

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

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Websites that impede disabled users face legal action

The Times, 14 April 2004

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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