The Application of Title III of the ADA to Sport Web Sites

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INTRODUCTION

Since passage of the Americans with Disabilities Act in 1990 (42 U.S.C. §12101 et seq.), people with disabilities have experienced greater physical accessibility in sport and recreation facilities and have witnessed "fundamental changes in public attitude" (Bick, 2000, p. 206). Furthering the purpose of the ADA to eliminate discrimination, these critical changes have allowed individuals with disabilities to become part of the mainstream of society with regard to employment, housing, and entertainment options (42 U.S.C. §12101(b)).

At the same time, the Internet has experienced rapid expansion, growing faster than all other forms of electronic technology and all other mediums of communication (Berthon, Pitt, & Watson, 1996). It is estimated that 47 million American adults access the World Wide Web at least once every three months making the Web the newest form of mass media in the United States (Brown, 2003). Using the Internet has become a prominent way that Americans access news, shop, and transact business.

With the expansion of the Internet, however, there has not been an expansion in the accessibility of Internet web sites so that people with disabilities can access informational content provided on the World Wide Web. The fact that many Internet sites are not accessible to people with disabilities has resulted in a "digital divide" (Yu, 2002, p. 406). Expanding the scope of the ADA to apply to Internet web sites is premised on the idea that if a public accommodation is providing services or information about its services to the public through its web site, the service provider has a legal duty to provide similar services in a format that is accessible to computer users with disabilities (Patrick, 1996). However, despite a policy ruling issued by the

U.S. Department of Justice (1996) suggesting that the ADA accessibility requirements apply to the Internet, many companies have failed to implement changes to make their web sites accessible to users with disabilities. This is problematic because if a web site is not accessible to users with disabilities, significant populations will be locked out as the World Wide Web rapidly advances from a text-based format to a more technologically advanced graphical format (Waddell, 1997).

This paper will explore the application of the Americans with Disabilities Act to Internet web sites, with emphasis on the implications of recent court decisions on the sport industry. Court decisions adopting both the broad and narrow interpretations of "public accommodation" will be analyzed along with recent interpretations to assess the current state of the law regarding Web accessibility. Given that the disability community makes up nearly one-fifth of the American population with over $220 billion in collective spending power (National Organization on Disability, 2002), from a marketing and finance perspective, a sport property's decision to make a web site accessible has the potential to be a financially lucrative means to attract a largely untapped market. However, from a legal standpoint, while the issue of whether a sport organization is required to design their web site in an accessible format in order to comply with the ADA is still being debated among the circuits, a sport property's failure to make its web site accessible could result in potential liability for violation of the ADA as future courts interpret Title III (42 U.S.C. §12182).

BACKGROUND OF THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (42 U.S.C. §12101 et seq.) was enacted to provide a national mandate to eliminate discrimination faced by individuals with disabilities on a day-to-day basis (42 U.S.C. §12101(b)). To seek protection under the ADA, a person must have a disability, defined "a physical or mental impairment that substantially limits one or more of an individual's major life activities" (42 U.S.C. §12102(1)(A)). The ADA prohibits discrimination in employment, public services, and places of public accommodations operated by private entities (Wong, 2002).

Title II and Title III of the ADA are most applicable to sport properties (42 U.S.C. §12101 et seq.). Title II mandates that public entities give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (42 U.S.C.§12132). Title III of the ADA provides protection for individuals with disabilities seeking access to places of public accommodation (42 U.S.C. §1282). Title III outlaws both intentional discrimination as well as

practices that have a disparate impact upon persons with disabilities (*Parr v. L & L Drive-Inn Restaurant*, 2000). The focus of the discussion in this paper will be on Title III of the ADA because sport properties, including professional teams, are becoming increasingly cognizant of the need to comply with the Americans with Disabilities Act in order to avoid potential litigation.

THE SPORT INDUSTRY'S USE OF THE WEB

In an effort to reach out to untapped fan bases or strengthen relationships with existing fans, sport properties have often looked to evolving technology as a way get their message out. Branded as "the greatest marketing and selling tool ever invented" (Griffin, 1996, p. 50), the sport industry has primarily utilized the Web in order to provide information about a specific team, league, or product, as well as to generate awareness for the organization (Brown, 2003). Ironically, the use of the Web by the sport industry was spurred by the fans. Before the evolution of the World Wide Web as we know it today, sport fans used chat rooms and message boards to place information on the Internet about their favorite teams (Brown). Professional teams and leagues then began to create web sites in order to inform their stakeholders about web-based media (Brown).

Since the National Football League (NFL) launched its first web site in 1995 (Jensen, 1995), the number of sport properties using the Web has grown exponentially. There has also been an expansion in content offered and infusion of technological innovations on team and league web sites. Sport web pages contain on-line chats, real-time audio broadcasts, audio and video clips of sporting events and team news, guides to televised games, as well as virtual team stores where fans can purchase merchandise or game tickets electronically (Noack, 1996). However, according to McClung, Hardin, & Mondello (2003), despite the progress made in utilizing this new communication and sales medium, sport properties have not yet maximized the full potential of their team web sites as marketing and revenue generation tools. For example, most professional teams are just beginning to set up ticket swapping web sites where season ticket holders can post tickets for re-purchase, where the team typically collects a fee from both buyer and seller.

THE NEED FOR ACCESSIBLE WEB SITES

As sport consumers have become increasingly tech-savvy, sport properties have adjusted their marketing strategies to meet their customer's online needs for team information. This same desire and need is present for customers with disabilities. There is a need to make sport web sites accessible to customers

with disabilities because a web site is viewed by consumers as more time efficient than communicating with team personnel in other ways, particularly in obtaining information that does not require any personal interaction with the team staff, such as game dates or times or learning about special promotions (Murphy, Forrest, Wotrig & Brymer, 1996).

Web accessibility refers to the design of a web page that follows "Universal Design" requirements so that all users can access the information on the page (Waddell, 1997). "Universal Design" includes information systems that are flexible enough to "accommodate the needs of the broadest range of users of computers and telecommunications equipment, regardless of age or disability" (Brummel, 1994, p. 1). Cynthia Waddell, in a presentation before the American Bar Association national conference on disability law and policy, noted that there are "significant legal and practical reasons for ensuring web accessibility" (Waddell, 1997, p. 1). An accessible web site provides access to users without advanced technology and enables "CD technology and videotapes to be archived with word search capabilities due to text captioning" (Waddell, p. 1).

A web site that is designed in an accessible format has features that can assist users with a ride range of disabilities. Users with cognitive, learning, or developmental disabilities would likely benefit from screen readers with speech synthesis as well as design of web pages with consistent layouts and color schemes as well as navigation buttons with clear meanings (Smith, n.d.). Users with hearing impairments rely upon text and graphics for information so a web page that utilizes audio clips should provide transcripts for the user. Users with motor disabilities may have difficulty using a mouse or holding down multiple keys simultaneously, while others may need special adaptive software. In designing a web page with these needs in mind, the web page should contain links and hot images that are large enough for users to click on. If the web site requires the user to submit forms, often requiring the use of a mouse to complete, the web page should be designed so that there is an alternate means for submitting the form. Web users with visual impairments may use screen readers with voice synthesizers or Braille output. For these users, tables and columns on the web page may be problematic because users who are blind cannot see the images or use mouse-driven forms (Smith).

The National Center on Accessibility web site, found at *http://www.ncaonline.org/accessweb.shtml*, is a good example of a web site that is designed with the needs of users with disabilities in mind (National Center on Accessibility, n.d.). Some of the features offered on the site include "tab indexes" on each link so that users are able to navigate by using the "tab" key, descriptive alternate text on all of the images and graphical content,

synchronized captioning, video captioning, and font size controls (National Center on Accessibility).

WHAT DOES THE ADA REQUIRE?

Entities covered by the ADA are required to provide "reasonable accommodations" in the form of auxiliary aids and services where necessary to ensure "effective communication" with individuals with disabilities, unless this would fundamentally alter the program or service or result in an undue burden (28 C.F.R. §§36.303 & 35.160). This means that when a private entity or place of public accommodation communicates to customers about their programs, goods or services, they must also be able to "effectively communicate" in a similar manner with customers with disabilities. The U.S. Department of Education Office of Civil Rights further clarified three basic components of "effective communication:" "timeliness of delivery, accuracy of the translation, and provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability." (U.S. Department of Education, 1997, p. 1). Therefore, as more businesses increasingly rely on the Internet to sell goods and services, the ability to reach customers with disabilities through an accessible web site becomes even more critical.

The sport industry communicates with their customers and fans using multiple media sources, including television, radio, print advertising, as well as the team web site. The ADA's requirement of "effective communication" means that when a sport property chooses a specific media source to reach out to fans, such as the team web site, the team must ensure that they are communicating in a similar manner with able-bodied customers and customers with disabilities, given the three components discussed above.

DOES TITLE III REQUIRE A PHYSICAL STRUCTURE?

While there is clearly a need for Web accessibility, many businesses are unclear whether the ADA requires them to design their web site in an accessible format in order to comply with the law. While the language of Title III defines "public accommodation" as "a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the twelve enumerated categories." (28 C.F.R. §36.104) and the Department of Justice has implemented regulations clarifying Title III, courts are still conflicted about its meaning (Stowe, 2000, p. 298). "Rather than elucidating the meaning of Title III of the ADA, court decisions have heaped ambiguity upon ambiguity through inconsistent use of Title III's terms" (Stowe, p. 300).

Courts have been asked to consider whether "public accommodation" is limited to physical "facilities," defined 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" (28 C.F.R. §36.104), or whether Title III can be applied to other situations, including Internet web sites (*Access Now v. Southwest Airlines*, 2002). Courts in various circuits have weighed in on this issue, which has resulted in a conflict among the circuits. Some courts have interpreted Title III broadly to not require a physical structure (*Carparts Distribution Ctr., Inc. et al. v. Automotive Wholesalers Ass'n of New England, Inc. et al.*, 1994, p. 21-22) while others have taken a narrow view where a physical structure is needed for Title III to apply (*Parker v. Metropolitan Life Ins. Co.*, 1997, p. 1011). These conflicting decisions will be analyzed along with recent cases that have shed further light on this issue

THE BROAD VIEW IN *CARPARTS*

The decision in *Carparts Distribution Ctr., Inc. et al.*, (1994) provides a useful analysis to support the broad interpretation of the scope of Title III's public accommodation requirement. The suit centered around Ronald Senter, an employee of Carparts Distribution Center who had AIDS. Carparts had been a participant in the Automotive Wholesalers Association of New England Health Benefit Plan. The plan was changed to limit benefits for AIDS-related illnesses. The plaintiffs claimed this change represented illegal discrimination on the basis of a disability in violation of the Title I and Title III of ADA (42 U.S.C. § 12101, et seq.). In dismissing all of the plaintiffs' claims, including the Title III complaint, the District Court interpreted public accommodation as limited to an actual physical structure with definite physical boundaries where a person physically enters in order to utilizing the facilities or obtain services (*Carparts Distribution Ctr., Inc. et al.* 1993).

The district court held that the term "public accommodation was "limited to actual physical structures with definite physical boundaries which a person physically enters for the purpose of utilizing the facilities or obtaining services therein." (*Carparts Distribution Ctr., Inc. et al.*, 1993, p. 585). On appeal, the plaintiffs asserted the district court erred in concluding Title III did not apply to the benefits provider because the provider was not a place of public accommodation (*Carparts Distribution Ctr, Inc. et al.*, 1994).

The issue before the First Circuit Court of Appeals was "whether establishments of 'public accommodation' are limited to actual physical structures" (*Carparts Distribution Ctr., Inc. et al.*, 1994, p. 19). Noting that it

was a question of first impression, the court of appeals first considered the language in Title III defining "public accommodation." The relevant provision provided a list of private entities, including a travel service, an insurance office, and other service establishments that are considered public accommodations, if the operations of such entities affect commerce (42 U.S.C. §12181(7)(f)). Using the plain meaning of the terms, the court found that public accommodations are not required "to have physical structures for persons to enter" (*Carparts Distribution Ctr., Inc. et al.*, p. 21). The court further noted that "even if the meaning of 'public accommodation' is not plain, it is, at worst, ambiguous" when considered together with agency regulations and public policy concerns which led to the conclusion "that the phrase is not limited to actual physical structures" (p. 21-22).

In determining Congressional intent, the Court found that because travel service was included among the list of services deemed public accommodations, "Congress clearly contemplated that 'service establishments' include providers of services which do not require a person to physically enter an actual physical structure" (*Carparts Distribution Ctr., Inc. et al.*, 1994, p. 22). The court also noted that many travel services transactions are conducted by telephone or mail without requiring customers to enter a physical office to conduct business (*Carparts Distribution Ctr., Inc. et al.*, p. 22). Given this phenomenon, "it would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result." (p. 22-23).

Further, when examining the legislative history of the ADA, "in drafting Title III, Congress intended that people with disabilities have equal access to the array of goods and services offered by private establishments and made available to those who do not have disabilities" (*Carparts Distribution Ctr., Inc. et al.*, 1994, p. 23). Upon further analysis, the court noted that one "could easily come away with the impression that it is primarily concerned with access in the sense of either physical access to a place of public accommodation or something analogous, such as access provided through telephone lines, messengers or some other medium" (*Carparts Distribution Ctr., Inc. et al.*, p. 24). However, nothing in the history of the ADA explicitly precluded extending the ADA to "the substance of what is being offered" (p. 24-25). Finding that "neither Title III nor its implementing regulations make any mention of physical boundaries or physical entry" (p. 26), the court determined that to exclude entities that conduct business over the telephone or through the mail "from the reach of Title III and limit the application of Title III to physical structures" would frustrate the purpose of the ADA (p. 26-27).

THE NARROW VIEW IN *PARKER*

While the broad view of "public accommodation" had been established by the First Circuit's analysis in *Carparts*, there is an equally compelling rationale for the narrow view in *Parker v. Metropolitan Life Insurance Co.* (1997), decided by a sharply divided Sixth Circuit Court of Appeals. The issue on appeal was whether an employee sponsored long-term disability plan was subject to Title III of the ADA (*Parker v. Metropolitan Life Ins. Co.*, 1997). The dispute centered around the fact that the plaintiff was not seeking an insurance policy from an insurance office, which is listed as a place of public accommodation, but rather had "accessed a benefit plan provided by her private employer and issued by MetLife" (*Parker,* p. 1010). The court determined that the benefit plan was not a good offered by a place of public accommodation because "a public accommodation is a physical place" (p. 1010). Further clarifying this interpretation, the court stated "the plaintiff could not physically walk into the offices" of the insurance company to obtain a benefits plan (p. 1011). Relying on the Department of Justice Regulations which define "facility" only in terms of physical structures or places (28 C.F.R. § 36.104), the court determined "it would contravene the plain meaning of Title III to hold that public accommodations are not limited to physical spaces (*Parker*, 1997, p. 1011). Thus, there was no "nexus between the disparity in benefits and the services which MetLife offers to the public from its insurance office" (p. 1011).

In dissent, the majority's narrow interpretation was criticized (*Parker*, 1997). Relying on the First Circuit's prior acknowledgement that "the purpose of Title III is 'to bring individuals with disabilities into the economic and social mainstream of American life. . . . in a clear, balanced, and reasonable manner'" (*Parker,* p. 1020), the dissenting judges argued that limiting Title III's application to physical structures as the majority's opinion suggested was "completely at odds with clear congressional intent" (p. 1020). The dicta found in the dissenting opinion is perhaps even more compelling for adopting the broad view of Title III. The dissenting judges elaborated "the economic and social mainstream of American life has experienced significant change due to technological advances" which has led to products and services becoming available for purchase by telephone, through the mail, and via the Internet (p. 1020). However, according to the dissenting judges, if one adopts the majority's view "the same technological advances that have offered disabled individuals unprecedented freedom may now operate to deprive them of rights that Title III would otherwise guarantee," further diluting the protections of the ADA (p. 1020).

RENDON—THE MILLION DOLLAR QUESTION

The debate over the interpretation of public accommodation has continued into more recent cases. In analyzing the process by which contestants for the game show "Who Wants to be a Millionaire" qualify to participate, the court in *Rendon, et al. v. Valleycrest Productions, et al.* (2002) determined whether the scope of Title III of the ADA included the telephone hotline procedures used by contestants attempting to qualify for the game show. Contestants for the game show are selected via an automated telephone answering system where callers record their answers to these questions by pressing the appropriate keys on their telephone keypads (*Rendon, et al. v. Valleycrest Prod's, et al.*, 2002, p. 1280).

The class action suit was brought by hearing and mobility impaired individuals who wanted to compete on the game show via the telephone hotline, but "who could not register their entries, either because they were deaf and could not hear the questions on the automated system, or because they could not move their fingers rapidly enough to record their answers on their telephone key pads" (*Rendon, et al.,* 2002, p. 1281-1282). The plaintiffs asserted they could be reasonably accommodated through the use of Telecommunications Device for the Deaf (TDD) services, which would allow participation in the fast finger competition (*Rendon, et al.*, p. 1281). The plaintiffs claimed Valleycrest Productions and the American Broadcasting Company (ABC) violated the Americans with Disabilities Act due to time limitations and use of touch-tine phones (*Rendon, et al. v. Valleycrest Prod's, et al.*, 2000, p. 1345). The district court found that "the Title III definition of 'public accommodation' is not broad enough to encompass a process for selecting individuals to be participants on a game show" and dismissed the complaint (*Rendon, et al.*, p. 1347).

On appeal before the Eleventh Circuit, the Department of Justice intervened and joined the plaintiffs in arguing that Title III is violated by the type of screening mechanism used to select the game show contestants (*Rendon et al.*, 2002). In considering whether Title III applies to the game show hotline, the plaintiffs had to first allege that they are disabled and that the "defendants' imposition or application of unnecessary eligibility criteria [had] screened them out or tended to screen them out from accessing a privilege or advantage of defendants' public accommodation" (*Rendon et al.*, p. 1282). The court found that the plaintiff's complaint met the standard. However, the defendants argued that the game show hotline may not serve as the basis for the Title III claim because "it is not itself a public accommodation or a physical barrier to entry erected at a public accommodation" (p. 1283).

Calling this argument "entirely unpersuasive," and using a plain reading of the statute, the court found "the definition of discrimination provided in Title III covers both tangible barriers, that is, physical and architectural barriers that would prevent a disabled person from entering an accommodation's facilities and accessing its goods, services and privileges" and "intangible barriers, such as eligibility requirements and screening rules or discriminatory policies and procedures that restrict a disabled person's ability to enjoy the defendant entity's goods, services and privileges" (*Rendon et al.*, 2002, p. 1283). Further, the court noted that nothing in the statute's text suggests that discrimination that occurs through screening or eligibility requirements must occur on the site of the place of public accommodation to constitute a violation of the ADA (p. 1283-1284). The defendants were effectively arguing "that so long as discrimination occurs off site, it does not offend Title III" (p. 1285). Citing the ADA's prohibition of discriminatory eligibility criteria (42 U.S.C. §12182(b)(2)(A)(i)), the court found the off-site screening using the hotline was a situation that violated the ADA (*Rendon et al.,* 2002, p.1286).

The Court further opined that an ADA violation would occur if the defendants screened contestants "just outside the studio by refusing otherwise qualified persons" because they were disabled (*Rendon et al.*, 2002, p. 1285). The judges noted, "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'" (*Rendon et al.*, p. 1285). The cases relied on by the court did not involve a physical barrier at the site of the public accommodation, but rather, involved "discriminatory screening methods used to deny access to a provided good, service, privilege or advantage" (p. 1285). Noting the game show plaintiffs were screened by an automated telephone system, rather than by an admission policy administered at the studio door, the court found this was not determinative because eligibility screening processes frequently occur off site, such as through the mail or by telephone (p. 1286). Thus, the court of appeals found that the plaintiffs had stated a valid claim under Title III (p. 1286).

The facts of the *Rendon* case are analogous to a sport promotion or contest where the qualifying process or sign up is held via an online format. If this method is to be used, the sport property or sponsor must consider whether all people who are eligible to compete will be able to sign up in the manner designated. If, for example, a sport property is aware that their web site is not designed to be accessible to users with disabilities, the team should consider offering an alternative way to sign up or qualify for the contest that accommodates the person with a disability's needs, such as a paper form or

telephone registration. Further, if the contest requires physical activity in order to compete, the sport property should consider an alternative form of participation for a person who cannot compete in the physical activity.

The justification for making these changes is consistent with the ADA's goal of making programs and services accessible to people with disabilities. Further, while Title III does not mandate that a sport property makes a contest more accessible to people with disabilities, Title III does not prevent the team from making the a contest or promotion more accessible, using such features as telecommunications device for the deaf (TDD) or voice options for use with automated phone systems (*Rendon, et al.*, 2000, p. 1347).

ACCESS NOW V. SOUTHWEST AIRLINES: TESTING THE LEGAL REQUIREMENT OF WEB ACCESSIBILITY

The interpretation of "public accommodation" in the context of Web accessibility was recently addressed in *Access Now v. Southwest Airlines* (2002). Access Now, an access advocacy group for disabled individuals, and a man who is blind, filed a complaint alleging that Southwest Airline's Internet web site, www.southwest.com, excludes disabled individuals in violation of Title III because the goods and services Southwest offers at its "virtual ticket counters" are inaccessible to blind persons (*Access Now v. Southwest Airlines*, 2002). Southwest moved to dismiss the complaint on the grounds that southwest.com is not a place of public accommodation and, therefore, does not fall within the scope of Title III of the ADA (*Access Now*, p. 1314).

In considering the motion to dismiss, the U.S. District Court for the Southern District of Florida addressed the assistive technology services available to disabled individuals that enables better navigation through text and graphics found on Internet web sites (*Access Now*, 2002). The court noted that different programs have varying capabilities to interpret text and graphics and web sites differ in their capability to allow the programs to effectively perform the conversion (*Access Now*, p. 1314-1315). This has created a situation where the success of a visually impaired person being able to access a web site is dependent on the particular software program as well as the particular web site (*Access Now*).

Noting that it was a case of first impression in the Eleventh Circuit, the district court began its analysis of "whether Title III of the ADA mandates that Internet web site operators modify their sites to provide complete access to visually impaired individuals" (*Access Now*, 2002, p. 1315). The first issue before the court was whether Southwest's web site was place of public

accommodation as defined by the ADA (*Access Now*). The court found that Congress expressed a clear intent that Title III applies only to physical, concrete places of public accommodation (*Access Now,* p. 1317). In adopting a strict constructionist view that Title III is not applicable to web sites, the court further stated that "to expand the ADA to cover 'virtual' spaces would be to create new rights without well-defined standards" (p. 1318).

The court then interpreted the plaintiff's definition of "place of public accommodation," which plaintiff defined as a place of "exhibition, display, and a sales establishment" (*Access Now*, 2002, p. 1318). The definition was created by combining general terms from three subsections of the ADA and applying them to an un-enumerated specific term, Internet web sites (*Access Now*). The court found that the general terms from the three subsections were limited to their corresponding specifically enumerated terms, all of which referred to physical, concrete structures (*Access Now,* p. 1318). Thus, place of public accommodation could not be interpreted to include an Internet web site, according to the court (p. 1319).

RECONCILING THE CONFLICT AMONG THE CIRCUITS

While some courts suggest that the narrow view of "public accommodation" comports with a strict reading of the text of ADA, appellate courts, such as the court in *Rendon*, have followed the *Carparts* court's conclusion that limiting Title III's applicability to physical structures would contravene the ADA's sweeping purpose to remedy past and present discrimination and would frustrate Congressional intent (*Rendon et al.*, 2002). Congress' stated purposes in enacting the ADA were to provide a clear and comprehensive national mandate for eliminating discrimination against people with disabilities as well as provide clear, consistent, and enforceable standards to address discrimination where it occurs (42 U.S.C. §12101 et seq.) Therefore, it can be argued since the ADA's mandate was purposely broad in order to eradicate widespread discrimination based on disability in all aspects of American society, excluding the reach of the ADA to the Internet is in clear conflict with Congressional intent.

In further support of this proposition, Chief Judge Posner of the Seventh Circuit Court of Appeals stated the core meaning of the section 302(a) of the ADA, is that a store, hotel, travel agency, web site or other facility "(whether in physical or electronic space) that is open to the public cannot exclude disabled persons from entering the facility and, once in, from using the facility in the same way that the nondisabled do" (*Carparts Distribution Ctr., Inc. et al.*, 1994, p. 19). This clear reference to web sites as well as businesses that

operate in "electronic space" clearly opened the door to the ADA's application to the Internet. The recent decision in *Rendon* (2002), which relies on the text of the ADA to suggest that discrimination does not need to occur on the site of the place of public accommodation to constitute a violation of the ADA, also supports adoption of the broad view of public accommodation.

In addition, while not relied on by the courts in recent cases such as *Rendon* or *Southwest Airlines*, the Supreme Court's interpretation of "public accommodation" in the Casey Martin case lends further support for the broad view. The phrase "public accommodation" is defined in terms of 12 extensive categories, including "a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment" and "an auditorium, convention center, lecture hall, or other place of public gathering" (42 U.S.C. §12181(7)). The Supreme Court held that the legislative history defining public accommodation indicated the term "should be construed liberally to afford people with disabilities equal access to the wide variety of establishments available to the nondisabled," (*Professional Golf Ass'n v. Martin*, 2001, p. 676-677). In examining whether Title III of the ADA applied to access to professional golf tournaments, the Supreme Court in *Martin* looked to both the general rule and the comprehensive definition of "public accommodation" to find that the Professional Golf Association's (PGA) events fit within the scope of Title III (*Professional Golf Ass'n*, p. 677). Specifically, the PGA events occur on a golf course which identified in the legislation as a public accommodation. (42 U.S.C. §12181(7)(L)) as well as the fact that the PGA "leases" and "operates" golf courses to conduct its tours, which subjects them to the ADA's prohibition on discrimination (42 U.S.C. §12182(a)).

The high court's assertion that "public accommodation" should be construed liberally can be cited in support of the broad view of public accommodation. In the context of applying the ADA to Internet web sites, it is logical to argue that because sporting events occur in stadiums, which are specifically listed in the text of the ADA, (42 U.S.C. §12181(7)(C)) and because sport properties typically are lessees of the facility subjecting them to the ADA (42 U.S.C. §12182(a)), the sport property's web site could be considered one of the "services... privileges, advantages, or accommodations" of the sport property (42 U.S.C. §12182(a)). For example, if there is a game day promotion where a team sells tickets through the team website at a discount, as is done with frequently with airline tickets or hotels, if a person with a disability cannot access these services, the sport property would be in violation of the ADA for discriminating against a person with a disability in the "full and equal enjoyment of the goods, services, facilities,

privileges, advantages, or accommodations" provided by the sport property. (42 U.S.C. §12182(a)).

Despite the Supreme Court's interpretation, there is a clear line of cases that reach the opposite conclusion with regard to the scope of the Title III (See *Access Now v. Southwest Airlines*, 2002). These courts have chosen to adopt the narrow view of public accommodation, leading to the present conflict among the circuits. Most notably, the courts in *Parker* (1997) and most recently, *Southwest Airlines* (2002) have based their analysis on a plain reading of the text of the ADA to find that the ADA requires a concrete physical structure for the ADA to apply. This divergence of opinion among the circuits has made this issue ripe for Supreme Court review.

IMPLICATIONS FOR SPORT ORGANIZATIONS

The ADA was enacted at a time when the Internet was a much less prominent way that Americans communicate on a daily basis. However, with the convergence of emerging assistive technology as well as explosive growth of the Internet, there is an increased need for the Internet to be available to all people, including people with disabilities. While the recent decision in *Southwest Airlines* held that web sites do not fall under the scope of the ADA (*Access Now*, 2002, p. 1319), adding further uncertainty to the debate over whether a sport property is legally required to make its web site accessible, sport properties must recognize their responsibility to meet the needs of consumers with disabilities. Given the conflict among the circuits, a determination of whether a sport property is legally mandated to make its web site accessible in order to comply with the ADA is a circuit-specific determination at this point in time.

However, even without a legal obligation to do so, there are financial as well as purely altruistic reasons for making modifications so that a web site is accessible to users with disabilities. Research has found that four out of 10 people with disabilities spend time online and typically spend twice the time logged on than their able-bodied counterparts (Cheng, 2002), a strong indicator that consumers with disabilities are increasingly using the Web to shop and communicate. Given this phenomenon, perhaps the first step in meeting this growing need is for sport properties to learn what online needs and preferences of people with disabilities exist. Once this information is known, the sport properties can then learn to use the new adaptive technology effectively along with Web accessibility guidelines in order to effectively meet the online needs of people with disabilities.

Undoubtedly, adjusting access to the Internet to fully meet the needs of customers with disabilities will not be an easy task. However, without modifying sport web sites to meet the needs of customers with disability by providing features such as descriptive alternate text on images and graphics, synchronized captioning, and video captioning, customers with disabilities will face new barriers as more sport businesses expand their sales and service presence in cyberspace. While some sport organizations may choose to wait for a lawsuit compelling them to make their web sites accessible, proactive organizations should see this as an opportunity to reach out to individuals with disabilities so that they too may experience the full and equal enjoyment of the sport industry's vast offering of goods and services.

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