

The Boston Globe

US judge rules Netflix subject to disability act

By Hiawatha Bray
| GLOBE STAFF

JUNE 22, 2012

A federal judge in Springfield has ruled that Netflix and other online providers that serve the public are subject to federal disabilities laws, a decision that could require TV shows and movies streamed over the Internet to include captions for the deaf or other accommodations.

On Tuesday, US District Judge Michael Ponsor rejected Netflix's argument that it is exempt from the Americans with Disabilities Act, or ADA. He declined to dismiss an ADA lawsuit against Netflix for failing to provide captions on much of the content it streams to subscribers.

Web-based businesses did not exist when the disabilities act was enacted in 1990, the judge wrote, but the US Congress intended the law to adapt to changes in technology, and it should apply to websites.

The complaint was filed by the National Association of the Deaf, the Western Massachusetts Association of the Deaf and Hearing Impaired, and Lee Nettles, a staffer at the Stavros Center for Independent Living in Springfield.

Nettles said Netflix discriminates against the hearing-impaired, forcing them to avoid its streaming service and pay for more expensive DVD rentals to ensure the movies and TV shows they rent are equipped with captions. "It has to be equal accessibility to all people using it," he said. "It has to be 100 percent equality."

Ponsor's decision cleared the way for the lawsuit to proceed. "In a society in which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would 'run afoul of the purposes of the ADA,' " he wrote.

"Online is a place," said Wendy Parmet, professor of law at Northeastern University and a specialist on disability law. "Virtual spaces are spaces."

Netflix said it would not comment on an ongoing legal matter. The company can appeal the ruling.

Under Ponsor's reading of the law, all Internet businesses must add features that make their sites usable by people with disabilities, said Peter Blanck, professor of law at Syracuse University and a disability rights advocate. "The law requires that there is full and equal enjoyment of services offered by a commercial entity," Blanck said.

Ponsor did not rule on the merits of the case itself, which must now be argued in court. But in refusing to dismiss it, he backed the concept that Internet-based businesses must make themselves as accessible to people with disabilities as brick-and-mortar companies.

The ADA is designed to give equal rights to people with disabilities. It prompted wide-ranging changes in workplaces and public structures, from the construction of wheelchair-accessible ramps to a ban on employer discrimination against disabled workers.

Arlene Mayerson, directing attorney of the Disability Rights Education and Defense Fund, a California advocacy group that is working on the Netflix case, said the court ruling was "making sure the ADA stays relevant by moving it into the 21st century."

But the high cost of adding accessibility features to all online entertainment services could pose an undue burden on Internet companies and lead to reduced choices for consumers, said Walter Olson, senior fellow at the Cato Institute, a libertarian think tank in Washington.

"This forces Netflix to serve markets that it currently doesn't find profitable to serve," said Olson, and could prompt online video companies to refrain from stocking obscure and unusual films, to avoid the expense of adding subtitles to movies that few customers will want to see.

The Caption Center at Boston public television station WGBH has subtitled thousands of films and TV shows, according to Larry Goldberg, WGBH's director of media access. Goldberg said it costs \$400 to \$800 to add captions to a movie from scratch.

On the other hand, many movies shown on Netflix have already been captioned by the film studios. Adding captions to the Internet streaming version of a film or TV program could cost Netflix \$200 or less, said Goldberg.

But the implications of the judge's decision go beyond captioning. For example, WGBH also pioneered the concept of descriptive video — a supplemental soundtrack which is used to describe on-screen action for the sight-impaired and another example of the kind of feature websites could eventually be required to offer.

The current case against Netflix does not mention descriptive video, but Steven Rothstein, president of the Perkins School for the Blind in Watertown, thinks that the law should mandate that online enterprises serve the blind as well as the deaf. “They’re under no obligation to provide movies to people who are blind today,” said Rothstein. “They should be.”

Syracuse professor Blanck said that making websites more accessible to people with disabilities will actually help businesses, by giving them access to millions of new customers. “I think this is a matter of corporate survival,” he said.

But he said that Tuesday’s ruling settles nothing. “Different jurisdictions have taken a different approach to this question,” he said, citing a California federal court ruling that the disabilities act applied only to online companies that also had physical locations.

“This case is almost certainly not the last word,” said Northeastern’s Wendy Parmet. “I think it’s likely at some point that this issue will get to the Supreme Court.”