Web Accessibility legal issues in the UK and beyond

3rd W4A International Cross Disciplinary Workshop on Web Accessibility
World Wide Web Conference 2006
Edinburgh International Conference Centre, 23 May 2006

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Outline of Presentation

• The Disability Discrimination Act 1995 (DDA)
  – What does the DDA say?
  – The legal argument under the DDA
  – Maguire v SOCOG

• Latest developments in the UK
  – PAS78, Public procurement and the Disability Equality Duty

• US law

• Summary and final thoughts
Websites that impede disabled users face legal action
The DDA and its Obligations

• Disability Discrimination Act 1995 (DDA):
  ‘a universal, all embracing right of non-discrimination against disabled people…applicable to all providers of goods, facilities and services to the general public’

Minister for Social Security and Disabled People,
*Hansard*, H.C. Standing Committee E col. 290
What does the DDA cover?

• Part II – Employment
• Part III – Provision of goods, facilities, services and premises
• Part IV – Education (schools, universities, colleges)
• Each section is accompanied by a Code of Practice
  – Codes of Practice “flesh out” the DDA
  – Provide guidance and aim to avoid legal action
  – Court obliged to consider Code where relevant
  – But Codes are not authoritative statements of the law
Part II of the DDA (Employment)

• Applies to employers in all sectors
• Duty to make reasonable adjustments where any provision, criteria or practice applied by the employer places the disabled person at a substantial disadvantage
• Relevant to internal ICT provision:
  – Intranet/extranet access
  – Software and ICT equipment provided to that employee
  – Auxiliary aids
Part III of the DDA

- Applies to the **provision** of
  - Goods
  - Facilities
  - Premises
  - services

- Does not apply to the actual goods being supplied
  - No requirement under the DDA for the goods to be accessible
  - How does this apply to the Web?
Who is a Service Provider?

- Not defined in either the DDA or the Part III Code
- Non-exhaustive examples listed
  - ‘access to and use of information services’
- Part III expressly covers ‘free’ services
- Generally considered to cover the Web/web-delivered services
  - Code of Practice example of airline web booking facility
- Part III does **not** generally apply to educational institutions, but does apply to public sector
Part III obligations

• Duties set out under section 19:
  – Not to refuse to provide or deliberately not provide any service which her providers or is prepared to provide to the public
  – To comply with any s.21 duty to make “reasonable adjustments”
  – Not to provide a lower standard or manner of service
Discrimination defined

• A provider of services discriminates against a disabled person if:
  – For reason which relates to the disabled person’s disability, he treats him less favourably than he treats or would treat others to whom that reason does not apply; and
  – He cannot show that the treatment in question is justified
Refusal to Provide a Service

- Where a service provider has deliberately chosen not to make his site accessible
- Requires knowledge
  - ie must be a conscious act by the service provider
- Relevant where accessibility is deliberately ignored by the service provider
  - eg when developing a new website
Lower Standard of Service

• Analogy in the Part III Code:
  – a bookshop which orders books for customers, but refuses to order a large print book for a visually impaired person

• Could apply in several situations:
  – supermarket home shopping service
  – online current account offering advantageous interest rates
Reasonable Adjustments

- Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service...it is his duty to take such steps as are reasonable...to have to take in order to change that practice, policy or procedure so that it no longer has that effect

(section 21)
What is a ‘reasonable adjustment’?

- Reasonableness is an objective term
- Is it reasonable to require that an inaccessible website is made amended to make it accessible?
  - In some situations it may be reasonable to provide the service using alternate, offline
  - Only possible if doing so does not lead to a lower/inferior service – 24/7 nature of the Web
- Main opposition is cost and work involved
  - Roads v Central Trains [2004] EWCA Civ 1541
- Australian view?
Maguire v SOCOG

• Visually impaired computer user
• Action under the Commonwealth DDA
• Site was inaccessible:
  – no ALT attributes on images used for navigating
  – index of Sports was inaccessible from the schedule page
  – tables used in layout of results were inaccessible
Maguire v SOCOG – the findings

• Commission found that
  – SOCOG was intending to offer a service to the public by creating the Website
  – the website was inaccessible
  – SOCOG was in breach of its legal duties

• SOCOG’s claims of unjustifiable hardship were rejected
Unjustifiable hardship

• SOCOG argued fixing the site would cost Au$2m
• Expert witnesses disputed this
• W3C Guidelines (WAI Guidelines) relevant
• Website evolved during two years prior to the Olympics
• Continuing duty to comply
Relevance of Maguire v SOCOG

• Reference to WAI Guidelines
  – first time the WAI Guidelines have been referred to in a court of law
  – gives an indication of the standard for accessibility expected by a court

• Strict interpretation of undue hardship

• Likely to be followed by UK courts when presented with the issue
Part IV of the DDA (Education)

- SEN and Disability Act 2001 introduced new Part IV of the DDA
- Applies to schools and further/higher educational institutions
- Requires reasonable adjustments to ‘student services’:
  - lectures
  - course materials
  - examinations
- Part III relevant to interpreting Part IV
Remedies

- Legislation gives civil remedies rather than criminal proceedings
- Court can issue order requiring service provider/employer/institution to take certain steps
- Damages
  - injury to feelings
  - derivative economic loss
Latest developments in the UK

- DRC/City University London Formal Investigation into Web access
  - First Formal Investigation by the DRC
  - Found 80% of websites failed to comply with WAI Guidelines
- PAS78
- Disability Equality Duty
- Public Contracts Regulations/Public Contracts (Scotland) Regulations 2006
PAS78: Guide to Commissioning Accessible Websites

• Developed following DRC Formal Investigation
• Step below a full British standard
• Sponsored by DRC
  – May help in assessing what steps are reasonable when developing a new website
  – Service providers who do not adopt PAS78 may find it harder to justify that their actions in the event of action under DDA
Disability Equality Duty

• Comes into force December 2006
• Applies to public bodies (eg local authorities, higher education institutions etc)
• Duty to take steps to promote disability equality
• Proactive duty to promote as opposed to a duty not to discriminate
  – Higher burden than under Part III
  – Arguably an obligation to utilise web technologies to improve service provision for people with disabilities
Public Procurement Regulations 2006

• Came into force 31 January 2006
• Apply to procurement by public bodies
• Set out requirement for technical specifications for goods/services being procured
• When laying down technical specifications:
  “contracting authority shall, wherever possible, take into account accessibility criteria for disabled persons…”
• Likely to pull in PAS78 (relevant British standard) and WCAG (relevant international standard)
US Law

• Title III of Americans with Disabilities Act (ADA)
  – Applies to service providers
• Case law currently unclear
• US DOJ’s view is that ADA does apply to the Web
  – *Amicus curiae* in *Hooks v OKBridge Inc*
• But, interpretation of “physical accommodation”
  – *Carparts* case
  – *Rendon* case (Who Wants to be a Millionaire?)
  – *Southwest Airlines* case
US law continued

• Section 508
  – Applies to procurement by Federal agencies
  – Specific guidelines for websites

• Section 504/Title II of ADA
  – Apply to public entities and those in receipt of federal funds
  – Covers websites operated by those entities
  – Vincent Martin v Metro Atlanta Rapid Transit Authority
Summary

• No case law in the UK, but DDA likely to cover websites
• Position in the US is less clear for private sector
• Australia has clear case law
• Nature of the DDA is that you cannot set down specific tests for compliance
  – DDA comprises broad duties and principles
  – Flexible approach has helped avoid US problems
• PAS78 and WAI Guidelines are likely to be relevant in assisting service providers to take reasonable steps
Further Information

• Disability Rights Commission (DRC)
  – http://www.drc-gb.org
• RNIB ‘See It Right’ Campaign
  – http://www.rnib.org.uk/digital/siraccess/
• PAS78
  – http://www.bsi-global.com
• W3C Web Accessibility Initiative
  – http://www.w3.org/wai/
• UK Resources for Web Accessibility and the Law
  – http://www.web-accessibility.org.uk
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