Statement of Professor Peter David Blanck

Before the U.S. House of Representatives
Subcommittee on The Constitution

Wednesday, February 9, 2000

Summary Page

Mr. Chairman, members of the Committee, my name is Peter Blanck. I am a professor of law, of occupational medicine, and of psychology at the University of Iowa, and the director of the Law, Health Policy, and Disability Center at the University of Iowa College of Law. The first part of my testimony is focused on the application of the ADA’s accessibility requirements to public accommodations – a limited category of private Internet web sites and services. Title III requires covered entities to provide effective communication to individuals with sensory impairments through auxiliary or assistive aids and to make reasonable modifications to their policies and procedures, unless doing so would result in an undue burden. The second part highlights ongoing research that suggests that increased accessibility to private Internet web sites and services may have yet undiscovered benefits to society. Additional dialogue and research are needed on issues regarding the applicability of ADA accessibility requirements to private

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Internet web sites and services, not only for people with disabilities, but for all individuals.

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I. Introduction

Mr. Chairman, members of the Committee, my name is Peter Blanck. I am a professor of law, of occupational medicine, and of psychology at the University of Iowa, and the director of the Law, Health Policy, and Disability Center at the University of Iowa College of Law. I have written articles and books on the Americans with Disabilities Act (ADA) and have studied and taught courses on the law’s implementation. I have an immediate family member with dyslexia who is challenged every day to read web-based and printed information.

The first part of my testimony is on the application of the ADA’s accessibility requirements to public accommodations – a limited category of private Internet web sites and

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[3] Ph.D. in psychology from Harvard University, J.D. from Stanford Law School; member of the President’s Committee on the Employment of People with Disabilities; former senior fellow of the Annenberg Washington Program; former Commissioner on the American Bar Association Commission on Mental and Physical Disability Law.

services. The second part highlights ongoing research suggesting that accessibility to private Internet web sites and services may have yet untapped and far-reaching benefits to society.

II. ADA Title III

The ADA is a comprehensive law designed to promote the equal participation in society of persons with disabilities. A major goal of the ADA is to remove architectural and communication barriers encountered by people with disabilities. Congress was careful in drafting the ADA to balance the needs of people with disabilities and the legitimate concerns of businesses.

Among its areas of coverage, ADA title III applies to a limited category of entities called “public accommodations.” A “public accommodation” under title III generally is any private (non-governmental) entity, regardless of size, which offers goods and services to the public.5 Print and broadcast media, manufacturers, wholesalers, and utility companies generally are not considered to be public accommodations.

Public accommodations must provide people with disabilities opportunities to enjoy their goods and services that are equal compared to the opportunities provided to others without disabilities. Title III requires that covered entities provide effective communication to individuals with sensory impairments through auxiliary or assistive aids (e.g, sign-language interpreters, assistive listening devices, Braille or audiocassette) and to make reasonable

5 “Places of public accommodation” include service establishments and places of exhibition or entertainment. 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104. Religious entities and certain private clubs are exempt from title III.

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modifications to their policies and procedures, unless doing so would result in an undue burden.  

Web-based activities of public accommodations that have an online presence (e.g., certain travel agents and retail stores) may be subject to title III provisions.  Similarly, exclusively web-based service industries (e.g., e-commerce retail companies) may be considered title III covered entities offering goods and services to the public.

As an alternative to providing full accessibility through the Internet, title III covered entities may offer their services in other effective accessible formats. This is warranted unless doing so would result in a fundamental alteration to the program or service (e.g., fundamentally change the content of the web site) or result in an undue burden.

In addition, title III covers only conduct affecting commerce that is directed at the public. Although the Internet provides opportunities for people to communicate with each other, not all are intended for the public. This distinction cannot be made solely upon whether there is a profit motive because included among title III public accommodations are entities that affect commerce

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6 28 C.F.R. § 36.303.

7 For instance, a traditional bookstore is covered as a public accommodation under title III, while newspapers, magazines, and television and radio broadcasters are not.


9 The ADA accessibility requirements do not require content-based alterations to covered private Internet sites and services.

10 28 C.F.R. § 36.303 (several factors are considered in determining an undue burden, including the nature and cost of the proposed action and the extent to which the action would fundamentally alter the nature of the goods or services provided).
without a profit motive, such as some libraries and museums.

Finally, and most critically, because Title III would not require changes to the subject matter or content of web sites and services but only to the manner by which information is presented, First Amendment concerns do not apply.

III. Exploratory Research About Accessible Technologies and the ADA

My colleagues and I have attempted to identify emerging issues related to accessibility and ADA implementation. First, research suggests that cost-effective, economically beneficial, and fair implementation of the ADA itself is furthered by providing information in accessible formats to persons with disabilities.\(^\text{11}\)

Second, my colleagues and I have conducted a review of economic activity in the assistive technology market (e.g., using data derived from the United States Patent and Trademark Office).\(^\text{12}\) The preliminary findings illustrate, but do not yet prove, that the ADA fosters future technological innovation and economic activity in the private Internet-based service industry, in many ways unanticipated at the time that the law was passed. As e-commerce markets and initiatives for goods and services expand, inventors, manufacturers, retailers, and employers are responding to meet the needs of consumers with disabilities, those

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who may become disabled in the future, and the elderly. The untapped accessible web-based “e-commerce” marketplace holds vast profit-making opportunities.\(^{13}\)

Other vital precepts include that: (1) web-based accessibility effectively may be integrated, and not added on, into workplaces;\(^ {14}\) (2) web-based accessibility is beginning to make education, school-to-work transitional programs, and gifted and talented educational programs more inclusive through individualized curricula and training innovations; (3) web-based accessibility in medicine is bringing doctors to geographically isolated people; and (4) web-based distance learning and counseling programs are helping to reduce chronic unemployment and isolation among people with disabilities.\(^ {15}\)

IV. Conclusion

Additional dialogue and research are needed on issues regarding the fair and reasonable application of the ADA to private Internet services and sites, not only for people with disabilities, but for all underrepresented individuals in society—the poor and isolated, and the vulnerable. A profound question requiring study underlies these precepts: Will the Internet help people with disabilities and other underrepresented people to participate equally in our society? Or will it further isolate them from the mainstream?

\(^{13}\) A tax credit is available to small businesses to offset expenses incurred in complying with the ADA and may be available for web site accessibility improvements.


\(^{15}\) This last point is relevant in light of recent laws such as the Ticket to Work and Work Incentives Improvement Act of 1999.
Thank you for the opportunity to appear before this Committee.