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MOOCs: WHEN OPENING DOORS TO EDUCATION, INSTITUTIONS MUST ENSURE THAT PEOPLE WITH DISABILITIES HAVE EQUAL ACCESS

By Nicholas Anastasopoulos and Amanda Marie Baer

Massive Open Online Courses (“MOOCs”) are free online courses offered by institutions of higher education to individuals across the world, without any admissions criteria. Through web-based courses hosted by MOOC platforms, such as Coursera or edX, student-participants learn by accessing media, including documents, pictures and uploaded lectures on the course website. While MOOCs may make access to education easier for individuals with certain disabilities, their format may render the courses inaccessible to individuals who have vision or hearing impairment. Many individuals with vision impairment use “assistive technology,” such as screen readers and voice recognition software, to use computers and access the Internet. Individuals with hearing impairment, meanwhile, often rely upon captioning when watching videos. Therefore, MOOCs may be inaccessible for individuals with vision or hearing impairment if the websites are not designed to work with assistive technology or if the lectures are not captioned or transcribed. If the MOOC courses are inaccessible to students with certain disabilities, the institutions and/or the platform providers may be found to have violated the Rehabilitation Act of 1973 or the Americans with Disabilities Act (ADA) of 1990.

Title II of the ADA provides that qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs or activities of, nor subjected to discrimination by, public universities and colleges. Meanwhile, Section 504 of the Rehabilitation Act of 1973 prohibits disabled individuals from being excluded from the participation in, denied the benefits of or subjected to discrimination under any operation of a college, university or other postsecondary institution receiving federal financial assistance. The U.S. Department of Education’s Office for Civil Rights (OCR) is responsible for enforcing Section 504 and Title II. Since the early days of the Internet, OCR has emphasized that an institution’s communications with persons with disabilities must be as effective as the institution’s communications with others. OCR has repeatedly held that the “communications” includes the verbal presentation of a lecturer, printed material and the resources of the Internet. To determine whether a communication with disabled students is “as effective as” communications with nondisabled students, OCR analyzes three factors: 1) timeliness of delivery; 2) accuracy of the translation; and 3) provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability. Unfortunately, the three-factor test promulgated by the OCR has not been meaningfully expanded upon by the OCR in a way that would provide institutions with a useful roadmap to ensure which features websites must have to ensure compliance with Section 504 and Title II. However, the U.S. Department of Justice’s Civil Rights Division’s publication entitled Accessibility of State and Local Government Websites to People with Disabilities provides helpful guidance for website compliance under the ADA and Section 504. Specifically, the division suggests that web developers refer to the Web Content Accessibility Guidelines developed by the Web Accessibility Initiative of the World Wide Web Consortium. The Web Content Accessibility Guidelines provide many recommendations for making web content more

MIRICK O'CONNELL

Page 2

accessible for individuals with disabilities, such as the recommendation that all prerecorded audio be captioned. The division also outlines a “Voluntary Action Plan for Accessible Websites,” which suggests that website hosts:

1. Establish a policy that their website will be accessible;
2. Ensure that all new and modified web pages and content, including tags, captions, photos, graphics and scanned images, are accessible;
3. Develop a plan for making the existing content more accessible and describe the plan on an accessible web page;
4. Ensure that in-house staff and contractors responsible for web page and content development are properly trained;
5. Provide a way for visitors to the website to request accessible information or services and establishing a procedure for quick responses to users with disabilities; and
6. Periodically enlist disability groups to test web pages for ease of use.

The Department of Justice recently announced that, in light of the fact that the “Internet as it is known today did not exist when Congress enacted the ADA” and that “[m]any colleges and universities offer degree programs online; [and that] some universities exist exclusively on the Internet,” it intends to propose amendments to the ADA’s regulations to “make clear to entities covered by the ADA their obligations to make their website accessible.” Unfortunately for institutions currently offering MOOCs, the process for drafting and finalizing such regulations may take years. In the meantime, OCR emphasizes that institutions have “an affirmative duty to establish a comprehensive policy in compliance with Title II in advance of any request” for an accommodation by a student with a disability.

Given OCR’s emphasis on the importance of effective communications and in light of the current lack of direct guidance from the departments of Education or Justice, it is important for institutions offering MOOCs to proactively ensure that the MOOCs will be fully accessible to students with visual and hearing impairments, and it would be wise for institutions to adhere, as closely as possible, to the division’s Voluntary Action Plan. Toward that goal, institutions should insist that contracts with MOOC platforms address each party’s responsibility in providing accessible content and addressing the other requirements outlined in the Voluntary Action Plan. While not exhaustive, the agreements generally should address the compatibility of all of the course materials with software used by individuals with vision impairments, the captioning and/or transcripts of lectures and the policies and procedures for handling mid-course requests for accommodation by a student with a disability.

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