



# Department of Justice

STATEMENT OF

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DEPARTMENT OF JUSTICE

BEFORE THE

SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR & PENSIONS  
UNITED STATES SENATE

CONCERNING

THE AMERICANS WITH DISABILITIES ACT AND ENTERTAINMENT  
TECHNOLOGIES: IMPROVING ACCESSIBILITY FROM THE MOVIE SCREEN TO  
YOUR MOBILE DEVICES

PRESENTED

MAY 14, 2013

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**Senior Counselor to the Assistant Attorney General for Civil Rights**  
**Department of Justice**  
**Before the Senate Committee on Health, Education, Labor & Pensions**  
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Chairman Harkin, Ranking Member Alexander, and Members of the Committee, it is an honor to appear before you today to discuss the accessibility of entertainment technologies. The Civil Rights Division enforces the Americans with Disabilities Act of 1990 (“ADA”). The ADA is a comprehensive, broad-reaching federal law that prohibits discrimination on the basis of disability in many areas of civic and social life – including entertainment. As technology continues to rapidly advance in the digital age, so too must our efforts to ensure that individuals with disabilities are not marginalized in the digital world.

During prior testimony before this Committee, I noted the critical juncture that people with disabilities are facing in this country. The pace of technological change is remarkable; each day brings a new reminder of how fast technology is developing and how quickly old technology becomes obsolete. Emerging technologies have the potential to open doors for many people with disabilities, and can provide them the means to move closer to the goal of full, equal, and truly integrated access to American life. But cutting-edge technological advances also have the potential to leave people with disabilities behind if the entities that develop, manufacture, and offer that technology do not make their products and services accessible.

This is especially true in the context of entertainment, where so much of the industry relies on technology to develop and distribute its products and services. If movies that are streamed through the Internet are not captioned, people who are deaf are shut out. If electronic books cannot be read by screen readers, people who are blind are shut out.<sup>1</sup> If kiosks selling tickets to sporting events are not built with the proper features, people with a variety of disabilities are shut out. These aren’t just barriers; these are civil rights issues.

A bi-partisan majority in Congress passed the ADA, 42 U.S.C. § 12101 *et seq.*, in 1990, and President George H.W. Bush signed this landmark civil rights legislation into law. The statute mandates the elimination of discrimination on the basis of disability in all areas of

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<sup>1</sup> Many individuals with vision disabilities use an assistive technology known as a screen reader that can convert visually-delivered content on the Internet into an audio form; however, the visually-delivered content must be properly formatted and structured for the screen reader to work effectively. For instance, a screen reader or similar assistive technology cannot “read” an image. Thus, when images appear on websites there is no way for an individual who is blind or who has low vision to know what is being depicted unless the website operator provides additional information describing what is depicted in the image for screen readers to read.

American civic and economic life. The Department of Justice is responsible for enforcing and implementing titles II and III of the ADA, which cover State and local government entities and private businesses, respectively. We also enforce title I of the ADA against State and local government employers that discriminate on the basis of disability.

Although Congress, in 1990, could not have foreseen the rapidly developing technology used by entities to deliver entertainment, Congress clearly intended for the ADA to apply to these technologies. When considering the bill that ultimately became the ADA, the House Committee on Education and Labor stated “that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times.”<sup>2</sup>

This position has been echoed by the Justice Department through the regulations the Department has promulgated under the ADA and the cases the Department has filed to enforce the ADA. My testimony will address the work that the Justice Department is doing and has done through its rule-making authority and its enforcement of the ADA to ensure that entertainment technologies are, and remain, accessible for people with disabilities.

#### **I. Website Accessibility**

When the ADA was enacted in 1990, the Internet as we know it today did not exist. Today the Internet plays a critical role in the daily personal, professional, civic, and business life of Americans. Increasingly, government entities and public accommodations are providing goods and services to the public through websites.

Being unable to access websites puts individuals at a great disadvantage in today’s society, which is driven by a dynamic electronic marketplace and unprecedented access to information. On the economic front, electronic commerce, or “e-commerce,” often offers consumers a wider selection and lower prices than traditional, “brick-and-mortar” storefronts, with the added convenience of not having to leave one’s home to obtain goods and services. For individuals with disabilities who experience barriers to their ability to travel or to leave their homes, the Internet may be their only way to access certain goods and services.

On the social front, the Internet has become a fast, easy, and cost-effective way for many people to access entertainment. Taking advantage of the Internet’s instantaneous commerce, entertainment providers distribute movies, television shows, books, music, and other content through websites. The Internet has literally transformed the way that entertainment distributors do business and how Americans access entertainment.

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<sup>2</sup> H.R. Rep. No. 485, pt. 2, **Error! Main Document Only.** at 108 (1990).

Millions of people have disabilities that affect their use of the web – including people with visual, auditory, physical, speech, cognitive, intellectual and developmental and neurological disabilities. People who have difficulty using a computer mouse because of mobility impairments, for example, may use assistive technology that allows them to control software with verbal commands. People who are deaf may rely on captioning to make streaming content accessible. People who are blind may use screen readers to convert visually-delivered content on the Internet into an audio form. But websites are not always compatible with those assistive technologies and technological adaptations do not always provide what is necessary for people with disabilities to access them.

The Department has long taken the position that websites of private entities that are public accommodations,<sup>3</sup> including entertainment providers that operate solely on the Internet, are covered by the ADA and are required to be accessible. The Department has reached settlements with a number of entities to bring their websites into compliance with the ADA, including websites serving the entertainment industry.

In September 2011, the Department entered into a settlement agreement with Fremantle Productions, Inc., and CBS Broadcasting, Inc., regarding the television show, *The Price is Right*. Among other things, the settlement requires *The Price is Right* to modify its websites to ensure that people with disabilities can access information about the television show and how to obtain tickets.

Similarly, in December 2012, the Justice Department entered into a settlement with the Cavaliers Operating Company, LLC, concerning Quicken Loans Arena. Under the settlement, the Cavaliers Operating Company is required to ensure that its website is accessible for people with disabilities. Because of the settlement, patrons with disabilities will be able to find seating and purchase tickets for sporting events and concerts online.<sup>4</sup>

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<sup>3</sup> Under title III, a public accommodation is a private entity that owns, leases, leases to, or operates a place of public accommodation. A place of public accommodation is defined as a facility whose operations affect commerce and falls within one of 12 enumerated categories, including places of lodging, establishments serving food or drink, places of exhibition or entertainment, sales or rental establishments, and service establishments.

<sup>4</sup> The World Wide Web Consortium, or the W3C, the main international standards organization for the World Wide Web, has developed accessibility standards – such as the Web Content Accessibility Guidelines 2.0 – that have become the standard in the technological industry for making websites and content accessible. The W3C continues to build upon these important initiatives, including information to help mobile application developers build accessible products.

Because video programming over the Internet is fast becoming the dominant means of delivering movies, television shows, and other entertainment offerings to the American public, the Department has taken steps to ensure that video programming websites are also accessible. In October 2011, the Justice Department filed a Statement of Interest in *National Association of the Deaf, et al., v. Netflix, Inc.* (D. Mass.), a case in which the plaintiffs alleged that Netflix failed to provide captions for many of its “Watch Instantly” Internet-based streamed movies, in violation of title III of the ADA. In its brief, the Justice Department argued that title III of the ADA applies to Netflix’s “Watch Instantly” videos and that the court had subject-matter jurisdiction over the plaintiffs’ claims.

In May 2012, the Department filed a second Statement of Interest in the case. The Department again argued that Netflix is a public accommodation under title III, even if it has no physical structure where customers access its services. The court agreed with the Department’s position and soon thereafter the case settled, with Netflix announcing that it will make 100% of its online streaming videos accessible by 2014.

In addition, the Department is engaged in rulemaking to ensure the ADA's requirements for equal access to the programs, services, goods and activities of title II and title III entities are fulfilled. The Department has issued an Advance Notice of Proposed Rulemaking (“ANPRM”) on the accessibility of information and services on the web, and has solicited public comment on this issue. The public comment period closed on January 24, 2011; the Department received approximately 440 public comments and is currently reviewing them. The Department anticipates publishing separate Notices of Proposed Rule Making addressing website accessibility pursuant to titles II and III of the ADA in calendar year 2013.

## **II. Movie Captioning and Video Description**

The Justice Department has also been working on issues involving the accessibility of movies shown in theaters to people with disabilities. Going to the movies is a quintessential American experience. In any given month, over 56 million adults (roughly 26% of the adult population) make a trip to a movie theater to take in a movie. *Experian Marketing Services, 2010 American Movie-Goer Consumer Report*, available at <http://www.experian.com/blogs/marketing-forward/2010/02/20/2010-american-movie-goer-consumer-report/> (last visited Apr. 2, 2013). Going to the movies is also an important social experience, especially for teenagers and young adults. And while teenagers and young adults are more likely to go to the movies than older adults, adults over 50 outnumber young adults when it comes to raw number of moviegoers. *Id.* Moreover, going to the movies is also an important part of the American family experience. Long holiday weekends offer the movie industry some of

the biggest box office sales as families gather for the holidays and head out to the theaters together.

Despite the recent economic downturn, movies continue to be a major source of entertainment in the United States. In 2012, moviegoers in the U.S. and Canada bought a record \$10.8 billion in movie tickets, with the largest number of tickets (1.36 billion) sold in three years. Theatrical Market Statistics, Motion Picture Ass'n of Am. 4 (2012), available at <http://www.mpa.org/Resources/3037b7a4-58a2-4109-8012-58fca3abdf1b.pdf>, (last visited May 9, 2013). Movie theaters continue to draw more people than all theme parks and major U.S. sporting events combined. Id. at 10.

Movies are a part of our shared cultural experience, “water cooler” talk, and the subject of lunch-time conversations. The Supreme Court observed over 60 years ago that motion pictures “are a significant medium for the communication of ideas” and “may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.” Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501 (1952).

When individuals with sensory disabilities have the opportunity to attend movies that they can actually understand through the use of captions or audio description, they are exposed to new ideas and gain knowledge that contributes to their social development and their communication skills.

According to 2010 census data, 7.6 million people experienced a hearing difficulty (defined as experiencing deafness or having difficulty hearing a normal conversation, even when wearing a hearing aid). Of those individuals, 1.1 million reported having a severe difficulty hearing. In addition, 8.1 million people reported having some degree of difficulty seeing (defined as experiencing blindness or having difficulty seeing words and letters in ordinary newsprint, even when normally wearing glasses or contact lenses). Of those individuals, 2.0 million reported they were blind or unable to see. See U.S. Census Bureau, U.S. Dep't of Commerce, P70-131, Americans With Disabilities: 2010 Household Economic Studies 8 (2012), available at <http://www.census.gov/prod/2012pubs/p70-131.pdf>. For people aged 65 or older, Census data indicated that 10.8 percent had difficulty hearing (as defined in the census), and 9.8 percent reported having difficulty seeing (as defined by the Census). Id. Hearing and vision loss are highly correlated with aging, and as the U.S. population ages,<sup>5</sup> the number of individuals

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<sup>5</sup> The percentage of Americans approaching middle age and older is increasing. The 2010 Census found that during the decade spanning 2000 to 2010, the percentage of adults aged 45 to 64 years increased by 31.5 percent while the population aged 65 and over grew at a rate of 15.1 per cent. By contrast, the population of adults between 18 and 44 grew by only 0.6 percent. Age and Sex Composition in the

with hearing or vision loss is projected to increase significantly. Research indicates that the number of Americans with a hearing loss has doubled during the past 30 years. See The Prevalence and Incidence of Hearing Loss in Adults, Am. Speech-Language-Hearing Ass'n, available at [http://www.asha.org/public/hearing/disorders/prevalence\\_adults.htm](http://www.asha.org/public/hearing/disorders/prevalence_adults.htm) (last visited Apr. 2, 2013). Experts predict that by 2030, severe vision loss will double along with the country's aging population. See Aging and Vision Loss Fact Sheet, Am. Found. for the Blind, available at <http://www.afb.org/section.aspx?FolderID=3&SectionID=44&TopicID=252&DocumentID=3374> (last visited Apr. 2, 2013). This increase will likely lead to a corresponding increase in the number of people who will need captioning or audio description. It is critical that these individuals are not shut out of an emblematic part of our culture.

Title III of the ADA prohibits public accommodations, such as movie theaters, from discriminating against individuals with disabilities, 42 U.S.C. 12182(a). Among other things, covered entities must take "such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently \* \* \* because of the absence of auxiliary aids and services" unless they can show that doing so would result in a fundamental alteration or undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii). Auxiliary aids available to movie theaters to make their theaters accessible include assistive listening systems, closed movie captioning, and audio description. The ADA title III regulations specify that movie theaters must provide assistive listening systems and a specific number of assistive listening devices to make movies accessible to people with hearing loss.

There are many different types of technology that help make movies accessible. Closed movie captioning displays the written text of the dialogue and other sounds or sound making to those individuals who request it. When requested, the captions are delivered via individual captioning devices used by patrons at their seats. Audio description is a technology that enables individuals who are blind or have low vision to enjoy movies by providing a spoken narration of key visual elements of a movie, such as actions, settings, facial expressions, costumes, and scene changes. Audio description fills in information about the visual content of a movie where there are no corresponding audio elements in the film. The oral delivery of the script is transmitted to the user through infra-red or FM transmission to wireless headsets.

In recent years, as part of the conversion of the movie industry from analog to digital formats, more movies are being made with closed movie captioning and audio description. Movie studios appear committed to making their movies accessible to individuals with sensory

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United States: 2010 Census Brief 2 (2011), U.S. Census Bureau, U.S. Dep't of Commerce, C2010BR-03, available at <http://www.census.gov/population/age/>.

disabilities, and the Department commends their efforts. In addition, more movie theaters have added the capacity to show captioned and audio described movies. We applaud such efforts and encourage other movie exhibitors to follow suit. As digital cinema technology has advanced, the options and methods available for exhibiting movies with captioning and audio description have also expanded. Members of the industry, manufacturers, and other interested parties worked together to ensure interoperability of digital cinema components through standards adopted by the Society of Motion Picture and Television Engineers (SMPTE), so that products that provide captioning and audio description would be compatible with the various digital cinema systems available for purchase and use by movie theaters. For this and other reasons, in digital cinema systems it is much easier and far less costly to exhibit movies with captioning and audio description.

However, not every movie company has announced plans to equip its movie screens with captioning and audio description, so the ability for persons who are deaf or hard of hearing or are blind or have low vision continues to depend upon where they live.<sup>6</sup> In addition, even when theaters have the capability to offer captions and audio description, they don't do so at all screenings. Many theaters limit showings of movies with captions or audio description to particular times of the day or week.

In July 2010, the Department issued an ANPRM seeking public comment on potential revisions to the regulations implementing the ADA relating to the exhibition of movies with closed captioning and audio description by theater owners or operators. The ANPRM did not propose any specific regulatory language or provisions. Instead, the ANPRM solicited input from the public on various issues, including: possible compliance and implementation schedules; industry-wide progress on conversion to digital cinema; status of consensus standards for digital cinema; captioning and audio description equipment; and, costs and benefits of potential revisions to the ADA regulations. The public comment period on the ANPRM closed in January 2011. There was a great deal of public interest with over 1,100 comments received from a broad spectrum of stakeholders, including theater owners and operators, persons with disabilities, trade organizations, and advocacy groups. The Department is in the process of reviewing public comments received in response to the ANPRM and preparing for the next stage in its rule-making efforts.

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<sup>6</sup> For example, persons who live in smaller cities served only by smaller regional movie theater chains are far less likely to have access to captioning and audio described movies than individuals with disabilities who live in California, Arizona, or any of the major cities with theaters operated by Regal or Cinemark.

### **III. Department of Justice E-Book Complaint Resolutions**

The Department has been keenly focused on ensuring accessibility to a critically important form of entertainment and education – reading. The emergence of electronic books holds great potential to place individuals with disabilities on equal footing with others when it comes to reading. But that goal will only occur if the e-book reader is equipped with text-to-speech capabilities, and if the electronic texts are coded with structural data and text descriptions of images. The Department is working to ensure that covered entities that use e-readers to deliver information or provide an experience insist on using accessible equipment that will provide persons with disabilities an equal opportunity to participate in their programs, services or activities.

The Justice Department has worked hard to ensure that electronic books of all kinds are accessible to people with disabilities. In 2010, the Department of Justice reached settlements with six colleges to ensure that they do not exclude students with disabilities by using inaccessible e-readers. Under the settlements, the colleges must ensure that whatever technology they deploy provides students who are blind the same information, the same interactions, and the same services as sighted students with substantially equivalent ease of use.<sup>7</sup>

Similarly, in August 2012, the Justice Department reached a settlement with the Sacramento Public Library, which had adopted a program of lending inaccessible e-book readers to its patrons. Under the settlement, the library is required to purchase at least 18 accessible e-book readers to ensure that people who are blind can participate in and benefit from the program.

### **IV. Accessibility Issues in Electronic and Information Technology Equipment**

Each day, it becomes increasingly more difficult to go to the movies, attend a sporting event, rent a movie, check out a book, or see a concert without successfully interacting with electronic and information technology (EIT) equipment. Accessible EIT equipment is often critical to an entity's ability to provide a person with a disability equal access to its goods and services. Individuals with disabilities must have an equal opportunity to use EIT equipment, such as kiosks, interactive transaction machines, point-of-sale (POS) devices, and automated teller machines (ATMs).

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<sup>7</sup> Following on the heels of the settlements, the Assistant Attorney General for Civil Rights at the Justice Department and the Assistant Secretary for Civil Rights of the Department of Education wrote to college presidents throughout the country emphasizing that the use of inaccessible emerging technologies in the classroom violates the ADA.

Among the EIT equipment being used by entertainment providers are kiosks and POS devices, which provide a wide range of services, including information sharing, purchasing, ticketing, and accessing the Internet. Unfortunately, many of these emerging technologies have been developed without accessibility in mind, even though accessibility features like talking kiosks are available. Often, with the advent of touch-screen technology, customers are required to enter data using a flat screen while reading changing visual information and instructions. Persons who cannot see the flat screen must rely on other people to enter their information, including their personal identification numbers. Individuals with disabilities who engage in financial or other transactions should be able to do so independently and not have to provide third parties with private information, such as a personal identification number. And with the right technology, this can be achieved.

The Department has addressed the accessibility of EIT equipment in several contexts, including in museums. In July 2010, for example, the Department announced a settlement with the entity that owns and maintains Mount Vernon Estate & Gardens in Alexandria, Virginia, a facility on the National Register of Historic Places. Among other modifications, Mount Vernon agreed to modify the controls of its interactive exhibits so that they are usable by visitors with mobility disabilities, to provide closed captioning for its films, and provide walk-in audio-described devices for tours. Similarly, in June 2008, the Department reached a settlement with the International Spy Museum, which requires that all computer interactive programs be accessible to people with disabilities.

The Department is also addressing these issues through its rule-making authority. In its 2010 ANPRM on equipment and furniture, the Department focused on, among other issues, the accessibility of fixed and non-fixed EIT equipment. The Department received more than 400 comments in response to its ANPRM and is currently reviewing these comments.

## **V. Technology and Access to Events (Ticket Sales)**

In the past, many private venues, ticket sellers, and distributors have not provided people with disabilities an equal opportunity to purchase tickets for wheelchair-accessible seats. Whereas the general public is usually able to directly and immediately purchase tickets for non-accessible seats through websites and other services, people with disabilities have struggled – and many times failed – to reserve wheelchair-accessible seating.

As of March 15, 2011, revised regulations issued by the Justice Department require venues that sell tickets for assigned seats to implement policies to sell tickets for accessible seats in the same manner and under the same conditions as all other ticket sales. Specifically, tickets for accessible seats must be sold during the same hours; through the same methods of purchase (by telephone, on site, through a website, or through third-party vendors); and during the same

stages of sales (pre-sales, promotions, general sales, wait lists, or lotteries) as non-accessible seats.

## **VI. Conclusion**

Thank you for the opportunity to highlight all of the work the Department is doing in this important area. We will continue to use all of the tools the Justice Department has to realize the mission of the ADA and to ensure that people with disabilities have full and equal access to entertainment technologies.