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**Recent Development: Leveling the Accessibility Playing Field:
Section 508 of the Rehabilitation Act**

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Introduction

Innovative technology is an essential asset in the information age. Most people have the ability to obtain information about almost any topic at the click of a mouse thanks to recent developments in Internet and home computer technology. But many people face obstacles in obtaining the same information due to mental and physical disabilities. Although technology has been developed to assist individuals with disabilities, most electronic and information technology is not compatible with these products. As a result, millions of people find it difficult or impossible to utilize basic electronic and information technology that non-disabled individuals use freely.

In an attempt to correct this disparity, Congress has amended the Rehabilitation Act of 1973 to include provisions that apply to federal agencies.² Effective as of June 21, 2001, the 1998 amendment to section 508 of the Rehabilitation Act³ (herein section 508) requires all United States federal agencies to comply with accessibility standards administered by the Architectural and Transportation Barriers Compliance Board (herein Access Board).⁴

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² Rehabilitation Act of 1973, as amended by § 508, 29 U.S.C. § 794(d) (1998).

³ *Id.*

⁴ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. 80,500 (Dec. 21, 2001) (to be codified at 36 C.F.R. pt. 1194). The Access Board is an independent federal agency, established by § 502 of the

These standards ensure that electronic and information technology is accessible to disabled persons to the extent it does not pose an undue burden on an agency.⁵

In addition, as of June 25, 2001, federal agencies are prohibited from procuring non-compliant electronic and information technology.⁶ As a result, federal agencies are required to purchase the most accessible electronic and information technology commercially available.⁷ Therefore, vendors who supply federal agencies with technology, such as hardware, software, websites, telecommunications equipment and automated office devices, must enable accessibility to obtain government contracts.⁸

The accessibility standards of section 508 only apply to federal websites and other electronic and information technology procured by federal agencies on or after June 21, 2001.⁹ Failure to comply with these standards could result in a federal lawsuit.¹⁰ Agencies, however, are not required to retrofit electronic and information technology created or procured before that date.¹¹

Rehabilitation Act, whose primary function is to promote accessibility for individuals with disabilities.

⁵ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. 80,500 (Dec. 21, 2001) (to be codified at 36 C.F.R. pt. 1194).

⁶ See Steve Charles, *Section 508 Compliance – Not a Simple Yes or No* (Jun. 2001), at <http://www.immixgroup.com/eujune01www.htm> (on file with the North Carolina Journal of Law & Technology).

⁷ *Id.*

⁸ *Id.*

⁹ Kathy Freise, *§ 508 Deadline Approaches* (Jun. 13, 2001), The Source, at <http://thesource.micronpc.com/articles/061301.html> (on file with the North Carolina Journal of Law & Technology).

¹⁰ 29 U.S.C. § 794(d)(f) (1998).

¹¹ *Id.*

Currently, section 508 does not directly apply to the private sector or to recipients of federal funds, but organizations and state agencies that receive federal funds under the Technology Related Assistance for Individuals with Disabilities Act of 1998¹² are required to comply with the standards set forth in section 508.¹³

The General Services Administration is the lead agency responsible for providing technical implementation and educational assistance for section 508 compliance.¹⁴ Additionally, many consulting firms, corporations, and organizations offer software, hardware, and strategic solutions to assist agencies with section 508 compliance.

The new restrictions are part of a congressional effort to improve the accessibility of digital information, online services and other electronic information to the fifty-four million people with disabilities living in the United States.¹⁵ Many of these people pay the same taxes to fund federal agencies that non-disabled people pay; therefore, disabled people should be afforded equal access to resources provided by federal agencies. As the largest technology consumer in the United States, the federal government hopes to motivate the electronic and information technology industry to design and manufacture more accessible

¹² Assistance for Individuals with Disabilities Act, 29 U.S.C. § 3001 (1998).

¹³ See *Accessibility: The Clock is Ticking* (Oct. 8, 1999), Evolt.org, at http://www.evolt.org/article/Accessibility_The_Clock_is_Ticking/4090/485 (on file with the North Carolina Journal of Law & Technology).

¹⁴ Christopher J. Dorobek, *Feds Might Get Short Reprieve on Section 508* (Jun. 5, 2000), Government Computer News, at http://www.gcn.com/vol19_no14/news/2138-1.html (on file with the North Carolina Journal of Law & Technology).

¹⁵ Courtney Macavinta, *W3C, Others Seek Accessible Web* (May 4, 1999), Cnet News.com, at <http://news.cnet.com/news/0,10000,0-1005-200-342021,00.html> (on file with the North Carolina Journal of Law & Technology).

technology products.¹⁶ As a result, vendors who refuse to take the necessary steps to make their products accessible will risk being cut off from the huge government market.¹⁷ Because of the large percentage of people with disabilities in the United States, market leaders in the field of authoring tools may begin to realize that a failure to make their products accessible could result in a loss of potential revenue from that percentage of the market. The congressional effort will most likely be successful and far-reaching should these market leaders decide to make their markets more accessible to people with disabilities.

Overall, the section 508 regulations “have the potential for being as important for assuring access to the information age, as the Architectural Barriers Act,¹⁸ [was] for assuring access to the constructed environment for people with disabilities.”¹⁹ Just as restaurants, buildings frequented by the general public, and other constructed environments provide access specifically for handicapped individuals, section 508 will likely ensure that the Internet and other electronic and information technology will make more accommodations for people with disabilities.

The following Recent Development provides insight on section 508, its application, requirements, exceptions, available solutions, and the remedies available for an agency’s failure to

¹⁶ See Jennifer Jones, *Users With Disabilities Push High-tech Limits* (Sept. 1, 2000), at

<http://www.infoworld.com/articles/hn/sml/00/09/04/000904hnetrend.xml> (on file with the North Carolina Journal of Law & Technology).

¹⁷ *Id.*

¹⁸ Architectural Barriers Act, 42 U.S.C. § 4151 (1968).

¹⁹ See Douglas Wakefield, *Section 508 Should You Care?* (Dec. 17, 1998), Disabilities Information Resources, available at http://www.dinf.org/csun_99/session0140.html (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

comply with the enumerated standards of section 508. Additionally, because of the overwhelming concern and confusion surrounding section 508's effect on websites, this Recent Development will focus primarily on this aspect of the legislation.

Section 508 of the Rehabilitation Act

Background

On August 7, 1998, President Clinton signed into law the Workforce Investment Act of 1998,²⁰ which included the 1998 amendments to the Rehabilitation Act.²¹ Section 508 was originally added to the Rehabilitation Act in 1986, but the 1986 version of section 508 established non-binding guidelines for accessibility.²² The 1998 amendments created binding, enforceable standards and incorporated these standards into federal procurement regulations.²³ The 1998 amendments also established a complaint procedure and reporting requirements.²⁴

Application

Section 508 is a part of the Rehabilitation Act of 1973, which applies to all electronic and information technology

²⁰ Workforce Investment Act, 29 U.S.C. § 2801 (1998).

²¹ See Questions & Answers About § 508 of the Rehabilitation Act Amendment of 1998, United States Access Board, at <http://www.access-board.gov/sec508/FAQ.htm> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

developed, procured, maintained, or used by federal government departments and agencies.²⁵ The Rehabilitation Act requires that such electronic and information technology must be accessible to people with disabilities in a way that is comparable to the access and use of information and data by federal employees who are not individuals with disabilities.²⁶ Accessibility is required unless compliance imposes an undue burden on the agency.²⁷

Currently, section 508 does not apply to recipients of federal funds nor does it regulate the private sector. But states that receive federal funds under the Technology Related Assistance for Individuals with Disabilities Act of 1988 (herein AT Act) are required by that Act to comply with section 508 and its assigned standards.²⁸ Thus, while section 508 on its face only requires compliance within the federal sector, it also applies to recipients of federal funds under the AT Act.²⁹

Moreover, section 508 does not apply to federal contractors' websites; however, the websites these contractors develop for federal agencies must adhere to section 508 accessibility requirements.³⁰ Thus, private companies do not have

²⁵ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,500.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *Accessibility: The Clock is Ticking* (Oct. 8, 1999), Evolt.org, at http://www.evolt.org/article/Accessibility_The_Clock_is_Ticking/4090/485 (on file with the North Carolina Journal of Law & Technology).

²⁹ See Technical Assistance Project, *Policy Information Pipeline*, at <http://www.resna.org/taproject/policy/initiatives/508.html> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

³⁰ Arkansas Independent Living Council, From the United States Department of Justice (report), at <http://www.aile-ar.org/SpringNewLtr/justicedept.html> (last

to provide alternative formatted information or accommodate individuals with disabilities under section 508 for their own electronic and information technology.³¹ An example of when a federal contractor would have to comply with section 508 exists when a federal agency contracts with a consulting firm to collect and analyze certain data and, in turn, make that information available to the public on a website.³² In that case, section 508 applies to the website or portion devoted to fulfilling the contractual obligation.³³ The firm's general website, or the portion not devoted to the contracted study, would not be subject to section 508. It is important to note, however, that potential government customers may consider the firm's accessibility approach for their own sites when determining what firm would best meet the federal agency's needs as an accessibility customer.

Technology Covered

Section 508 applies to all federal government electronic and information technology.³⁴ This includes computers; telecommunication systems; photocopiers; training videos; information transaction machines, such as lobby directories,

visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

³¹ E-Ramp, *Focus: Section 508*, at <http://www.eramp.com/Focus508.asp> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

³² Questions & Answers About § 508 of the Rehabilitation Act Amendment of 1998, *supra* note 21.

³³ *Id.*

³⁴ *Id.*

information kiosks, or card readers; applications software; and websites maintained or contracted out by the federal government.³⁵

The compatibility of electronic and information technology with assistive technology is one of the primary concerns that section 508 addresses.³⁶ Enumerated examples of assistive technology include: screen readers to either hear screen content or read the content in Braille; specialized one-handed keyboards; and specialized audio amplifiers that allow an individual with limited hearing to receive an enhanced audio signal.³⁷ But built-in assistive technology is not required where it is not needed. For example, workstations of non-disabled employees are not required to be equipped with Braille displays and printers.³⁸ On the other hand, networked computer systems, hardware, and software should be compatible with Braille systems and printers, so that if an employee needs them, he or she can use the same shared systems that other employees use.³⁹

³⁵ *Id.*; *Electronic and Information Technology Accessibility Standards*, 36 C.F.R. § 1194.4 (2000).

³⁶ See NARTE News, *Development and Implementation of Rehabilitation Act Amendments, Section 508* (Summer 2001) (interview with Doug Wakefield, Special Advisor to the Access Board), at <http://www.narte.org/nn192/sec508.html> (on file with the North Carolina Journal of Law & Technology).

³⁷ *Architectural and Transportation Barriers Compliance Board*, 65 Fed. Reg. at 80,504 (disabilities covered under the new standards include hearing impairments (hard of hearing or deafness); vision impairments (blindness, low vision, colorblindness); speech impairments; strength or dexterity impairments; and mobility impairments (i.e., wheelchair required)).

³⁸ See Arkansas Independent Living Council, *supra* note 30.

³⁹ *Id.*

Exceptions

Publicly, the electronic and information technology industry is dedicated to compliance. Various corporations have expressed an interest in providing accessible electronic and information technology.⁴⁰ Their stance is expected to affect the broader industry. But privately, the industry is likely to make every effort to use industry organizations to lobby for more time.⁴¹ Companies are also likely to take advantage of section 508 exceptions to avoid compliance.⁴² The four primary exceptions are the undue burden exception, the national security and intelligence systems exception, the lack of commercially available products, and the micro-purchases exception.⁴³

1) Undue Burden Exception

Under the undue burden exception, agencies need not purchase accessible products if doing so would impose an undue

⁴⁰ William Matthews, *IT Execs Bemoan June "Section 508" Deadline* (Dec. 15, 2000), Federal Computer Week Online, at <http://www.fcw.com/fcw/articles/2000/1211/web-508-12-15-00.asp> (on file with the North Carolina Journal of Law & Technology).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Christopher R. Yukins, *Section 508 Likely to Have Major Impact on Federal Information Technology Market* (June 2001), Holland & Knight Government Contracts Newsletter, available at <http://www.hklaw.com/newsletters.asp?ID=198> (on file with the North Carolina Journal of Law & Technology).

burden.⁴⁴ But the agency must explain why meeting the standards would impose an undue burden for a given procurement action and provide people with disabilities alternative access to the information or data that is affected.⁴⁵ To determine whether an undue burden exists, an agency must consider the resources available to the program or component for which the product is being developed, maintained, used, or procured.⁴⁶ This undue burden analysis is conducted by a requirements official, and the official is to report any undue burden finding to the contracting, or procuring, officials.⁴⁷ Therefore, contractors should address the issue of undue burden early in their discussions with agency officials.⁴⁸

⁴⁴ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,500. Undue burden is defined as a significant difficulty or expense. In one case, a postal clerk filed a complaint under the Rehabilitation Act of 1973 against his employer for failure to accommodate his request to make up for time missed at work due to his allergies. The court found that forcing the employer to accommodate would pose an undue burden because he would have to reassign the duties of other employees to appease the plaintiff's unpredictable tardiness. *Berkey v. Henderson*, 120 F. Supp. 2d 1189 (S.D. Iowa 2000). In another case, the Eighth Circuit Court of Appeals found that establishing a special bus route for a single student who admittedly received a free appropriate public education at her neighborhood because her parents wanted her to go to a school in another school district posed an undue burden. *Timothy H. v. Cedar Rapids Community Sch. Dist.*, 178 F.3d. 968 (8th Cir. 1999).

⁴⁵ See Questions & Answers About § 508 of the Rehabilitation Act Amendment of 1998, *supra* note 21.

⁴⁶ 36 C.F.R. § 1194.4.

⁴⁷ Yukins, *supra* note 43.

⁴⁸ *Id.*

2) *National Security and Intelligence Systems Exception*

A second exception relates to national security and intelligence systems. Section 508 requirements do not apply to national security, intelligence, and weapons systems.⁴⁹ But section 508 does apply to routine business and administrative systems within defense agencies, including payroll, finance, logistics, and personnel management applications.⁵⁰

3) *Lack of Commercially Available Products*

A third exception provides that when an agency is buying commercial items, and no accessible products are available in the marketplace, the agency need not apply section 508.⁵¹

4) *Micro-purchases Exception*

A fourth exception applies to micro-purchases. Before January 1, 2001, purchases at or below the micro-purchase level (\$2,500) did not have to comply with section 508.⁵²

The regulations do not require installation of accessibility related software or attachment of an assistive technology device at the workstation of a federal employee who is not an individual with a disability.⁵³ Additionally, when an agency provides public access to information and data through electronic and information

⁴⁹ 36 C.F.R. § 1194.3(a) (national security and intelligence systems are systems used for military command, weaponry, intelligence, and cryptologic activities).

⁵⁰ *Id.*

⁵¹ See Yukins, *supra* note 43.

⁵² *Id.*

⁵³ 36 C.F.R. § 1194.3(c).

technology, the agency is not required to purchase or make products owned by the agency accessible to individuals with disabilities at locations where electronic and information technology is not offered to the public.⁵⁴ For example, if the Internal Revenue Service provided an information kiosk in a post office, the agency has no obligation to provide that information in any location other than where the agency ordinarily provides such information to the public.⁵⁵ Finally, products located in spaces entered only by service personnel for maintenance, repair or occasional monitoring need not comply.⁵⁶

Misunderstanding

There has been some confusion surrounding the accessibility standards of section 508.⁵⁷ As a result, there have been both positive and negative effects as electronic and information technology customers strive to comply with section 508 requirements. As the June 21, 2001 deadline introduced above approached, some program managers began to shut down their websites rather than risk being sued while their webmasters tried to assess and implement the applicable compliance standards.⁵⁸ Others complained about diverting scarce time, talent and money

⁵⁴ 36 C.F.R. § 1194.3(d).

⁵⁵ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,503.

⁵⁶ 36 C.F.R. § 1194.3(f).

⁵⁷ See Karen Robb, *Confusion Reigns Over Accessibility Compliance* (April 2001), available at <http://www.federaltimes.com/infotech/inf041601b.html> (on file with the North Carolina Journal of Law & Technology).

⁵⁸ *Id.*

to this unfunded mandate.⁵⁹ Still other agencies focused on making their most popular pages accessible, planning updates in the future.⁶⁰

Some experts say agencies have misunderstood the law.⁶¹ According to Doug Wakefield, Information Technology Access Specialist at the Access Board, agencies have failed to recognize that section 508 standards only apply to websites launched or substantially redesigned on or after June 21, 2001.⁶² “Older sites must offer an alternative way for the disabled to get the information on the site, but the Rehabilitation Act has required that before websites even existed,” Wakefield said.⁶³ Alternative measures could include offering accessible information through a toll-free telephone number or an email address.⁶⁴ Wakefield is concerned that agencies’ overreaction to the law may leave people with disabilities with less access to information than they had before the enactment of the accessibility standards.⁶⁵

ADA and Section 504

Additionally, some members of the legal community believe that the guidelines will soon be extended to include all private, commercial websites. Currently, legal obligations already

⁵⁹ Government Computer News, *Section 508 Spells Trouble for Some Federal Sites* (May 22, 2000), available at <http://www.teleport.com/~kford/webwatch/nolyris/msg00248.html> (on file with the North Carolina Journal of Law & Technology).

⁶⁰ See Freise, *supra* note 9.

⁶¹ Robb, *supra* note 57.

⁶² *Id.*

⁶³ *Id.* (referring to § 504 and ADA regulations).

⁶⁴ *Id.*

⁶⁵ *Id.*

exist for agencies and organizations that fall under the requirements of the Americans with Disabilities Act (herein ADA) and section 504 of the Rehabilitation Act of 1973.⁶⁶ One of the lesser-known provisions of the ADA is the “effective communication rule.”⁶⁷ Under this rule “the ADA requires state and local governments and places of public accommodation to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, unless doing so would result in a fundamental alteration to the program or service or in an undue burden.”⁶⁸ Auxiliary aids include taped texts, brailled materials, large print material, and other methods of making information accessible to people with visual disabilities.⁶⁹ According to Deval Patrick,⁷⁰ on behalf of the Department of Justice, entities covered under the ADA “are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or computerized media such as the Internet. Covered entities that use the Internet for communications regarding their programs, goods, or services must be prepared to offer those communications through accessible means as well.”⁷¹ There is no legal or explicit statutory provision that supports this statement, however. The

⁶⁶ See *Accessibility: The Clock is Ticking*, *supra* note 28. Any employer with 15 or more employers must adhere to the Americans with Disabilities Act.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Assistant Attorney General, Civil Rights Division.

⁷¹ Letter from Deval L. Patrick, Assistant Attorney Gen., Civil Rights Div., to Sen. Tom Harkin (D, IA) (Sept. 9, 1996), *available at* <http://www.usdoj.gov/crt/foia/tal712.txt> (on file with the North Carolina Journal of Law & Technology).

legal validity of the Department of Justice's argument is discussed below.

Section 504 of the Rehabilitation Act, passed in 1973, applies to education contracts that utilize federal funds.⁷² Under section 504, federally funded technology purchases for education must include technologies and support for use by all students.⁷³ This provision is intended to ensure that disabled students have equal access to the same information and opportunities as non-disabled students. But neither the ADA nor section 504 articulate specific Web accessibility guidelines.⁷⁴ As a result, advocates hope the Web standards developed for section 508 will be used to serve the Web purposes of the ADA and section 504.

Requirement Standards

Section 508(a)(2)(A) instructs the Access Board to publish standards setting forth a definition of electronic and information technology and the technical and functional performance criteria necessary for accessibility for such technology.⁷⁵ The Electronic and Information Technology Access Advisory Committee (herein EITAAC) recommendations were the basis of the proposed

⁷² Assistive Services, Inc., *Overview*, at

http://www.geocities.com/assistive_services/overview.htm (last revised Oct. 22, 2000) (on file with the North Carolina Journal of Law & Technology).

⁷³ *Id.*

⁷⁴ See *Rationale for Addressing the Barriers to Universal Access*, Professional Development Center/California Virtual Campus, at

<http://pdc.cvc.edu/uaccess/rationale.asp> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

⁷⁵ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,500.

standards.⁷⁶ These standards outline the technical and information dissemination requirements for the use of electronic media.⁷⁷ These standards also describe several checklists that assist in determining an agency's section 508 compliance status.⁷⁸ Additionally, a functional equivalence standard was developed to permit alternative means of complying with section 508, encompassing provisions that could not be envisioned when the standards were established.⁷⁹

The section 508 compliance checklists are divided into several subparts and categories. The next section will focus on the following subparts: A) Technical Standards; B) Functional Performance Criteria; and C) Information, Documentation and Support.⁸⁰

A) Technical Standards

The following technical categories focus on the functional capabilities of different technologies covered under the regulation:

- 1) Software Applications and Operating Systems (1194.21);
- 2) Web-based Information and Applications (1194.22);

⁷⁶ 36 C.F.R. § 1194.

⁷⁷ See GRC International, *About § 508*, at http://www.grci.com/whatwedo/§_508/508_info.htm (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

⁷⁸ *Id.*

⁷⁹ *Access To Information and Technology Offered by the U.S. Government* (Jan./Mar. 2001), *Advocate* (National Assistive Technology Advocacy Project newsletter), at <http://www.nls.org/av/av-0301.htm> (on file with the North Carolina Journal of Law & Technology).

⁸⁰ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,523.

3) Telecommunication Products (1194.23); 4) Video and Multimedia Products (1194.24); 5) Self Contained, Closed Products (1194.25); and 6) Desktop and Portable Computers (1194.26).⁸¹

1) Software Applications and Operating Systems

The requirements for software applications and operating systems define software as a set of logical steps, or programming instructions, that control the actions or operations of most forms of electronic and information technology products.⁸² Most of the specifications for software within this section pertain to accessibility for people with vision impairments.⁸³ Moreover, some of the specifications address animated displays, color and contrast settings, flash rate, and electronic forms, among others.⁸⁴

According to the requirements, when software is designed to run on a system that has a keyboard, the functions of the product must be executable from a keyboard where the function itself, or the result of performing a function, can be distinguished textually.⁸⁵ Similarly, when electronic forms are used, the form must allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.⁸⁶ Applications cannot disrupt or disable activated features of other products that are identified as compliant

⁸¹ See GRC International, *supra* note 77.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ 36 C.F.R. § 1194.21(a).

⁸⁶ 36 C.F.R. § 1194.21(l).

accessibility features.⁸⁷ The requirements also provide that sufficient information about a user interface element, including the identity, operation and state of the element, must be available to assistive technology.⁸⁸ When an image represents a program element, the information conveyed by the image must also be available in text.⁸⁹ Textual information shall be provided through operating system functions for displaying text.⁹⁰ Text content, text input caret location, and text attributes must be available at a minimum.⁹¹

Applications cannot override user selected contrast and color selections and other individual display attributes that allow individuals to customize screen appearance to accommodate his or her individual disability.⁹² Moreover, color-coding cannot be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.⁹³ When animation is displayed, the information must be displayable in at least one non-animated presentation mode at the option of the user.⁹⁴ Additionally, software cannot use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than two hertz and lower than fifty-five hertz.⁹⁵

2) Web-based Information and Applications

⁸⁷ 36 C.F.R. § 1194.21(b).

⁸⁸ 36 C.F.R. § 1194.21(d).

⁸⁹ *Id.*

⁹⁰ 36 C.F.R. § 1194.21(f).

⁹¹ *Id.*

⁹² *See* 36 C.F.R. § 1194.21(g).

⁹³ 36 C.F.R. § 1194.21(i).

⁹⁴ 36 C.F.R. § 1194.21(h).

⁹⁵ 36 C.F.R. § 1194.21(k).

The specifications for Web-based technology and information are primarily based on access guidelines developed by the Web Accessibility Initiative of the World Wide Web Consortium.⁹⁶

Section 508 does not prohibit graphics, but there must be a text equivalent for every non-text element.⁹⁷ The use of scripting languages, such as Java, in the construction of Web pages is not prohibited even though they are not generally accessible to screen-readers or text browsers.⁹⁸ Instead, information displayed on such Web pages must be identified textually to ensure accessibility by assistive technology.⁹⁹ Similarly, text-only pages are not generally required; however, when accessibility requirements cannot be met by any other method, text-only pages must be implemented and updated whenever the primary page changes.¹⁰⁰ Other requirements focus on frames, headers, links, and display frequency, similar to those mentioned above.¹⁰¹

⁹⁶ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,525. The Board interprets paragraphs (a) through (k) of this § as consistent with the following priority 1. Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5, 1999), Web Accessibility Initiative of the World Wide Web Consortium, *available at* <http://www.w3.org/TR/1999/WAI-WEBCONTENT-19990505>.

⁹⁷ 36 C.F.R. § 1194.22(a).

⁹⁸ *See Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

⁹⁹ 36 C.F.R. § 1194.22(l).

¹⁰⁰ *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79; 36 C.F.R. § 1194.22(k).

¹⁰¹ 36 C.F.R. § 1194.22(i); 36 C.F.R. § 1194.22(g); 36 C.F.R. § 1194.22(o); 36 C.F.R. § 1194.22(j).

3) Telecommunication Products

The requirements for telecommunication products promote accessibility for people who are deaf or hard of hearing.¹⁰² The applicable assistive technology includes hearing aids, cochlear implants, assistive listening devices, and TTYs.¹⁰³ TTYs (teletypewriters) allow people with hearing or speech impairments to use the telephone to communicate.¹⁰⁴ Standard, non-acoustic TTY connection points for telecommunication products are required. These connection points allow voice communication but not TTY functionality.¹⁰⁵ Additional specifications require adjustable volume controls for output, product interface with hearing technologies, and the usability of keys and controls by people that have impaired vision or problems with their dexterity or motor control.¹⁰⁶

If voice-mail and other interactive voice response systems require timed user responses, alerts must be included to notify the user that the response time has expired.¹⁰⁷ Moreover, the system must be equipped to accept requests for additional time.¹⁰⁸ Although this section does not explicitly mention the following requirement, interactive voice systems must have the

¹⁰² See GRC International, *supra* note 77.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

¹⁰⁷ *Id.*; 36 C.F.R. § 1194.23(d).

¹⁰⁸ 36 C.F.R. § 1194.23(d).

capability to grant the requested extension of time.¹⁰⁹ In addition, this section requires that technologies that use encoding, signal compression, format transformation, or similar techniques cannot remove information needed for access, or the technologies must restore that information upon delivery.¹¹⁰

These requirements may also make technology more accessible for both disabled and non-disabled individuals.¹¹¹ If a telecommunication system allows a user to adjust the volume, a function of the system must automatically reset the volume to the default level after each use.¹¹² Because more than one input modality, output or format must be supported, no telecommunications equipment is either barred from using or required to use toggle switches.¹¹³ But if toggle switches are used, the user must be able to detect the on or off status of these controls visually, physically, and through sound.¹¹⁴

4) *Video and Multimedia Products*

The video and multimedia product requirement standards apply to products such as video programs, narrated slide production, and computer-generated presentations.¹¹⁵ The

¹⁰⁹ See *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

¹¹⁰ 36 C.F.R. § 1194.23(j).

¹¹¹ See *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

¹¹² 36 C.F.R. § 1194.23(g).

¹¹³ See *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79; 36 C.F.R. § 1194.23(k)(4).

¹¹⁴ 36 C.F.R. § 1194.23(k)(4).

¹¹⁵ See GRC International, *supra* note 77.

standards focus on captioning, audio description, and video description.¹¹⁶ For example, certain training and informational multimedia products developed or procured by federal agencies must comply with the standards outlined in this section.¹¹⁷ In addition, the standards mandate caption decoder circuitry for any system with a screen larger than 13 inches and secondary audio channels for television tuners.¹¹⁸ Tuner cards for computers are also included.¹¹⁹ Viewers must also be permitted to turn captioning or video description features on or off.¹²⁰

The comment to this section notes that captioning is important because captions “convey more than just dialog.” As a result, “subtitles are not a substitute for captions” and audio description.¹²¹ Thus, television displays thirteen inches and larger, as well as computer equipment with television receiver or display circuitry must be equipped with appropriate caption decoder circuitry.¹²² In addition, all training and informational videos and multimedia presentations which support the agency’s mission must be open- or closed-captioned if they contain audio information necessary for comprehension of the content.¹²³ These videos must also be audio-described if they contain visual information necessary for comprehension of the content.¹²⁴ Furthermore, if the playback or display equipment does not support closed-captioning

¹¹⁶ 36 C.F.R. § 1194.24.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,517.

¹²² 36 C.F.R. § 1194.24(a).

¹²³ 36 C.F.R. § 1194.24(c).

¹²⁴ 36 C.F.R. § 1194.24(d).

or audio-description, the inclusion of compliant videos would be futile. Conversely, if the training materials are not properly equipped, having compliant televisions would not be enough to adequately comply with the standards.¹²⁵

5) *Self-Contained, Closed Products*

The standards for self-contained, closed products apply to products such as information kiosks, information transaction machines, copiers, printers, calculators, and fax machines.¹²⁶ Assistive technology is difficult to install or attach to these products due to the design of the product's imbedded software.¹²⁷ As a result, the standards require that such products have access features built into the system so that users do not need external assistive technology.¹²⁸

6) *Desktop and Portable Computers*

The standards for desktop and portable computers focus on keyboards and other mechanically-operated controls, touch screens, ports and connectors, and the use of biometric forms of identification.¹²⁹ Accordingly, all mechanically-operated controls and keys must comply with subsection (k), enumerated in the

¹²⁵ See *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

¹²⁶ See GRC International, *supra* note 77.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See GRC International, *supra* note 77.

telecommunication products standards, which regulate mechanically-operated controls or keys.¹³⁰

B) Functional Performance Criteria

The functional performance criteria of section 508 are for overall product evaluation and for technology or components for which there are no specific requirements under other sections.¹³¹ The performance criteria cover operation, including input and control functions; operation of mechanical mechanisms; and access to visual and audible information.¹³² These standards are designed to allow people with sensory or physical disabilities to locate, identify, and operate input, control and mechanical functions and to access the information provided, including text, static or

¹³⁰ 36 C.F.R. §1194.26(a). § 1194.23(k) states:

“Products which have mechanically operated controls or keys, shall comply with the following:

1) Controls and keys shall be tactilely discernible without activating the controls or keys.

2) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. maximum.

3) If key repeat is supported, the delay before repeat shall be adjustable to 2 seconds per character.

4) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

¹³¹ See Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,519.

¹³² See Better Access, *Creating Digital Curb-Cuts: An Overview of New Federal Regulations on Electronic and Information Technology*, at http://betteraccess.com/l_section_508_history.htm (last modified May 10, 2001) (on file with the North Carolina Journal of Law & Technology).

dynamic images, icons, labels, sounds or incidental operating cues.¹³³

The performance criteria are intended “to ensure that individual accessible components work together to create an accessible product.”¹³⁴ Additionally, the performance criteria are intended to ensure multi-sensory access to all product functions, including operation and information retrieval.¹³⁵ Products must include at least one mode of operation and information retrieval that does not require user vision, visual acuity greater than 20/70, hearing or speech.¹³⁶ Auditory information that is important for the use of a product must be provided in an “enhanced auditory fashion.”¹³⁷ Finally, at least one mode of operation and information retrieval of the product must not require fine motor control or simultaneous actions, and must be operable with limited reach and strength.¹³⁸

C) Information, Documentation and Support

The standards also address access to all information, documentation, and support provided to end users of covered technologies.¹³⁹ This includes user guides, installation guides for end-user-installable devices, and customer support and technical

¹³³ *Id.*

¹³⁴ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,519.

¹³⁵ See Better Access, *supra* note 132.

¹³⁶ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,519-20.

¹³⁷ *Id.* at 80,520.

¹³⁸ *Id.*

¹³⁹ See *id.*

support communications.¹⁴⁰ Such information must be available in alternate formats upon request at no additional charge.¹⁴¹ Alternate formats or methods of communication can include Braille, cassette recordings, large print, electronic text, Internet postings, TTY access, and captioning and audio description for video materials.¹⁴² For example, when a federal agency disseminates information to the public, it must also provide that information in Braille or on an audiocassette, if requested, to accommodate a visually impaired person.

End users must also have access to a description of the accessibility and compatibility features of products in alternative formats, upon request, at no added charge.¹⁴³ Finally, support services for products must accommodate the communication needs of end-users with disabilities.¹⁴⁴

Equivalent Facilitation

There is also an alternative means of compliance, which is not to be considered a waiver of the rules, “but a recognition that future technologies may be developed,” and that existing technologies could be used in a way not envisioned by the regulations to provide the same functional access.¹⁴⁵ Specifically, the regulations are not “intended to prevent the use of designs or technologies as alternatives to those prescribed in this part,

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² 36 C.F.R. § 1194.41(a).

¹⁴³ 36 C.F.R. § 1194.41(b).

¹⁴⁴ 36 C.F.R. § 1194.21(c).

¹⁴⁵ See Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,506.

provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.”¹⁴⁶ In determining “whether a technology results in ‘substantially equivalent or greater access,’ it is the functional outcome, not the form, which is important.”¹⁴⁷ “For example, an information kiosk which is not accessible to a person who is blind must be made accessible by having a telephone handset that connects to a computer that responds to touch-tone commands and delivers the same information audibly.”¹⁴⁸ Also, voice recognition and activation are progressing rapidly, so voice input may soon substitute some or all keyboard functions.¹⁴⁹

Solutions

Organizations must begin the compliance process by evaluating their electronic and information technology and submitting a report of their findings to the Attorney General.¹⁵⁰ In addition, it is imperative that organizations initially consider both a detailed set of technical standards for each enumerated product, as well as functional performance criteria. Organizations should also consider functional equivalence standards, which provide alternate means of complying with section 508.

¹⁴⁶ 36 C.F.R. § 1194.5.

¹⁴⁷ *Access To Information and Technology Offered by the U.S. Government*, *supra* note 79.

¹⁴⁸ *Id.*

¹⁴⁹ Architectural and Transportation Barriers Compliance Board, 65 Fed. Reg. at 80,506.

¹⁵⁰ See Office of the Attorney General, Memorandum for the Heads of All Federal Agencies (Apr. 2, 1999), *available at* <http://www.handinet.org/508/508memohead.htm> (on file with the North Carolina Journal of Law & Technology).

When focusing on websites, organizations should note that a website is considered accessible if every page is in HTML, if all graphics have text descriptions, primarily in alt tags, and if the site uses no interactive or script functions.¹⁵¹ Agencies need only include text details of the displayed graphics; as a result, websites are seen as one of the easier technology items to make accessible.¹⁵² But many websites do not define graphics, so screen readers cannot capture and provide the information to visually impaired visitors. The problem is compounded when a site uses icons and graphics for its links.¹⁵³ As a result, website compliance seems to be causing the most alarm, although compliance is not necessarily difficult.

There are various public and private organizations, as well as corporations that provide section 508 compliance solutions. These are discussed below.

GSA

General Services Administration (herein GSA) is the lead agency for providing education to other agencies about section 508.¹⁵⁴ The Rehabilitation Act assigned GSA the task of providing technical assistance on implementation.¹⁵⁵ As a result, GSA created the Federal IT Accessibility Initiative¹⁵⁶ to coordinate the

¹⁵¹ Freise, *supra* note 9.

¹⁵² Dorobek, *supra* note 14.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Federal IT Accessibility Initiative (FITAI), *available at* <http://www.cmpinc.net/section508>. The FITAI is a “federal government interagency effort to offer information and technical assistance to assist in the

execution of implementation requirements.¹⁵⁷ GSA has also created a website to publish information about rules.¹⁵⁸

The Center for Applied Special Technology

The Center for Applied Special Technology, known as CAST, is a not-for-profit organization that uses technology to expand opportunities for all people, including those with disabilities.¹⁵⁹ CAST offers a service called Bobby that designers can use to check Web pages for accessibility problems.¹⁶⁰ Bobby can be used through the CAST website or it can be downloaded onto a computer's desktop. Designers can upload their organization's website, and Bobby will point out all compliance violations and pinpoint what corrections need to be made.

successful implementation of § 508.” Its website includes information about FITAI and its projects, resources and links. *Id.*

¹⁵⁷ Dorobek, *supra* note 14.

¹⁵⁸ *Id.* Online training for webmasters is available at www.508.gov. In the future, this site will include training for contracting officers, human resources managers and agency § 508 coordinators.

¹⁵⁹ See Center for Applied Special Technology website, at <http://www.cast.org> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

¹⁶⁰ *Id.*

Compaq

Compaq Computer Corporation, a leading global provider of enterprise technology and solutions, was the first computer manufacturer to list its product information online for customers in the federal government seeking information on accessible technology.¹⁶¹ Information on accessibility features of Compaq products can be found on the Buy Accessible website and on Compaq's website.¹⁶²

Microsoft Accessibility Initiatives

Microsoft offers resource guides for people with vision, hearing, mobility, and cognitive and language impairments. Each guide provides a list of assistive technology and links to step by step tutorials that will help customize computers to accommodate an individual with a specific disability.¹⁶³ In addition, Microsoft offers accessibility information about Microsoft products including features, installation tips, and upgrade considerations.¹⁶⁴

¹⁶¹ See E-Ramp, *supra* note 31.

¹⁶² See Buy Accessible website, at

http://www.508.gov/buy_accessible/main.cfm (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology); see also Compaq website, at <http://www.compaq.com/accessibility> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

¹⁶³ See Microsoft website, at

<http://www.microsoft.com/enable/guides/default.htm> (last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

¹⁶⁴ *Id.*

Adobe

Adobe's accessibility Web page offers information about Adobe's access to PDF documents for people who use screen readers.¹⁶⁵

Sun Microsystems

Sun Microsystems offers an Enabling Technologies Program in its effort to ensure universal access to programs written with Java.¹⁶⁶

HTML Writers Guild

The HTML Writers Guild has established a Web resource on accessibility call AWARE – Accessible Web Authoring Resources and Education.¹⁶⁷

HiSoftware

HiSoftware's accessibility solutions allow multiple users to work collaboratively on website accessibility verification and repair, resulting in reductions in time and resources allocated to section 508 compliance.¹⁶⁸ HiSoftware client solutions are

¹⁶⁵ See *Rationale for Addressing the Barriers to Universal Access*, *supra* note 74. See also Adobe website, at <http://access.adobe.com>.

¹⁶⁶ See *Rationale for Addressing the Barriers to Universal Access*, *supra* note 74. See also Sun Microsystems website, at <http://www.sun.com/access>.

¹⁶⁷ See *Rationale for Addressing the Barriers to Universal Access*, *supra* note 74. See also Accessible Web Authoring Resources and Education (AWARE) website, at <http://aware.hwg.org>.

¹⁶⁸ See E-Ramp, *supra* note 31.

available also as integrated Microsoft FrontPage add-ons.¹⁶⁹ Additionally, HiSoftware solutions include server-based reporting, accessibility history tracking, repair and monitoring products for automated verification and maintenance.¹⁷⁰

Estrada Internet Technology

Estrada Internet Technology provides a suite of templates for creating Web pages that are accessible by disabled individuals and meet section 508 accessibility regulations.¹⁷¹

Although automated software solutions may be fast and convenient, it is important to note that these tools cannot identify all accessibility issues.¹⁷² Human review is needed to verify accessibility, and it is best to begin using verification methods at the earliest stages of development, when accessibility issues are easier to correct and avoid.¹⁷³

Once an organization has assessed its electronic and information technology development processes, and it begins to explore compliance solutions, it is also important for the organization to ensure that all staff members, not just engineers and developers, understand why section 508 is important.¹⁷⁴ The

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See Estrada website, at <http://www.estrada-onstage.com/>.

¹⁷² See World Wide Web Federal Consortium, *Federal World Wide Web Guidelines and Best Practices, Appendix A: Website Accessibility* (revised July 1999), available at <http://www.ojp.usdoj.gov/oa/fedwebguide/appendixa.htm> (on file with the North Carolina Journal of Law & Technology).

¹⁷³ *Id.*

¹⁷⁴ See Katharyn Bine, *Section 508 and Why It Matters*, Hyperviews (Sept. 2001), at <http://www.stcsig.org/oi/hyperviews/archieve/01Spring/012f3.htm>

entire organization should understand the enabling effect of section 508, as well as support the allocation of resources. Compliance can be an easier process if these steps are properly considered.

Remedies/Damages/Litigation

Remedies/Damages

If an agency has failed to comply with the above-mentioned standards of section 508 by the June 21, 2001 deadline, an individual may file an administrative complaint with the agency alleged to have violated section 508.¹⁷⁵ This administrative complaint enables any individual with a disability to file a complaint alleging that a federal department or agency has not complied with the accessible technology standards in a procurement made after June 21, 2001.¹⁷⁶ It does not apply if the electronic and information technology was procured before June 21, 2001. Individuals also have a concurrent right to file a civil action against an agency.¹⁷⁷ As with administrative complaints, this right only applies to electronic and information technology procured after June 21, 2001, with the same limitations as discussed above.¹⁷⁸ The complaint process is the same as that used for Section 504 of the Rehabilitation Act for complaints alleging

(last visited Sept. 17, 2001) (on file with the North Carolina Journal of Law & Technology).

¹⁷⁵ See Questions & Answers About § 508 of the Rehabilitation Act Amendment of 1998, *supra* note 21.

¹⁷⁶ *Id.*

¹⁷⁷ See 29 U.S.C. § 794d(f)(3) (1998).

¹⁷⁸ See 29 U.S.C. § 794d(f)(1)(B) (1998).

discrimination because of disability in federal programs and activities.¹⁷⁹

Section 508 relies on section 505 of the Rehabilitation Act to provide remedies for those aggrieved by an agency's failure to comply with section 508 requirements.¹⁸⁰ After administrative remedies have been exhausted, an aggrieved party may assert a civil action right.¹⁸¹ In addition, reasonable attorney's fees may be awarded to the prevailing party, as well as equitable remedies, such as declaratory and injunctive relief.¹⁸² But compensatory or punitive damages will not be awarded.¹⁸³ Compensatory and punitive damages usually depend on a successful intentional discrimination allegation.¹⁸⁴ But courts are not likely to award compensatory or punitive damages, even if a federal agency's violation of section 508 is deemed intentional, because Congress has not waived the federal government's sovereign immunity from such damages as it relates to the Rehabilitation Act.¹⁸⁵

Remedies are not explicitly enumerated in any single provision.¹⁸⁶ Instead, the civil action and available remedies are implied by the enforcement language of section 508, which refers

¹⁷⁹ See Questions & Answers About § 508 of the Rehabilitation Act Amendment of 1998, *supra* note 21.

¹⁸⁰ American Foundation for the Blind, *Memo Regarding Remedies Available Under Section 508 of the Rehabilitation Act* (July 21, 2000), at http://www.afb.org/info_document_view.asp?documentid=298 (on file with the North Carolina Journal of Law & Technology).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

to sections 505(a)(2) and 505(b).¹⁸⁷ Section 505(b) establishes the availability of attorney's fees.¹⁸⁸ In addition, section 505(a)(2) establishes that both employees of federal agencies and members of the public are permitted to file complaints.¹⁸⁹ Government employees with disabilities may also file complaints under sections 501 and 505(a)(1).¹⁹⁰ Moreover, section 508 specifically identifies the remedies allowed under section 505(a)(2), which are in turn implied under Title VI of the Civil Rights Act of 1964,¹⁹¹ as the rights and remedies available to address violations of the federal government's obligation to provide accessible electronic and information technology.¹⁹² Thus, section 505 establishes that individuals with disabilities can sue for declaratory and injunctive relief, as well as attorney's fees.¹⁹³

Litigation

Although legal obligations currently exist for agencies and organizations that fall under the requirements of the ADA, as

¹⁸⁷ *Id.*; 29 U.S.C. 794(a) (1998). § 505(a)(2) states, "The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of federal assistance or federal provider of such assistance under § 504 of this Act."

§ 505(b) states, "In any action or proceeding to enforce or charge a violation of a provision of this title [29 U.S.C. §§ 790 et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Civil Rights Act, 42 U.S.C. §§ 2000(d) (1964).

¹⁹² American Foundation for the Blind, *supra* note 180.

¹⁹³ *Id.*

discussed above, there are unresolved issues as to whether the ADA applies to websites that are made available to the public. The National Federation of the Blind (herein NFB) filed suit in November 1999 against America Online, Inc. (herein AOL).¹⁹⁴ The NFB claimed that, unlike other Internet providers, AOL's site did not use available screen-access software that would make AOL accessible by the blind. AOL and NFB settled the case July 26, 2000. Under the terms of that settlement, AOL agreed to work with NFB to ensure that AOL would be more accessible, but NFB retained the right to renew its claims after one year.¹⁹⁵ No court has decided the issue to date.¹⁹⁶

Although the Department of Justice argues that Internet websites are public accommodations subject to the ADA's accessibility requirements, there is no legal or explicit statutory provision that supports this argument.¹⁹⁷ But the United States Court of Appeals for the First Circuit has held that public accommodations, within Title III of the ADA, are "not limited to actual physical structures."¹⁹⁸ The Second Circuit has also held that the ADA is not limited to physical access.¹⁹⁹ On the other

¹⁹⁴ See National Federation of the Blind/America Online Accessibility Agreement, *available at* <http://www.nfb.org/Tech/accessibility.htm> (last revised July 26, 2000) (on file with the North Carolina Journal of Law & Technology).

¹⁹⁵ *Id.*

¹⁹⁶ See Perkins Coie, LLP, *Is Your Web Site Accessible?*, at <http://www.perkinscoie.com/resource/ecommerce/website.htm> (last modified July 13, 2001) (on file with the North Carolina Journal of Law & Technology).

¹⁹⁷ See *Hooks v. OKBridge, Inc.*, No. SA-99-CA-214-EP, slip op. at 7 (W.D. Tex. Aug. 4, 1999) ("If there is no physical structure or facility, there is no place of public accommodation and Title III of the ADA is not applicable.").

¹⁹⁸ See *Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994).

¹⁹⁹ See *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32 (2d Cir. 1999).

hand, other federal court decisions conflict with those of the First and Second Circuits. In *Ford v. Schering-Plough Corp.*, the Third Circuit held that the plain meaning of the ADA's accessibility requirements is that public accommodation is limited to physical places.²⁰⁰ The Sixth Circuit has held similarly.²⁰¹

Although the NFB suit did not establish legal precedent, it has been effective in raising awareness about making technology user-friendly to disabled computer users across the technology community.²⁰²

Conclusion

The June 21, 2001 compliance deadline has come and gone, and while there is still some confusion surrounding section 508's requirements, federal agencies and regulated organizations have completed or have begun their organization's compliance process. To date, there is no record of either administrative complaints or civil lawsuits having been filed, but it is still relatively early as of this writing.

Currently, section 508 does not apply to the private sector, but as the needs of people with disabilities become more prevalent, and as producing accessible systems becomes an economically viable option for corporations, socially aware corporations may choose to incorporate the standards established under section 508

²⁰⁰ See *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 612 (3d Cir. 1998) (holding that the plain meaning of Title III is that "public accommodation" is limited to physical places).

²⁰¹ See *Parker v. Metropolitan Life Insurance Co.*, 121 F.3d 1006, 1010 (6th Cir. 1997).

²⁰² See *Jones*, *supra* note 16.

for private sector products. In addition, as corporations and organizations complete the federal compliance process, they are realizing that the standards under section 508 make electronic and information technology more useful not only to disabled individuals, but also to the general public as the development of mobile and voice-activated devices become more commonplace.