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## Planetariums and the ADA

In previous columns I have discussed issues that relate primarily to intellectual property and the rights and responsibilities associated with planetarium shows, music, images, and similar elements. Departing slightly from the general content-oriented focus of my prior columns, in this installment I hope to provide some general background on laws relating to accommodating individuals with disabilities. As usual, this column should be considered a source of basic background information on disability and accommodation law, and not a point-by-point guide to this complex area. Instead, I aim to provide you with the basic legal landscape and some key points so that when confronted with an accommodation concern, you will be better prepared to identify the relevant issues and focus the discussion with your own counsel.

## The Legal Framework

Passed into law in 1990, the Americans with Disabilities Act (“ADA” or “the Act”) serves as the primary source of disability and accommodation law in the United States. According to the legislative declaration of purpose, the ADA was designed to provide the 43 million disabled Americans with a mechanism by which to seek redress for disability-based discrimination.

The ADA is divided into four broad sections, each relating to a specific area of concern. Title I requires employers to provide equal employment opportunities to qualified individuals, regardless of their disability. Title II applies to state and local government activities, and generally requires that government services, programs, and facilities are adequately accessible. Title III imposes similar requirements on private organizations. Finally, Title IV provides accessibility requirements for telecommunications systems and requires public accommodations, whether publicly or privately owned, to provide avenues of effective communication for people with disabilities. Note that there is no distinction between for-profit and nonprofit entities—both would fall under the ambit of Title III.

Although the Act is the principal source of disability and accommodation law in the United States, the Rehabilitation Act of 1973 provides that recipients of federal funding are prohibited from discriminating against individuals with disabilities. Issues relating to the Rehabilitation Act frequently arise in the context of federal grant programs, since government agencies such as the National Science Foundation generally inquire about Rehabilitation Act compliance on the application materials and grant recipients are generally required to warrant compliance with the Rehabilitation Act in the grant contract.

Various states have also implemented anti-discrimination laws aimed at protecting individuals with disabilities. Although federal laws generally trump state laws, in some issues (such as anti-discrimination regulation), whichever law provides the greatest

protection to the public is controlling. As a result, a comprehensive analysis of your accessibility obligations requires a review of both federal and state law. Because state laws are generally verbose and complex, a review of each state’s statutes is beyond the scope of this column, and again illustrates the importance of discussing these issues with your own attorneys.

## Sections with Particular Relevance to Planetariums

Like most organizations operating in the United States, a planetarium (or museum or science center) likely has obligations arising from all four Titles of the ADA. To the extent that a planetarium serves as an employer, for example, it must comply with the provisions of Title I which generally requires that

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employers make reasonable accommodations so that qualified individuals may perform the essential functions of their jobs. The precise contours of Title I, however, are best left to a discussion of labor and employment law. In the remainder of this column, I discuss some of the major points of Titles II and III, the operative provisions of the ADA that are most relevant to planetariums in terms of accommodating disabled visitors.

As I mentioned briefly above, Title II applies to government entities such as states and municipalities. Accordingly, planetariums, museums, and science centers that are owned and operated by government entities, including state-run colleges and universities, are governed by the rules set forth in Title II. In general terms, Title II provides that a public entity may not prohibit a disabled individual from participating in any service, program, or activity solely because of the disability.

Public entities must make “reasonable modifications” to accommodate individuals with disabilities and must provide certain aids to assist such individuals participate in public programs and services, provided, however, that such accommodative aids, services, and modifications do not “fundamentally alter” the nature or character of the programs, and that the costs of the aids, services, and modifications are not passed along to those who benefit from them.

Because integrating individuals with dis-

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abilities into mainstream society is a major objective of the ADA, public entities must strive to incorporate their disability accommodations into their ordinary programs and services. While it is permissible to offer separate programming for those afflicted with disabilities, it is unlawful to prohibit an individual from attending an “ordinary” program. For example, a planetarium may offer special showings of its programs with captions to accommodate those with hearing impairments, but it may not prevent a hearing-impaired individual from attending a show without the captions.

Contrary to widespread belief, the ADA does not require that public buildings be equipped with elevators, ramps, and other accommodations. It does, however, require that the programs and services that are offered inside the buildings be made accessible to those with disabilities. A courthouse with courtrooms accessible only by stairway, for example, could comply with the ADA by simply holding court sessions in ground-floor rooms. In the case of new construction or substantial alteration to existing structures, however, public entities are required to ensure that the newly designed facilities are accessible.

Facilities that are privately owned need not concern themselves with Title II, but must instead consider Title III of the ADA which is applicable to any entity that owns a place of “public accommodation” such as a restaurant, hotel, or a museum, science center, or planetarium. The requirements for Title III compliance are relatively similar, requiring public accommodations to provide an integrated setting in which it provides equal access to its goods and/or services to both disabled and non-disabled individuals.

Like public entities, a public accommodation must make reasonable modifications to its policies, practices, and procedures so long as the modifications do not impose an undue burden and do not fundamentally alter the nature or character of the services provided. While public accommodations are required to provide accessible facilities, they are not required to provide personal devices

like wheelchairs or personal services to individuals with disabilities (e.g., assistance with eating).

The rules relating to the modification of existing facilities are slightly different with respect to public accommodations, as they require physical barriers to be modified when “readily achievable,” which has been defined to mean, generally, “easily accomplishable and able to be carried out without much difficulty or expense.” If such modifications are not readily achievable, public accommodations must take alternative measures to ensure that individuals with disabilities have equal access to the accommodation’s services and programs.

As with Title II, Title III mandates that new construction and facility alterations must be accessible provided that incorporating the accessible elements is not “structurally impracticable.” The Act, and various guidelines and other documents interpreting the statutory provisions provide a morass of very specific formulae, standards, and technical explanations relating to what is and is not required under certain conditions and circumstances.

The technical complexity is far beyond the scope of this column and, once again, underscores the importance for consultation with qualified, competent counsel as well as architects familiar with ADA compliance issues before embarking on any sort of new construction or facility renovation project.

### For More Information

Although the complexity of the ADA can be daunting at first, one advantage of such intricacy is that it has led to the development of a great deal of interpretive material designed to help people understand their legal rights and responsibilities. One particularly useful resource for further information is the Department of Justice, the government agency charged with overseeing the implementation and enforcement of the Act. Their ADA web site at <http://www.ada.gov> provides a wealth of information on the various sections of the Act, technical assistance manuals, standards for accessible design, and a slew of other resources.

The Department of Justice also offers an ADA information line at (800) 514-0301, which connects callers directly with ADA specialists who are familiar with various areas of ADA compliance and can offer assistance and advice on a wide range of accessibility-related topics. As of this writing, the information line is staffed Monday through Friday, 9:30 a.m. until 5:30 p.m. Eastern Time, except on Thursday, when it opens at 12:30 p.m.

As I have reiterated several times, the ADA is a remarkably lengthy and complex body of law. While it is difficult to argue against its fundamental goals and objectives, understanding the technical minutiae and complex compliance requirements of the ADA can be overwhelming and frustrating. Fortunately, attorneys, architects, and other professionals are already experts in the field and stand ready to help battle your compliance issues.

Many institutions and certainly most public entities have attorneys either on staff or on call that can discuss, in far more detail than I have presented here, your responsibilities under the ADA and can advise you on issues specific to your circumstances. Armed with a basic understanding of the law and its general requirements, your discussions with the legal and design professionals will be far more useful.

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