Accessibility

Fighting for Accessible Websites Under the ADA:
Daniel Goldstein, Brown Goldstein Levy, Baltimore

The U.S. Department of Justice has yet to issue regulations on how e-commerce operators and governments can meet their website accessibility obligations under the Americans With Disabilities Act. In the meantime, many of the country’s top retailers are being hit with lawsuits for allegedly failing to make their websites accessible to the legally blind.

Bloomberg BNA’s Alexis Kramer posed questions to Daniel Goldstein, attorney for the National Federation of the Blind and a partner at Brown Goldstein Levy in Baltimore on barriers to website accessibility and how companies can ensure their websites are—and remain—accessible to sight-impaired users.

Bloomberg BNA: How long have you been representing the NFB in disability rights issues? How did you get started in this area of law?
Daniel Goldstein: I have been representing the NFB in disability rights matters since 1986. After graduating from the University of Texas Law School in 1973 and clerking for a federal district court judge in Maryland, I had a brief stint in private practice before becoming an assistant U.S. attorney, a position I held for six years.

As assistant U.S. attorney, I tried a number of political corruption and other white collar criminal cases. In 1982, I set up my own firm, doing complex civil cases and defending white collar criminal cases, with the occasional civil rights case thrown in. I knew nothing about disability rights issues when I was first hired by the NFB, but quickly recognized it as a new and overlooked frontier in civil rights.

Bloomberg BNA: What industry sectors does the NFB look at regarding website accessibility barriers?
Goldstein: The NFB has been responsive to its membership complaints about inaccessible websites—which often means the most heavily used websites—regardless of sector. Thus, one of our first settlement agreements was with Amazon. Over the years, other
agreements that come to mind include Target, Apple (iTunes U), eBay, Expedia, H&R Block, Scribd and Monster.com.

**BLOOMBERG BNA:** Have government websites also been an issue?

**Goldstein:** Government websites have been and continue to be a major issue. The United States has been a major scofflaw, but has been improving its performance somewhat in the last several years. Government websites are the most visited websites and the issue extends to online forms and accessible notifications.

In 2014, we, working with the Disability Rights Education and Defense Fund (DREDF), signed a landmark agreement with the Department of Education that addressed accessible, fillable, savable online forms for student loans and accessible notifications (loan statements, opportunities to change terms, etc.). We are now pursuing negotiations with several other federal government entities over similar issues.

In 2015, the National Association of State Chief Information Officers (NASCIO) released excellent guidelines that extended to guidance on picking vendors that are mature on maintaining accessibility. The guidelines provide criteria for assessing whether a vendor is offering accessible technology and contain a chart of the kinds of policies, procedures and metrics that would allow someone interested in getting a license to assess whether the company knows what it’s doing with respect to accessibility.

**BLOOMBERG BNA:** What are the common technical barriers to website accessibility?

**Goldstein:** The most common barriers result from not considering accessibility in designing the website: images without alt tags, no headings, no focus on a new page, etc.

Screen readers don’t read the screen, they read the coding behind the screen. Images need to have alt tags to enable screen readers to communicate to the user what the images are. Pages are organized visually, so blind users who don’t want to read from top to bottom to find what they need can listen for headings at various levels. For example, if the page is one that lists “hardware,” the H1 tag—which would be visible only to the screen reader—would say “hardware.” Then the H2 tags would say “plumbing,” “electrical,” “garden center,” etc. Blind users would hear the H1 up front to confirm what page they are on, and then they can use a keyboard command to get a listing of headings on that page and navigate to the desired heading.

Focus is where the cursor lands on a new page. Let’s say that you were paying for an item and you forgot to put in your credit card’s security code and you hit “submit.” The new page will contain an error message telling you that you must fill in the security code and your eye will go to the error message because it is bright red. If the page is coded for accessibility, the focus on the new page (i.e., where it will start reading) will be with the error message.

I expect we’ll be looking in 2016 at more government websites with inaccessible forms and at corporate websites with inaccessible forms, together with those websites that are operated by e-commerce.

**BLOOMBERG BNA:** How can these barriers be resolved?

**Goldstein:** It’s pretty easy to resolve most of these barriers. Sometimes there are issues with controls for videos, flash or carousels that are more complex. There are now a host of firms offering to remediate websites and the expense is usually small. The most significant problem is maintaining the accessibility of a large commercial site. Without policies, procedures and metrics—such as testing a release for accessibility before posting to the website and training in accessible design (so that accessibility is part of the design process the way, say, cybersecurity is)—the site’s status as accessible will be temporary at best.

**BLOOMBERG BNA:** What is the most recent case you have worked on against a company with an inaccessible website?

**Goldstein:** The most recent case was against Scribd.com, an online e-library for a monthly fee. Scribd did face some significant remediation challenges, but it developed a financially reasonable and effective plan that led to an excellent settlement. Scribd is currently building a new mobile website that will be accessible on all devices and is going to have its books in ePUB3.01 format—the accessibility standard for digital books.

We have a suit pending against the Ohio Secretary of State over barriers in the voter services website and forms, as well as making it possible to fill out absentee ballots using the computer. Our focus on websites, though, has recently been more in the context of higher education, where it is not only the websites, but educational software, and digital content that create barriers, and where systematic change is most challenging. I expect we’ll be looking in 2016 at more government websites with inaccessible forms and at corporate websites with inaccessible job applications, together with those websites that are operated by e-commerce.

**BLOOMBERG BNA:** What’s your opinion of the DOJ’s delay in its rulemaking on website accessibility for businesses?

**Goldstein:** It’s more bad news for business than for disability rights advocates. Many businesses were waiting for the guidelines before undertaking the work of remediation, so that they could be sure that their websites would comply. I think most businesses would be pleased to expand their customer base, which is what accessibility does. The ripples would have been good for tech, rewarding developers of authoring tools that create accessibility, for example. It is rare that an acces-
sibility development does not benefit everyone—think wheelchair ramps and strollers or closed captioning and televisions at the gym and noisy bars.

**BLOOMBERG BNA:** What steps would you advise companies to take now to ensure their websites are accessible to the blind, in the absence of federal rules?

**Goldstein:** Don't wait to get a demand letter or be sued. Look at how you can comply with the Web Content Accessibility Guidelines (WCAG) 2.0 AA, which is the standard that DOJ and private plaintiffs are using for the most part and figure out the most painless way, financially, to make your site accessible.

For example, if you have planned to redesign or add a certain segment to your site, then make it accessible from the start. It's far cheaper to plan for an elevator than to decide to add one once your 30-story building is complete. Or if you are re-branding, consider using templates that will ensure accessibility. Make sure you have policies, procedures and metrics in place so that you know if you are maintaining accessibility and can identify why, if you are not. Most of all, consult disabled consumers or a consumer organization before deciding what you are going to do, and have consumers actually test the changes.

Something you imagine you may need to do, you may not need to do at all or may be able to do much cheaper. Something you hadn't thought to do may be critical to accessibility. And, of course, if you work with the disability community, they will spread the word that this is no longer a site to be avoided, but to be used.