

Towards a Right under the ADA to Web Access for People with Cognitive Disabilities

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Preface

The Coleman Institute for Cognitive Disabilities is pleased to present the first working paper resulting from a dialogue that began at the Institute's tenth annual conference on October 21, 2010. At that conference, the keynote speaker was Thomas K. Gilhool, JD, former Chief Counsel, Public Interest Law Center of Philadelphia and former Secretary of Education, Commonwealth of Pennsylvania. He is often referred to as the legal champion who argued the seminal case in 1971 that established the right to a public education for children with intellectual disabilities. That case is also credited with promoting the underpinning of the Individuals with Disabilities Education Act (IDEA). Gilhool's talk was entitled "Forty Years After Pennsylvania Association of Retarded Children [PARC] v. The Commonwealth of Pennsylvania: Is There a Right To Technology Access?"

At that same conference, Peter Blanck, PhD, JD, University Professor and Chairman, Burton Blatt Institute, Syracuse University, was part of a distinguished panel discussion entitled: "Implications of Cloud Computing for People with Cognitive Disabilities." The Institute had hosted a pre-conference workshop on the topic, co-sponsored by the

Administration on Developmental Disabilities and the University of Colorado, School of Law, at which Dr. Blanck had made a presentation as well.

Following the 2010 conference, the Coleman Institute engaged Professor Blanck and the Burton Blatt Institute (BBI) to carry on exploratory legal and related research to illuminate discourse and provide insight into the question: "Is there a right to technology access for people with intellectual/developmental disabilities?" We suggested that this question may be proposed, for example, in the context of the pervasive use of the World Wide Web as an educational tool, a source of information, a vehicle of commerce, a therapeutic and recreational tool, and a means for social interaction. Based on the expertise brought to bear on the topic by Dr. Blanck, one important focus for this project includes addressing the implications of legal precedents regarding the rights to integrated education, employment and habilitation as they inform future law, policy and practice regarding inclusive technology and equal web access for individuals with intellectual and developmental disabilities..

The following working paper is the first in a continuing collaboration between The Coleman Institute and Professor Blanck / Burton Blatt Institute (BBI). The work is to be completed in 2012 and will be discussed at the Coleman Institute's 2012 Annual Conference on Cognitive Disability and Technology, where Dr. Blanck will provide an update on establishing the right to technology and equal web access for people with cognitive disabilities. The ongoing program of research, jointly supported by the Coleman Institute for Cognitive Disabilities and the Burton Blatt Institute, is intended to be disseminated widely in subsequent publications and at meetings with a range of stakeholders, including persons with cognitive disabilities, their families and advocates, researchers, policymakers, and technology experts.

Executive Summary

This working paper, commissioned by the Coleman Institute for Cognitive Disabilities at the University of Colorado, begins to articulate a right under the Americans with Disabilities Act (ADA) to web access for people with cognitive disabilities. I frame this paper around three generations of high impact legal efforts, from the past, in the present, and I believe to come in the future, regarding pursuit of the right to web access in the U.S. under the ADA and related federal and state laws.

The first generation of cases was anchored by *National Federation of the Blind v. Target Stores*, which involved the right to web access for persons with visual impairments. A second generation of legal challenge is reflected now in *Greater Los Angeles Association for the Deaf (GLAD) v. Time Warner, CNN and National Association of the Deaf (NAD) v. Netflix*, which involve the right to web access for people with hearing impairments. The third generation of systemic cases to come will involve the right to equal web access for people with cognitive disabilities.

The metrics to measure the ADA's impact are set out in the law itself; for people with disabilities, the ADA is to ensure the right to equal opportunity, full participation, independent living, and economic self-sufficiency. This paper focuses on application of these metrics to people with cognitive disabilities in one crucial means to achieve equal access to society; that is, via services provided on the World Wide Web ("web") through the Internet. I focus on the issue of nondiscrimination in web services by public accommodations (commercial entities) under ADA Title III. To date, the right to web access under Title III has been pursued in the courts in individual and class action litigation by those with visual and hearing impairments, and with learning disabilities.

My starting point, given the ubiquitous nature of the web, is that separate access to web information and service, including the ease of using information, is inherently unequal for people with cognitive disabilities who seek such services. This is because web accessibility is essential to meet the integration mandate of the ADA.

Broadly defined, cognitive disabilities comprise the largest subgroup of persons with disabilities covered by the ADA. The term cognitive disability includes people with conditions such as autism, intellectual and developmental disabilities, traumatic brain

injury (TBI), Post-Traumatic Stress Disorder (PTSD), Alzheimer's disease, and reading and learning disorders. These conditions often coexist with other sensory and physical or dexterity impairments, with mental health conditions such as depression, and have a great diversity of causes and severity. The manifestation of cognitive disability also is often affected separately or in combination by individual characteristics, environmental demands, and social circumstances.

The paper addresses questions such as: What is equal web access for people with disabilities in general, and for people with particular cognitive disabilities? How is access defined for people across the spectrum of cognitive disabilities, and across websites as well as within the pages and services of websites? May Title III require modifications to a website so that it is accessible, but which also result in reasonable modification of the service navigation and content presentation? How is web content defined, for instance in terms of navigational and substantive information, for purposes of equal web access for persons with cognitive disabilities?

These complex issues, and others, are analyzed in regard to a third generation of web access cases; specifically, articulating a right to reasonably equal access, usability (sometimes called "ease of use"), and comprehensibility (e.g., understandability and use of plain language) of web services for people with cognitive disabilities. The issues are discussed in light of emerging U.S. federal and state case law, law and policy developments such as those related to the Twenty-First Century Communications and Video Accessibility Act (arguably the most important communications antidiscrimination law since passage of the ADA), the proposed U.S. Department of Justice regulations for nondiscrimination in web access under the ADA, as well as in light of international

disability nondiscrimination efforts reflected in the United Nations Convention on the Rights of Persons with Disabilities.

I conclude that law and policy, and technology alone will not ensure equal access to the web for persons with cognitive disabilities. This is because of the myriad of issues associated with cognitive disability, not the least of which involves attitudinal stigma. Encouragingly, however, organizations increasingly appreciate that web access means good business and increased revenue. Equal web access also is seen as a key to the implementation of the U.S. Supreme Court's *Olmstead* integration mandate; for instance, supporting the move from institutions to community living, from special classes to mainstream education, and from segregated workshops to integrated job settings.

Additionally, advances in Cloud Computing may further enhance equal web access for people with cognitive disabilities. The Coleman Institute for Cognitive Disabilities at the University of Colorado is leading a national dialogue about cognitive disability and the implications of the Cloud, which has been furthered at the Institute's pre-conference and conference events over the past several years. Leaders such as William T. (Bill) Coleman III, an expert in Cloud technology development and trends, and accessibility leaders such as professors Clayton Lewis (Colorado) and Gregg Vanderheiden (Wisconsin) have brought special expertise to the on-going conversation. They and many others are examining the complexity and impact of the Cloud and web access, with the goal of assuring that people with cognitive disabilities are considered in hardware and software design, regulation, and accessible content.

Related and emerging issues of web security, privacy, and copyright will emerge. I conclude these matters will be addressed in Cloud platforms that allow individuals to

securely customize and leverage the web in ways that make economic sense for companies and service providers. In raising more questions than answered, I hope this paper will contribute to new dialogue on the right to equal web access for persons with cognitive disabilities, and for us all.

Peter Blanck, PhD, JD

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www.colemaninstitute.org .

For information on Dr. Blanck and the Burton Blatt Institute, visit:

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For information on the Global Universal Design Commission, visit:

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