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All the World’s a Stage, But Admission is Limited: The Need for a Standardized Ticketing Policy for Patrons with Disabilities

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All the World’s a Stage, But Admission is Limited:
The Need for a Standardized Ticketing Policy for Patrons with Disabilities

By Deborah Brightman

Abstract

Live events, including theater, concerts, and athletics, are a popular form of entertainment in the United States. Many of these events are open to the public through general ticket sales which tend to function through basic sales practices. However, these practices often do not consider patrons with disabilities who require additional accommodations in order to enjoy live events. For almost twenty years, entertainment arenas, theaters, and stadiums have been actively attempting to create more accessible venues for patrons with disabilities in an effort to comply with the Americans with Disabilities Act. Nonetheless, patrons with disabilities still encounter accessibility barriers – in the structure of ticketing policies. Currently, there are no fixed ticketing regulations or policy guidelines that venues can follow in order to accommodate persons with disabilities. This comment argues for a standardized ticketing policy that strikes a balance between the interests of a venue and those of a patron with a disability. The author further proposes a policy that is “reasonable” according to the law, and will inevitably deter litigation.
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I. INTRODUCTION

Live events, including theater, concerts, and athletics, are a popular form of entertainment in the United States. Many of these events are open to the public through general ticket sales which tend to function through basic sales practices. However, these practices often do not consider patrons with disabilities who require additional accommodations in order to enjoy live events. For almost twenty years, entertainment arenas, theaters, and stadiums have been actively attempting to create more accessible venues for patrons with disabilities in an effort to comply with the Americans with Disabilities Act (ADA). Nonetheless, patrons with disabilities still encounter accessibility barriers – in the structure of ticketing policies. Currently, there are no fixed ticketing regulations or policy guidelines that venues can follow in order to accommodate persons with disabilities. A policy needs to be instituted that will create “equal enjoyment” for all patrons with disabilities. Through uniform compliance with the ADA, this policy would create a systematic approach to ticketing and discourage litigation.

1 See Paul Farhi, Ticket Business: Out of Line?, Wash. Post, Nov. 9, 2007, at LIVEONLINE (Patrons are paying “[ten] times the face value…for popular concerts, sporting events, and Broadway Shows.”); See also Geoff Boucher, How Much Do You Want Those ‘Hannah’ Tickets? Good Luck Telling the Kids Her Concerts are Sold Out. Got $214?, L.A. Times, Oct. 6, 2007, at A1 (this live event was so popular it was a “parental panic“ to obtain them.); See also Richard Sandomir, ESPN Increases Budget in a Deal with Baseball, N.Y. Times, Sept. 15, 2007, at D5 (noting that “baseball attendance is heading for a record.”); See also NBA Sets All-Time Attendance Record, The Sports Network, April 19, 2007.

2 See TicketMaster Purchase Policy, http://www.ticketmaster.com/h/purchase.html (last visited Nov. 27, 2007) (in TicketMaster’s general purchase policy there is no reference to patrons with disabilities and purchasing with needed accommodations.).

3 See 42 U.S.C. § 12101 et seq. (2000) (The ADA was signed July 26, 1990.)
Nearly a decade ago, the Department of Justice “pledged to develop an ADA pamphlet on ticketing policies that would answer questions about the rights of theater-goers and sports fans with disabilities.” This pamphlet was never released, and the Department of Justice, hereinafter referred to as the DOJ, took no further action to create such a policy. Provided with the scant guidance that ADA regulations offer, many venues drafted policies for ticketing persons with disabilities. Every policy varied, and none were written with any attempt to conform with the DOJ’s interpretation of ADA compliance.

In 2002, the National Center on Accessibility conducted a “survey of ticket and accommodation policies for performance venues, theaters, and sports arenas.” This survey noted commonly found issues with companion seating and venue practices regarding the release of accessible seating to the general public. Additionally, this survey found a “[d]isparity of

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treatment of accommodations for different disabilities.”\textsuperscript{8} However, the most poignant finding of the survey was that less than half of the ninety-nine venues that responded complied with many of the suggested policies in the survey.\textsuperscript{9} Moreover, a multitude of the venues, were, on some points, in strict violation of the ADA.\textsuperscript{10}

The ADA ensures that persons with disabilities be provided with “equal enjoyment of [a]…public accommodation.”\textsuperscript{11} The key to achieving equality in ticketing is to provide equal opportunity to obtain access to an event. As the basis for a ticketing policy for persons with disabilities, venues must first determine what rights and privileges able-bodied patrons are afforded. By doing so venues can determine what rights and privileges they must offer patrons with disabilities in order to ensure “equal enjoyment” of an event.\textsuperscript{12}

This article begins by tracing the development of the ADA through the promulgation of state and federal disability rights statutes. Part II describes the structure of the ADA and directs attention to Title III, the focus of this article. Further, Part II discusses the shortcomings of the ADA and how to compensate for its weaknesses. Part III introduces the DOJ’s federal regulations that were promulgated to enforce the ADA and argues that these regulations, although seemingly thorough, are ambiguous and ultimately provoke civil rights litigation. In addition, Part III explains how the DOJ Title III settlements do little to encourage enforcement of


\textsuperscript{9} National Center on Accessibility, Accommodating Patrons with Disabilities: A Survey of Ticket and Accommodation Policies for Performance Venues, Theaters and Sports Arenas, July 2002 (available at http://ncaonline.org/arts/ticket-summary.pdf)


\textsuperscript{11} 42 U.S.C. § 12182(a) (2000)

\textsuperscript{12} 42 U.S.C. § 12182(a) (2000)
the ADA. Lastly, Part IV of this comment discusses various aspects of ticketing and it raises the potential problems that may occur due to lack of policy. Additionally, Part IV proposes and argues a ticketing policy for persons with disabilities. Finally, Part V of this comment ultimately concludes that a ticketing policy is necessary in order to provide venues, and patrons with disabilities, clear guidance through a uniform system.

II. The Americans with Disabilities Act

A. Disability Rights Laws and the Formation of the ADA

The American with Disabilities Act of 1990 was promulgated with the intent to put an end to wide-spread discrimination against people with disabilities. The ADA is currently the most comprehensive federal disability rights statute. Prior statutes designed to combat discrimination against persons with disabilities had the tendency to be too narrow, and did not address the broad scope of discrimination that plagued persons with disabilities.

By the late 1970s, people with disabilities began to achieve improved rights in the employment sector by means of the Rehabilitation Act of 1973, one of several precursors to the ADA. Additionally, educational institutions were required to provide children with disabilities

13 Peter Blanck et al., Disability Civil Rights Law and Policy at 1-1 (Thomson West 2003).

14 See Peter Blanck et al., Disability Civil Rights Law and Policy at 1-5 (Thomson West 2003) (federal laws prior to the ADA “were narrower.”).

15 Peter Blanck et al., Disability Civil Rights Law and Policy at 1-7 (most of the earlier disability discrimination statues focused on discrimination in federal programs and buildings); See also National Council on Disability, Enshrining the ADA: House-Senate Conference and the Signing, http://www.ncd.gov/newsroom/publications/1997/equality_2.htm at Appendix B (last viewed Nov. 27, 2007) (the civil right of people with disabilities began to be addressed in the Civil Rights Act of 1964 and addressed further in other Federal and State Act before 1990).

16 29 U.S.C. § 794 (2000); See also Peter Blanck et al., Disability Civil Rights Law and Policy 1-10 (Thomson West 2003).
with “special education and related services devoted to meet[ing] [the student’s] unique needs.”

However, these statutes targeted only a fraction of the many areas in which people with disabilities faced discrimination, and did not include any enforcement provisions. There were many subsequent statutes passed, as well as several judicial decrees in favor of complainants with disabilities. Yet each act, and each lawsuit, only treated part of the greater injury that people with disabilities suffered.

One of the leaders of the movement that pushed the ADA through the House and Senate, likened disability rights law in the United States to Swiss cheese. Although numerous federal and state laws were directed at remedying discrimination against people with disabilities, “there

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17 Peter Blanck et al., Disability Civil Rights Law and Policy 1-13 (Thomson West 2003) (cting to what it presently known as Individuals with Disabilities Education Act 20 U.S.C. §§ 1400 et seq.)


19 See Peter Blanck et al., Disability Civil Rights Law and Policy 1-6 (Thomson West 2003) (The Architectural Barriers Act of 1968, 42 U.S.C. § 1381 et seq., provided that buildings built with federal funds had to be accessible to people with disabilities. Although this act was recognized as “an important first step in federal civil rights legislation for the disabled community,” it lacked provisions that would ensure enforcement of the statute.).

20 See National Council on Disability, Enshrining the ADA: House-Senate Conference and the Signing, http://www.ncd.gov/newsroom/publications/1997/equality_2.htm at Appendix B (last viewed Nov. 27, 2007) (this appendix presents a chronology of civil rights statutes and cases that addressed discrimination against persons with disabilities.).

21 National Council on Disability, Enshrining the ADA: House-Senate Conference and the Signing, http://www.ncd.gov/newsroom/publications/1997/equality_2.htm at Appendix B (last viewed Nov. 27, 2007); See also Peter Blanck et al., Disability Civil Rights Law and Policy at xxxvii (Thomson West 2003); See also 42 U.S.C 12101(a) (2000) (congressional findings report the lack of legal redress persons the disabilities were afforded.).

were many holes where there were little to no civil rights protections.”\textsuperscript{23} The ADA was a piece of revolutionary disability rights legislation that sought to bring equal rights to “a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society.”\textsuperscript{24}

Based on congressional findings of discrimination against people with disabilities,\textsuperscript{25} the ADA was drafted to provide legal redress in five broad categories: employment – Title I,\textsuperscript{26} public services – Title II,\textsuperscript{27} public accommodations – Title III,\textsuperscript{28} telecommunications – Title IV,\textsuperscript{29} and miscellaneous – Title V.\textsuperscript{30} This comment will focus on public accommodations which are generally regulated under Title III of the ADA.\textsuperscript{31}

\textbf{B. The Inevitable Shortcomings of the ADA}

\begin{itemize}
\item \textsuperscript{23} National Council on Disability, Enshrining the ADA: House-Senate Conference and the Signing, \url{http://www.ncd.gov/newsroom/publications/1997/equality_2.htm} (last viewed Nov. 27, 2007).
\item \textsuperscript{24} 42 U.S.C. § 12101(a)(7) (2000).
\item \textsuperscript{25} 42 U.S.C. § 12101(a) (2000).
\item \textsuperscript{26} 42 U.S.C. §§ 12111-121177 (2000).
\item \textsuperscript{27} 42 U.S.C. §§ 12131-12134; 12141-12150;12161-12165 (2000).
\item \textsuperscript{28} 42 U.S.C. §12181-12189 (2000) (Article I § 8 of the U.S. Constitution allows the federal government to regulate public accommodations that are privately owned entities because the entities affect interstate commerce. See Pinnock v. International House of Pancakes Franchisee, 844 F. Supp. 574, 584 (S.D. Cal. 1993)).
\item \textsuperscript{29} 47 U.S.C. § 201 (Title IV was an amendment to 47 U.S.C. §§ 151 et seq., more commonly known as the Communications Act of 1934).
\item \textsuperscript{30} 42 U.S.C. §§ 12201-12213 (In the U.S. Code this is known as Title IV, but is Title V in the Public Law. See Pub. L. No. 101-336, §§ 501 et seq., 104 Stat. 327).
\item \textsuperscript{31} Codified at 42 U.S.C. §12181-12189 (2000); Regulations enforcing the Act at 28 C.F.R. § 36 (2007).
\end{itemize}
During the deliberative process of the ADA, one of the contributing Congressmen noted that the deliberations “perfected the ADA.”32 However, after this pronounced “excellent piece of legislation”33 was passed, the DOJ, in conjunction with the Architectural and Transportation Barriers Compliance Board, hereinafter referred to the Access Board, was tasked to draft federal regulations that would enforce Title III.34 This included creating standards for vague concepts such as “readily achievable,”35 “readily accessible,”36 and “reasonable modification.”37

The ADA was drafted with the intent to have a broad scope, in order “to account for a broad range of disabilities.”38 However, the flexibility that the ADA offers often makes the statute difficult to apply.39 The lack of specificity “requires courts to craft jurisprudence that addresses the unique facts and circumstances of each situation.”40 This causes each court to


34 42 U.S.C. §§ 12186(b), 12186(c) (2000); See also 29 U.S.C. § 792(b) (2000) (pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. § 4151 et seq. (2000), the Access Board was tasked with issuing regulations and guidelines for enforcement of the Act.); See also 42 U.S.C. 12204(a) (2000) (The Access Board regulations for the ADA were drafted as a “supplement to the existing Minimum Guidelines and Requirements for Accessible Design” previously issued in pursuance of the Architectural Barriers Act.).


38 Paul Steven Miller, Foreword to Peter Blanck et al., Disability Civil Rights Law and Policy xxxvii (Thomson West 2003).

39 Paul Steven Miller, Foreword to Peter Blanck et al., Disability Civil Rights Law and Policy xxxvii (Thomson West 2003).

40 Paul Steven Miller, Foreword to Peter Blanck et al., Disability Civil Rights Law and Policy xxxvii (Thomson West 2003).
interpret the law and regulations differently, which sometimes makes the ADA unreliable for Remedying discrimination due to inconsistent precedent.41

The ADA was promulgated as a comprehensive scheme to proscribe discrimination against people with disabilities; but like its preceding statutes, there are unavoidable flaws. In order to address inconsistent interpretations of the ADA, the DOJ should develop specific policies that concentrate on particular areas of discrimination that people with disabilities face. These specific policies will be able to address the alleged “failure [of the ADA] to provide clear responses to all situations.”42 Unambiguous guidelines would present a method by which the ADA and the complimentary regulations could provide “reasonable accommodations [that are] relatively inexpensive and easy to implement.”43

III. TITLE III OF THE ADA AND THE COMPLIMENTARY CODE OF FEDERAL REGULATIONS

The part of the ADA legislation that governs public accommodations, known as Title III, applies to theaters, stadiums, arenas, and all other public entertainment venues regardless of whether these facilities are owned by the government or a private entity.44

41 Compare Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000) with Oregon Paralyzed Veterans v. Regal Cinemas, Inc., 339 F.3d 1126 (9th Cir. 2003); See also United States v. Cinemark USA, Inc., 348 F.3d 569 (6th Cir. 2003); See also United States v. Hoyts Cinemas Corp., 380 F.3d 558 (1st Cir. 2004) (The four aforementioned cases all involved movie theaters with stadium-style seating and whether placing all the wheelchair accessible seats in the front row of the theaters was in violation of the ADA. The 5th circuit held the seating complied with the ADA, but the 9th, 6th and 1st circuits held that placing the accessible seats only in the front of the theaters was in violation of the act. However, the 1st circuit case was remanded because the district court had not supported the holding for the plaintiffs with sufficient evidence.).

42 Paul Steven Miller, Foreword to Peter Blanck et al., Disability Civil Rights Law and Policy xxxvii (Thomson West 2003).

43 Paul Steven Miller, Foreword to Peter Blanck et al., Disability Civil Rights Law and Policy xxxviii (Thomson West 2003).

The general rule of Title III provides:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodation of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.\(^{45}\)

In order to enforce Title III, the DOJ adopted regulations that were consistent with those drafted by the Access board.\(^{46}\) These would function as the governing guidelines that public accommodations would follow in order to comply with ADA.\(^{47}\) The regulations were intended to clarify the broad, ambiguous language of the ADA and create a comprehensible scheme.\(^{48}\) Nevertheless, the seemingly clear regulations quickly came under overwhelming scrutiny, and became subject to judicial interpretation.\(^{49}\)

The greatest amount of interpretative controversy surrounded section 4.33.3 of the ADA Accessibility Guidelines (ADAAG). This section provided that patrons in wheelchairs be offered a “choice of admission prices and lines of sight comparable to those for members of the general public.”\(^{50}\) However, this section also provided that “accessible viewing positions may be clustered,” and that the accessible seating may be located in only one location in venues with less than three-hundred seats.\(^{51}\) Reading the plain language of the regulations, it was difficult for venues to discern whether “choice” modified only pricing, or if it also pertained to “lines of

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\(^{48}\) See 42 U.S.C. § 12186(b) (2000) (The DOJ was charged with “issu[ing] regulations in an accessible format.”).

\(^{49}\) Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000)

\(^{50}\) 28 C.F.R. § 36, App. A at 4.33.3 (2007)

Additionally, if “choice of…line of sight” was required, did this negate the exception that allowed facilities of less than three-hundred seats to cluster the wheelchair accessible seating?

A. Ambiguous Regulations of Title III Lead to No Clear Precedent

A series of four cases, brought in four separate circuits, best articulates the necessity for focused policies under the accommodation provision. Each discussed whether stadium-style movie theaters complied with ADA regulations. In the mid-1990s, just a short time after the passage of the ADA, stadium-style movie theaters replaced traditional theaters. In minimal compliance with the ADA, movie theater complexes offered “clustered” wheelchair accessible seating in one location at “the very front of the theater.” The first noteworthy lawsuit that challenged stadium-style seating under the ADA, was Lara v. Cinemark USA, Inc., filed in 1997.

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52 28 C.F.R. § App. A at 4.33.3 (2007); Compare Lara v. Cinemark USA, Inc., 207 F.3d 783, 787 (5th Cir. 2000) (The court held that “lines of sight” was separate from the dispersal requirements and “choice” only modified pricing) with United States v. Cinemark USA, Inc., 348 F.3d 569, 576 (6th Cir. 2003) (The court held the “lines of sight…to require that wheelchair users be provided with comparable viewing angles.”).

53 Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000); Oregon Paralyzed Veterans v. Regal Cinemas, Inc., 339 F.3d 1126, 2003 (9th Cir. 2003); United States v. Cinemark USA, Inc., 348 F.3d 569 (6th Cir. 2003); United States v. Hoyts Cinemas Corp., 380 F.3d 558 (1st Cir. 2004); See also Meineker v. Hoyts Cinema Corp., 2003 U.S. App. LEXIS 13411, 14 (2nd Cir. 2003) (in this unpublished case, the court remanded the case in order to determine whether the DOJ’s interpretations of the regulations were owed deference.).

54 See Bob Howard, Commercial Real Estate: a Look at the People, Trends and Innovations that Make the Industry Essential to Southern California: Mining the Silver Screen; Scores of Movie Theaters are Debuting in Malls Everywhere. One Big Reason? Retailers Need Them to Lure Customers. L.A. Times Home Edition, Nov. 19, 1997, at D8 (The author noted “[m]ovie chain executives sa[id] the new, more desirable design…rendered many old theaters obsolete.”); See also Lee Condon, Valley Roundup: Set Change for Screen Scene; Reeling with Customers; State-of-the-Art Cinemas are Becoming the Main Attraction. L.A. Times Valley Edition, Nov. 13, 2000, at B6 (“[A]n executive vice president at box-office tracking firm ACNielsen” notes stadium seating theaters as “the highest-grossing complexes.”); See also Sunday Special/Valley Briefing; Show Time in the Valley. L.A. Times Valley Edition. March 16, 1997, at B2 (With the new “state-of-the-art…megaplexes” tickets sales soared higher “than at any time since the late 1950s.”); See also Diana Shaman, In the Region/Long Island; The Movies Are the New Stars of the Mall. N.Y. Times Late Edition, Jan. 4 1999, at 11-9 (Between 1996 and 1997 there was the largest increase of movie tickets sales in history. This was due to “the appeal of the new theaters.”).

in the Western District of Texas. On a cross summary judgment motion, relief was granted in favor of the plaintiff. The courts held that “discomfort” that the front row seats caused prevented patrons in wheelchairs from “full and equal enjoyment of …the place of public accommodation.” Additionally, the district court found that patrons in wheelchairs were not provided with a “line of sight comparable to those for members of the general public.”

However, the fifth circuit court of appeals reversed, holding that the plain language of the regulations did not provide patrons in wheelchairs with a “choice” of lines of sight; rather, the theater was only required to provide an unobstructed view.

Subsequent to the Lara decision, the sixth and ninth circuits were presented with cases in which patrons in wheelchairs raised the same complaint against cineplexes with “clustered” wheelchair accessible seating. However, both courts of appeal gave deference to the DOJ’s interpretation of the ADA regulations, holding that “lines of comparable sight” “mean[t]
‘equivalent’ or ‘similar.’” Viewing angles and distance from the screen affect whether individuals’ views of the movie screen are truly equivalent.” Patrons in wheelchairs were provided with the “worst seats in the theater,” denying them the right to “full and equal enjoyment.” Therefore, the state-of-the-art theaters were in violation of the ADA.

Moreover, one year after the sixth and ninth circuit cases, the first circuit, presented with an identical case, also held in accordance with the DOJ’s interpretation of the ADA “lines of sight” regulation. However, the court remanded the case for further hearings due to the fact that the district court’s holding had not been grounded on sufficient evidence. The court of appeals also encouraged “the parties to show an equal dedication by attempting to work out a settlement, bearing in mind that no solution…[would] be perfect.”

With the surge of stadium-style theaters, came the almost immediate surge of litigation. The DOJ was fully aware of the trend to “relegate[] [patrons in wheelchairs] to the very front of

63 Brief for the United States as Amicus Curiae Supporting Appellants, Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc., 339 F.3d 1126 (9th Cir. 2003) (No. 01-35554).
64 Brief for the United States as Amicus Curiae Supporting Appellants, Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc., 339 F.3d 1126 (9th Cir. 2003) (No. 01-35554).
67 See United States v. Hoyts Cinemas Corp., 380 F.3d 558, 566 (1st Cir. 2004) (The court held “that the better reading of the regulation is that it takes angles of all sight into account.”); See also 36 C.F.R. § 1191, App. B at 221.2.3 (2004) (the Access Board adopted the new guidelines, based on the DOJ’s interpretation of the regulations, that address the shortcomings of the original regulations only one month prior to the first circuit decision, and therefore, were not governing).
68 See United States v. Hoyts Cinemas Corp., 380 F.3d 558, 570 (1st Cir. 2004)
69 United States v. Hoyts Cinemas Corp., 380 F.3d 558, 575 (1st Cir. 2004)
70 See Cinemark Facing Lawsuit, Daily Variety, Dec. 11, 1997 at 10 (The article notes that “stadium seating [was] a new concept” at the time the Lara suit was filed.); See also Lara v. Cinemark USA, Inc., 1998 U.S. Dist. LEXIS 14447 (W.D. Tex. 1998) (this was the first well recognized district court case regarding stadium seating.).
the theater, but it took six years to adopt new regulations that would prospectively address the
issues raised by the circuit split. Based on the dissonance among the courts, it was apparent that
“there [was] a need for a [new] rule.”

B. Department of Justice Settlements and Consent Decrees

Due to the refusal of the U.S. Supreme Court to resolve the circuit split and rule on which
interpretation of the ambiguous regulations prevailed, the DOJ entered into many ADA
settlements and consent agreements with venues. These settlements outlined ways in which the
violating parties could better comply with the ADA, including improved accessible seating, and
better ticket sales policies. Although many of these settlements were often landmark
agreements, they did not “remedy any other potential violations of the ADA,” or bind any

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73 See 5 U.S.C. § 563(a)(1) (2000) (This is the first requirement, under the Administrative Procedures Act, for
forming a committee to negotiate a proposed rule.).

74 See Lara v. Cinemark USA, Inc., 531 U.S. 944 (2000) (the Supreme Court denied petition for writ of certiorari
from the fifth circuit); See also Regal Cinemas, Inc. v. Stewmom, 542 U.S. 937 (2004) (This was the subsequent
history to Oregon Paralyzed Veterans v. Regal Cinemas, Inc., 339 F.3d 1126. The Supreme Court denied petition for
writ of certiorari from the ninth circuit.); See also Cinemark USA, Inc., v. United States, 542 U.S. 937 (2004) (The
Supreme Court denied petition for writ of certiorari from the sixth circuit.).

75 See U.S. Department of Justice, ADA Settlements and Consent Agreements,
http://www.usdoj.gov/crt/ada/settlemt.htm#anchor502508 (last viewed Nov. 27, 2007) (The DOJ website makes the
majority of ADA settlements and consent agreements available to the public on this site. If the entire settlement or
consent agreement is not issued with mandatory availability to the public, the DOJ issues a press release to
acknowledge that such an agreement has been made.); See Black’s Law Dictionary 184 (7th ed. 1999) (A consent
decree is “[a] court decree that all parties agree to.”). See U.S. Department of Justice, Consent Order,
http://www.usdoj.gov/crt/ada/ragal.htm (last viewed Nov. 27, 2007) (This was a settlement with Hoyts cinemas regarding the stadium seating.); See also U.S. Department of
Justice, Agreement,
http://www.usdoj.gov/crt/ada/ticketmaster.htm (last viewed Nov. 27, 2007) (This settlement with TicketMaster is discussed further in the article.); See also Justice Department and Detroit Lions Reach
Agreement Under the Americans with Disabilities Act, (July 30, 1997) (available at

76 See LRP Publications, TicketMaster Reach Accord on Improving Theater Access, Disability Compliance
Bulletin, Feb. 22, 2006 (TicketMaster is “the world’s largest ticketing company for concerts and other events,” and
the settlement will have an effect on “more that 8,000 venues throughout the world.”).
entity that was not party to the settlement. The settlements only vaguely sought to act as limited
guidance for other venues in their compliance with the ADA. Instead, a specific policy is needed
to create clearer guidelines for venues to follow. Additionally, a policy is more effective at
resolving issues and helping avoid a tremendous amount of litigation.

IV. PROPOSED TICKETING POLICY FOR PERSONS WITH DISABILITIES AT ENTERTAINMENT VENUES

Ticketing is a new area where there is the threat of litigation. However, ticketing has no
legal framework set forth in the ADA regulations, and the scant jurisprudence in the area does
not provide clear and guiding precedent. Therefore, courts will be forced to create policy
instead of giving deference to DOJ interpretation of regulations like they did in the stadium-style
theater cases, which dominated the field of ADA new construction litigation. Further, as more
and more venues are accessible to people with disabilities, there is increasing difficulty to ensure
that these patrons are issued tickets that provide access to necessary accommodations.

79 See U.S. Department of Justice, Consent Order, United States v. Hoyts Cinema Corp., June 9, 2005,
http://www.usdoj.gov/crt/ada/regal.htm (last viewed Nov. 27, 2007) (The settlement noted that “the terms of this
Consent Order shall not apply to any movie theatre company or circuit” except that which was party to the
settlement.).
80 See Press Release, U.S. Department of Justice, Justice Department to Develop New Pamphlet on the ADA
for guidance, but this promised pamphlet was never released).
81 See LRP Publications, Nation’s Largest Theater Chain Agrees to Groundbreaking Settlement on Accessibility,
Disability Compliance Bulletin, June 23, 2005 (The impact of the litigation led to “[a]n unprecedented
settlement…[and] guidance…in ADA compliance efforts.).
82 See Knoxville Civic Auditorium and Coliseum, General ADA Information,
http://www.knoxvillecoliseum.com/default.asp?lnopt=7&pnopt=0 (last viewed Nov. 27, 2007); See also The
National Theater, Accessibility For People with Disabilities,
http://www.nationaltheatre.org/services/accessibility.htm (last viewed Nov. 27, 2007); See also Hollywood Bowl,
Patrons with Disabilities, http://www.hollywoodbowl.com/tix/ada_tickets.cfm (last viewed Nov. 27, 2007) (The
often sell various types of tickets (i.e. season tickets and single performance tickets), and each type of ticket needs a separate policy because each ticket is sold in a different fashion.\textsuperscript{83} Furthermore, additional issues, such as privacy, arise if the venue asserts that they have a right to request certification of a disability.\textsuperscript{84}

Finally, the ADA regulations currently provide that a wheelchair patron be afforded “at least one companion…seat,”\textsuperscript{85} and that “reasonable modifications to policies, practices or procedures”\textsuperscript{86} need to occur, when necessary, to accommodate patrons with disabilities. “This presents a classic public policy question: to what extent” do the accommodations that would be available to patrons with disabilities “outweigh the potential revenue loss” of a venue?\textsuperscript{87}

\textbf{A. Multiple Event Ticketing}

Multiple event tickets is defined as season tickets, ticket packages, ticket subscriptions and bulk ticket sales. Customarily, when multiple event tickets, hereinafter referred to as season tickets, are purchased, the same patron (or patrons) uses those seats for each ticketed event. Therefore, it is less burdensome on the venue to accommodate a season ticket holder with a disability because the venue is consistently aware of a needed accommodation. For example, in instances where a patron is in a wheelchair, some venues have the ability to remove seats to

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\textsuperscript{83} See Toyota Park and Chicago Fire 2006, Wheelchair & Companion Seating Ticket Sale Policy, \url{http://web.mlsnet.com/t100/stadium/bridgeview/wheelchair_seating/} (last viewed Nov. 27, 2007) (Toyota Park set forth comprehensive policy for each of the many categories of tickets they sell.).

\textsuperscript{84} See The National Theater, Accessibility For People with Disabilities, \url{http://www.nationaltheatre.org/services/accessibility.htm} (last viewed Nov. 27, 2007).


produce more wheelchair seating than they are legally obligated to provide. The fact that the patron will be sitting in the same location throughout the entire season means there will not be a burden on the venue to remove and re-install the seats. Additionally, venues will be able to easily provide season ticket holders with necessary accommodations such as American Sign Language (ASL) interpreters, because the venue will have advanced notice of the patron’s attendance. Nonetheless, season tickets can be problematic, and do raise many issues that other types of tickets do not.

1. Wheelchair and Ambulatory Seating

The common issue that surrounds season tickets for patrons with mobility impairments, specifically patrons in wheelchairs, is the release of unsold accessible seating to the general public. The Independent Living Resources v. Oregon Arena Corporation decisions are the primary jurisprudence that address this issue.

The ADA provides that people with disabilities shall be afforded “full and equal enjoyment of…any place of public accommodation.” Courts have held that Congress intended “equal enjoyment” to mean “equal access to the array of goods and services offered by private


establishments [that are] made available to those who do not have disabilities.” However, equal access does not mean superior access.

Venues can meet the minimum guidelines of the ADA by putting season tickets for people with disabilities, as well as those for the general public, on sale concurrently. However, a venue should set a reasonable amount of time in which season tickets may be purchased. Further, during this designated season ticketing period the venue must continue to keep the wheelchair accessible seating open exclusively to patrons in wheelchairs. This is true even when general public season tickets are no longer available, and accessible seats are the only season tickets that remain.

In Independent Living Resources the defendant venue argued that it was in compliance with the ADA because, during a three-week period prior to general ticket sales, the venue offered

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94 See Michele Himmelberg, Disney Theme Parks Want Able-Bodied Back in Line, The Orange County Register Feb. 10, 2004, at Domestic News (The ADA only requires the parks “provide equal access but not ‘superior access,’” and that accommodations should be given on a case-by-case basis to ensure equality, but avoid superior treatment of patrons with disabilities.).


96 See 42 U.S.C. 12182 (2000) (“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods [or] services… of a place of public accommodation.”) See also 28 C.F.R. § 36, App. B, § 36.201(a) (2007) (“Full and equal enjoyment means the right to participate and to have an equal opportunity to obtain the same results as others.” Therefore, persons with disabilities should be afforded the same amount of time in which to purchase tickets as persons without disabilities.; See also Route 66 Raceway Ticketing Rules and Regulations, at 8 (available at http://www.chicagolandspeedway.com/images/r66/Rt66_TKRG_Handbook.pdf) (The raceway does not release accessible seating until “after the period of time specified.”).

97 See 42 U.S.C. § 12182(b)(2)(A)(ii) (2000) (This would be a reasonable modification to the first come first policy of season ticket purchasing in order to provide equal access to purchase. This would not “fundamentally alter the goods” etc. due to the fact that the season seats could be released after the purchase deadline.).
season tickets exclusively to persons with disabilities.\textsuperscript{98} After this period, all of the accessible seating was released to the general public.\textsuperscript{99} The ADA provides that unless a separate accommodation is necessary in order to afford a patron with a disability “equal enjoyment” of a facility, it is deemed to be discriminatory.\textsuperscript{100} This separate accommodation was discriminatory because it was unnecessary.\textsuperscript{101} Additionally, it did not provide equal access to seating because persons in wheelchairs were forced to compete with the general public for the one percent of the accessible seats that venues are required to provide.\textsuperscript{102}

Additionally, after the season ticketing deadline, a venue should not be permitted to release more than twenty-five percent of the total accessible seats for season ticket sale. This prevents patrons in wheelchairs from being denied the opportunity to purchase tickets for single events with a “choice[] of seating locations and viewing angles that are substantially equivalent to, or better than…[those] available to all other spectators.”\textsuperscript{103} Yet, if the amount of accessible seating allocated to season ticket sales is less than twenty-five percent of the total number of accessible seats, only those should be released. However, no venue with one thousand seats or less should be allowed to release wheelchair accessible seating to the general public in season ticket sales. This is due to fact that smaller venues are only legally obligated to provide a very

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\item \textsuperscript{98} Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1167 (D. Or. 1998).
\item \textsuperscript{99} Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1167 (D. Or. 1998).
\item \textsuperscript{100} 42 U.S.C. § 12182(b)(1)(A)(iii) (2000).
\item \textsuperscript{102} 28 C.F.R. § 36, App. A at 4.1.3(19)(a) (2007).
\item \textsuperscript{103} 36 C.F.R. § 1191, App. B at 221.2.3 (2004) (the Access Board modified the language of its ADA guideline to correspond to the DOJ interpretation of their regulation); \textbf{See} Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1166, 1169 (D. Or. 1998) (The court noted that 133 of the 191 wheelchair accessible seats were infilled “on either a season ticket or longer basis.” Then, “[a]t least 84% of the [remaining] wheelchair spaces [were] routinely infilled for every game, not counting the additional infilling that occurred for individual games.”); \textbf{See also} 28 C.F.R. § 36, App. A at 4.33.3 (2007).}

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limited number of wheelchair accessible seats.\textsuperscript{104} This small loss in revenue is justified by the countervailing interest of patrons with disabilities and the effect it will have in deterring litigation.

Nonetheless, a reasonable modification to a policy can only be just that – reasonable. In the interest of generating maximum revenues,\textsuperscript{105} the ADA regulations permit “[r]eadily removable seats [to] be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.”\textsuperscript{106} This practice, known as “infilling,” is meant to “convert those areas to temporary…[conventional] seating.”\textsuperscript{107} However, infilling seats for season tickets is problematic due to the fact that it fills in the wheelchair accessible seats. “Once a seat is sold on a season ticket basis, the holder has the right (or, in many cases, the obligation) to renew that ticket each year, and most do renew.”\textsuperscript{108} This right to renewal ultimately leads to the permanent infill of wheelchair accessible seats, a policy which is “inherently unequal.”\textsuperscript{109} The regulation

\textsuperscript{104} See 28 C.F.R. § 36, App. A at 4.1.3(19)(a) (2007) (Venues with a seating capacity of one thousand requires only eleven wheelchair accessible seats.).

\textsuperscript{105} See Independent Living Resources v. Oregon Arena Corporation, 982 F. Supp. 698, 721 (D. Or. 1997) (In a deposition, the Vice President of Business Affairs for the defendant testified that the venue begins sell in-filled seats immediately after the venue is sold out.); See also Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1166 (D. Or. 1998) (By in-filling wheelchair accessible seats the arena “generate[d] roughly an additional two to three million dollars a year in gross ticket sale revenue.” This is a classic example of a policy that when reasonably modified, provides equal access to persons with disabilities.).


\textsuperscript{108} See Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1167 (D. Or. 1998) (“The renewal rate for…season ticket holders [was] very high.” Therefore, most of the infused seats are permanently assigned to [other] patrons, and the infused wheelchair spaces are not available for purchase or use by patrons in wheelchairs.”); See also Jessica Hopp, Best Seats in the House Can Be Pricey, The Tennessean, April 8, 2006, at 4C (This venue has a renewal rate of ninety-six percent, and good seats “rarely become available.”); See also Linda Hamilton, Jazz Lead Surge in NBA Ticket Sales, Deseret Morning News, August 31, 2007 (The Salt Lake City Jazz have a “[ninety-five] percent season-ticket renewal rate for next season.” Due to the high demand for season tickets “15,000 season tickets [were] purchased …, leaving fewer than 5,000 available for single games.”).
permitting infilling was not intended to allow venues to permanently infill accessible seats after offering those seats for only one season.\textsuperscript{110}

In \textit{Independent Living Resources}, the DOJ “suggested that the right…to renew a season ticket for an infilled wheelchair seat should be conditioned upon that wheelchair seat not being requested by a wheelchair user.”\textsuperscript{111} The court rejected this suggestion due to the fact that infilled wheelchair accessible seating can provide up to seven times more seats than if it remained exclusively for use by patrons in wheelchairs.\textsuperscript{112} Thus, a venue cannot simply exchange one conventional seat for one wheelchair accessible seat. However, a venue can, and should, sell all infilled seats on an annual basis, conditioned on the fact that there will be no right to renew the infilled seats.\textsuperscript{113} Therefore, a venue would annually remove all the infilled seats from the wheelchair accessible locations, providing persons in wheelchairs another opportunity to purchase season tickets during a designated season ticketing period.

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\textsuperscript{110} \textit{Independent Living Resources v. Oregon Arena Corporation}, 982 F. Supp. 698, 720 (D. Or. 1997); See \textit{Independent Living Resources v. Oregon Arena Corporation}, 1 F. Supp. 2d 1159, 1170 (D. Or. 1998) (The court held “defendant's ADA obligations were not forever satisfied merely by a one-time-offer, before the arena opened, to sell the wheelchair spaces on a season ticket (or longer) basis to persons with disabilities.”) See also Chicago Bears Football Club, Inc., Chicago Bears Accessible Seating Policy for Soldier Field in 2004, Feb. 18, 2004, at 3 (available at \url{http://assets.chicagobears.com/uploads/files/AEIBKHANHBCA/AccessibleSeatingPolicy021804.pdf} (The Chicago Bears sell the infill season tickets only on an “an annual basis.”)
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\textsuperscript{112} See \textit{Independent Living Resources v. Oregon Arena Corporation}, 982 F. Supp. 698, 721 (D. Or. 1997) (The arena “replaced 133 wheelchair spaces with 1,028 conventional seats.”); Telephone with Jena Hoffman, Los Angeles Philharmonic, October 19, 2007 (Each wheelchair accessible seat requires that two to three conventional seats be removed.).
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\textsuperscript{113} See \textit{Independent Living Resources v. Oregon Arena Corporation}, 1 F. Supp. 2d 1159, 1170 (D. Or. 1998) (The court held “defendant's ADA obligations were not forever satisfied merely by a one-time-offer.”); See also Toyota Park and Chicago Fire 2006, Wheelchair & Companion Seating Ticket Sale Policy, \url{http://web.mlsnet.com/t100/stadium/bridgeview/wheelchair_seating} (An example of a policy that best articulates this proposal states: “[a]ny non-disabled season ticket holder who has purchased seats located in a wheelchair and companion seating area either before this policy took place or after all tickets in that ticket category had been sold shall not have an automatic right to renew his or her license for those seats in the following year and may be relocated… if necessary to accommodate wheelchair users in the following year.”).
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The above proposed policy should extend to ambulatory seating as well. Ambulatory seats are defined as “aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side.” These seats are intended for patrons in wheelchairs who can transfer to a seat, or for patrons with other mobility impairments. These patrons should be given the first opportunity to purchase ambulatory infill seats, when such seats become available. Nevertheless, a venue should not be permitted to infill all of the wheelchair accessible seats to accommodate ambulatory patrons.

2. Patrons with Auditory and Visual Impairments

Accommodations for hearing and visual impairments will not be as problematic for season ticket holders. Because patrons purchase season tickets far in advance, a venue will be aware of a patron’s need for an accommodation and will be able to seat each patron according to their specific needs. However, if a venue wants to seat all patrons who require ASL


115 See Black’s Law Dictionary 184 (7th ed. 1999) (Black’s defines ambulatory as “able to walk.”).


117 See Chicago Cubs, Season Ticket Holders Can Now Renew Their Season Tickets, Parking and Stadium Club Memberships Online for the 2007 Season, http://chicago.cubs.mlb.com/chc/ticketing/season_renewal.jsp (last viewed Nov. 27, 200) (season tickets for the Chicago Cubs, forever sold old, mandates renewal nearly three months before the season begins); See also Knoxville Civic Auditorium and Coliseum, General ADA Information, http://www.knoxvillecoliseum.com/default.asp?inopt=7&pnopt=0 (last viewed Nov. 27, 2007) (the Knoxville Civic Auditorium and Coliseum requires that hearing impaired patrons give fourteen days notice if they require an accommodation. Season tickets are purchased far more in advance than fourteen days); See also Staples Center, Arena – Guest Services – Accessibility, http://www.staplescenter.com/content/default.sps?itype=6762&icustompageid=9999 (last viewed Nov. 27, 2007) (the Staples Center provides assisted listening devices and a designated phone number to request an ASL interpreter. Additionally, visually impaired are accommodated by the venue).
interpretation in a designated location, a block of seats should be reserved and not released until after the season ticketing deadline.\textsuperscript{118} Additionally, a venue should reserve seats in every season ticket location for people with visual impairments, not to be released until after the designated season ticketing period. This is due to the fact that all visual impairments differ; unique individuals will require varying accommodations.\textsuperscript{119}

\textbf{B. Single Event Ticketing}

Similar to season tickets, single event tickets should be sold concurrently with tickets for the general public. However, the issues that arise in single event ticket are mostly focused on timing. That is, timing of the purchase of the ticket, and timing of the release of accessible seats.

1. Wheelchair and Ambulatory Seating

Generally, single event tickets do not result in a permanent infill of an accessible seat. Therefore, a venue may begin to release accessible seating seventy-two hours after the event sells out to the general population.\textsuperscript{120} However, the venue should not be permitted to sell more than twenty-five percent of the remaining wheelchair spaces as infilled conventional seating.\textsuperscript{121}

\textsuperscript{118} See also Knoxville Civic Auditorium and Coliseum, General ADA Information, http://www.knoxvillecoliseum.com/default.asp?lnopt=7&pnopt=0 (last viewed Nov. 27, 2007) (The Knoxville Civic Auditorium and Coliseum groups twenty seats together for those individuals who require an ASL interpreter.).

\textsuperscript{119} 42 U.S.C. § 12182(b)(2)(a)(ii) (2000); See \textit{Peter Blanck et al., Disability Civil Rights Law and Policy} at 13-6 (Thomson West 2003) (the authors give several examples of cases that dealt with reasonable modifications given on a case-by-case basis); See also \textit{The Exceptional Parent}, National Resources for Specific Disabilities: Directory, Jan, 1 2007, at 11(26) (the directory lists all the varying visual impairments); Note: more on auditory and visual impairment accommodations discussed later.

\textsuperscript{120} E-mail from Kevin McGuire, Chairman and CEO, McGuire Associates, Inc., to Deborah Brightman, Staff Writer, Loyola of Los Angeles Entertainment Law Review, Loyola Law School (October 27, 2007, 09:27 PST) (on file with author); See also Featured McGuire Associates Inc., Clients, http://mcguireassociatesinc.com/clients.html (last viewed Nov. 27, 2007) (Kevin McGuire is an avid ADA advocate and his firm represents numerous renowned venues such as the Staples Center, FedEx Forum, Foxboro Stadium, and the Kodak Theater).

\textsuperscript{121} See Independent Living Resources v. Oregon Arena Corporation, 982 F. Supp. 698, 723 (D. Or. 1997) (One plaintiff in this case testified that he was unable to purchase a wheelchair seat in a certain section because all seats were sold out before season started. However, when he attend an event “there were only a few wheelchairs
This is because a venue will not know if such seats will be required until the event is imminent, and infilling is only permitted when “the spaces are not required to accommodate” patrons in wheelchairs. However, forty-eight hours prior to an event, the majority of unsold accessible seating may be infilled and released to the general public. Although, a selective five percent of the accessible seats should be withheld from sale to accommodate potentially problematic relocation and rush ticket circumstances. Further, as per the discussion in multiple event ticketing, an advanced ticketing period for persons in wheelchairs does not permit a venue to release wheelchair seating to the collective public during general ticketing. Conversely, persons in wheelchairs and other persons with disabilities do not have “a special right to purchase tickets for events if comparable tickets would not be available to a person without disabilities.” Therefore, venues do not have to give preference to persons with

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123 See Toyota Park and Chicago Fire 2006, Wheelchair & Companion Seating Ticket Sale Policy, http://web.mlsnet.com/t100/stadium/bridgeview/wheelchair_seating (last viewed Nov. 27, 2007) (this more liberal policy does not release unsold wheelchair seats until twenty-four hours prior to an event, at which point only one-third of the seats are sold).
124 See Toyota Park and Chicago Fire 2006, Wheelchair & Companion Seating Ticket Sale Policy, http://web.mlsnet.com/t100/stadium/bridgeview/wheelchair_seating (last viewed Nov. 27, 2007) (“Toyota Park may, in their discretion, elect to withhold from sale a representative selection of unsold wheelchair and companion seating for to accommodate wheelchair users who acquire tickets through the secondary market.”).
125 See 42 U.S.C. § 12182(b)(1)(A)(iii) (2000); See e.g. Bank Atlantic Center, Access Guide for Guests with Disabilities, http://www.bankatlanticcenter.com/about/DisabledAccess.asp (last viewed Nov. 27, 2007) ( The guide states: “[w]heelchair seats that are not purchased during an advanced sale…may be released for sale to the general public.” This policy provides a separate accommodation to patrons in wheelchairs that is unnecessary, and therefore discriminatory.); See also Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1170 (D. Or. 1998) (“[T]he ADA…does not require…an arena operator to give persons with disabilities a special right to purchase tickets for event.” However, the ADA does require “equal enjoyment” and therefore the limited number of wheelchair seats may not be released until a specified time.).
disabilities when there is a random lottery to win or obtain tickets. However, a venue should not include accessible seating in the ticket lottery, because persons who require wheelchair or ambulatory seating do, by law, have preference to those seats over the general public. By placing these seats into a general lottery, the venue is assuming that the seats are not required, which is an assumption that is not permitted by the ADA regulations.

2. Ticketing for Patrons with Auditory Impairments

The ADA mandates that all entities falling under the regulation of Title III must provide “effective communication” to persons with auditory impairments. The greatest issue surrounding ticketing for patrons with auditory impairments is accommodating those patrons that require ASL interpretation. This is problematic because venues need to provide ASL interpreters with the material they are translating, and give them a reasonable amount of time to learn it. Additionally, venues do not want to be unduly burdened by having to provide multiple interpreters. Therefore, to avoid these common problems, venues often require persons with auditory impairments to inform the venue two to three weeks in advance if they need the services

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127 See Louie v. National Football League, 185 F.Supp.2d 1306, 2002 (S.D.Fla. 2002) (The plaintiff alleged that the NFL’s Super Bowl random lottery discriminated against persons with disabilities on the basis that he attempted to obtain a ticket and failed. The court held that this did not constitute a Title III violation because the NFL was not required to provide persons with disabilities tickets, only the equal opportunity to obtain tickets.).


130 28 C.F.R. § 36.303(c) (2007).


of an ASL interpreter.\textsuperscript{134} This not only gives the interpreter ample time to learn the material before the event, but it also allows the venue to relocate individuals needing this accommodation to a designated location. Alternatively, venues that have recurring performances often select designated dates on which ASL interpretation will be provided.\textsuperscript{135}

However, this prevents persons requiring an ASL interpreter from taking advantage of last minute purchasing, purchasing days in advance, or sometimes choosing the date of the performance they wish to attend. Nonetheless, it is \textit{reasonable} to afford an ASL interpreter sufficient time to prepare for an event.\textsuperscript{136} By designating performances with ASL interpretation, an interpreter can thoroughly prepare for a scripted performance by attending rehearsals, thus growing accustomed to the actors’ expressions.\textsuperscript{137} Although patrons with auditory impairments cannot freely choose a performance date, the interpretation offered at the designated performance is far superior to interpretation provided with short notice.\textsuperscript{138} Further, it is often difficult to

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\item \textsuperscript{134} See Knoxville Civic Auditorium and Coliseum, General ADA Information, http://www.knoxvillecoliseum.com/default.asp?lnopt=7&pnopt=0 (last viewed Nov. 27, 2007); See also Open Air Theater, Accessibility, http://as.sdsu.edu/cox_arena/oat_access_ticket.html (last viewed Nov. 27, 2007); See also Oracle Arena & McAfee Coliseum, Oakland – Alameda County Arena McAfee Coliseum Accessibility and Service Guide for Guests with Disabilities, http://www.oraclearena.com/info/disabledguests.php (last viewed Nov. 27, 2007); See also The Meadowlands, The Meadowlands Sports Complex and Accessibility Services, http://www.meadowlands.com/ada.asp (last viewed Nov. 27, 2007).
\item \textsuperscript{135} See The National Theater, Accessibility for People with Disabilities, http://www.nationaltheatre.org/services/accessibility.htm (last viewed Nov. 27, 2007).
\item \textsuperscript{136} See Marc Ramirez, \textit{Keeping Deaf Fans Rockin'}, The Seattle Times, March 8, 2006, at A1 ("Music interpreters prepare rigorously," therefore needing a reasonably amount of time to prepare.).
\item \textsuperscript{137} See Robin Pogrebin, \textit{Interpreting the Theater Without Speaking a Word}, N.Y. Times, Dec. 27, 2000, at E3 (ASL interpreters see a show several times in advance.; Interview with Tiffany Green and Debra Patkin, Civil Rights Litigation Attorneys, Disability Rights Legal Center, in L.A., Cal. (Nov. 26, 2007) (in addition to being civil rights attorneys, Tiffany and Debra have hearing impairments, and require a ASL interpreter when they attend live performances).
\item \textsuperscript{138} See Robin Pogrebin, \textit{Interpreting the Theater Without Speaking a Word}, N.Y. Times, Dec. 27, 2000, at E3 (the work of an ASL interpreter is “more than sign language”); Interview with Tiffany Green and Debra Patkin, Civil Rights Litigation Attorneys, Disability Rights Legal Center, in L.A., Cal. (Nov. 26, 2007).
\end{itemize}
acquire an ASL interpreter that specializes in dramatic interpretation, with only two weeks advance notice.\footnote{See Robin Pogrebin, Interpreting the Theater Without Speaking a Word, \textit{N.Y. Times}, Dec. 27, 2000, at E3 (there is only a pool of about a dozen dramatic ASL interpreters that are deemed qualified by the Theater Access Project).}

Furthermore, a venue may require that patrons with an auditory impairment provide at least one week notice when planning to attend a designated performance. This will ensure that they are seated in the section with the ASL interpretation.\footnote{Telephone interview with Jena Hoffman, Senior Director of Sales and Customer Service, LA Philharmonic Association, in L.A., Cal. (Oct. 19, 2007) (advance notice allows a venue to seat a larger party together in the ASL interpreter section).} However, a venue should still reserve some seats in this section for last minute sales and relocation, to be released as per the above discussed policy regarding wheelchair accessible seats. Moreover, the amount of designated ASL interpreted shows throughout a recurring event should be directly related to the total number of performances. For example, it is reasonable to require that one show every two weeks throughout the run of an event be a designated signed performance. Nevertheless, a patron with an auditory impairment should, if unable to attend the designated performances, still be permitted to request an ASL interpreter if the request is given at least three weeks in advance.\footnote{See National Center on Accessibility, Accommodating Patrons with Disabilities: A Survey of Ticket and Accommodation Policies for Performance Venues, Theaters and Sports Arenas, July, 2002, at 10 (available at \url{http://ncaonline.org/arts/ticket-summary.pdf}) (the theaters have scheduled signed performances, but requests need to be at least three weeks in advance in order to obtain the services of a specialized interpreter).}

Lastly, there are alternative auxiliary aids that venues can offer to substitute for ASL interpretation, such as “printed program text.”\footnote{See Oracle Arena & McAfee Coliseum, Oakland – Alameda County Arena McAfee Coliseum Accessibility and Service Guide for Guests with Disabilities, \url{http://www.oraclearena.com/info/disabledguests.php} (last viewed Nov. 27, 2007); See also 28 C.F.R. § 36.303(f) (2007) (Alternative auxiliary aid must be provided if “a particular auxiliary aid… would result in… an undue burden.”).} Courts tend to have a high standard of “undue burden”\footnote{42 U.S.C. §12182(b)(2)(A)(iii) (2000).} for larger venues that generate more revenue. For example, in \textit{Ball v. AMC}
Entertainment, Inc., the court held that a request for movie theaters to install rear window captioning at a cost of 3.5 million dollars was not an undue burden on the megaplexes. This liberal interpretation of the regulations furthers the notion that venues need to be increasingly more accommodating to patrons with auditory impairments.

By contrast, venues often do not offer ASL interpreters for unscripted events, such as sporting events. This is due in large part to the fact that the event is being seen and not heard. In view of the fact that most large sporting events are televised or streamed on the Internet, a venue can offer patrons with auditory impairments devices such as portable televisions, that provide real-time closed captioning. Additionally, all venues should, at no additional cost, offer patrons with auditory impairments assistive listening devices that amplify the performance or event. However, “[i]f the listening system provided serves individual fixed seats, then such

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See Ball v. AMC Entertainment, Inc., 246 F.Supp.2d 17, 20 n9 (D.D.C. 2003) (Rear window captioning (RWC) “is a specific type of closed caption technology. With RWC-compatible movies, captions are recorded on a computer disc, separate from the movie itself but provided free of charge by the movie studios, that is played simultaneously with regular screenings of the movie. As the movie is displayed on the movie screen, the captions are sent to an LED data panel installed on the back wall of the theater. Patrons then use portable, transparent acrylic panels attached to their seats to reflect the LED captions, allowing the captions to appear superimposed on or beneath the movie screen. The reflective panels are portable and adjustable (usually placed in cup holders attached to seats), enabling patrons using RWC to sit almost anywhere in the theater.”).


See Staples Center, Accessibility, http://38.114.165.144/doublecol.php?section=guestservices&page=accessibility (last viewed Nov. 27, 2007) (Sign language interpreters are only available for concerts.).

See Thomas Umstead, Sports Events Shoot To Broadband Outlets; Networks Go Online to Fill Fans’ Desire to Access More Live Events, Multichannel News, March 12, 2007 (the Internet is picking up where the “wide, wide world of sports” leave off, letting more and more sports events be streamlined to the public).

See National Captioning Institute, Inc., A Brief History of Captioned Television, http://www.ncicap.org/Docs/history.htm (last viewed Nov. 27, 2007) (Real-time captioning has been around since 1982.).

seats shall be located within a 50 ft … viewing distance of the stage … and shall have a complete view of the stage.”\textsuperscript{150} The release policy for such fixed seats would be the same as the one for wheelchair accessible seats.

It is important to note, however, that smaller venues may be exempt from adhering to the above proposed regulation if the venue can evince an undue burden.\textsuperscript{151} Nonetheless, smaller venues should still provide one designated translated performance or printed program text. Adhering to these accommodations would be viewed as reasonable under the ADA.\textsuperscript{152}

3. Ticketing for Patrons with Visual Impairments

In addition to the above mentioned mandates, Title III of the ADA also requires that “visually delivered materials” be effectively communicated to individuals with visual impairments.\textsuperscript{153} As ASL interpreters are needed to provide “effective communication” for people with auditory impairments, audio description is required to provide “effective communication” to patrons with visual impairments.\textsuperscript{154} Audio description is defined as “the descriptive narration of key visual elements of live theatre, television, movies, and other media to enhance their

\textsuperscript{153} 28 C.F.R. § 36.303(b)(2) (2007).
\textsuperscript{154} 28 C.F.R. § 36.303(c) (2007); See Audio Description International, http://adinternational.org/ (last viewed Nov. 27, 2007).
enjoyment by consumers who are” visually impaired.155 Like assistive listening devices, patrons hear the narration through headsets that are attached to receivers.156

Similar to ASL interpreters, describers or narrators also need a sufficient amount of time to prepare for a performance. The notice period for such an accommodation should be the same as that for an ASL interpreter. Additionally, as per the argument regarding ASL interpretation, venues may not designate only one narrated performance if the recurring performance has a running length of more than two weeks.157 Further, if patrons requiring narration are delegated to specific seats, the release policy on those seats should be the same as that for wheelchair accessible seats.

Nonetheless, audio description is not the only accommodation that persons with visual impairments may require. Due to the fact that different visual impairments create varying issues, person with unique visual impairments may need to be seated in a specific location of a venue.158 Therefore, a venue should reserve one percent of the seating in each seating location of the venue, and release those seats in accordance with the release policy for wheelchair accessible seating.159 Alternatively, some patrons with visual impairments do not need special seating, but require other visual aids such as binoculars. These should be provided at all venues.

157 National Theater, Accessibility For People with Disabilities, http://www.nationaltheatre.org/services/accessibility.htm (last viewed Nov. 27, 2007)
158 See also The Exceptional Parent, National Resources for Specific Disabilities: Directory, Jan, 1 2007, at 11(26).
Finally, at unscripted events, such as sporting events, a venue should provide listening devices to patrons with visual impairments that allow them to hear the sportscast that is being broadcast to the general public via television or Internet. This would serve as the narration of the live, unscripted event, and thus provide “equal enjoyment” required by the ADA.\(^{160}\)

**C. Companion Seating and Service Animals**

The ADA regulations provide that “[e]ach accessible seating area shall have provisions for companion seating.”\(^{161}\) Companions are able-bodied patrons that attend events with persons with disabilities. However, the regulations only specifically have companion seating regulations for the accompanying individuals of patrons in wheelchairs. The regulations provide that “[t]o the extent that it is readily achievable, a public accommodation in assembly areas shall…permit individuals who use wheelchairs to sit with family members or other companions.”\(^{162}\) Further, “at least one companion fixed seat shall be provided next to each wheelchair seating area.”\(^{163}\)

Regardless of this rule, some facilities do not have fixed seats adjacent to the wheelchair seating. In these venues, “the final rule retains [] that the [venue must] provide portable chairs or other means to allow the accompanying individuals to sit with the [patron] in [the] wheelchair[…]when it is readily achievable to do so”\(^{164}\) Furthermore, even where this is not assigned seating, venues are required to provide patrons with disabilities with at least one


adjacent companion seat. Moreover, this companion policy should be the same when patrons with auditory and visual impairments are seated in fixed seats with listening devices.

Nonetheless, companion seating can be quite problematic, even with the thorough guidelines in the ADA regulations and comments. The most common issue is the instance where a patron with a disability has more than one companion. This can lead to potential difficulties because venues often cluster accessible seating together. When the accessible seating is clustered, the seating of multiple companions with a patron with a disability could ultimately lead to the infill of needed accessible seating. Although a venue, by law, can choose to seat only one companion with the patron with a disability, and the remainder of the party elsewhere, this policy contradicts the purpose of the “equal enjoyment” philosophy that the ADA embodies. A patron with a disability should be able to sit with friends and family, a privilege given to able-bodied patrons.

Additionally, there are instances where a patron with a disability cannot be separated from their party. For example, a grandparent in a wheelchair attends an event with their son or daughter and two minor grandchildren. Venues need to be aware that there are occasions where patrons with disabilities and their accompanying party must be accommodated. Nevertheless, the

165 See Fortyune v. American Multi-Cinema, Inc., 364 F.3d 1075, 1083 (9th Cir. 2004) (the court held that the movie theater was required to remove able-bodied patrons from companion seating to accommodate a wheelchair patron).


167 Ticketing Policy Dialogue between National Council on Disabilities, California Department of Justice, and various entertainment venues led by Paula Pearlman, Executive Director, Disability Rights Legal Center, in L.A., Cal. (August 24, 2004).

168 See 28 C.F.R. pt. 36, App. A § 4.33.3 (2007) (Venues are allowed to cluster seats when there is a slope.).


170 Ticketing Policy Dialogue between National Council on Disabilities, California Department of Justice, and various entertainment venues led by Paula Pearlman, Executive Director, Disability Rights Legal Center, in L.A., Cal. (August 24, 2004).
argument of undue burden arises when factoring in the size of the party and the amount of notice provided to the venue.\textsuperscript{171} In the settlement agreement between the DOJ and TicketMaster, a provision was drafted to specifically apply to situations in which there were “more companions than the number of companion seats allocated to the accessible seat.”\textsuperscript{172} The provision stated that with advance notice, the venue or authorized seller (i.e. TicketMaster), through a sales agent, would “look for additional seats in the general pool, as close as possible to the accessible seat.”\textsuperscript{173}

However, based on the premise of “equal enjoyment,” venues should institute and abide by a policy that promises at least three companion seats.\textsuperscript{174} Although the ADA only requires that one companion seat be provided for each accessible seat, good customer service practices and the progressive nature of the ADA are impeded by minimal compliance of the regulations. Such minimal performance tends to provoke unnecessary litigation.\textsuperscript{175}

Finally, with regard to another type of companion, service animals, a patron should not be required to provide notice to a venue of this type of accompanying companion, and a venue should be able to facilitate relocation if needed. “Service animals include any animal individually


\textsuperscript{172} U.S. Department of Justice, Agreement, \url{http://www.usdoj.gov/crt/ada/ticketmaster.htm} (last viewed Nov. 27, 2007).

\textsuperscript{173} U.S. Department of Justice, Agreement, \url{http://www.usdoj.gov/crt/ada/ticketmaster.htm} (last viewed Nov. 27, 2007); See also Route 66 Raceway Ticketing Rules and Regulations, at 4 (available at \url{http://www.chicagolandspeedway.com/images/r66/Rt66_TKTG_Handbook.pdf}) (The venue will “attempt to seat companions as close as possible to the wheelchair user seats.”).


\textsuperscript{175} Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000); Oregon Paralyzed Veterans v. Regal Cinemas, Inc., 339 F.3d 1126, 2003 (9th Cir. 2003); United States v. Cinemark USA, Inc., 348 F.3d 569 (6th Cir. 2003); United States v. Hoyts Cinemas Corp., 380 F.3d 558 (1st Cir. 2004)
trained to do work or perform tasks for the benefit of an individual with a disability.”176 The ADA regulations state that service animals must be permitted at all venues.177

However, service animals do not require certification, and a venue “may not insist on proof of …certification before permitting the entry of a service animal.”178 Nonetheless, a service animal can be denied entry into a venue if it is apparent that the animal is not trained and will be disruptive.179 However, a service animal cannot be denied entry based “solely on a fear that the animal might misbehave.”180 Further, the standard for what constitutes a disruption is extremely high. In Lentini v. California Center for the Arts, the patron’s service dog yipped on two occasions during intermission when people approached the patron.181 The patron was forced to leave the venue when the House Manager threatened to have her arrested if she did not vacate the premises. However, the court held that if the noise of the service animal was “intended to serve as means of communication for the benefit of the disabled owner,” the animal may not be excluded.182 Therefore, an animal must be clearly disruptive in order for a venue to determine that they are within their right to exclude that animal.

When ticketing patrons with service animals an issue commonly arises if the service animal is a larger animal, such as a Labrador Retriever.183 In these instances, often the animal

177 See 28 C.F.R. § 36.302(c) (2007).
179 Peter Blanck et al., Disability Civil Rights Law and Policy at 13-7 (Thomson West 2003) (emphasis added).
180 Peter Blanck et al., Disability Civil Rights Law and Policy at 13-7 (Thomson West 2003).
181 Lentini v. California Center for the Arts, 370 F.3d 837, 840 (9th Cir. 2004)
182 Lentini v. California Center for the Arts, 370 F.3d 837, 845 (9th Cir. 2004)
and the owner are unable to comfortably be seated due to a lack of foot and leg room.\textsuperscript{184} A venue should retain seats with extra leg room to accommodate these patrons and release those seats as per the release policy for the wheelchair accessible seating. However, in order to ensure that a comfortable seat is provided, a patron should try to notify a venue of their accompanying service animal.\textsuperscript{185}

\textit{D. The Purchasing Process in Primary Markets and Pricing}

Persons with disabilities should be afforded the same options and varying avenues of purchasing as able-bodied persons. The most significant problems with purchasing tickets arise with the Internet. When purchasing over the phone, or at the box office, a trained customer service representative can readily address accessibility and accommodations for a patron. By contrast, the Internet is not programmed to accommodate all individuals and their unique situations.

Title III of the ADA does not expressly apply to the Internet. Further, courts have held that congress intended for Title III to only apply to “physical, concrete places.”\textsuperscript{186} Nonetheless, the application of Title III to the Internet is still an ongoing debate.\textsuperscript{187} This debate is, in large part, fueled by the fact that the Internet was not significant or integrated in the mainstream when

\begin{footnotesize}
\textsuperscript{184} Telephone interview with Jena Hoffman, Senior Director of Sales and Customer Service, LA Philharmonic Association, in L.A., Cal. (Oct. 19, 2007).


\textsuperscript{186} Access Now, Inc. v. Southwest Airlines, Co., 227 F.Supp 2d 1312, 1321 (S.D. Fla. 2002); \textit{See also} Nat’l Federation of the Blind v. Target Corp., 452 F.Supp. 2d 946, 952 (N.D. Cal. 2006)

\textsuperscript{187} \textit{See} Access Now, Inc. v. Southwest Airlines, Co., 227 F.Supp 2d 1312, 1315 (S.D. Fla. 2002) (the court cites several articles that supported Title III application to the Internet prior to the court decision); \textit{See also} Isabel Arana Dupree, Websites as “Places of Public Accommodation”: Amending the Americans with Disabilities Act in the Wake of National Federation of the Blind v. Target Corporation, 8 N.C. J.L. Tech. 273 (2007) \[and\] Michael O. Finnigan et. al., Accommodating Cyberspace: Application of the Americans with Disabilities Act to the Internet, 75 U. Cin. L. Rev. 1795 (2007) (These recent articles both argue that the Title III should be applicable to the Internet and because courts are not applying it, there is a need for a Congressional amendment.).
\end{footnotesize}
the ADA was enacted in 1990.\textsuperscript{188} A decade after the Act was promulgated, in order to address the impact of the Internet on the ADA, Congress held a hearing regarding the applicability of the ADA to private Internet sites; no resolution was reached.\textsuperscript{189}

The two cases that specifically speak to the applicability of Title III to the Internet, \textit{Access Now, Inc. v. Southwest Airlines, Co.} and \textit{Nat’l Federation of the Blind v. Target Corp.}, both address the accessibility of the defendant websites for the visually impaired.\textsuperscript{190} Although both courts agreed that the ADA was not applicable to the “virtual space,”\textsuperscript{191} the courts also seemed to come to this conclusion with trepidation.\textsuperscript{192} Further, in \textit{Nat’l Federation}, the court noted that “[a] broader application of the ADA to the [store] website may [have been] appropriate if … it [was] disclosed that the store and website [were] part of an integrated effort.”\textsuperscript{193}

Venues are definitely working in an “integrated effort” with their website ticket sales. Additionally, a clear nexus could also arguably be shown between the Internet and the “physical, concrete” venue.\textsuperscript{194} Therefore, venues should make every attempt to make their websites

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\item \textsuperscript{188} See USA Today Research, The Rise of the Internet, USA Today March 10, 2003, \url{http://www.usatoday.com/money/industries/technology/2003-03-10-time-line_x.htm} (In 1993 the White House launched their website and the Internet only contained 600 sites.).
\item \textsuperscript{189} See also \textit{Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites}: 106\textsuperscript{th} Cong. 2 (2000) (available at \url{http://commdocs.house.gov/committees/judiciary/hju65010.000/hju65010_0f.htm}).
\item \textsuperscript{190} Access Now, Inc. v. Southwest Airlines, Co., 227 F.Supp 2d 1312, 1318 (S.D. Fla. 2002); See also \textit{Nat’l Federation of the Blind v. Target Corp.}, 452 F.Supp. 2d 946, 956 (N.D. Cal. 2006).
\item \textsuperscript{191} Access Now, Inc. v. Southwest Airlines, Co., 227 F.Supp 2d 1312, 1314 (S.D. Fla. 2002).
\item \textsuperscript{192} See Access Now, Inc. v. Southwest Airlines, Co., 227 F.Supp 2d 1312, 1321 (S.D. Fla. 2002) (Because the plaintiffs argues access to “virtual ticket counter” there was no nexus, had they shown a nexus to a concrete place the ADA may have been applicable.).
\item \textsuperscript{193} See \textit{Nat’l Federation of the Blind v. Target Corp.}, 452 F.Supp. 2d 946, 956 n4 (N.D. Cal. 2006).
\item \textsuperscript{194} \textit{Nat’l Federation of the Blind v. Target Corp.}, 452 F.Supp. 2d 946, 956 n4 (N.D. Cal. 2006) (Note: in this case the court held that California state law did apply to the internet because the language in California statutes was “any place.”).
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accessible to the visually impaired by making the content readable by assistive voice dictation software.\(^{195}\) However, like all other accommodations, a venue can exempt itself by showing that offering a website with such accessibility would be an “undue burden.”\(^{196}\) Additionally, if a venue provides the services in another format (i.e. disabilities ticketing phone line), this “is an affirmative defense.”\(^{197}\)

However, accessibility of websites to the visually impaired is only one of the Internet purchasing issues that persons with disabilities face. Other concerns include the inability to purchase accessible seating online, and the inability to purchase more than one companion seat.\(^{198}\) These limitations are due in large part to the potential fraudulent purchase of accessible seating by able-bodied patrons.\(^{199}\) The DOJ’s notable settlement with TicketMaster addresses this concerns.\(^{200}\) Prior to the settlement, persons with disabilities wanting to purchase tickets via the Internet had to do so “through a series of e-mail communications with a [TicketMaster] sales [agent].”\(^{201}\) Often, sales agents did not respond to persons with disabilities in a timely

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manner, making it extremely difficult to purchase tickets through an online process. Additionally, the other formats (i.e. telephone sales) through which persons with disabilities could purchase tickets were not sufficient, and tended to provide less than “equal enjoyment” of ticket purchasing services.

Under the terms of the DOJ settlement, TicketMaster agreed that “customers [would] be able to purchase accessible seating via telephone, and email, during the entire time period that customers [could] purchase regular seating through TicketMaster’s web-based automated system.”

Because TicketMaster’s site was not currently programmed to sell accessible seating, TicketMaster was allowed time to make “reasonable modifications” to the TicketMaster website to eventually “enable individuals with disabilities to purchase accessible seats online.”

TicketMaster is “the world’s largest ticketing company.” Therefore, they should be the leader in Internet ticketing sales technologies and practices. For that reason, TicketMaster’s lack of Internet purchasing accessibility to persons with disabilities clearly shows the grave issues that Internet purchasing poses. At this time, no clear resolution has been reached as to managing Internet purchasing of accessible seating. In the interim, venues should offer patrons with disabilities other formats by which to purchase tickets. Formats that are efficient and do not burden the customer. For instance, venues can modify ticketing sales policies by designating a

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department that will exclusively handle accessible seating and accommodations and allow patrons with disabilities to purchase tickets in a more timely fashion.\textsuperscript{207}

Finally, regarding pricing in the primary market, the federal regulations provide that “people with [] disabilities [shall be provided] a choice of admission prices…comparable to those for the general public.”\textsuperscript{208} Accessible seating is often “provided in more than one location,”\textsuperscript{209} with each section offering varying prices. However, pricing becomes problematic when lower tiered pricing locations do not have accessible seats due to a clear showing of “structural impracticability,” or of an “undue burden” to alter facilities that predate the ADA.\textsuperscript{210}

In situations where the lower priced seating is not accessible, venues should outline the fee structure of accessible seating to ascend in the same manner as the tickets for the general seating.\textsuperscript{211} Therefore, the first location of accessible seats in the pricing tier should be the same price as the first group of general seat tickets in the fee structure. Additionally, if the accessible seating in a lower priced area is sold out, but the general public seating in that location is not, then the venue should charge the lower price for the upgraded accessible seats until the lower priced location is also sold out for the general public. This allows patrons with disabilities equal access to lower tiered prices.\textsuperscript{212}

\textsuperscript{207} See 42 U.S.C. § 12182(b)(2)(A)(ii) (2000) (This would be a reasonable modification to general ticket sales policies); See also Agreement, http://www.usdoj.gov/crt/ada/ticketmaster.htm (general public patrons can purchase their tickets “in a matter of minutes”).

\textsuperscript{208} 28 C.F.R. § 36, App. A at 4.33.3 (2007)

\textsuperscript{209} 28 C.F.R. § 36, App. A at 4.33.3 (2007)


\textsuperscript{211} See Caruso v. Blockbuster-Sony Music Entertainment Center, 193 F.3d 730, 739 (3rd Cir. 1999) (The court notes that district court held that offering superior seats at the cost of the inaccessible area provided equal access. The court of appeals rejected this justification and reversed based on a lack of showing of structural impracticability.).

\textsuperscript{212} See 28 C.F.R. § 36, App. A at 4.1.3(19)(a)-(b) (2007) (There is such a small percentage of accessible seating compared to the percentage of seats for the general public.); See also 42 U.S.C. § 12182(a) (2000).
E. Secondary Market Relocation and Rush Tickets

The secondary market is a huge aspect of ticketing, worth approximately ten billion dollars.213 The secondary market consists primarily of brokers and scalpers reselling tickets.214 Venues have little or no control over who is reselling their tickets, due in large part to the recent trend of states repealing anti-scalping laws.215 Further, the states that retain anti-scalping laws often do little to enforce these laws.216 This lack of control creates disarray in venues.217 Nonetheless, patrons with disabilities are entitled to “equal enjoyment” of the secondary market, even in those states that prohibit such a market.218 The main problem is that secondary market tickets are often purchased in the eleventh-hour or in inaccessible locations, and the patrons require last-minute accommodations when they arrive at the venue.219


217 Richard Sandomir, That Season Ticket on eBay? It Could Cost Seller the Seat, The N.Y. Times, Sept. 24, 2006, at 8-3 (In order to retain some control over ticket sales, the Yankees “revoke[ed] season tickets of fans who…sold their unused tickets on ” the secondary market.).

218 42 U.S.C. § 12182(a); See also Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1171 (D. Or. 1998)

All venues are aware, or should be aware, of the secondary market. Therefore, even a
venue claiming to be unaware of the secondary market, still needs to be responsible for the
effects of those ticket sales.\textsuperscript{220} Popular events sell out quickly, and often persons with disabilities
purchase any seat, through any medium, in order to obtain a ticket.\textsuperscript{221} Although patrons with
disabilities buying on the secondary market should attempt to give the venue advance notice of
any required accommodation, this should not preclude these patrons from using this market.
However, the responsibility of venues to accommodate patrons buying in the secondary market
only extends to the point where the accommodation is reasonable and would not become an
“undue burden” on the venue.\textsuperscript{222}

Ideally, every unique disability could be accommodated, even at the last moment.
However, some accommodations are not feasible and become burdensome. These could include
last minute requests for ASL interpreters or narrators, and seating a patron with a disability with
multiple companions.\textsuperscript{223} By contrast, requiring that a venue withhold a minimal amount of
wheelchair and ambulatory seats with accompanying companion seats is not an “undue burden”
on a venue.\textsuperscript{224}

Further, patrons with disabilities are entitled to “equal enjoyment” of rush tickets, or
same-day tickets, which are inherently last minute and create eleventh hour issues much like

\textsuperscript{220} See Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1169 (D. Or. 1998) (The
court noted that a venue cannot “ignore [the] existence” of the secondary market.).

\textsuperscript{221} Telephone interview with Jena Hoffman, Senior Director of Sales and Customer Service, LA Philharmonic
Association, in L.A., Cal. (Oct. 19, 2007) (the Hollywood Bowl, managed by the LA Philharmonic Association, can
sell out in as little as six minutes).


\textsuperscript{224} 42 U.S.C. §12182(b)(2)(A)(iii) (2000); See Department of Justice, ADA Mediation Highlights, \textit{Disability Rights
Online News}, April 2007, at 7 (available at \texttt{http://www.usdoj.gov/crt/ada/newsln0407scrn.pdf}) (in a successful
mediation, a sports team agreed not to release fifty accessible seats to the general public until the day of the game).
those caused by secondary market tickets.\(^\text{225}\) Therefore, a venue should be able to accommodate patrons with disabilities who purchase rush tickets in the same manner in which they accommodate patrons with disabilities who purchase on the secondary market.\(^\text{226}\)

\(\text{F. Transferability and Resale of Tickets}\)

Patrons with disabilities are often dissuaded from purchasing season tickets, or single event tickets, because of the inability to transfer those tickets.\(^\text{227}\) Specifically, patrons in wheelchairs are plagued by the lack of the transferability of unused tickets due to the unconventional nature of a wheelchair seat.\(^\text{228}\) In order to accommodate patrons with disabilities, venues should offer a ticket exchange program that would guarantee transferability, and would therefore encourage patrons in wheelchairs to purchase tickets.\(^\text{229}\) Further, season ticket holders in wheelchairs should be able to transfer their tickets as a gift to non-wheelchair users. In this instance, the attending patron, or the original ticket holder, should contact the venue at least forty-eight hours in advance to ensure the seat is infilled or that the able-bodied patron is relocated to a conventional seat of equal or greater value.\(^\text{230}\) However, if forty-eight hours notice

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\(^{226}\) See Campbell Robertson, Storefront Is New Stop for Resale of Tickets, N.Y. Times, Oct. 15, 2007, at E1 (Often, secondary market tickets are rush tickets.).

\(^{227}\) See Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1169 (D. Or. 1998) (Wheelchair users are “precluded from…sharing a season ticket.”).

\(^{228}\) See 28 C.F.R. pt. 36, App. A § 4.33.2 (2007) (A wheelchair “seat” is “clear ground or floor space[.].”)

\(^{229}\) See Independent Living Resources v. Oregon Arena Corporation, 1 F. Supp. 2d 1159, 1169 (D. Or. 1998) (“The transferability of tickets … encourages the purchase of season tickets.”); See also Dodgers, Ticket Exchange, http://mlb.mlb.com/la/ticketing/ticket_exchange.jsp (last viewed Nov. 27, 2007) (this program, offered by the Los Angeles Dodgers, offers season ticket holders the ability to resell the tickets that they do not use throughout the season).

is not possible (i.e. last-minute gift), the venue should act in accordance with the policy set forth in the secondary market ticketing discussion, and relocate the able-bodied patron.

Ideally, the resale of tickets should be regulated much like Major League Baseball’s (MLB) attempt to corner the resale market of all MLB tickets. This regulation would encourage persons with disabilities to purchase tickets, because they will have the ability to use the regulated market to resell those that are unwanted.

G. Privacy and Fraud

The DOJ explicitly states that “[t]he ADA prohibits unnecessary inquiries into the existence of a disability.” Additionally, in settlement agreements and mediations, the DOJ has made it evident that venues that require proof of a patron’s disability are “in violation of the law.” Venues are only permitted to ask how they can accommodate the patron with a

231 See Brad Stone and Matt Richtel, Baseball Gets Into Resale of Tickets, N.Y. Times, Aug. 1, 2007, at C1 (“[T]he league has entered into a revenue-sharing agreement with StubHub, an online market owned by eBay.”)

232 See e.g. Colorado Rockies, Ticket Marketplace, http://colorado.rockies.mlb.com/col/ticketing/ticket_marketplace_sellers.jsp (last viewed Nov. 27, 2007) (“When posting disabled seats for sale on the Rockies Ticket Marketplace, you must list a description of your disabled seat from one of the following categories: wheelchair accessible or companion seats.”).


234 U.S. Department of Justice, Justice Department and Detroit Lions Reach Agreement Under the Americans with Disabilities Act, July 30, 1997 (available at http://www.usdoj.gov/opa/pr/1997/July97/313cr.htm); See also Department of Justice, ADA Mediation Program, http://www.ada.gov/mediate.htm (last viewed Nov. 27, 2007) (A sports arena agreed to change a policy that required for proof of disability); See also Accessibility Services, ICC Accessibility Codes Help New York Fans with Disabilities Enjoy Accessible Features of New Ballparks, http://www.accessibility-services.com/category/newsletter/spring-2007/ (last viewed Nov. 27, 2007) (Modified baseball stadiums are focusing on becoming more accessible and the DOJ has instructed that “ticket-sellers [may not] ask for proof of [a patron’s] disability.”).
disability. This is because a venue cannot adequately accommodate a patron with a disability without knowing how to effectively do so.

However, proof of disability may be permitted if the venue has a special program exclusively for patrons with disabilities. For example, the National Theatre in Washington D.C. offers “a limited number of half-price Special Patron Tickets.” Because this program offers patrons with disabilities a benefit not offered to able bodies patrons, the venue is allowed to regulate, and ensure that people are not fraudulently taking advantage of the program. Therefore, the inquiry is no longer considered “unnecessary.”

However, one of the main problems that strict privacy creates is that it allows people to fraudulently obtain accessible seating. Fraud is an increasing concern in the ticketing of accessible seating, specifically in the resale of tickets. Due to the fact that venues sometimes sell accessible seating at a lower price than general seating, scalpers buy those tickets to maximize profit. Additionally, because venues often hold accessible seating “for [twenty-four] to


238 See ADA Title III Technical Assistance Manual, § 4.1000 (available at http://www.ada.gov/taman3.html) (The unnecessary inquiry only applies to the screening out of persons with disabilities from benefits “offered to individuals without disabilities.”).


[seventy-two] hours after all other seats are gone,” scalpers become aware of these remaining seats and can “pounce” when the waiting period expires.\textsuperscript{242}

This fraudulent and “despicable” conduct counteracts actions a venue takes to ensure “equal enjoyment of the...public accommodation”\textsuperscript{243} and results in continued frustration of patrons who actually require accessible seating.\textsuperscript{244} Currently, there is no clear solution as to how to prevent fraud. There are, however, many methods by which venues can attempt to minimize fraud without infringing privacy.\textsuperscript{245} In addition to asking a patron how they can be accommodated, a venue can ask a series of questions in an attempt to verify a patron’s actual need for an accessible ticket without asking the patron their specific disability.\textsuperscript{246} In avoiding fraud, it is important to ask patrons who do not have an apparent disability why they are requesting and need an accessible seat.\textsuperscript{247} This still does not require proof of a disability, protecting a person’s privacy, but allows a venue to screen for possible fraudulent activity.

tickets valued at $66 on ebay for $197, however those tickets were accessible seats and priced at $19 as per a settlement with the Yankees.).


\textsuperscript{244} See \textit{Accessibility Services, ICC Accessibility Codes Help New York Fans with Disabilities Enjoy Accessible Features of New Ballparks}, http://www.accessibility-services.com/category/newsletter/spring-2007/ (last visited Nov. 27, 2007)


\textsuperscript{247} Bill King, \textit{Street & Smith Sports Business Journal}, Seats for Sale; Able-bodies Patrons Often Buy Wheelchair Seats, Some to Resell for Profit, But Can Teams Do Anything About It?, July 16, 2007, at 01 (available at
However, the discount programs that are exclusively for patrons with disabilities offer one off the most effective ways to prevent fraud due to the fact that proof of a disability is permitted. Nevertheless, “[t]he kind of proof being required should [not] be too narrow” (i.e. only accepting a physician’s letter). Just as a venue cannot discriminate against people with disabilities, venues cannot discriminate among disabilities.

Finally, in addition to special programs, venues can issue a disclaimer to put patrons on notice that misrepresentation of a disability is a criminal offense and can result in civil and criminal penalties. The DOJ both recommends and approves of such disclaimers.

H. ADA Coordination in Venues


See also E-mail from Betty Siegel, Director of Accessibility, The John F. Kennedy Center for the Performing Arts, to Deborah Brightman, Staff Writer, Loyola of Los Angeles Entertainment Law Review, Loyola Law School (November 20, 2007, 13:49 PST) (on file with author).


See Department of Justice, ADA Mediation Highlights, Disability Rights Online News, April 2007, at 7 (available at http://www.usdoj.gov/crt/ada/newsltr0407scrn.pdf)
It is apparent that enforcement of any ticketing policy will be complex, and require due care by venues. Already it is becoming more common for venues to designate an ADA coordinator to exclusively oversee accommodating patrons with disabilities. However, in addition to accommodating persons with disabilities, the ADA coordinator should administer a complaint procedure through which patrons with disabilities can air grievances. By administering such a practice, the complaint procedure will inevitably help evade litigation. The ADA does not provide that notice be given before a suit is filed, as no civil right statute requires notice; however, courts have recognized that parties should “cooperate[] to develop… creative solution[s] that benefits both parties’ [interests] and which avoids the costs and polarizing effects of litigation.”

V. CONCLUSION

The ADA was promulgated in 1990, proving to be the most progressive disability rights statute to date. The Supreme Court recognized the expansive nature of the ADA by noting that it could “be applied in situations not expressly anticipated by Congress.” Although the Court


256 See Peter Blanck et al., Disability Civil Rights Law and Policy at 1-5; See also National Council on Disability, Enshrining the ADA: House-Senate Conference and the Signing, http://www.ncd.gov/newsroom/publications/1997/equality_2.htm at Appendix B (last viewed Nov. 27, 2007)

held that this did “not demonstrate ambiguity, but instead demonstrate[d] breadth.”

Nonetheless, the plain reading of the ADA regulations has lead to ambiguous interpretation. This was evinced in the litany of stadium-style seating cases.

Consistent ambiguous interpretation of the ADA regulations has shown that it is essential to create specific policies. Venues can use a focused ticketing policy in order to adequately accommodate patrons with disabilities. It is beneficial to both the patron and the venue to have a reciprocal relationship in which the rights and obligations of each party are clearly set forth. Additionally, continuing to allow venues to draft individual, varying policies, confuses patrons and weakens each policies’ overall strength.

The DOJ should adhere to its pledge to draft a policy that will “answer questions about the rights of theater-goers and sports fans with disabilities.” The above proposed guidelines set forth the necessary elements to establish a strong ticketing policy for patrons with disabilities. The DOJ should promulgate such regulations in order to deter litigation and ensure that persons with disabilities have equal opportunity to attend live events.

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259 Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000); Oregon Paralyzed Veterans v. Regal Cinemas, Inc., 339 F.3d 1126, 2003 (9th Cir. 2003); United States v. Cinemark USA, Inc., 348 F.3d 569 (6th Cir. 2003); United States v. Hoyts Cinemas Corp., 380 F.3d 558 (1st Cir. 2004).
