Digital Access and Title III of the ADA

An ADA Knowledge Translation Center Research Brief

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What is the ADA?

The Americans with Disabilities Act (ADA) of 1990 is a civil rights law that addresses discrimination on the basis of disability. Disability inclusion is supported through the ADA, as the law provides people with disabilities a way to challenge discrimination in areas of public life such as employment, public services, and places of public use. The ADA recognizes disability as a source of discrimination, similar to "race, color, religion, sex, or national origin" within the Civil Rights Act of 1964. The overarching goal of the ADA is to promote equal opportunity, full participation, independent living, and economic self-sufficiency for Americans with disabilities.

Background of Digital access and the ADA

Digital access is increasingly important for people with disabilities as technology continues to become a regular part of everyday life. Digital access is described as the ability for users, including those with disabilities, to easily navigate and understand content on websites, mobile applications, or other electronic-based information.[1] Some examples of common digital accessibility features include: closed captioning on videos, video descriptions, and alternative text for images or tables in online content. Full digital access is not only impacted by accessibly designed content, but also by the availability of digital devices and technology, and the usability of that technology. These factors are important so that all people can interact and benefit from information and communication available through technology.

Even though technology is becoming commonplace, disability laws are struggling to keep up with the changing landscape. The Americans with Disabilities Act (ADA) was signed into law in 1990, which was before the internet and much of modern computer related technology.[1] Questions and answers about how and when the ADA applies to online content are still evolving. Additionally, much of the internet and technology is unregulated, unlike physical structures, such as buildings, that have permits or other safeguards to ensure accessibility. Digital content is also relatively easy to create, and the sheer number of websites or other electronic content is difficult to monitor or regulate. These limitations in policy and the nature of technology has created barriers to achieving the spirit of the ADA and ensuring full participation of people with disabilities in society.

One of the main issues concerning the ADA and web accessibility is what constitutes "public accommodations." Title III of the ADA provides regulations for private businesses and other entities to ensure access for people with disabilities within the realm of public accommodations, described as "businesses that are generally open to the public."[2] This phrasing has become central to the understanding of web accessibility within the U.S. Two notable court cases related to this issue include Robles vs. Domino's Pizza LLC and National Association of the Deaf et al. vs. Netflix, Inc. Both of these cases were ruled in favor of the plaintiffs (i.e. people with disabilities). The rulings detail that companies must provide accessible features in online applications and web-based businesses. Despite the number of web accessibility cases, the Department of Justice has withdrawn potential rule changes to the ADA to provide further regulations on digital access. Businesses can utilize other standards, such as the Web Content Accessibility Guidelines (WCAG),[3] in order to meet the spirit of the ADA and provide accessible technology to the public.

Another central issue regarding digital access, web accessibility, and disability laws include the debate around access versus copyright infringement. Copyright generally means that creators or authors of content have control over how their work is used by others. Copyright law prevents work from being duplicated, shared, or changed without permission from the creator. The Fair Use doctrine states that adding accessible features to digital content is usually considered "fair use" and therefore does not violate copyright laws or other aspects of intellectual property.[4] However, depending on the changes, there may still be concerns regarding copyright. Businesses and individuals should understand public accommodations and copyright or authorship laws on federal, state, and even local levels to ensure full compliance.

HIGHLIGHTS OF FINDINGS

- There is a digital divide where people with disabilities have less access and benefit less from technology than people without disabilities.
- Most websites are not fully accessible for people with disabilities, and access guidelines do not fully address all access needs.
- Developers can enhance access and usability of technology by including user outcomes throughout the development process, consulting inclusion experts, and having people with disabilities participate in user testing.
- There are many benefits of creating accessible technology, such as increased customer bases and increased productivity by limiting retrofitting or reworking efforts.

Research About Digital Access, Public Accommodations, and the ADA

This section will provide an overview of research about digital access for people with disabilities.

Digital Divide

One of the most important topics regarding digital access for people with disabilities is known as the "digital divide." The digital divide is the gap between those who have access to and use information and communication technology and those who do not.[5] People with disabilities are less likely to live in households with computers, use computers, or be online.[6] However, when controlling for different demographic variables, it was found that people who are deaf or hard of hearing and people with mobility impairments are not less likely to be internet users, and use the internet in a similar way to people without disabilities. Other identified barriers to digital access include cost and lack of technology-based knowledge or skills.[5] This highlights the diversity in the disability community, and shows that the digital divide may be partially influenced by inaccessible technology as well as socioeconomic factors.

Common Access Issues

Lazar et al.[7] identifies common concerns about digital access in addition to the digital divide. The authors describe digital access as an issue of equality that requires the creation of accessible websites and technology with the "same time, same content, and same price."[7] The issue of 'same time' refers to noted delays in having accessible content compared to when content is originally developed. It has been found that, on average, there is a three-year lag between the creation of new technology and the availability of an accessible version.[8, 9, 10]

'Same content' means that accessible content conveys the same information and provides the same experience for people with and without disabilities.[7] One example of this is the longstanding controversy of verbatim versus edited captioning.[11] Verbatim captioning refers to when all words and sounds are captured and shared, and often requires fast reading speeds. Edited captioning is when words are omitted or exchanged for others in order to slow down reading speeds. While there remains pros and cons to both types of captioning, it is important that content is not lost in translation and that people with disabilities are able to receive the same information through accessible formats.

The final concern laid out by Lazar et al.[7] is 'same price.' This concept refers to assuring accessible content is not more expensive than costs found with inaccessible features. An example provided in the review is web-only or internet-based pricing on inaccessible websites.[9, 12] If people are unable to access sale prices, then they are subjected to higher costs due to inaccessibility.

Inaccessibility

While there was hope that technology would enhance accessibility, it seems to have created a new host of access issues. For example, unemployment is both a contributor and symptom of the digital divide. Some people with disabilities cannot get jobs because of a lack of access to technology, and while at the same time cannot access technology because of financial constraints due to unemployment.[13] Furthermore, technology is found to influence a variety of areas such as healthcare, education, employment, and social inclusion.[5] People with disabilities report a lower impact of technology in each of these areas. This highlights that people with disabilities may not be benefitting from technology as much as people without disabilities.

Online accessibility evaluation tools can help identify barriers to accessing web-based content. Websites have been the most reviewed in terms of digital content. In 2009, one study identified access barriers to Fortune 100 company websites and found that 80% were potentially inaccessible to people with vision impairments.[14] Another study reviewed 25 health information websites and sought to identify if there was a correlation between mobile-readiness and accessibility.[15] Researchers found that most of the websites were partially mobile-ready, meaning readily available to be accessed on mobile devices, but had serious disability related access issues.

In another review of 20 hospitality websites, researchers found that all of the websites reviewed had at least one accessibility issue.[16] The most common inaccessible feature was related to the use of color to convey information. There was a lack of color contrast as well as

having information represented in another way in addition to color. These limitations could prevent people with vision impairments from understanding the intended content.[16] Another finding across multiple studies is that private company websites tend to be less accessible, or have more access barriers, than state or federal government websites.[15, 17] However, public sites continue to also have access challenges. The several accounts of inaccessible websites and other online content show the need for better digital access.

Social Barriers to Access

In addition to the structural barriers described, researchers commonly identify social barriers to digital access. These barriers limit the ability of people with disabilities and other people from marginalized communities to freely interact with the internet.[18] Researchers conducted semi-structured interviews to discover if there are psychological barriers to web access with people who have marginalized identities (e.g. people with disabilities, people of color). Results from this study indicate that people with disabilities expect to encounter oppressive language (e.g. hate speech and disability slurs) and self-regulate their interactions with the internet to avoid this type of offensive content. This may prevent full participation online, particularly in social media and other social web-based platforms.

Usability versus Accessibility

Some research makes the distinction between technology being "accessible" and "useable." These two terms help to frame how researchers evaluate the accessibility of websites and other technology. One study describes concerns with digital access by using three broad categories to better describe digital access issues.[19] The first is "pure accessibility" problems, which only impact people with disabilities. "Pure usability" is the next category and refers to issues only affecting people without disabilities. The final category are problems that affect both people with and without disabilities, described as "universal usability" issues. Researchers explored these ideas by having participants with low vision and participants without disabilities test the use of a website. Findings indicate that each group had concerns, but there was little overlap between the groups, revealing that there were both access and usability issues that are sometimes different from each other.

Digital Access Guidelines

While there are many guidelines to enhance technical accessibility, studies have found that these guidelines may not address all access issues. For example, one study reviewed 16 websites for accessibility and found that only about 50% of identified user problems had a corresponding guideline in the Web Content Accessibility Guidelines (WCAG) 2.0 that would have addressed the issue.[20] WCAG 2.0 was updated to version 2.1 in June 2018, and are international guidelines widely used and intended to improve access to digital content and web-based technology for people with disabilities. The fact that only 50% of issues had a corresponding guideline in WCAG 2.0 shows that 1) web developers still have a limited understanding of accessibility guidelines and 2) that the guidelines do not fully cover all access concerns. Updates made in WCAG 2.1 may address these gaps. However, best practices indicate that many accessible features should be checked and monitored on a manual basis rather than reliance on accessibility checkers or only adherence to access guidelines.[14, 21]

Best Practices for Digital Access

Companies and developers can help ensure technology is universally accessible by engaging in best practices. Universal accessibility refers to online content that is usable by as many people as possible.[18] One way to create universally accessible technology is to consider user experience from the onset of development and to make design decisions based on intended user outcomes.[21, 22] Considering universal access at the very beginning stages of technology development can limit future reworking or retrofitting, which is often more expensive and time intensive than if websites or other online tools are originally designed with accessible features.[10, 22]

Another noted best practice is to consult inclusion experts or someone who has a deep knowledge of inclusive technology in the planning and development phases.[21, 22] Involving people with experience in inclusion can help bring innovation and ensure that technology is meeting access needs. Additionally, developers should include people with disabilities in user testing.[21] Users with disabilities can help identify potential access issues and manually checking for accessible features can help ensure that technology is usable and accessible for the widest array of people.[14]

Businesses and Accessible Technology

Businesses have identified a number of barriers to creating accessible websites or online products. Some of these barriers include the potential increased costs of technology, lengthened time of development, and perceived limitations in design or aesthetics of products.[23] Another concern is that because of the diversity of the disability community, there is assumed difficulty in meeting the needs of all people. Showing how business can benefit from being accessible helps convince businesses to not only comply with regulations but also fully support digital access.

One group of researchers developed a cost-benefit model to identify outcomes related to the development of inclusive and accessible technology from data found in various technology-based demonstration projects.[22] Through this work, the research team identified two main benefits of creating accessible technology. The first benefit is increased productivity, particularly as there is reduced effort in having to rework or redo efforts in order to retrofit technology with accessible features. The second benefit is the increase of sales. Inclusive designs can increase the ease of use and translate into increased customer satisfaction. Additionally, people with disabilities are more likely to use and engage with websites that are accessible.[24] Customers with disabilities are a growing and often untapped market, and digital access can help businesses reach customers with disabilities.

Conclusion

This research brief highlights various issues regarding digital access for people with disabilities. Disability laws, including the ADA, have limited regulations or guidance regarding digital access. Additionally, there is a digital divide, meaning that people with disabilities have less access to technology and online content than people without disabilities. In fact, most websites are not fully accessible for people with disabilities. Access and usability of web-based content and other

technology can be enhanced by including user outcomes throughout the development process, consulting inclusion experts, and having people with disabilities participate in user testing. Lastly, businesses benefit from creating digital access by increasing customer bases and reducing the need to rework efforts to include accessible features in later stages of development.

Examples from the ADA National Network

Below are a few examples of how the ADA national network are addressing the issues raised in this brief. For further information on how the ADA Centers can help with issues related to the ADA, please contact the ADA National Network here: https://adata.org

- **Small businesses and web access:** One ADA center presented to several local businesses about web accessibility. The training included information about the legal issues surrounding web access, guidelines, and resources about how to enhance digital accessibility for customers with disabilities.
- **Training on electronic documents:** Another ADA center offered a training on electronic documents to a professional management association. In preparation, technical assistants from this center developed a fact sheet on electronic documents as a resource for participants.
- **Nonprofit website access:** A third example comes from an ADA center working with a local chapter of a national nonprofit. ADA center staff conducted an informal review of the organization's website, and the results were shared with nonprofit staff. The ADA center also conducted a webinar training for the organization's staff on how to create accessible social media content. The organization made some updates to their website, including asking if clients need reasonable accommodations when making appointments and developed an internal document with guidelines for accessible content on social media.

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