACT TO THE INTERNET AND THE WORLDWIDE WEB 3 (2003), available at <http://www.ncd.gov/publications/2003/July102003> ("To the degree that people with disabilities have lower levels of education, lesser choices in accessible housing, fewer options in transportation, or face other structural barriers such as minority status, residence in rural or inner-city areas that lack advanced telecommunications access such as broadband, or to the extent they are older, their disproportionate exclusion from digital access is all too readily foreseeable."). A 2010 report issued by the U.S. Census Bureau demonstrated that the nation's growing population of disabled individuals still face a disparate rate of unemployment and poverty. MATTHEW W. BRAULT, U.S. CENSUS BUREAU, AMERICANS WITH DISABILITIES: 2010, at 11 fig.5 (2012), available at <http://www.census.gov/prod/2012pubs/p70-131.pdf>. Specifically, the study found that only 41% of disabled adults were employed, compared to 79% of adults with no disability. *Id.* at 5 (defining "adult" in this context of the study to include individuals aged 21 to 64). Also, the study found that 10.8% of severely disabled adults experienced persistent poverty, compared to 3.8% of adults with no disability. *Id.* (defining "persistent poverty" as "continuous poverty over a 24-month period").

7. See FRIEDEN, *supra* note 6, at 3; Marc Parry, *College Web Pages Are 'Widely Inaccessible' to People with Disabilities*, THE CHRONICLE (Aug. 12, 2010, 5:21 PM), <http://chronicle.com/blogPost/blogPost-content/26188/> (citing Terrill Thompson et al., *Web Accessibility: A Longitudinal Study of College and University Home Pages in the Northwestern United States*, 5 DISABILITY & REHABILITATION: ASSISTIVE TECH. 108 (2010)) (reporting that "[c]ollege Web pages remain 'widely inaccessible' to people with disabilities"); Katie Vizenor & Christina L. Wissinger, *AFB Survey Results Show Inaccessibility of Many Travel Websites*, AFB ACCESSWORLD MAG. (Nov. 2012), <http://www.afb.org/afbpress/pub.asp?DocID=aw131107> (reporting that the results from an American Foundation for the Blind survey showed that many travel websites are inaccessible to blind individuals).

8. Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended in scattered sections of 42 U.S.C. and 47 U.S.C.); see also THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE xi (Jane West ed., 1991) [hereinafter POLICY TO PRACTICE].

9. See POLICY TO PRACTICE, *supra* note 8, at xi-xii.

III of the ADA requires private businesses to make reasonable efforts to ensure that disabled individuals are able to access their “place[s] of public accommodation.”¹⁰ Title III does not explicitly include the Internet as an example of a place of public accommodation.¹¹ Therefore, it has fallen to the courts to interpret whether websites fall within the purview of the ADA. Courts addressing whether Title III applies to websites have come to conflicting decisions. Some courts have refused to extend the ADA to cover non-physical locations.¹² Others have held that the ADA applies only to websites that also have significant ties to a physical location.¹³ Finally, a recent case in the U.S. District Court of Massachusetts held that the ADA applies to all websites that constitute “places of public accommodation,” regardless of their ties to a physical structure.¹⁴

Eliminating accessibility barriers to commercial websites is essential to promote the independence and social inclusion of the disabled population.¹⁵ For disabled individuals, accessible websites allow for greater independence by removing many of the obstacles disabled people face while performing traditional tasks—obstacles such as transportation and navigation.¹⁶ While accessible websites benefit the disabled population, application of Title III to commercial websites would also impose significant costs on website providers.¹⁷ Certain websites offering entertainment services, such as video streaming, have maintained that the economic burden of eliminating accessibility barriers will result in a smaller variety of content available for all consumers.¹⁸ Disability-rights activists, however, urge that as more companies begin to offer goods and services solely through the Internet, these costs are warranted to ensure that the disabled population is not left behind as technology and Internet services evolve.¹⁹

10. 42 U.S.C. § 12182(a) (2006).

11. See *infra* note 55 for the ADA’s list of examples for what constitutes a “place of public accommodation.”

12. See *infra* Part II.B.2.a.

13. See *infra* Part II.B.2.b.

14. See *infra* Part II.B.2.c.

15. Jonathan Lazar & Paul Jaeger, *Reducing Barriers to Online Access for People with Disabilities*, ISSUES SCI. & TECH. (Winter 2011), <http://www.issues.org/27.2/lazar.html> (“In 2000, people with disabilities who were able to access and use the Internet were already reporting notably larger benefits from the Internet in some areas than was the general population. Adults with disabilities in 2000 were more likely to believe that the Internet improved the quality of their lives (48% to 27%), made them better informed about the world (52% to 39%), helped them meet people with similar interests and experiences (42% to 30%), and gave them more connections to the world (44% to 38%) than the general population.”).

16. *Id.*

17. See *infra* notes 100–08 and accompanying text.

18. See *infra* notes 109–13 and accompanying text.

19. See, e.g., Jeffrey M. O’Brien, *The Netflix Effect*, WIRED (Dec. 2002), http://www.wired.com/wired/archive/10.12/netflix.html?pg=1&topic=&topic_set (detailing the immediate success of Netflix.com—an online video retailer with no physical retail locations—and the number of rival

While the Department of Justice (“DOJ”) ²⁰ has yet to issue regulations specifying technical accessibility standards for all commercial websites, ²¹ Congress passed the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) in 2010, which imposes a number of accessibility requirements on developers of advanced communications equipment and video programming providers. ²² The CVAA is significant because the United States has traditionally promoted self-regulation of the Internet, with government intervention only when self-regulation is insufficient. ²³ Whether the CVAA resolves the questions surrounding the ADA’s application to commercial websites is unclear. ²⁴ Furthermore, whether the CVAA goes far enough in its attempt to solve the accessibility problems faced by the disabled community remains controversial.

This Note argues that commercial websites, ²⁵ regardless of their ties to a physical entity, fall within the scope of Title III’s definition of a “place of public accommodation,” and because the CVAA does not go far enough in its effort to improve Internet accessibility, further federal regulations

companies that began to offer similar online services); Gary Rivlin, *A Retail Revolution Turns 10*, N.Y. TIMES (July 10, 2005), <http://query.nytimes.com/gst/fullpage.html?res=950CE5DC1630F933A25754CoA9639C8B63> (describing the rise of Amazon.com—“Earth’s Biggest Bookstore”—which provides goods through its website and does not have a physical retail location).

20. Congress granted the DOJ the primary authority to enforce Title III and, in that capacity, the DOJ issues regulations interpreting the ADA. 42 U.S.C. §§ 12186(b), 12188(b) (2006); 28 C.F.R. pt. 36 (2013).

21. The DOJ has yet to issue any binding regulations on website providers. However, the DOJ has issued an Advance Notice of Proposed Rulemaking “in order to solicit public comment on various issues relating to the potential application of” the ADA to commercial websites. Advance Notice of Proposed Rulemaking: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43,460, 43,460 (July 26, 2010) [hereinafter ANPRM]. In addition, the DOJ is also scheduled to issue a Notice of Proposed Rulemaking in March 2014. Executive Office of the Pres., *View Rule 1190-AA61: Spring 2013*, REGINFO.GOV, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201304&RIN=1190-AA61> (last visited Sept. 20, 2013).

22. See *infra* Part II.C.

23. ANPRM, *supra* note 21, at 43,463.

24. Online media providers have argued that the CVAA’s specific application to online content carves out an exception for media websites from the more general ADA application to “place[s] of public accommodation.” See *infra* Part IV.

25. This Note uses the phrase “commercial websites” to refer to the websites “of entities that provide goods or services that fall within the 12 categories of ‘public accommodations,’ as defined by the statute and regulations.” ANPRM, *supra* note 21, at 43,465 (“Because the [DOJ] is focused on the goods and services of public accommodations that operate exclusively or through some type of presence on the Web—whether hosting their own [website] or participating in a host’s [website]—the Department wishes to make clear the limited scope of [any future] regulations.”); cf. Shani Else, Note, *Courts Must Welcome the Reality of the Modern World: Cyberspace Is a Place Under Title III of the Americans with Disabilities Act*, 65 WASH. & LEE L. REV. 1121, 1122 (2008) (arguing that “[i]n light of the massive expansion of websites, virtual worlds, and businesses that operate solely over the internet,” courts should recognize the Internet, as a whole, as a “place” under Title III). For the twelve categories listed under Title III’s definition of “place of public accommodation,” see *infra* note 55.

imposing uniform technical accessibility standards are needed. Part II of this Note discusses the historical background surrounding the enactment of the ADA, the relevant case law interpreting Title III of the ADA, and the public policy issues concerning a blanket application of Title III to commercial websites. Part II then discusses the CVAA by addressing Congress's purpose for passing the legislation and presenting the general structure of the CVAA, focusing on the specific accessibility requirements it imposes on certain commercial websites. Part III argues that the history and purpose of the ADA require a broad interpretation of Title III that extends its coverage to commercial websites. Part IV argues that the CVAA does not inhibit the ADA's application to the Internet by carving out a commercial-website exception.²⁶ Part V concludes by arguing that the CVAA does not go far enough in its attempt to solve the accessibility problems faced by the disabled community, and, therefore, the DOJ or the FCC need to issue regulations that require websites to comply with a set of uniform technical standards that minimize accessibility barriers without discouraging technological advancement.

II. BACKGROUND OF THE ADA AND THE CVAA

The ratification of the ADA in 1990 signified a historic shift in disability public policy.²⁷ This Part undertakes to familiarize the reader with the road to the enactment of the ADA, which not only aimed to codify and expand a number of existing disability-rights laws, but also to ensure that the disabled community had full access to the goods, services, and advantages available to other members of the public.²⁸ This Part then examines the relationship between the ADA and commercial websites, first focusing specifically on Title III and its definition of a "place of public accommodation." This Part next details three different statutory interpretations of Title III that have emerged from the relevant case law before discussing the policy concerns underlying a broad application of Title III to all commercial websites.

Though the ADA does not explicitly state whether websites fall within its scope, Congress specifically enacted the CVAA in an effort to ensure that disabled individuals are not left behind as communication technology and Internet-based services evolve, despite the ambiguity in the ADA.²⁹ This Part

26. See *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 203 (D. Mass. 2012) ("According to [Netflix], there is an irreconcilable conflict between the CVAA and the ADA when applied to captioning of streaming video. Because the CVAA specifically addresses such captioning while the ADA covers disability discrimination generally, [Netflix] argues that Congress intended the CVAA to 'carve out' the captioning of streaming video programming from the scope of the ADA."); Allison Landwehr, *Amending the Digital Divide*, 23 SYRACUSE SCI. & TECH. L. REP. 90, 113 (2010).

27. See POLICY TO PRACTICE, *supra* note 8, at xi–xii.

28. See *id.* at 15–21.

29. *Summary of Twenty-First Century Communications and Video Accessibility Act of 2009*, COAL. OF ORGS. FOR ACCESSIBLE TECH., <http://coataccess.org/node/4623> (last visited Sept. 20, 2013).

also examines the structure of the CVAA and the regulations it imposes on providers of advanced communication services and video programming.

A. *THE DISABILITY RIGHTS MOVEMENT AND THE PRECURSORS TO THE ADA*

The disability rights movement in the United States gained momentum concurrently with the 1960s civil rights movement,³⁰ and aimed to eliminate the stigma, dependency, and segregation of people with disabilities in the United States.³¹ Fred Pelka, an author specializing in disability-rights history, reports that

[b]y the mid-twentieth century . . . Americans with disabilities lived under a system of virtual apartheid, in which those with discernable [sic] disabilities were most often hidden away in institutions, special schools, or in family basements and attics, or, at best, isolated in their homes, while those who could “pass” as non-disabled . . . tried their best to conceal and deny their identity.³²

Disability-rights activists demanded legislation requiring society to eliminate the physical and social barriers facing the disabled community.³³ Congress responded to this growing awareness of Americans with disabilities by passing the Rehabilitation Act of 1973, which, at the time, represented the most comprehensive set of laws prohibiting discrimination on the basis of disability.³⁴ The “hallmark” section of the Rehabilitation Act was section 504,³⁵ which banned any program receiving federal funding from discriminating against disabled people.³⁶

Following the Rehabilitation Act of 1973, Congress enacted a number of other significant antidiscrimination laws, including the Developmental

30. FRED PELKA, *WHAT WE HAVE DONE: AN ORAL HISTORY OF THE DISABILITY RIGHTS MOVEMENT* 23 (2012) (noting that a number of disability-rights advocates gained their first political experience in the African American civil rights movement and “came to see civil rights litigation and legislation as useful tools for advancing a disability rights agenda”).

31. *Id.* at 17.

32. *Id.*

33. PETER BLANCK ET AL., *DISABILITY CIVIL RIGHTS LAW AND POLICY: CASES AND MATERIALS* 23 (2005). Legislation enacted in the early twentieth century tended to support the belief that it was the responsibility of the *individual* to overcome his disability in order to gain acceptance into society. *See id.* at 22–23 (discussing the National Vocational Rehabilitation Act of 1920 and the Randolph–Sheppard Act of 1936).

34. VOICES FROM THE EDGE: *NARRATIVES ABOUT THE AMERICANS WITH DISABILITIES ACT* 10 (Ruth O’Brien ed., 2004).

35. BLANCK ET AL., *supra* note 33, at 28 (noting that the “sweeping language” of section 504 “was the first explicit Congressional statement recognizing ‘discrimination’ against people with disabilities”).

36. 29 U.S.C. § 794(a) (2006) (“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”).

Disabilities Assistance and Bills of Rights Act,³⁷ the Education for All Handicapped Children Act,³⁸ and the Voting Accessibility for the Elderly and Handicapped Act.³⁹ Nearly all of these laws, however, only regulated those activities conducted by the federal government or funded by some form of federal assistance.⁴⁰ Because nearly all activities that did not receive federal funding could discriminate against the disabled, disability-rights activists lobbied Congress to extend section 504 of the Rehabilitation Act to the private sector.⁴¹ In 1990, activists succeeded in their efforts to increase the amount of antidiscrimination protection for disabled citizens when Congress enacted the ADA.

B. THE ADA AND COMMERCIAL WEBSITES

The primary goal of the ADA is “to provide a clear and comprehensive national mandate,”⁴² ensuring that people with disabilities are not prevented from participating in mainstream American life.⁴³ To accomplish this goal, Congress adopted a broad definition of “disability.”⁴⁴ The Act defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities.”⁴⁵ A “major life activity” includes, but is not limited to, seeing, hearing, reading, communicating, and working.⁴⁶

In addition to adopting an expansive definition of “disability,” the ADA imposes accessibility requirements on a number of service providers to eliminate discrimination in most areas of Americans’ daily lives.⁴⁷ The ADA creates antidiscrimination guidelines for employers (Title I),⁴⁸ public

37. Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 6000–81 (1976) (repealed 2000).

38. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1401–82 (2006 & Supp. V 2011)).

39. Voting Accessibility for the Elderly and Handicapped Act, Pub. L. No. 98-435, 98 Stat. 1678 (1984) (codified at 42 U.S.C. §§ 1973ee to ee-6 (2006)).

40. See Robert L. Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 428–29 (1991).

41. *Id.*

42. 42 U.S.C. § 12101(b)(1) (2006).

43. POLICY TO PRACTICE, *supra* note 8, at xii (stating that the ADA seeks to eliminate discrimination in “virtually all sectors of society and every aspect of daily living—work, leisure, travel, communications”).

44. 42 U.S.C. § 12102(1) (Supp. V 2011).

45. *Id.* § 12102(1)(A). The statute also notes that this definition “shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.” *Id.* § 12102(4)(A).

46. *Id.* § 12102(2)(A). The statute also provides that “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity *when active*.” *Id.* § 12102(4)(D) (emphasis added).

47. *Id.* § 12101.

48. *Id.* §§ 12111–17 (2006 & Supp. V 2011). “No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the

services (Title II),⁴⁹ public accommodations and commercial facilities (Title III),⁵⁰ and telecommunications services (Title IV).⁵¹ Because the Internet has become a major instrument in facilitating commercial and social interaction,⁵² disability-rights activists argue that commercial websites are a new type of “place of public accommodation” under Title III.⁵³

1. “Place of Public Accommodation” Under Title III of the ADA

Title III requires that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods [or] services . . . of any place of public accommodation by any person who owns . . . or operates a place of public accommodation.”⁵⁴ Title III goes on

hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” *Id.* § 12112(a).

49. *Id.* §§ 12131–65 (2006). Title II of the ADA prohibits individuals with disabilities from being “excluded from participation in or [being] denied the benefits of the services, programs, or activities of a public entity, or [being] subjected to discrimination by any such entity.” *Id.* § 12132. Title II defines “public entity” as including: “(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).” *Id.* § 12131(1).

50. *Id.* §§ 12181–89.

51. 47 U.S.C. § 225 (2006). Title IV of the ADA pertains to interstate and intrastate telecommunications relay services and ensures that these services are available “to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” *Id.*

52. *See supra* note 1.

53. *See* Jonathan Bick, *Americans with Disabilities Act and the Internet*, 10 ALB. L.J. SCI. & TECH. 205, 214 (2000).

54. 42 U.S.C. § 12182 (2006).

to provide twelve categories of “place[s] of public accommodation.”⁵⁵ It requires businesses that fit into at least one of these categories to adopt “reasonable modifications in policies, practices, or procedures” in order to make their services available to the disabled community, unless these modifications would “fundamentally alter” the nature of these services.⁵⁶ Title III also requires places of public accommodation to provide auxiliary

55. *Id.* § 12181(7). A business is a “place of public accommodation” if it fits into one of the following categories:

- (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.

Id.

56. *Id.* § 12182(b)(2)(A)(ii). In determining whether a modification is reasonable, the following four factors will be considered: (1) the price and complexity of the modification; (2) the overall impact the modification will have on the operation; (3) the entity’s financial resources; and (4) the type of operation(s) of the entity. *Id.* § 12181(g). Examples of modifications that brick and mortar businesses implement include entrance ramps at storefronts, wheelchair accessible restrooms, and reserved parking for disabled patrons. 28 C.F.R. §§ 36.401–.406 (2013).

aids or other services⁵⁷ to assure access, unless the entity can show that adding these aids or services results in an “undue burden.”⁵⁸ Title III’s public accommodation categories provide a number of examples of physical locations that are open to the public, but make no mention of whether an entity without a tangible structure may qualify as a place of public accommodation.⁵⁹

The fact that Congress did not explicitly include the Internet in the text of Title III is unsurprising. At the time Congress enacted the ADA, the Internet was a relatively new development and it would have been nearly impossible for Congress to predict either the exponential growth of the number of Internet users within the next twenty years,⁶⁰ or the substantial role that the Internet would eventually play in both the personal and professional lives of Americans.⁶¹ Although Congress could not have foreseen the drastic evolution of the Internet at the time it enacted the ADA, today the Internet’s impact on society is undeniable. Yet, neither Congress,

57. “Auxiliary aids and services” include:

- (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (C) acquisition or modification of equipment or devices; and
- (D) other similar services and actions.

42 U.S.C. § 12103(1) (Supp. V 2011).

58. *Id.* § 12182(b)(2)(A)(iii) (2006).

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include:

- (1) The nature and cost of the action needed under this part;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

28 C.F.R. § 36.104.

59. *See* 42 U.S.C. § 12181(7).

60. *See* DAVID G. POST, IN SEARCH OF JEFFERSON’S MOOSE: NOTES ON THE STATE OF CYBERSPACE 32–33 tbl.2.1 (2009) (noting that the number of computers on the Internet grew from 313,000 in October 1990 to 541,677,360 in January 2008).

61. *See supra* notes 1–2.

the DOJ, nor the U.S. Supreme Court has explicitly extended Title III to websites or restricted its application to physical locations. Because of the uncertainty surrounding Title III's application to commercial websites, disability-rights activists and commercial website providers continue to litigate the issue in the lower federal courts.⁶² Courts addressing whether a website is within the scope of the ADA have centered their decisions around their statutory interpretation of Title III and its definition of a "place of public accommodation" while also considering the competing policy concerns arising from a blanket application of Title III to all commercial websites.⁶³

2. Relevant Case Law: Three Interpretations of Title III of the ADA

Courts have centered their analyses of Title III's application to commercial websites on the statutory interpretation of Title III. The absence of language referring to the Internet in Title III has forced courts to determine whether a "place of public accommodation" is limited to a physical structure or whether an entity that is open to the public, but exists solely in cyberspace, may also be considered a place of public accommodation.⁶⁴ The relevant cases are best broken into three different statutory interpretations. They can be described, roughly, as refusing to extend Title III to cover non-physical locations,⁶⁵ applying Title III to only commercial websites that have significant ties to a physical location,⁶⁶ and extending Title III to commercial websites regardless of their ties to a physical structure.⁶⁷

a. Title III Only Covers Physical Locations

Access Now, Inc. v. Southwest Airlines, Co. illustrates the interpretation that the Internet simply is not a place of public accommodation.⁶⁸ In that case, Robert Gumson, a blind individual, and Access Now, Inc., a disability-rights

62. Minh N. Vu, Seyfarth Shaw LLP, *Businesses: Brace for an Onslaught of ADA Lawsuits Alleging Inaccessible Websites*, ADA TITLE III: NEWS & INSIGHTS (June 22, 2012), <http://www.adatitleiii.com/2012/06/businesses-brace-for-an-onslaught-of-ada-lawsuits-alleging-inaccessible-websites/>.

63. See *infra* Part II.B.3.

64. See, e.g., *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017 (N.D. Cal. 2012); *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012); *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006); *Access Now, Inc. v. Southwest Airlines, Co.*, 227 F. Supp. 2d 1312 (S.D. Fla. 2002).

65. See *infra* Part II.B.2.a.

66. See *infra* Part II.B.2.b.

67. See *infra* Part II.B.2.c.

68. *Southwest Airlines*, 227 F. Supp. 2d at 1318 ("[T]o fall within the scope of the ADA as presently drafted, a public accommodation must be a physical, concrete structure. To expand the ADA to cover 'virtual' spaces would be to create new rights without well-defined standards.").

advocacy organization, brought a claim against Southwest Airlines, arguing that the defendant's website was not accessible to blind persons using assistive technology devices, and accordingly excluded blind individuals from accessing goods and services offered through Southwest's "virtual ticket counters."⁶⁹

The Southern District of Florida held that Title III of the ADA and the relevant federal regulations provided "plain and unambiguous" language describing a place of public accommodation, and that these texts demonstrated Congress's clear intent that Title III only cover physical locations.⁷⁰ Specifically, the court invoked the principle of *ejusdem generis*⁷¹ to support its construction of Title III:

[Under Title III's definition of "public accommodation"] the general terms, "exhibition," "display," and "sales establishment," are limited to their corresponding specifically enumerated terms, all of which are physical, concrete structures, namely: "motion picture house, theater, concert hall, stadium"; "museum, library, gallery"; and "bakery, grocery store, clothing store, hardware store, shopping center," respectively.⁷²

The court held that because Title III's list of specific examples included only concrete structures, *ejusdem generis* dictated that the ADA's accessibility requirements did not extend to the defendant's website.⁷³

In addition to its interpretation of Title III's text, the court also based its decision on the Code of Federal Regulations' ("CFR") definitions of "place of public accommodation" and "facility." The CFR defines a "place of public accommodation" as "a facility, operated by a private entity, whose

69. *Id.* at 1315–16.

70. *Id.* at 1317–18.

71. "A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." BLACK'S LAW DICTIONARY 594 (9th ed. 2009).

72. *Southwest Airlines*, 227 F. Supp. 2d. at 1319.

73. *Id.* In addition to the principle of *ejusdem generis*, courts have also invoked the canon of *noscitur a sociis* to interpret Title III. *See* *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 614 (3d Cir. 1998); *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1014 (6th Cir. 1997). Under this principle, "the meaning of an unclear word or phrase should be determined by the words immediately surrounding it." BLACK'S LAW DICTIONARY, *supra* note 71, at 1160–61. In *Weyer*, the Ninth Circuit held:

All the items [in 42 U.S.C. § 12181(7)] . . . have something in common. They are actual, physical places where goods or services are open to the public, and places where the public gets those goods or services. The principle of *noscitur a sociis* requires that the term, "place of public accommodation," be interpreted within the context of the accompanying words, and this context suggests that some connection between the good or service complained of and an actual physical place is required.

Weyer, 198 F.3d at 1114.

operations affect commerce and fall within at least one of the [twelve (12) enumerated categories set forth in 42 U.S.C. § 12181(7)].”⁷⁴ The CFR defines “facility” as “all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.”⁷⁵ The court noted that these definitions are limited to brick and mortar locations. The court ultimately held that because the defendant’s website did not exist in a physical location, the plaintiffs’ claim could not succeed under Title III.⁷⁶

b. Title III Covers Commercial Websites that Have Significant Ties to a Physical Location

National Federation of the Blind v. Target Corp. illustrates the second statutory interpretation courts have adopted to determine whether the Internet is a place of public accommodation.⁷⁷ Courts adopting this interpretation look for a nexus between the website at issue and a physical location that satisfies Title III’s definition of “place of public accommodation.”⁷⁸

Similar to the plaintiffs’ claim in *Southwest Airlines*, the plaintiffs in *Target* argued that Target violated Title III because its website lacked certain technological features that would allow blind individuals to navigate the website.⁷⁹ In this case, however, the Northern District of California determined that limiting the ADA to prohibit discrimination only in services occurring at the physical location of a place of public accommodation would be against the plain language of Title III.⁸⁰ Specifically, the court noted that the statute addresses “services of a place of public accommodation, not services in a place of public accommodation.”⁸¹ Also, because Title III protects against actions that may impede a disabled person’s “full enjoyment” of services or goods of a place of public accommodation, the

74. *Southwest Airlines*, 227 F. Supp. 2d. at 1318 (alteration in original) (quoting 28 C.F.R. § 36.104) (internal quotation marks omitted).

75. *Id.* (citing 28 C.F.R. § 36.104).

76. *Id.* at 1319.

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

78. *Id.* at 952 (citing *Weyer*, 198 F.3d at 1114).

79. *Id.* at 949–50 (noting that the website was inaccessible to blind individuals because it did not provide data that was compatible with a screen reader, which vocalizes the content of the website for blind individuals).

80. *Id.* at 953.

81. *Id.* (noting that the presence of the word “of” extends the scope of the ADA to cover services offered outside the premises, while “in” would have limited the scope to services provided on the premises of the “place of public accommodation”).

court found that the ADA extends beyond ensuring physical access to Target's brick and mortar locations.⁸²

In addition to its textual interpretation of Title III, the court took into account the relationship between Target's website and its brick and mortar locations. The court concluded that the services complained of on Target's website were "heavily integrated" with Target's physical locations and the website effectively acted as a "gateway" to the stores.⁸³ Because the plaintiffs claimed that the defendant's website prevented disabled individuals from equal access to the enjoyment of goods and services offered in Target's physical locations, the defendant's website was within the scope of Title III.⁸⁴

c. Title III Covers Commercial Websites that Do Not Have Ties to a Physical Location

The District Court of Massachusetts recently applied the third interpretation of Title III, and held that a freestanding website may qualify as a place of public accommodation.⁸⁵ In *National Ass'n of the Deaf v. Netflix*, the plaintiff argued that the ADA applies to Netflix's video streaming website because the site fell within at least four of the categories specified in Title III: "place of exhibition and entertainment," "place of recreation," "sales or rental establishment," and "service establishment."⁸⁶ The plaintiff further contended that because Netflix's website provides a video streaming service, it is analogous to a movie theatre, video rental store, or other business that provides a similar service through a physical location.⁸⁷

In *Netflix*, the court examined the plain language of the ADA as well as its legislative history, and held that Title III applies to nonphysical structures, including websites, regardless of their ties to a brick and mortar establishment.⁸⁸ The court determined that the legislative history clearly demonstrated that Congress intended the ADA to apply to new forms of technology,⁸⁹ and that Congress did not intend to limit "places of public accommodation" to only the examples explicitly listed in Title III.⁹⁰ The

82. *Id.* at 954 (citing 42 U.S.C. § 12182(a) (2000)).

83. *Id.* at 954-55.

84. *Id.* at 956.

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

86. *Id.* at 200.

87. *Id.*

88. *Id.* at 201.

89. *Id.* ("[T]he Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times." (alteration in original) (quoting H.R. REP. NO. 101-485(II), at 108 (1990)) (internal quotation marks omitted)).

90. *Id.* ("[W]ithin each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase 'other similar' entities. The Committee intends that the 'other similar' terminology should be construed liberally consistent with the intent of the

court concluded that because the website at issue potentially fell under particular Title III categories—including “service establishment,” “place of exhibition or entertainment,” and “rental establishment”—the ADA clearly includes nonphysical entities such as the Internet.⁹¹

While a plain-language and legislative-history analysis typically drive the courts’ determination of whether Title III extends to commercial websites, they have also taken into account the significant policy concerns surrounding the ADA’s application to commercial websites.

3. Policy Concerns Underlying a Broad Application of Title III to Commercial Websites

Disability-rights activists tend to emphasize the ADA’s broad purpose, design, and traditionally extensive application in support of their contention that the Internet is a place of public accommodation under Title III.⁹² Applying Title III to commercial websites is essential to promote technological access for the disabled, which in turn offers greater societal inclusion and independence for the disabled community. Proponents of limiting Title III’s application to physical locations, however, argue that applying Title III broadly to require incorporation of accessible features on all commercial websites yields too great a cost.⁹³ In addition to the potentially massive economic ramifications, certain website providers also argue a blanket application of Title III will force them to sacrifice the variety of goods and services available through their sites.⁹⁴

a. Arguments for Extending Title III to All Commercial Websites

Increasingly, private entities are completely foregoing the traditional brick and mortar storefronts and are beginning to provide goods and services solely through websites.⁹⁵ Individuals who are unable to access these websites are put at a disadvantage in today’s society. In 2010 the DOJ issued an Advanced Notice of Proposed Rulemaking (“ANPRM”) that demonstrates how inaccessible websites prevent disabled individuals from enjoying the benefits offered through commercial websites: “On the economic front,

legislation” (alteration in original) (quoting S. REP. NO. 116, at 59 (1990)) (internal quotation marks omitted)).

91. *Id.* (The court discussed the classification of the online media provider Netflix within the categories listed under Title III of the ADA: “[T]he web site may qualify as: a ‘service establishment’ in that it provides customers with the ability to stream video programming through the internet; a ‘place of exhibition or entertainment’ in that it displays movies, television programming, and other content; and a ‘rental establishment’ in that it engages customers to pay for the rental of video programming.”).

92. *See infra* Part II.B.3.a.

93. *See infra* Part II.B.3.b.

94. Walter Olson, *Judge Green-Lights ADA Captioning Suit Against Netflix*, CATO INST. (June 25, 2012, 8:50 AM), <http://www.cato.org/blog/judge-green-lights-ada-captioning-suit-against-netflix>.

95. *See supra* note 19.

electronic commerce, or ‘e-commerce,’ often offers consumers a wider selection and lower prices than traditional, ‘brick-and-mortar’ storefronts, with the added convenience of not having to leave one’s home to obtain goods and services.”⁹⁶ Disability-rights activists believe the failure to extend Title III to commercial websites gives companies license to discriminate against the disabled, which directly contradicts the purpose of the ADA.⁹⁷

In addition to ensuring that disabled individuals have equal opportunity to enjoy the goods and services offered through commercial websites, disability-rights activists argue that applying Title III to commercial websites would ameliorate some of the challenges disabled individuals face when participating in traditional activities.⁹⁸ For example, e-commerce and online educational services both benefit individuals with mobility problems because they allow individuals to take advantage of these services without the burden of traveling.⁹⁹ Disability-rights activists argue that extending the ADA to cover websites will ensure that commercial website designers implement design strategies to improve accessibility, and turn websites into significant sources of independence for disabled individuals.

b. Arguments for Limiting Title III to Physical Locations

Despite the benefits that an accessible Internet provides the disabled community, a number of commercial website providers have argued that Title III should only apply to physical structures. The primary concern critics have raised about extending Title III to websites is the massive financial cost associated with implementing all of the technological changes necessary to comply with the accessibility requirements of the ADA.¹⁰⁰ At a congressional hearing in 2000, opponents of applying Title III to websites claimed that “millions of web pages would have to be taken down, some permanently, due to the cost of modifications.”¹⁰¹ One reason for the substantial cost of creating an accessible website by ADA standards is that the ADA adopts an expansive definition of “disability.”¹⁰² While some disabilities included in

96. ANPRM, *supra* note 21, at 43,461.

97. See *supra* notes 42–43 and accompanying text.

98. See Lazar & Jaeger, *supra* note 15.

99. See Michael Burks et al., *The Internet and People with Disabilities: Expanding Horizons or Barrier to Information and Services?*, INTERNET SOC’Y, http://www.isoc.org/inet2000/cdproceedings/5c/5c_1.htm#s2 (last visited Sept. 20, 2013).

100. See Michael Goldfarb, Comment, *Access Now, Inc. v. Southwest Airlines, Co.—Using the “Nexus” Approach to Determine Whether a Website Should Be Governed by the Americans with Disabilities Act*, 79 ST. JOHN’S L. REV. 1313, 1334–35 (2005); Patrick Maroney, Note, *The Wrong Tool for the Right Job: Are Commercial Websites Places of Public Accommodation Under the Americans with Disabilities Act of 1990?*, 2 VAND. J. ENT. L. & PRAC. 191, 203 (2000).

101. Goldfarb, *supra* note 100, at 1335; see also Maroney, *supra* note 100, at 203 (citing the Congressional testimony of a website operator who claimed he would be forced to stop archiving old web pages due to the cost of complying with the ADA).

102. See *supra* notes 45–46 and accompanying text.

this definition have little or no effect on an individual's ability to access the Internet, there are a wide range of disabilities that each pose unique challenges for Internet users.¹⁰³ Because each ADA-recognized disability presents different accessibility concerns, the number of changes required to make a website accessible by ADA standards could be significant, depending on the website's service and content.¹⁰⁴

Another economic issue facing website providers revolves around the difficulty in estimating the total cost of website design.¹⁰⁵ Unlike physical structures, websites are constantly evolving—web developers update their sites' content, incorporate new features, or redesign their sites' aesthetic to keep it contemporary.¹⁰⁶ Because websites are constantly changing, some web providers argue that the total cost of incorporating accessible features is unpredictable.¹⁰⁷ Without being able to estimate the actual costs of redesigning websites, it is difficult to select and implement efficient accessibility protocols that meet the ADA's requirements.¹⁰⁸

Website providers have also argued that the significant costs associated with a blanket application of Title III to websites will limit the number of goods or the extent of the services they are able to provide through their websites.¹⁰⁹ For example, websites offering entertainment services, such as video streaming, have maintained that the economic burden of eliminating accessibility barriers will result in a decreased variety of available content for all consumers.¹¹⁰ The additional costs of incorporating accessible technology such as closed captioning¹¹¹ and video descriptions¹¹² to online video

103. 42 U.S.C. § 12102(1)–(2) (Supp. V 2011) (noting that “disability” also includes impairments that substantially limit operation of major bodily functions, including the immune system, bowel, bladder, and reproductive functions, all of which do not affect an individual's interaction with the Internet); Web Accessibility Initiative, *Accessibility Principles: How People with Disabilities Use the Web [Draft]*, W3C, <http://www.w3.org/WAI/intro/people-use-web/principles#alternatives> (last updated Aug. 1, 2012).

104. Web Accessibility Initiative, *supra* note 103.

105. *See* Maroney, *supra* note 100, at 203.

106. *Id.* (comparing the recurring costs of maintaining a website to the, typically, one-time cost of altering a physical structure).

107. *See id.*

108. *See id.*

109. *See* Olson, *supra* note 94.

110. *See id.*

111. “Closed captioning” displays the audio portion of a program as text on the viewer's screen, in order to assist hearing impaired individuals access television programming. 47 C.F.R. § 79.4(a)(6) (2012).

112. “Video description” refers to “audio narrated descriptions of a . . . program's key visual elements.” *Id.* § 79.3(a)(3).

content could prohibit online video providers from distributing “obscure and unusual films.”¹¹³

Because neither the U.S. Supreme Court nor Congress has explicitly resolved the question of whether Title III applies to commercial websites, lower courts continue to come to conflicting decisions on the issue. However, as society has become more dependent on evolving technologies for entertainment, communication, and commerce, Congress has recognized the importance of ensuring that disabled individuals have access to the Internet and web-based devices.¹¹⁴ In an effort to alleviate some accessibility barriers disabled individuals face, and to remedy some of the effects of the uncertain application of Title III, Congress enacted the CVAA in October 2010.¹¹⁵

C. THE CVAA

Congress ratified the CVAA to update the communication laws¹¹⁶ and to ensure that people with disabilities had access to the evolving digital-communication technology and Internet-based services.¹¹⁷ The CVAA is divided into two titles: communications access (Title I) and video programming (Title II).¹¹⁸ The CVAA requires the FCC to implement regulations that ensure that providers and manufacturers of advanced communications services and video programming will make their products accessible to people with disabilities.¹¹⁹ Because communication services and video programming present a particularly significant challenge for hearing

113. Hiawatha Bray, *U.S. Judge Rules Netflix Subject to Disability Act*, BOS. GLOBE (June 22, 2012), <http://www.bostonglobe.com/business/2012/06/21/judge-websites-subject-equal-access-laws/fx03sy5Z52OsgSLsptuNHL/story.html?camp=pm>.

114. See *Summary of Twenty-First Century Communications and Video Accessibility Act of 2009*, *supra* note 29.

115. Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (codified in scattered sections of 47 U.S.C.); see also *Guide: 21st Century Communications and Video Accessibility Act (CVAA)*, FCC, <http://www.fcc.gov/guides/21st-century-communications-and-video-accessibility-act-2010> (last visited Sept. 20, 2013).

116. Prior legislation that aimed to promote the access of video programming for disabled individuals included the Television Decoder Circuitry Act of 1990 (“TDCA”) and the Telecommunications Act of 1996. Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 76 Fed. Reg. 59,963, 59,966 (proposed Sept. 28, 2011) (codified at 47 C.F.R. pts. 15 & 79 (2012)). The TDCA stated that all thirteen-inch or larger television sets that were made or sold in the United States must be compatible with closed captioning technology. *Id.* The Telecommunications Act required all television programming to have closed captioning. *Id.*

117. *Id.* (quoting S. REP. NO. 111-386, at 1 (2010)).

118. CCVA, 124 Stat. at 2751. “Video programming” is defined as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” 47 C.F.R. § 79.4(a)(1) (2012).

119. 47 U.S.C. § 613(c) (Supp. V 2011).

and visually impaired individuals, the FCC has focused its regulations on ensuring that individuals with these specific disabilities have access to the technologies covered by the CVAA.¹²⁰ However, similar to the ADA, the CVAA only requires providers of communications services and video programming to comply with the FCC regulations promoting accessibility, so long as these changes would not be “economically burdensome” for the program provider.¹²¹

1. The FCC’s Regulations on Internet Accessibility for the Hearing Impaired

The CVAA requires the FCC to facilitate deaf and hearing-impaired individuals’ access to video programming broadcast over the Internet.¹²² In an effort to fulfill this mandate, the FCC requires closed captioning for any broadcast or cable programming retransmitted on the Internet.¹²³ The FCC regulations require that the accuracy and timing of closed captioning for Internet-delivered programming to be at least commensurate with the quality of closed captioning provided for a television broadcast.¹²⁴

The FCC regulations do not cover all video content that is streamed through the Internet. Closed captioning requirements are applicable to full-length video programming but not to video clips or outtakes.¹²⁵ Furthermore, the FCC’s closed-captioning rules do not extend to programming that originally aired outside of the United States.¹²⁶ Finally, online media providers are not required to provide closed captioning for consumer-generated media.¹²⁷ However, if consumer-generated media is shown on television as part of a closed-captioned, full-length program, and this program is subsequently distributed over the Internet, the Internet

120. See 47 C.F.R. §§ 79.1–3.

121. See 47 U.S.C. § 613(d)(1) (2006).

122. *Id.* § 613(c) (Supp. V 2011).

123. 47 C.F.R. § 79.4(b).

124. *Id.* § 79.4(c)(1)(i).

125. See *id.* § 79.4(a)(2), (b). The FCC defines “full-length video programming” as “[v]ideo programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol” *Id.* § 79.4(a)(2). The FCC defines “video clips” as “[e]xcerpts of full-length video programming,” and does not impose a minimum or maximum time requirement. *Id.* § 79.4(a)(12). The FCC defines “outtakes” as “[c]ontent that is not used in an edited version of video programming shown on television.” *Id.* § 79.4(a)(13).

126. Diane Burstein, *FCC Rules Implementing the CVAA Online Captioning Requirements*, in 2 BROADBAND AND CABLE INDUSTRY LAW 2013, at 389, 393–94 (2013).

127. See 47 C.F.R. § 79.4(a)(1), (b). The CVAA defines “consumer generated media” as “content created and made available by consumers to online websites and services on the Internet, including video, audio and multimedia content.” 47 U.S.C. § 153(14) (Supp. V 2011). User-uploaded YouTube videos constitute a common example of “consumer-generated media”; the consumer is not required to provide closed captioning for his or her video content.

retransmission of the consumer-generated content must include closed captioning.¹²⁸

2. The FCC's Regulations on Internet Accessibility for the Visually Impaired

The FCC has issued regulations that are intended to improve the blind or visually impaired's access to television programming, but has not yet extended those rules to video programming retransmitted through the Internet.¹²⁹ The FCC requires television stations that are affiliated with the top four commercial broadcast television networks (ABC, CBS, Fox, and NBC) to provide video description for at least 200 hours of prime-time or children's video programming per year.¹³⁰ While the American Council for the Blind has asked the FCC to extend the video description requirement to the Internet transmission of full-length video programming that originally aired on television, the FCC did not address this proposal until June 2013.¹³¹ In June, the FCC issued a public notice seeking comments on video programming that is delivered via the Internet, which the FCC will use in its anticipated July 2014 report to Congress concerning the costs and benefits of video description of Internet programming.¹³²

3. The "Economically Burdensome" Standard and Failure to Comply with Regulations

FCC regulations allow providers or owners of video programming to petition the FCC for an exemption from the closed-captioning and video-description requirements.¹³³ Exemptions are granted on a case-by-case basis.¹³⁴ To receive an exemption from the FCC, the petitioner must show that compliance with either the closed-captioning or video-description requirements would be economically burdensome.¹³⁵ The FCC defines

128. In the Matter of Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 27 FCC Rcd. 787 (2012).

129. See 47 C.F.R. §§ 79.3(b)(2), .4(b).

130. 47 C.F.R. § 79.3(b)(1) (2012) (requiring 50 hours of video description per calendar quarter). "Prime time" is defined, roughly, as lasting "from 8 to 11 p.m. Monday through Saturday, and 7 to 11 p.m. on Sunday." *Id.* § 79.3(a)(6). "Children's programming" is defined as "[t]elevision programming directed at children 16 years of age and under." *Id.* § 79.3(a)(8).

131. FCC, DA 13-1438, MEDIA BUREAU SEEKS COMMENT ON VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON TELEVISION AND ON THE INTERNET 1-2 (2013), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0625/DA-13-1438A1.pdf.

132. *Id.* at 1-2.

133. 47 C.F.R. §§ 79.1(f)(1), .3(d)(1).

134. *Id.*

135. *Id.* § 79.3(d)(1). The current language of 47 C.F.R. section 79.1 uses the term "undue burden," but in the FCC's Report and Order dated July 19, 2012, the FCC amended section 79.1 to replace all references to "undue burden" with the term "economically burdensome." In the Matter of Interpretation of Economically Burdensome Standard, 27 FCC

“economically burdensome” as “imposing significant difficulty or expense.”¹³⁶ If media providers are unable to demonstrate that compliance with the FCC’s regulations would be economically burdensome and still fail to comply, users may file complaints against the providers through the FCC.¹³⁷

III. COMMERCIAL WEBSITES ARE A “PLACE OF PUBLIC ACCOMMODATION” UNDER TITLE III

The court’s holding in *Netflix* and the DOJ’s 2010 ANPRM both maintain that Title III extends to commercial websites providing goods or services, regardless of their ties to physical structures.¹³⁸ The District Court of Massachusetts and the DOJ address each of the main arguments critics raise against extending Title III to commercial websites: the text of Title III and the economic ramifications of a blanket application of Title III. This Part argues that an interpretation of Title III’s place of public accommodation extending Title III to commercial websites best achieves the mandates and purpose of the ADA. This Part relies on the history and text of the ADA, as well as the District Court of Massachusetts and DOJ’s analysis of Title III, as a foundation for its conclusion that commercial websites must comply with the ADA.

A. THE REASONABLE TEXTUAL ANALYSIS OF TITLE III

The plain language of Title III indicates Congress’s intention to extend the ADA’s application to nonphysical structures. First, regardless of whether a website itself is a “place” under Title III, the precise language of the statute demonstrates Congress’s intent to extend Title III to all of a business’s services.¹³⁹ The DOJ and a number of lower federal courts contend that the phrase “services of a place of public accommodation” demands that even services occurring outside a company’s brick and mortar location are

Rcd. 8831 (2012). The enumerated factors used in the “undue burden” analysis are the same factors used in the “economically burdensome” analysis—the change was simply one of nomenclature. *Id.*

136. 47 C.F.R. § 79.3(d)(2) (2013). The FCC will consider at least four factors when deciding whether the closed-captioning or video-description requirements would be economically burdensome: (1) “[t]he nature and cost of” providing the closed captions or video description; (2) “[t]he impact on the operation of the video program provider”; (3) “[t]he financial resources of the video program provider; and” (4) “[t]he type of operations of the video program provider.” *Id.* § 79.3(d)(2)(i)–(iv). In addition to these four considerations, the petitioner may also present any other factors that may be relevant to the FCC’s determination of whether these requirements are economically burdensome. *Id.* § 79.3(d)(3).

137. *Id.* §§ 79.2(c), .3(e).

138. *Nat’l Ass’n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 202 (D. Mass. 2012); ANPRM, *supra* note 21, at 43,463.

139. *See Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006) (“To limit the ADA to discrimination in the provision of services occurring on the premises of a public accommodation would contradict the plain language of the statute.”).

covered by Title III.¹⁴⁰ If the text of the statute read “at” or “in,” rather than “of,” it would seem more likely that Congress intended to limit Title III to services provided at a physical location.¹⁴¹

Second, courts that have limited the ADA to only physical structures have based this determination in part on a textual analysis of Title III and invocation of the doctrines of *ejusdem generis* and *noscitur a sociis*.¹⁴² The correct interpretative rule to apply to the ADA, however, is the absurdity doctrine,¹⁴³ which dictates that the judiciary must avoid an interpretation that would lead to an absurd or unjust result.¹⁴⁴ Limiting the ADA to physical structures effectively removes the rapidly growing number of services provided over the Internet from Title III’s scope. Given the purpose of the ADA and the fact that an increasing number of businesses operate solely over the Internet, such an interpretation would have irrational results.¹⁴⁵

B. THE “ECONOMICALLY BURDENSOME” AND “UNDUE BURDEN” LIMITATIONS

The principle argument opponents of a broad interpretation of Title III advance is that the determination that commercial websites are “places of public accommodation” will result in massive economic ramifications. These individuals argue that the costs associated with implementing a vast number of accessibility strategies to websites are unpredictable.¹⁴⁶ This argument, however, has little merit. The ADA does not require website providers to eliminate every single accessibility barrier, but only those barriers for which removal is “readily achievable.”¹⁴⁷ Because the ADA liberally defines “readily

140. Brief of the United States as Amicus Curiae in Support of Appellant at *8, *Hooks v. OKbridge, Inc.*, No. 99-50891, 2000 WL 1272847 (5th Cir. 2000) (No. 99-50891), 1999 WL 33806215 [hereinafter DOJ Brief]; see also *Rendon v. Valleycrest Prods., Ltd.*, 294 F.3d 1279, 1285 (11th Cir. 2002) (“To contend that Title III allows discriminatory screening as long as it is off site requires not only misreading the relevant statutory language, but also contradicting numerous judicial opinions that have considered comparable suits dealing with discrimination perpetrated ‘at a distance.’”); *Stoutenborough v. Nat’l Football League, Inc.*, 59 F.3d 580, 583 (6th Cir. 1995) (noting that the district court correctly held that “all of the services which the public accommodation offers” fall within the scope of Title III, not just those at the physical location).

141. See DOJ Brief, *supra* note 140, at *9.

142. See *supra* notes 70–73 and accompanying text.

143. Cf. DOJ Brief, *supra* note 140, at *9–11 (describing the district court’s restrictive interpretation of the “place of public accommodation” language as “neither practical nor supported by common sense,” “irrational,” and “arbitrary”).

144. See *United States v. Kirby*, 74 U.S. (7 Wall.) 482, 486–87 (1868) (“All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.”).

145. See DOJ Brief, *supra* note 140, at *10.

146. See *supra* notes 105–08 and accompanying text.

147. See 42 U.S.C. § 12182(b)(2)(A)(iv)–(v) (2006).

achievable” as “easily accomplishable and able to be carried out without much difficulty or expense,”¹⁴⁸ the burden to comply with the ADA’s accessibility standards would not impose unmanageable costs on a website provider. Also, the ADA only requires modifications that will neither “fundamentally alter the nature of [the] goods [or] services” provided, nor result in an “undue burden” for the website provider.¹⁴⁹ These limitations within the ADA further protect companies who cannot afford to implement extensive modifications to increase the accessibility of their websites.

C. *THE HISTORY AND PURPOSE OF THE ADA SUPPORT A BROAD INTERPRETATION OF TITLE III*

The history and background of the ADA clearly demonstrate Congress’s intent that the ADA evolve with new forms of technology.¹⁵⁰ As Americans’ social and economic lives become increasingly dependent on the Internet, the potential for exclusion of the disabled population from important aspects of mainstream American life also increases. The ADA’s goal of providing an equal opportunity for disabled individuals to enjoy goods and services available to the rest of Americans can only be achieved by extending the ADA’s definition of “place of public accommodation” to commercial websites. Extending the ADA to cover websites will ensure that commercial website providers implement website-design strategies to improve their website’s accessibility, thereby allowing disabled individuals the opportunity to take advantage of the goods and services offered through commercial websites. Limiting the reach of the statute would be in stark opposition to the purpose of the ADA, which was meant “to invoke the sweep of congressional authority . . . to address the major areas of discrimination faced day-to-day by people with disabilities.”¹⁵¹

IV. THE CVAA DOES NOT CARVE OUT AN EXCEPTION TO THE ADA

While the text and legislative history of the ADA clearly demonstrate that it applies to commercial websites, the enactment of the CVAA in 2010 caused commercial website providers to further claim that, *even if* the ADA extends to nonphysical structures, the CVAA carves out an exception to the ADA’s application to a number of websites.¹⁵² The first court to face this issue was the District Court of Massachusetts in *Netflix*.¹⁵³ The defendant pointed to four aspects of the CVAA that allegedly conflict with the ADA: (1) The CVAA’s FCC regulations make video-content owners, not distributors,

148. *Id.* § 12181(g).

149. *Id.* § 12182(b)(2)(A).

150. *See supra* Part II.A.

151. 42 U.S.C. § 12101(b)(4).

152. *Nat’l Ass’n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 203 (D. Mass. 2012).

153. *Id.* at 202.

liable for captioning; (2) the FCC regulations established a particular schedule for compliance deadlines for different programming; (3) the FCC regulations require complainants to file grievances directly with the FCC; and (4) the FCC regulations allow exemptions for captioning that would be “economically burdensome.”¹⁵⁴ Netflix maintained that website providers are not capable of complying with both the FCC and the CVAA, and under the well-established rule that when two statutes are in conflict, “the most recent and more specific congressional pronouncement will prevail over a prior, more generalized statute,” commercial website providers only need to comply with the FCC’s regulations pursuant to the CVAA—not the broader accessibility requirements the ADA imposes on a “place of public accommodation.”¹⁵⁵

The district court disagreed with the defendant, and held that the CVAA does not preclude the application of the ADA to the defendant’s website.¹⁵⁶ First, the court found that while the duties imposed by the ADA—including the compliance deadlines—differ from those imposed by the CVAA, the statutes are not in “irreconcilable conflict” and Netflix was capable of complying with both.¹⁵⁷ Second, the court determined that “[t]he existence of an administrative complaint procedure under the CVAA is entirely consistent with a private right of action under the ADA for the same wrong,” and there was no indication in the CVAA’s text or legislative history that Congress intended to eliminate private rights of action under the ADA.¹⁵⁸ Finally, the court dismissed the defendant’s allegation that the FCC’s “economically burdensome” exemption conflicts with the ADA, because the ADA requires accessibility modifications only when they do not result in an undue economic burden.¹⁵⁹ The court concluded that the CVAA is meant to supplement, not “carve out” an exception to the ADA.¹⁶⁰

The *Netflix* court’s decision that the ADA and CVAA work together to improve Internet accessibility is in line with Congress’s goal when enacting

154. *Id.* at 203–05.

155. *Id.* at 203 (quoting *Nat’l Res. Def. Council, Inc. v. U.S. EPA*, 824 F.2d 1258, 1278 (1st Cir. 1987)) (internal quotation marks omitted).

156. *Id.* at 208.

157. *Id.* at 204 (“While the schedule established by the FCC undoubtedly reflects informed decisions regarding the technological and economic difficulties of captioning, the FCC time line reflects only minimum compliance standards that apply to a diverse industry. Not all of the concerns motivating the FCC’s schedule will necessarily apply to the defendant in this particular case. If the court finds that Defendant has a duty to provide closed captioning under the ADA, it may itself consider the appropriate time line for compliance, taking into account the technological and economic burdens on Defendant, under the ADA’s ‘undue burden’ analysis after further discovery.” (citing 42 U.S.C. § 12182(b)(2)(A)(iii) (2006))).

158. *Id.* (“Congress may provide ‘separate administrative and judicial paths through which to rectify the same wrongs’ without creating an irreconcilable conflict.” (quoting *Rathbun v. Autozone, Inc.*, 361 F.3d 62, 70 (1st Cir. 2004))).

159. *Id.* at 205 (citing 42 U.S.C. § 12182(b)(2)(A)(iii)).

160. *Id.* at 208.

both pieces of legislation—to minimize the barriers facing the disabled population’s ability to participate in the activities enjoyed by the able-bodied population. Because these two Acts do not conflict, commercial website providers must comply both with the any regulations issued by the DOJ under the authority granted to it under Title III and the regulations issued by the FCC under the CVAA.

V. FEDERAL REGULATIONS ARE REQUIRED TO IMPROVE WEBSITE ACCESSIBILITY

While the DOJ has articulated its view on the application of Title III to websites, it has yet to execute federal regulations explicitly supporting this interpretation.¹⁶¹ Though the United States has traditionally promoted self-regulation of the Internet,¹⁶² the traditional system of voluntary standards and self-regulation has resulted in a number of websites discriminating against the disabled community.¹⁶³ This Part advocates for the necessity of federal regulations plainly extending the application of the ADA to online media providers. It concludes by suggesting how the DOJ and FCC could structure these regulations to minimize accessibility barriers without discouraging technological advancement.

A. THE NEED FOR FEDERAL REGULATIONS

In order to diminish the technological-accessibility barriers the disabled face and to assure the correct application of Title III to the Internet, the DOJ must promulgate regulations explicitly extending Title III to cover commercial websites and issue specific accessibility requirements for these sites. Alternatively, the FCC could achieve a similar result under the CVAA by expanding its regulations of communications access and video programming. These regulations should attempt to maximize disabled individuals’ access to commercial websites without discouraging technological advancement or imposing an undue burden on website providers.¹⁶⁴

Fixed accessibility standards will better motivate commercial website providers to commit to a complete technological overhaul of their sites.¹⁶⁵ While some commercial website providers have voluntarily incorporated technological strategies to improve disabled people’s access to their website, others are unwilling to invest in alterations that may not conform to future

161. See Vu, *supra* note 62.

162. ANPRM, *supra* note 21, at 43,463; see also Bick, *supra* note 53, at 214 (“The potential application of the ADA to the Internet may be among the first significant applications of government regulation of the Internet.”).

163. Cf. ANPRM, *supra* note 21, at 43,463.

164. *Id.* at 43,464.

165. See Vu, *supra* note 62.

technical requirements, out of fear of additional costs as soon as definitive legal standards are set.¹⁶⁶

While the DOJ has yet to create accessibility requirements for commercial websites, the FCC, under the CVAA, has begun to issue regulations to ensure that people with disabilities have access to certain Internet-based services.¹⁶⁷ While these regulations have updated the prior communications laws, the FCC has not gone nearly far enough in solving the accessibility problems faced by the disabled community. The FCC regulations that call for closed captioning of television programming rebroadcast over the Internet are limited to full-length video programming.¹⁶⁸ This limitation is problematic because it significantly hinders disabled individuals' ability to access news segments originally broadcast on television and subsequently streamed over the Internet via video clips. As for the regulations regarding video descriptions, the FCC does not impose any requirement that programming originally shown on television with video descriptions must also have video descriptions when retransmitted over the Internet.¹⁶⁹ Failing to require video descriptions for this type of programming prevents visually impaired viewers from accessing the content. Because the "economically burdensome" limitation imposed by the CVAA ensures that the duty imposed on online media providers is not excessive, the FCC can fairly expand its regulations to require closed captioning of video clips and video descriptions for programming streamed over the Internet, and must do so to ensure the disabled community's access to this content.

B. TECHNICAL ACCESSIBILITY STANDARDS FOR WEBSITES THAT FALL UNDER TITLE III

Under the ADA's grant of authority to the DOJ to issue regulations, the DOJ should explicitly extend Title III to websites and impose uniform technical accessibility standards on all sites that fall under Title III's definition of a "place of public accommodation."¹⁷⁰ Both the U.S. Access Board and the World Wide Web Consortium ("W3C")—the leading international standards setting organization for the World Wide Web—have already developed a set of accessibility standards that the DOJ could impose

166. *See id.*

167. *See supra* Part II.C.

168. *See supra* Part II.C.1.

169. *See supra* Part II.C.2.

170. ANPRM, *supra* note 21, at 43,465 ("Although some litigants have asserted that 'the Internet' itself should be considered a place of public accommodation, the Department does not address this issue here. The Department believes that Title III reaches the [websites] of entities that provide goods or services that fall within the 12 categories of 'public accommodations,' as defined by the statute and regulations. Because the Department is focused on the goods and services of public accommodations that operate exclusively or through some type of presence on the Web—whether hosting their own [website] or participating in a host's [website]—the Department wishes to make clear the limited scope of its regulations.").

on commercial websites. The U.S. Access board issued the Electronic and Information Technology Accessibility Standards,¹⁷¹ which are currently imposed only on federal government agency websites through section 508 of the Rehabilitation Act of 1973.¹⁷² Alternatively, the DOJ could model their technical standards for commercial websites after the W3C's guidelines.¹⁷³ Many businesses have already adopted the standards outlined by the W3C, and the DOJ has indicated that it is considering implementing these standards.¹⁷⁴

The W3C's comprehensive set of accessibility guidelines for Web developers outline three separate levels of conformance, which indicate a measure of accessibility and feasibility.¹⁷⁵ The DOJ could require different websites to comply with one of the three different conformance levels, depending on the size of the company, its resources, and the nature of its services. The W3C structured its guidelines around four principles of accessibility, contending that, in order to be accessible, Web content must be: "perceivable," "operable," "understandable," and "robust."¹⁷⁶ Using these basic accessibility principles, the W3C has outlined a number of techniques that could vastly improve webpage accessibility for individuals with a wide range of disabilities.¹⁷⁷ While the challenges of making a website accessible principally depend on the content and complexity of the site, these guidelines attempt to demonstrate that website designers can implement simple changes to significantly improve website accessibility.¹⁷⁸ Using either the Electronic and Information Technology Accessibility Standards or the

171. 36 C.F.R. pt. 1194 (2013).

172. See ANPRM, *supra* note 21, at 43,465.

173. WCAG 2.0, *supra* note 3.

174. ANPRM, *supra* note 21, at 43,465.

175. *Id.* ("Level A, which is the minimum level of conformance for access, contains criteria that provide basic Web accessibility and that are the most feasible for Web content developers. Level AA, which is the intermediate level for access, contains enhanced criteria that provide more comprehensive Web accessibility and yet are still feasible for Web content developers. Level AAA, which is the maximum level of access, contains criteria that may be less feasible for Web content developers.")

176. WCAG 2.0, *supra* note 3. W3C defines these qualities as follows: "Perceivable - Information and user interface components must be presentable to users in ways they can perceive." This means that users must be able to perceive the information being presented (it cannot be invisible to all of their senses). "Operable - User interface components and navigation must be operable." This means that users must be able to operate the interface (the interface cannot require interaction that a user cannot perform). "Understandable - Information and the operation of user interface must be understandable." This means that users must be able to understand the information as well as the operation of the user interface (the content or operation cannot be beyond their understanding). "Robust - Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies." This means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible). *Id.*

177. See *id.*

178. See *id.*

W3C's standards as a model, the DOJ could easily implement uniform technical standards to regulate the accessibility of privately-owned commercial websites.

VI. CONCLUSION

Prior to the disability-rights movement, Americans with disabilities were isolated from the rest of society by being hidden within their family homes or placed in institutions. The disability-rights movement and the ADA specifically aimed at eliminating the stigma and social barriers facing disabled individuals by ensuring their ability to participate in all aspects of mainstream American life. However, now that the Internet has evolved to play a central role in the daily lives of the majority of Americans, the problem of Internet accessibility is causing the disabled community to once again become shut out from the experiences and opportunities enjoyed by the rest of the population.

The problem of web accessibility deprives millions of disabled Americans of the full enjoyment of goods and services that are offered solely via commercial websites. The legislative history and stated purpose of the ADA clearly demonstrate that Title III extends beyond physical structures and into the realm of the Internet. However, without federal regulations explicitly stating that websites are within the scope of Title III, courts may continue to apply a narrow interpretation of "place of public accommodation." These regulations must also impose on online media providers a set of uniform technical standards that minimize accessibility barriers without discouraging technological advancement.