

Media, Entertainment, and First Amendment Newsletter, November 2018

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Must Websites Comply With the ADA?

Website ADA compliance litigation is all the rage, manifesting itself as an epidemic of “website drive-by lawsuits.” Beyond the litigation controversy, the issue is whether websites must be accessible to the visually-impaired via screen reader software to comply with the ADA. Circuit Courts are split.

Title III of the ADA requires that [n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

The statute defines “public accommodation” through a laundry list of 12 characterizations whose common denominator is that they are all physical places that must affect commerce, i.e., hotels, restaurants, retail stores, schools, stadiums, theaters, just to name a few. When the ADA became law in 1990, the public conscience largely associated disabled Americans with individuals with mobility issues, hence the installation of reserved parking spaces and wheelchair-friendly access ramps. Fast-forward a few years and one of the hot-topic issue has become the visually-impaired’s ability to access Internet. The substantive legal question whittles down to whether a website is a “place of public accommodation” under 42 U.S.C. § 12181(7), an expression that the statute leaves undefined.

To read the full article, click [here](#).

Music Modernization Act Brings Mechanical Licensing into 21st Century

The widespread availability of fast and reliable broadband Internet access has had a profound impact on the recorded music industry, necessitating a fundamental reevaluation of how copyright law compensates songwriters and musicians in digital age. Once the industry’s primary source of revenue, physical sales of music (through CDs, vinyl records, and cassettes) plummeted with the advent of digital music downloads and online streaming services. In the span of just a few years, revenue from music streaming services has grown exponentially, now easily surpassing revenue from physical sales. In the first half of 2018 alone, streaming services accounted for \$3.4 billion dollars in revenue, a figure that represents approximately 75 percent of all industry revenue during that six-month period.

Copyright law has been slow to adapt to the rapidly changing economic realities of music consumption in the Internet age. Mechanical licensing, which governs the right to reproduce and distribute copyrighted musical works through physical formats, digital downloads, and interactive streaming, is, at its core, an antiquated system. In fact, these licenses were originally established to provide copyright owners the ability to control the distribution of player piano rolls at a time when sound recordings were themselves cutting-edge technology (and nearly a century before the advent of digital streaming). This licensing regime had not been significantly overhauled since its inception in 1909; the result was an outdated system that was ill-suited to govern royalty payments for Internet streaming and unable to equitably and efficiently distribute royalties in the current digital marketplace.

To read the full article, click [here](#).