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Inadequate Accessibility: Why Uber Should be a Public Accommodation Under the Americans With Disabilities Act

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Inadequate Accessibility: Why Uber Should be a Public Accommodation Under the Americans With Disabilities Act

INADEQUATE ACCESSIBILITY: WHY UBER SHOULD BE A PUBLIC ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT

BY ELIZABETH A. MAPELLI*

This Comment will focus on Uber and its obligations under the Americans with Disabilities Act (ADA). While it may seem logical that Uber should adhere to the same ADA regulations as taxis, the relevant ADA provision only applies to private entities that are primarily engaged in the business of transporting people. To avoid these regulations, Uber asserts that it is primarily a technology company, rather than primarily a transportation company.

However, the more expansive approach, consistent with the ADA's purpose of eliminating discrimination against persons with disabilities, is to classify Uber's services as public accommodations. While the ADA's public accommodation provision governs physical spaces such as restaurants, shopping centers, and offices, some jurisdictions have recently decided that web-based entities and services are public accommodations. Thus, even if a court were to accept Uber's claim that it is primarily a technology company rather than a transportation company, Uber would still be required to adhere to the ADA's public accommodation provision. This Comment presents and analyzes three rationales for defining Uber as a public accommodation under the ADA: (1) web-based activities are distinct public accommodations, (2) the physical vehicles that Uber operates are places of public accommodation, and (3) Uber is a "travel service" or "other service establishment" as defined in the ADA.

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INTRODUCTION

For some individuals, it is “hard to imagine a time when taxis or dial-a-number car services were the only way to be driven around.”¹ The growth of Uber, Lyft, and Via, commonly referred to as Transportation Network Companies (TNCs),² has transformed the way that individuals use transportation services.³ Passengers are no longer reliant on calling a taxi dispatcher only to be given a rough estimate of a vehicle arrival time or forced to stand in the street attempting to flag down a vehicle—now passengers simply use their mobile phones to request a ride.⁴

With this new and innovative way of requesting rides, Uber proclaims that its mission is to “make transportation as reliable as running water.”⁵ While this may be true for many Uber users,⁶ this lofty goal remains unfulfilled for the nearly 56.7 million Americans who have disabilities.⁷ For example, an Uber driver cursed at and prohibited Jamey Gump and Manveen Chahal from bringing their service animals into the vehicle.⁸ Michael Pederson, who is blind, had a similar experience when his Uber driver refused to transport his guide dog.⁹ After realizing that D’Edra Steele requires a service dog for her cerebral palsy, Uber drivers have complained and cancelled her requests for rides, citing reasons such as allergies, improper protective seat

1. Adam Lashinsky, *Uber: An Oral History*, FORTUNE (June 3, 2015, 11:00 AM), <http://fortune.com/2015/06/03/uber-an-oral-history>.

2. For purposes of this Comment, I will only discuss Uber, which has the largest market share of the TNC market, commanding seventy-four percent of the U.S. market share in September 2017. See Kathryn Roethel Rieck, *Four Metrics That Show Uber’s Not as Bad Off as You Think*, SECOND MEASURE (Nov. 2, 2017), <http://blog.secondmeasure.com/2017/11/02/ubers-not-as-bad-off-as-you-think>.

3. See *infra* Section I.B (addressing Uber’s positive impact, including the ease of obtaining reliable transportation options, and Uber’s negative effects, including the decline in the use of public transportation options and traditional taxi services).

4. See *infra* Section I.A (explaining how Uber users request rides through mobile apps and drivers subsequently accept rides through similar mobile apps).

5. *CNBC Transcript: Interview with Travis Kalanick, CEO and Co-Founder of Uber*, CNBC (Mar. 29, 2016, 3:06 AM), <https://www.cnbc.com/2016/03/28/cnbc-transcript-interview-with-travis-kalanick-ceo-and-co-founder-of-uber.html>.

6. See *infra* Section I.B (explaining the ease and reliability of Uber’s services).

7. *Nearly 1 in 5 People Have a Disability in the U.S.*, *Census Bureau Reports*, U.S. CENSUS BUREAU (JULY 25, 2012), <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>.

8. *Nat’l Fed’n of the Blind v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1077 (N.D. Cal. 2015).

9. *Id.*

coverings, or unwillingness to clean up dog hair.¹⁰ And, on two separate occasions, Uber drivers have denied access to their cars for Kristen Parisi, a Boston woman who uses a wheelchair.¹¹ Unfortunately, stories like these are not isolated instances.¹² While over the past few years, Uber has implemented accessible service options,¹³ these options have proven to be inadequate.¹⁴ However, subjecting Uber to Title III of the Americans with Disabilities Act (ADA)¹⁵ provides the essential and required link to guarantee that persons with disabilities can utilize Uber's modern conveniences.

Recent lawsuits alleging that Uber is in violation of the ADA generally make two arguments.¹⁶ First, disability advocates argue that Uber should be regulated under 42 U.S.C. § 12184, which governs private entities that are primarily engaged in transportation services.¹⁷ While this argument may seem logical, especially since taxi services are

10. Compl. at 6–7, 10, *Steele v. Uber Techs., Inc.*, No. 3:18-cv-01715 (N.D. Cal. Mar. 30, 2018).

11. See Nina Strohlic, *Uber: Disability Laws Don't Apply to Us*, THE DAILY BEAST (May 21, 2015), <https://www.thedailybeast.com/uber-disability-laws-dont-apply-to-us> (outlining the two instances in which Parisi, a twice-weekly Uber customer of two years, was told that her wheelchair would not fit in the car and that she needed to “develop thicker skin”).

12. See, e.g., *Nat'l Fed'n of the Blind*, 103 F. Supp. 3d at 1077 (describing multiple instances where Uber drivers refused to transport individuals with service animals); *Kauders v. Uber Techs., Inc.*, No. CV 16-11659-FDS, 2017 WL 903455, at *1 (D. Mass. Mar. 7, 2017) (outlining three separate instances in which a man who is blind was refused service by Uber drivers after the drivers did not permit the man's guide dog into their cars); *Salovitz v. Uber Techs., Inc.*, No. A-14-CV-823-LY, 2014 WL 5318031, at *1 (W.D. Tex. Oct. 16, 2014) (recounting Uber's denial of service to a man who uses a wheelchair).

13. See *infra* Section I.C.1 (outlining and critiquing uberWAV and uberASSIST, Uber's accessible service options).

14. First Am. Compl. at 2, *Brooklyn Ctr. For Indep. of the Disabled v. Uber Techs., Inc.*, No. 17-cv-6399 (NRB) (S.D.N.Y. Nov. 2, 2017) (arguing that Uber's efforts are insufficient since 99.9 percent of the 58,000 New York City vehicle fleet is inaccessible); Compl. and Jury Demand at 2–3, *Namismak v. Uber Techs., Inc.*, No. 3:17-cv-06124-JSC (N.D. Cal. Oct. 26, 2017) (noting that uberWAV services are not available in the New Orleans area and that uberASSIST cannot accommodate all types of wheelchairs); *Left Behind: New York's For-Hire Vehicle Industry Continues to Exclude People with Disabilities*, N.Y. LAW. FOR THE PUB. INT. 2–7 (2018), <http://www.nylpi.org/wp-content/uploads/2018/05/Left-Behind-Report.pdf> (finding disproportionate success rates and wait times comparing uberWAV and non-accessible Uber vehicles).

15. The Americans with Disabilities Act is codified at 42 U.S.C. §§ 12101–213 (2012).

16. See *infra* Section II.F (summarizing recent lawsuits filed against Uber and addressing the responses of courts).

17. See, e.g., *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *10 (W.D. Tex. Feb. 20, 2015) (finding that the claim was plausible enough to survive Uber and Lyft's motion to dismiss).

governed under this very provision, Uber asserts that it is primarily a technology company rather than a transportation company, and thus not required to adhere to § 12184 regulations.¹⁸

Second, disability advocates argue that Uber is a public accommodation and should be regulated under § 12182.¹⁹ While Uber's services do not fit squarely into one of the ADA's twelve exhaustive categories of public accommodations,²⁰ Congress and courts have stressed that the examples of public accommodations within each category are to be "construed liberally, consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities."²¹ Although there has been no affirmative holding on whether Uber's services should be subjected to § 12184 or § 12182 regulations, courts have denied Uber's attempts to dismiss these claims,²² suggesting that Uber may face ADA obligations in the near future.

The more expansive approach, consistent with the ADA's purpose of eliminating discrimination against persons with disabilities,²³ is to classify Uber's services as public accommodations under § 12182. Congress specifically intended for this provision to be expansive,²⁴ and whether courts determine that Uber is a transportation company or a technology company is irrelevant in subjecting Uber to § 12182 requirements. This Comment will present and analyze three rationales for defining Uber as a public accommodation under the ADA: (1) web-based activities are distinct public accommodations, (2) the physical vehicles that

18. *See id.* ("Defendants argue that they are not subject to § 12184 because they do not provide specified public transportation services and are not engaged in the business of transporting people, but are simply mobile-based ridesharing platforms to connect drivers and riders.").

19. *See, e.g., Nat'l Fed'n of the Blind v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015) ("Uber asserts only that it is not a 'public accommodation' under the ADA, but does not ask the Court to dismiss the complaint as to the specified public transportation service claim.").

20. § 12181(7)(A)–(L).

21. *See* H.R. REP. NO. 101-485, pt. 2, at 100 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 303; *cf. Magee v. Coca-Cola Refreshments USA*, 833 F.3d 530, 535 (5th Cir. 2016) (quoting the House Report and explaining that Congress specifically noted that some of the examples listed in the categories are only a "representative sample").

22. *See infra* Section II.F (summarizing recent litigation involving Uber's obligations under the ADA).

23. § 12101(b)(1).

24. H.R. REP. NO. 101-485, pt. 2, at 100 (stressing that Congress intended the list of twelve categories of public accommodations exhaustive but "should be construed liberally").

Uber operates are “public accommodations,”²⁵ and (3) Uber is a “travel service” or “other service establishment.”²⁶

Part I of this Comment provides background information related to Uber’s operations and the ADA. Section I.A explains how Uber works and Section I.B explores Uber’s quick ascent to becoming the largest TNC. Section I.C then concludes by discussing the range of service options, including the inadequate accessible options that Uber currently offers.

Next, Section II.A and Section II.B examine the history and circumstances that necessitated the passing of the ADA. Section II.C and Section II.D highlight the relevant transportation and public accommodations provisions of the ADA. Finally, although at the time the ADA was passed public accommodations were limited to distinct, physical places, Section II.E discusses a recent decision that jurisdictions have been forced to consider—whether internet and web-based platforms are considered places of public accommodations. Section II.E also outlines the three approaches that jurisdictions have taken to account for internet and web-based activities under the ADA. Finally, Section II.F reviews recent litigation involving TNCs and their compliance under the ADA. Because courts have not definitively ruled on whether or under what provision Uber should be subjected to ADA requirements, Part II concludes that the approach most aligned with the ADA’s purpose is to require Uber to comply with § 12182 regulations.

Part III presents and analyzes three rationales for including Uber within the scope of § 12182. First, Section III.A argues that even if a court is to accept Uber’s assertion that it is primarily a technology company rather than primarily a transportation company, Uber’s online presence still confines it to § 12182 requirements both in jurisdictions that recognize web-based activities as distinct places of public accommodation, and in jurisdictions that require a “nexus” between a distinct physical space and the online location. Section III.B notes that even in jurisdictions that limit public accommodations to physical spaces, Uber’s vehicles provide the necessary connection to subject Uber to § 12182 regulations.

Section III.C advances an additional reason for requiring Uber to comply with § 12182—Uber is a “travel service” or “other service establishment” as defined under § 12182(7)(F). Section III.C discusses how the plain language meaning, the legislative history, and jurisprudential interpretation of “travel service” or “other service establishment,” all support Uber’s § 12182 obligations. Finally, this

25. § 12181(7).

26. § 12181(7)(F).

Comment concludes by arguing that Uber should proactively implement § 12182 regulations.

I. UBER

Uber, having the largest share of the TNC market,²⁷ is “changing the logistical fabric of cities around the world.”²⁸ Understanding how Uber works and assessing its explosive growth illustrate how vital Uber’s services are to individuals globally. Furthermore, evaluating the inadequate “accessible” options offered by Uber leads to the realization that—for persons with disabilities to be guaranteed “[a] ride for every price, and any occasion”²⁹—Uber must be recognized as a public accommodation under § 12182.

A. *How Uber Works*

It was a snowy Paris evening in 2008, when Travis Kalanick and Garret Camp, who were attending a LeWeb technology conference, had trouble calling a taxi.³⁰ Kalanick and Camp were inspired by their frustration with the snow; both had recently sold their respective companies, had abundant cash on hand, and were looking for their next business ventures.³¹ They came up with a simple idea: tap a button, get a ride.³²

Initially launched in 2009 as “UberCab”³³ and then subsequently changed to “Uber” in 2010,³⁴ Uber is synonymous with a taxi service to passengers and a referral service to drivers.³⁵ Through Android, iOS,

27. Roethel Rieck, *supra* note 2.

28. STEPHEN SCOTT JOHNSON, EMERGENT: IGNITE PURPOSE, TRANSFORM CULTURE, MAKE CHANGE STICK 62 (2017) (quoting from Uber’s website).

29. *Always the Ride You Want: The Best Way to Get Wherever You’re Going*, UBER, <https://www.uber.com/ride> (last visited Aug. 17, 2018) [hereinafter *Always the Ride You Want*].

30. *Uber Newsroom: History*, UBER, <https://www.uber.com/newsroom/history> (last visited Aug. 17, 2018); Kara Swisher, *Man and Uber Man*, VANITY FAIR (Dec. 2014), <https://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>.

31. Swisher, *supra* note 30.

32. *Id.*

33. Dan Blystone, *The Story of Uber*, INVESTOPEDIA (May 24, 2018, 12:25 PM), <https://www.investopedia.com/articles/personal-finance/111015/story-uber.asp>.

34. *Id.* (“In October of 2010, the company received a cease-and-desist order from the San Francisco Municipal Transportation Agency. One of the main issues cited was the use of the word ‘cab’ in UberCab’s name. The startup promptly responded by changing the name UberCab to Uber and bought the Uber.com domain name from Universal Music Group.”).

35. John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <http://time.com/3556741/uber>.

or Windows apps,³⁶ a rider requests a ride and a nearby driver will accept the request.³⁷ GPS capabilities allow both parties to know one another's locations and the arrival time of the driver's vehicle.³⁸ Passengers then use the Uber app to enter their preferred destinations, either before or during the ride.³⁹

Once a driver is matched with a passenger, the Uber app will provide basic information to the passenger: the driver's name, vehicle type, and license plate number.⁴⁰ While anyone over the age of eighteen can request a ride,⁴¹ Uber drivers must meet more rigorous criteria—drivers must be at least twenty-one years old, have at least one year of licensed driving experience in the United States, have a valid United States driver's license, have use of a four-door vehicle, and be subjected to a review of their driving record and criminal record.⁴²

When the passenger arrives at his or her destination and exits the vehicle, the trip is complete.⁴³ Furthermore, Uber automatically takes care of costs; most payments are cashless⁴⁴ and processed by charging the passenger's credit card, taking a five to twenty percent cut for Uber itself, and directly depositing the remaining money into the driver's account.⁴⁵ Fare estimates for each ride can be quoted in advance, but additional charges such as tolls and cleaning fees may

36. "App" is short for "application." A mobile app is a software program that is downloaded and accessed directly on a mobile phone or other mobile device such as a tablet. To use an app, a mobile phone or device with internet access is required. *Understanding Mobile Apps*, FTC: CONSUMER INFO. (Feb. 2017), <https://www.consumer.ftc.gov/articles/0018-understanding-mobile-apps>.

37. Pullen, *supra* note 35.

38. *Id.*

39. *How Does Uber Work?*, UBER, <https://help.uber.com/h/738d1ff7-5fe0-4383-b34c-4a2480efd71e> (last visited Aug. 17, 2018) [hereinafter *How Does Uber Work?*].

40. *Id.*

41. *We're Here to Help: Signing Up as a Minor*, UBER, <https://help.uber.com/h/4e0a8853-f252-4a49-a181-aff7a2e0ec15> (last visited Aug. 17, 2018).

42. *See Driver Requirements: How to Drive with Uber*, UBER, <https://www.uber.com/drive/requirements> (last visited Aug. 17, 2018). In addition, drivers must provide proof of vehicle registration and proof of vehicle insurance. *Id.* Furthermore, some local rules may apply. For example, to drive in some New York City suburbs, vehicles must be a model year 2002 or newer, contain seats and seatbelts for at least four passengers, and display no commercial branding. *See Vehicle Requirements: Long Island, Westchester, and other NYC Suburbs*, UBER, <https://www.uber.com/drive/nyc-suburbs/vehicle-requirements> (last visited Aug. 17, 2018).

43. *How Does Uber Work?*, *supra* note 39.

44. "In some cities, Uber allows you to pay your fare in cash. This option must be selected before you request a ride." *Id.*

45. Pullen, *supra* note 35.

be subsequently added to the bill.⁴⁶ This ease of service allows everyone to “ride like a millionaire.”⁴⁷

B. History and Subsequent Growth

Almost immediately after its 2010 inception, Uber experienced financial growth⁴⁸ and its geographic market quickly expanded. Although initially just operating in San Francisco,⁴⁹ between May 2011 and October 2011 Uber launched in New York City, Seattle, Chicago, and Boston.⁵⁰ In December 2011, after a \$32 million funding round led by Menlo Ventures, Jeff Bezos, and Goldman Sachs, Uber began its international service in Paris, France.⁵¹ In a full-circle moment, Uber offered free rides to early signups at the LeWeb conference,⁵² the very same conference that sparked the idea of Uber only three years earlier.⁵³

However, Uber’s fast expansion came with complications. In August 2012, Lyft, a competitor of Uber, launched a similar service, which began an ongoing and present competition war.⁵⁴ As Uber expanded

46. *Id.*

47. Swisher, *supra* note 30 (referencing a favorite phrase of Camp).

48. In October 2010, a mere three months after its initial launch, Uber secured a \$1.25 million funding round from Napster and First Round Capital. See Nathan Malone, *Here’s How Uber Got its Start and Grew to Become the Most Valuable Startup in the World*, BUS. INSIDER (Sept. 13, 2015, 8:00 AM), <http://www.businessinsider.com/history-of-uber-and-its-rise-to-become-the-most-valuable-startup-in-the-world-2015-9>. Next, in February 2011, Uber closed on a \$10 million funding round, which valued the company at \$60 million. Swisher, *supra* note 30. By Summer 2014, Uber had reached a pre-money valuation of \$17 billion, and had attracted investments from big-name investors such as Ari Emanuel, Ashton Kutcher, Jay-Z, and Jeff Bezos. *Id.*

49. See Swisher, *supra* note 30 (noting that the initial San Francisco launch of Uber only included a few cars, a handful of employees, and a small seed funding round).

50. *We’re Going Global with Big Funding*, UBERBLOG (Dec. 7, 2011), <https://www.uber.com/en-FR/blog/paris/were-going-global-with-big-funding> [hereinafter *Going Global*] (“The rapid expansion was driven by increasing operational expertise and proof that all other cities were growing as fast, if not faster than San Francisco.”).

51. Malone, *supra* note 48.

52. *Going Global*, *supra* note 50.

53. Swisher, *supra* note 30; see also Alexa Tsotsis, *Uber Gets \$32M from Menlo Ventures, Jeff Bezos and Goldman Sachs*, TECHCRUNCH (Dec. 7, 2011), <https://techcrunch.com/2011/12/07/uber-announces-32-million-in-funding> (noting that at the 2011 LeWeb conference, Camp said that “Uber is in part a French company,” referencing Uber’s inception when the founders could not find a cab on a snowy evening in Paris).

54. See, e.g., Swisher, *supra* note 30 (explaining that Kalanick readily admitted to tampering with Lyft’s fundraising efforts by approaching Lyft’s potential investors and encouraging these investors to hold off investing in Lyft since Uber would be “fundraising immediately after”); Aarti Shahani, *In the Battle Between Lyft and Uber, the Focus is on Drivers*, NPR (Jan. 18, 2016, 4:30 PM), <https://www.npr.org/sections/>

and faced this competition, it has been tainted by a number of lawsuits, stemming both internally from its drivers⁵⁵ and externally from its passengers.⁵⁶ Additionally, Uber's decision to implement "surge" pricing to capitalize on its growth has been publicly and harshly criticized.⁵⁷ For example, New York riders lamented about paying as much as nine times the normal rate on New Year's Eve.⁵⁸ After a 2013 New York City blizzard, New Yorkers complained that Uber raised its prices to as much as "seven times a normal fare, charging customers \$35 per mile with a minimum of \$175 per trip. In other words, if you wanted to go a block, you would have to pay \$175."⁵⁹ In response to these complaints, Uber issued a statement that read, in part, "[t]his is

alltechconsidered/2016/01/18/463473462/is-uber-good-to-drivers-it-s-relative (finding that Uber sent covert operatives into Lyft vehicles to recruit drivers).

55. See, e.g., *O'Connor v. Uber Techs., Inc.*, 82 F. Supp. 3d 1133, 1135 (N.D. Cal. 2015) (outlining the plaintiffs' claim that Uber drivers should be considered "employees" of Uber rather than "independent contractors" so that they are covered by the statutory protections of the California Labor Code); see also Bryan Casey, *Uber's Dilemma: How the ADA May End the On-Demand Economy*, 12 U. MASS. L. REV. 124, 130 (2017) (noting that the distinction between "employees" and "independent contractors" saves Uber hundreds of millions of dollars that would otherwise go towards benefits to its drivers). But see *Kai Peng v. Uber Techs., Inc.*, 237 F. Supp. 3d 36, 47, 60 (E.D.N.Y. 2017) (dismissing claims brought by a class of drivers that Uber failed to pay them on the grounds that they must go through arbitration); Miriam A. Cherry & Antonio Aloisi, *'Dependent Contractors' in the Gig Economy: A Comparative Approach*, 66 AM. U. L. REV. 635, 644 (2017) (acknowledging that the parties in *O'Connor* settled for \$100 million but the court rejected the settlement as inadequate, leaving the door open to future litigation and negotiation).

56. See, e.g., *Doe v. Uber Techs., Inc.*, 184 F. Supp. 3d 774, 779–80 (N.D. Cal. 2016) (detailing two separate claims that passengers were sexually assaulted by their Uber drivers); Sarah Ashley O'Brien et al., *CNN Investigation: 103 Uber Drivers Accused of Sexual Assault or Abuse*, CNN (Apr. 30, 2018, 5:43 PM), <https://money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault> (detailing numerous sexual assault allegations against Uber drivers and noting that Uber's Chief Executive Officer, Dara Khosrowshahi responded by saying, "[Cracking down on sexual assault] is a priority that I expect to remain a priority for the foreseeable future").

57. See, e.g., Tara John, *Uber Criticized for Surge Pricing During London Attack*, FORTUNE (June 5, 2017), <http://fortune.com/2017/06/05/uber-london-attack-surge> (documenting customer outrage following surge pricing during the June 3, 2017 London terrorist attack, and quoting an Uber official promising to refund fares for the affected customers).

58. See Daniel White, *Uber Users are Complaining About Pricey New Year's Eve Rides*, TIME (Jan. 1, 2016), <http://time.com/4165410/uber-new-years-eve-price-surge-rides> (viewing the New Year's Eve "surge" pricing as both upsetting and humorous to passengers who joked that "if anyone had a good night it was their Uber drivers").

59. Nick Bilton, *Customers Out in the Cold Balk at Uber Surge Pricing*, N.Y. TIMES: BITS (Dec. 17, 2013, 6:43 PM), <https://bits.blogs.nytimes.com/2013/12/16/customers-out-in-the-cold-balk-at-uber-surge-pricing>.

the busiest time of year for Uber.”⁶⁰ Facing backlash, Uber eventually declared that it would cap surge pricing at 2.8 times its usual rate, after the company reached an agreement with then New York Attorney General, Eric Schneiderman, to “limit demand pricing during ‘abnormal disruptions of the market’ such as emergencies and natural disasters.”⁶¹

Regardless, the effect that Uber’s growth and popularity has had on society has been both positive and negative. On one hand, Uber’s services offer convenient and reliable transportation options, often cheaper than traditional taxi services,⁶² which have transformed the way that individuals get around.⁶³ The days of “[c]atching a cab [which] requires standing on the street until an available one happens to drive by, giving the driver directions in case of an unfamiliar destination and rummaging around for cash or wrangling with a finicky credit-card machine” are close to non-existent.⁶⁴ Uber is proud of this domination; after twenty-five city launches in 2014, Uber stated, “[t]oday we are one

60. *Id.*

61. Jacob Davidson, *Uber and Lyft Cap ‘Surge Pricing’ During East Coast Storm*, MONEY (Jan. 26, 2015, 4:16 PM), <http://time.com/money/3682731/uber-lyft-surge-pricing-cap-blizzard-east-coast>.

62. See Mark Fahey, *What’s Cheaper In Your City: Cabs or Ride Shares?*, CNBC (Aug. 31, 2015, 2:29 PM), <https://www.cnbc.com/2015/08/31/whats-cheaper-in-your-city-cabs-or-ride-shares.html> (finding that it was seldom cheaper to travel in a taxi than it was to travel in a TNC vehicle, and that Uber, compared to other TNCs such as Lyft or Sidecar, was the cheaper option in sixteen out of twenty major cities); see also Sergei Klebnikov, *The Only 3 Major Airports Where a Taxi is Cheaper Than an Uber*, MONEY (Aug. 23, 2017), <http://time.com/money/4906533/the-only-3-major-airports-where-a-taxi-is-cheaper-than-an-uber> (estimating that it was normally cheaper to take an Uber, rather than a taxi, to an airport except when Uber’s prices were “surging”).

63. See, e.g., Emma G. Fitzsimmons, *Subway Ridership Declines in New York. Is Uber to Blame?*, N.Y. TIMES (Feb. 23, 2017), <https://www.nytimes.com/2017/02/23/ny-region/new-york-city-subway-ridership.html> (concluding that a possible explanation of the decline of New York City subway ridership was the popularity of Uber and other TNCs which tripled their riders from June 2015 to October 2016); Justin Fox, *Horrors! Uber and Lyft are Convenient*, BLOOMBERG (Oct. 16, 2017, 9:30 AM), <https://www.bloomberg.com/view/articles/2017-10-16/horrors-uber-and-lyft-are-convenient> (noting that if not for Uber or Lyft, twenty-two percent of trips would not be taken); Denver Nicks, *Like It or Not, Uber is Transforming Life in Middle America*, TIME (Dec. 9, 2014), <http://time.com/3606017/uber-lyft-ridesharing-america> (noting that although Uber may partially be blamed for the disintegration of the taxi industry, it has completely transformed the lives of individuals who are not living in cities and who did not previously have access to taxis).

64. *Taxis v. Uber: Substitutes or Complements?*, THE ECONOMIST (Aug. 10, 2015), <https://www.economist.com/blogs/graphicdetail/2015/08/taxis-v-uber>.

step closer to our vision of *UberEverywhere*—a bold idea that no matter where you are, a reliable ride with Uber is just 5 minutes away.”⁶⁵

Additionally, Uber has been some significant public policy contributions including creating jobs.⁶⁶ Camp, in a June 2017 blog post, stated that Uber gave “2 million drivers flexible work options,”⁶⁷ up from the 1.1 million active drivers in November 2015⁶⁸ and in 2014, Uber said that it was responsible for directly creating 20,000 new jobs per month.⁶⁹ Further, Uber’s lasting positive effect is evident in its environmental footprint. Uber reduces consumers’ incentives to

65. Marcus Wohlsen, *Uber’s Biggest Danger is its Business Model, Not Bad PR*, WIRED (Aug. 29, 2014, 6:30 AM), <https://www.wired.com/2014/08/the-peril-to-uber-is-its-business-model-not-bad-pr>.

66. Depending on location, Uber gives drivers the opportunity to drive part-time or full-time, offers delivery driver options, and allows college students to become drivers. See *Driving Jobs vs. Driving with Uber*, UBER, <https://www.uber.com/driver-jobs> (last visited Aug. 17, 2018). For its drivers, Uber offers fuel and maintenance programs, phone plans, health insurance, and financial management planning. See *Driving Has Its Perks: Exclusive Discounts On and Off the Road*, UBER, <https://www.uber.com/drive/rewards> (last visited Aug. 17, 2018). Uber also asserts that unlike the over eighty percent of taxi drivers who logged thirty-five hours or more per week, Uber drivers do not see driving as their full-time jobs. See Ryan Lawler, *Uber Study Shows Its Drivers Make More Per Hour and Work Fewer Hours Than Taxi Drivers*, TECH CRUNCH (Jan. 22, 2015), <https://techcrunch.com/2015/01/22/uber-study>. Rather, Uber notes that eighty percent of its drivers in its twenty largest markets drive fewer than thirty-five hours per week. *Id.* One explanation for this discrepancy is that Uber drivers make more money per hour. See *id.* (adding that on average, Uber drivers earned more than \$19 per hour, compared to taxi drivers’ \$12.90 per hour). However, the impact that these higher wages have had on drivers’ income is debated. Compare Swisher, *supra* note 30 (referencing Kalanick, who notes that New York City Uber drivers that work at least forty hours per week earn more than \$90,000 in a year, compared to a New York City taxi driver who earns \$38,000), with Megan Rose Dickey, *Here’s How Much Money You Can Really Earn as an Uber Driver*, BUS. INSIDER (June 28, 2014, 8:36 AM), <http://www.businessinsider.com/how-much-you-earn-as-an-uber-driver-2014-6> (pointing out that Uber’s \$90,000 figure does not include “the cost of gas, insurance, parking, maintenance, repairs, and paying for tolls”).

67. Garrett Camp, *Uber’s Path Forward*, MEDIUM (June 20, 2017), <https://medium.com/@gc/ubers-path-forward-b59ec9bd4ef6>.

68. *Uber and The American Worker: Remarks from David Plouffe*, UBER NEWSROOM (Nov. 3, 2015), <https://www.uber.com/newsroom/1776>.

69. See Lisa Eadicicco, *Uber Says It’s Creating 20,000 Jobs Per Month*, BUS. INSIDER (June 6, 2014, 2:11 PM), <http://www.businessinsider.com/uber-creating-jobs-2014-6> (quoting a blog post from Kalanick in which he, in addition to saying that Uber was creating 20,000 new jobs each month, said that Uber was “reducing DUI rates and fueling the urban environment”). However, Eadicicco notes that “jobs” was not clearly defined because it was unclear whether “jobs” included part-time drivers. *Id.*

purchase automobiles, which not only saves these consumers money,⁷⁰ but provides Uber the unique opportunity to have a significant, positive impact on the environment.⁷¹ Furthermore, Uber may also reduce drunk driving and other accidents.⁷²

While these positive influences may be seen as Uber furthering “social goods,” in other ways, Uber may be viewed in a negative light. For instance, some see Uber’s growth as a contributing factor to the demise of the traditional taxi industry.⁷³ In some cities, seeing a

70. See Brishen Rogers, *The Social Costs of Uber*, 82 UNIV. OF CHI. L. REV. 85, 90–91 (2015) (commenting that by saving consumers money, Uber allows consumers to use their capital more efficiently and thus considerably improves consumer welfare); see also Christian Fritz, *Mobility-As-A-Service: Turning Transportation into a Software Industry*, VENTUREBEAT (Dec. 13, 2014, 10:41 AM), <https://venturebeat.com/2014/12/13/mobility-as-a-service-turning-transportation-into-a-software-industry> (estimating that Americans spend approximately \$300 billion every year on gas, which is just a fraction of the costs that come with owning a car).

71. See Rogers, *supra* note 70, at 90 (arguing that the impact of Uber could mean the possibility of converting parking spaces to new and environmentally sound uses, which leads to “important social goods”). But see Laura Bliss, *Uber and Lyft Could Do a Lot More for the Planet*, CITYLAB (Apr. 30, 2018), <https://www.citylab.com/transportation/2018/04/how-uber-and-lyft-could-do-better-by-the-planet/558866> (suggesting that the amount of time drivers spend traveling without passengers negates the positive environmental impact of ridesharing).

72. See, e.g., Uber, *MADD: Get Home Safe*, UBER, <https://www.uber.com/partner/madd> (last visited Aug. 17, 2018) (outlining Uber’s partnership with Mothers Against Drunk Driving). Compare Jessica Lynn Peck, *New York City Drunk Driving After Uber*, CITY UNIVERSITY OF NEW YORK GRADUATE CENTER, WORKING PAPER SERIES 3 (2017) (reporting that there has been a twenty-five to thirty-five percent reduction in alcohol-related car accidents since Uber launched in New York in 2011), with Noli Brazil & Davis S. Kirk, *Uber and Metropolitan Traffic Fatalities in the United States*, 184 AM. J. OF EPIDEMIOLOGY 192, 196 (2016) (finding no correlation between the launch of Uber services and the number of traffic fatalities); see also Jacey Fortin, *Does Uber Really Prevent Drunken Driving? It Depends on the Study*, N.Y. TIMES (Apr. 7, 2017), <https://www.nytimes.com/2017/04/07/business/uber-drunk-driving-prevention.html> (acknowledging the difficulty with testing Uber’s impact on drunk driving since researchers on this subject deal with multiple variables and that there is “plenty of opportunity to cherry-pick data”).

73. See, e.g., Heather Kelly, *San Francisco’s Yellow Cab Files for Bankruptcy*, CNN (Jan. 25, 2016, 3:16 PM), <http://money.cnn.com/2016/01/25/technology/yellow-cab-bankruptcy/index.html> (noting that San Francisco’s largest taxi company filed for bankruptcy partly because of its inability to compete with the less expensive and more convenient alternative ride-hailing services, such as Uber); Aamer Madhani, *Chicago Cabbies Say Industry is Teetering Toward Collapse*, USA TODAY (June 5, 2017, 4:47 PM), <https://www.usatoday.com/story/news/2017/06/05/chicago-cabbies-say-industry-teetering-toward-collapse/102524634/> (explaining the effects that Uber and Lyft have had on Chicago’s taxi market, which included approximately forty-two percent of Chicago’s taxi fleet not operating in March 2017); Winnie Hu, *Taxi Medallions, Once a Safe Investment, Now Drag Owners Into Debt*, N.Y. TIMES (Sept. 10, 2017), <https://www.nytimes.com/2017/09/10/nyregion/new-york-taxi-medallions->

traditional taxi is so rare that users do not even consider using one as a transportation option.⁷⁴

Concerns about driving and vehicle safety⁷⁵ and potential breaches of privacy with Uber's data collection⁷⁶ have cast shadows over Uber's successes. However, regardless of whether one believes that Uber has had a positive or negative impact on society, it is impossible not to admit that Uber has completely transformed the way that individuals access transportation.

C. Present-Day Operations

Uber currently operates in over 630 cities worldwide.⁷⁷ While Uber has since expanded into other services,⁷⁸ Uber's on-demand driving

uber.html (reporting that Uber and other TNCs have destroyed the notion that taxi ownership was a "guaranteed route to financial security, something that was more tangible and reliable than the stock market since people hailed cabs in good times and bad"); see also Emma G. Fitzsimmons, *A Taxi Driver Took His Own Life. His Family Blames Uber's Influence*, N.Y. TIMES (May 1, 2018), <https://www.nytimes.com/2018/05/01/nyregion/a-taxi-driver-took-his-own-life-his-family-blames-ubers-influence.html?action=click&module=RelatedCoverage&pgtype=Article%20®ion=Footer> (explaining that Uber has reduced the need for taxi services, putting additional strain on taxi drivers' personal lives, which may have contributed to a taxi driver's suicide).

74. Winnie Hu, *Uber, Surging Outside Manhattan, Tops Taxis in New York City*, N.Y. TIMES (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/nyregion/uber-taxis-new-york-city.html> (interviewing a New York City resident who added, "Uber is everywhere . . . [w]hen I think of cabs, I think of Uber because that's the main thing to take now").

75. See, e.g., Rogers, *supra* note 70, at 92–93 (discussing safety concerns about reckless drivers and risks associated with driving non-insured vehicles); Samantha Schmidt, *Teen Accused of Killing Uber Driver with Machete in One Hand, Knife in the Other*, WASH. POST (June 1, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/06/01/teenage-girl-kills-uber-driver-with-machete-in-one-hand-knife-in-the-other/?utm_term=.27884e274fbf (detailing an incident where an Uber driver was murdered by a violent passenger).

76. See, e.g., Nicole Perlroth & Mike Isaac, *Inside Uber's \$100,000 Payment to a Hacker, and the Fallout*, N.Y. TIMES (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/technology/uber-hacker-payment-100000.html> (recounting how Uber paid a hacker \$100,000 after a vulnerability was identified, which potentially exposed fifty-seven million driver and rider accounts); Chris Sanders & Heather Somerville, *Uber Settles U.S. Allegations Over Data Privacy*, REUTERS (Aug. 15, 2017, 3:16 PM), <https://www.reuters.com/article/us-uber-usa/uber-settles-us-allegations-over-data-privacy-idUSKCN1AV1VB> (stating that Uber agreed to twenty years of audits by the Federal Trade Commission (FTC) after the FTC found that Uber failed to protect personal information of both its drivers and passengers and misled the public about efforts to prevent snooping by its employees).

77. See *Get There: Your Day Belongs to You*, UBER, <https://www.uber.com> (last visited Aug. 17, 2018) [hereinafter *Get There*].

78. See *UberFRESH is Now UberEATS*, UBER (Apr. 28, 2015), <https://newsroom.uber.com/us-california/uberfresh-is-now-ubereats> (announcing UberEATS for Los

services continue to be its main focus: Uber hit five billion rides on May 20, 2017.⁷⁹ Depending on the city, Uber offers a wide variety of vehicle options. These include “economy” options that offer affordable, everyday rides for four people;⁸⁰ “premium” options for more luxurious travels;⁸¹ “carpool” options where one rider can share the ride and cost with other riders heading in the same direction;⁸² and “accessible” rides that that can accommodate wheelchairs or car seats.⁸³

1. *Current accessible options*

Although Uber has consistently insisted that it is not under any obligation to comply with the ADA,⁸⁴ it nevertheless has established two accessible options to accommodate certain passenger needs—uberWAV and uberASSIST. In implementing these services, Uber has partnered with organizations such as the Open Doors Organization, which provides tips to drivers on how to accommodate persons with disabilities,⁸⁵ and the National Federation of the Blind, which builds resources for visually impaired drivers and riders.⁸⁶

UberWAV is a service option that offers wheelchair-accessible vehicles for riders, in certain cities, who use non-foldable, motorized wheelchairs or

Angeles in April 2015, which provides an on-demand food delivery service); *see also* Malone, *supra* note 48 (stating that in January 2015, Uber introduced UberCARGO in Hong Kong, which provided moving and delivery services). *But see* Cannix Yau, *End of the Road: Uber to Halt Taxi and Van Services in Hong Kong*, CNBC (Aug. 30, 2016; 11:03 PM), <https://www.cnbc.com/2016/08/30/uber-to-halt-taxi-and-van-services-in-hong-kong.html> (noting that Uber was discontinuing its “non-core business” of UberCARGO to focus more on its ridesharing operations).

79. Rachel Holt et al., *5 Billion Trips*, UBER (June 29, 2017), <https://www.uber.com/newsroom/5billion-2>.

80. *Always the Ride You Want*, *supra* note 29.

81. These services are referred to as uberBLACK, uberSUV, uberLUX. *Id.*

82. This service is referred to as uberPOOL. *Id.*

83. *Id.* Unlike the “Economy,” “Premium,” and “Carpool,” options, the “Accessibility” tab does not list out any vehicle options available, which suggests the lack of accessible options for Uber users and highlights Uber’s non-commitment to persons with disabilities. *Id.*

84. *See infra* Section II.F (discussing recent litigation involving TNCs and their compliance under the ADA).

85. *Serving People with Disabilities*, UBER, <https://www.uber.com/drive/resources/accessibility/> (last visited Aug. 17, 2018).

86. *Commitment to Innovation for the Blind and Low Vision Community*, UBER (July 9, 2015), <https://www.uber.com/newsroom/commitment-to-innovation-for-the-blind-and-low-vision-community>.

scooters.⁸⁷ UberWAV is designed to provide “fast, flexible rides” at a price that is comparable to uberX,⁸⁸ and uberWAV drivers are certified and trained to assist and drive persons with disabilities.⁸⁹ Alternatively, uberASSIST is a vehicle option designed to provide a “helping hand” to both seniors and persons with disabilities who need additional assistance.⁹⁰ “[U]berASSIST vehicles can accommodate folding wheelchairs, walkers, and collapsible scooters, but do not have wheelchair accessible ramps or lifts.”⁹¹ UberASSIST drivers are also trained to assist riders with disabilities, such as learning how to transfer riders safely from wheelchairs to the car.⁹²

Notwithstanding Uber’s efforts, these programs are inadequate.⁹³ An Uber spokesperson acknowledged that “while there is certainly more work to be done, we will continue advocating for a solution that offers affordable, reliable transportation to those who need a wheelchair accessible vehicle.”⁹⁴ The solution lies within the Americans with Disabilities Act.

II. THE AMERICANS WITH DISABILITIES ACT

Because Uber’s efforts to implement services for persons with disabilities have proven to be inadequate,⁹⁵ Uber must adhere to ADA regulations so that persons with disabilities can use these modern services. When Congress passed the ADA, the internet and web-based activities were in their infancy, and thus the ADA does not explicitly include regulations for these activities. However, in response to the internet’s popularity and its acceptance into everyday life, jurisdictions have used three approaches to determine whether web-based activities fall under the scope of Title III. However, the jurisprudential history shows that courts have not provided definitive answers on how the ADA

87. *uberWAV: Affordable Rides in Wheelchair-Accessible Vehicles, Where Available*, UBER, <https://www.uber.com/ride/uberwav> (last visited Aug. 17, 2018) [hereinafter *uberWAV*].

88. *Id.*

89. *Id.*

90. *See uberASSIST: Lending a Helping Hand*, UBER, <https://www.uber.com/en-SG/drive/resources/uberassist> (last visited Aug. 17, 2018) [hereinafter *uberASSIST*].

91. *Id.*

92. *Id.*

93. *See, e.g.*, Compl. at 1–3, *Smith v. Uber Techs., Inc.*, No RG18894507 (Cal. Super. Feb. 27, 2018) (asserting that Uber’s lack of wheelchair accessible cars is discriminatory); *supra* note 14 and accompanying text (noting that legal action has been brought over the deficiencies in uberWAV and uberASSIST accommodations).

94. Winnie Hu, *Uber Discriminates Against Riders with Disabilities, Suit Says*, N.Y. TIMES (July 18, 2017), <https://www.nytimes.com/2017/07/18/nyregion/uber-disabilities-lawsuit-new-york-city.html>.

95. *See supra* Section II.C.1 (discussing the pitfalls of uberWAV and uberACCESS).

should apply to TNCs specifically. Due to the lack of clarity and consistency, this Comment argues that, in keeping with the purpose of the ADA, Uber should be regulated under § 12182.

A. *History of the Americans with Disabilities Act*

Before Congress passed the ADA, there was inadequate protection for persons with disabilities.⁹⁶ For example, so that the persons with disabilities did not threaten society's gene pool, separate institutions were designed and built for persons with disabilities.⁹⁷ The idea that it was "in the best interest of humanity to eliminate or at least curtail populations considered inferior"⁹⁸ was evident in the 1927 Supreme Court case *Buck v. Bell*.⁹⁹ In *Buck*, the Supreme Court found that it was constitutional for states to impose sterilization based on disability because it was "better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."¹⁰⁰ This holding "reflected a general intolerance for those who allegedly did not fit the model for the rugged, individualistic, capitalistic American."¹⁰¹

96. See, e.g., 134 CONG. REC. S9375 (daily ed. Apr. 28, 1988) (statement of Sen. Weicker, Jr.) ("Authorities on disability have often said, and I have quoted them on this floor before, that the history of society's formal methods of dealing with people with disabilities can be summed up in two words: segregation and inequality."); NAT'L COUNCIL ON DISABILITY, EQUALITY OF OPPORTUNITY: THE MAKING OF THE AMERICANS WITH DISABILITIES ACT 5 (July 26, 2010), https://ncd.gov/publications/2010/equality_of_opportunity_the_making_of_the_americans_with_disabilities_act [hereinafter NCD, EQUALITY OF OPPORTUNITY] (asserting that the nineteenth-century industrial market revolution spawned an "individualist culture," which in turn deemed that persons with disabilities did not "fit" within the American economy); cf. Jonathan C. Drimmer, Comment, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. REV. 1341, 1347-48 (1993) (noting that pre-ADA disability laws were designed to rehabilitate persons with disabilities because of their perceived inferiority and deficiencies).

97. NCD, EQUALITY OF OPPORTUNITY, *supra* note 96, at 5; cf. Robert L. Burgdorf, Jr., *Why I Wrote the Americans with Disabilities Act*, WASH. POST (July 24, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/07/24/why-the-americans-with-disabilities-act-mattered> (adding that these facilities were "unsanitary, dangerous, overcrowded and inhumane," and that they were typically located in rural areas with high walls and locked wards).

98. NCD, EQUALITY OF OPPORTUNITY, *supra* note 96, at 6.

99. 274 U.S. 200 (1927).

100. *Id.* at 207.

101. NCD, EQUALITY OF OPPORTUNITY, *supra* note 96, at 6.

As disability advocacy grew,¹⁰² the National Council on Disability (NCD) found that discrimination was the biggest problem facing those with disabilities and recommended a comprehensive non-discrimination law.¹⁰³ The blueprint of this non-discrimination law, later the ADA, was modeled partly after the Civil Rights Act of 1964, which was considered the “only statute even comparable in the breadth of its nondiscrimination coverage,”¹⁰⁴ and Section 504 of the Rehabilitation Act of 1973, which at the time was commonly referred to as the civil rights bill for persons with disabilities.¹⁰⁵

Prior to the ADA, “[m]ost public transportation systems made few, if any, accommodations for persons with disabilities,”¹⁰⁶ which resulted in a transportation network, including private taxis, ferries, and buses

102. See *id.* at 6–7 (commenting that demographic changes, including the growth of the number of persons with disabilities as a result of World War I, World War II, Korean War, and Vietnam War veterans, the creation of disability organizations, and the growth of rehabilitation occupations, all contributed to the transformation of disability in the United States); see also *id.* at 7 (“As the numbers of persons with disabilities grew, and as they, their parents, organizations, and professionals worked to improve their lives, the attitudes manifest in *Buck v. Bell* came under attack: persons with disabilities, too, deserved to be part of society.”); Burgdorf, *supra* note 97 (noting that by the late 1980s, there was enough case law to publish the first casebook on disability rights).

103. See Burgdorf, *supra* note 97 (stating that the NCD’s determination that discrimination was the biggest challenge for disabled individuals “[was] further buoyed by the results of a 1986 nationwide Harris Poll of Americans with Disabilities, which documented that people with disabilities were largely a disadvantaged, isolated, stay-at-home population that commonly experienced discrimination and desired civil rights protection”).

104. Robert L. Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 453 (1991); see also *Introduction to the ADA*, U.S. DEP’T OF JUST.: C.R. DIV., https://www.ada.gov/ada_intro.htm (last visited Aug. 17, 2018) (noting that the ADA is modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin); Robert D. Dinerstein, *The Americans with Disabilities Act of 1990: Progeny of the Civil Rights Act of 1964*, 31 HUM. RTS. 10, 10–11 (2004) (commenting that the ADA is “in many ways a logical descendent of” and “a worthy successor to” the 1964 Civil Rights Act).

105. “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .” 29 U.S.C. § 794(a) (2012); cf. Paul Stephen Dempsey, *The Civil Rights of the Handicapped in Transportation: The Americans with Disabilities Act and Related Legislation*, 19 TRANSP. L.J. 309, 314 (1991) (“Section 504 of the Rehabilitation [A]ct of 1973, commonly known as the civil rights bill of the disabled . . .”).

106. Burgdorf, *supra* note 97.

that was largely unusable by persons with disabilities.¹⁰⁷ Thus, the Urban Mass Transportation Act of 1970¹⁰⁸ and other regulations helped provide the framework for the transportation provisions of the ADA.¹⁰⁹ However, while these regulations brought upon the expansion of services available to persons with disabilities,¹¹⁰ these services were segregated from the same services offered to persons without disabilities.¹¹¹ Congress passed the ADA, in part, to alleviate this segregation issue.¹¹²

B. *Passing of the Americans with Disabilities Act*

The ADA was passed with broad bipartisan support on July 12, 1990,¹¹³ and was signed into law by President George H.W. Bush on July 26, 1990.¹¹⁴ The primary purpose of the ADA is to eliminate

107. *Id.*

108. 49 U.S.C. §§ 1601–18 (1988); *see also* Dempsey, *supra* note 105, at 314 (stating that the Urban Mass Transportation Act “declared it a national policy that [persons with disabilities] have the same right as other people to use mass transportation facilities and services; and that special efforts should be made in the planning and design of mass transit facilities and services [so] that its availability to the elderly and [accessible] services will be assured”).

109. *See e.g.*, 51 Fed. Reg. 18,994 (1986) (providing options for transit services to accommodate accessible services, while also containing service criteria for maximum response time, non-comparable hours and days of service, and comparable service areas); 41 Fed. Reg. 18,234 (1976) (requiring federally sponsored local transit agencies to make efforts, such as purchasing new vehicles or supplying wheelchair lifts).

110. Dempsey, *supra* note 105, at 317 (“The percentage of new bus purchases accessible to those in wheelchairs grew to more than 50% annually. By 1990, 35% of the nation’s public transit buses were accessible to [persons with disabilities].”).

111. *Id.* (explaining that although the services for persons with disabilities were segregated, they needed to be comparable to services for persons without disabilities).

112. *See, e.g., id.* at 310 (“The fundamental thrust of the ADA is to integrate [persons with disabilities] into the mainstream of the nation.”); NCD, EQUALITY OF OPPORTUNITY, *supra* note 96, at 155 (quoting Justin Dart, the chair of the President’s Committee on Employment of People with Disabilities) (“The ADA ‘will proclaim to America and to the world that people with disabilities are fully human; that paternalistic, discriminatory, segregationist attitudes are no longer acceptable.’”).

113. The ADA passed in the House of Representatives by a vote of 377–28, with 27 Representatives not voting. 136 CONG. REC. H17,296 (1990). The ADA passed in the Senate by a vote of 91–6, with three Senators not voting. 136 CONG. REC. S17,376 (1990); *see also* Burgdorf, *supra* note 97 (suggesting that the ADA is a “model for bipartisanship” and noting that although disability has traditionally been a cross-party issue, the passage of the ADA was “extraordinarily bipartisan”).

114. *See* REMARKS OF PRESIDENT GEORGE BUSH AT THE SIGNING OF THE AMERICANS WITH DISABILITIES ACT, EEOC, https://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html (last visited Aug. 17, 2018) (“With today’s signing of the landmark Americans for [sic] Disabilities Act, every man, woman, and child with a disability can

discrimination¹¹⁵ against the 56.7 million Americans¹¹⁶—nearly one in five individuals or nineteen percent of the noninstitutionalized population¹¹⁷—who have disabilities.¹¹⁸ To achieve this purpose, the ADA is divided into five substantive titles¹¹⁹ and aims to provide standards, supported and enforced by the Federal Government, so that the day-to-day discrimination experienced by individuals with disabilities can be addressed and alleviated.¹²⁰ This Comment will focus on Title III, which covers public accommodations, services, and amenities offered by private entities.¹²¹

*C. Transportation Regulations Under the
Americans with Disabilities Act*

The transportation provisions of the ADA were among the most hotly contested.¹²² Under § 12184, private entities “whose operations affect commerce”¹²³ and that are “primarily engaged in the business of

now pass through once-closed doors into a bright new era of equality, independence, and freedom Our success with this act proves that we are keeping faith with the spirit of our courageous forefathers who wrote in the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights.”).

115. 42 U.S.C. § 12101(b)(1) (2012).

116. *Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports*, U.S. CENSUS BUREAU, *supra* note 7.

117. *Id.*

118. The ADA defines “disability” as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment” § 12102(1).

119. Title I covers employment. *See* §§ 12111–17. Title II deals with public services. *See* §§ 12131–65. Public accommodations are regulated under Title III. *See* §§ 12181–89. Title IV concerns telecommunications. *See* 47 U.S.C. § 225 (2012). Finally, miscellaneous issues are addressed under Title V. *See* 42 U.S.C. §§ 12201–13.

120. § 12101(b)(1)–(4).

121. §§ 12181–89.

122. While debating the ADA, Representative Luken stated:

All of us recognize the crucial role transportation plays in our lives. It is the veritable lifeline which enables all persons to enjoy the full economic and social benefits which our country offers. To be denied effective transportation is to be denied the full benefits of employment, public and private services, and other basic opportunities.

See 136 CONG. REC. H2433 (daily ed. May 17, 1990) (statement of Rep. Luken); *see also* Dempsey, *supra* note 105, at 310 (stating that the debate regarding the ADA transportation provisions mostly had to do with cost).

123. § 12184(a).

transporting people”¹²⁴ may not prohibit persons with disabilities from fully enjoying these transportation services.¹²⁵ Private entities are in violation of § 12184 provisions when they: (1) fail to “make reasonable modifications in [their] policies, practices, or procedures”;¹²⁶ (2) fail to provide auxiliary aids and services,¹²⁷ which results in an individual being “excluded, denied services, segregated, or otherwise treated differently than other individuals”;¹²⁸ or (3) fail to remove architectural barriers or communication barriers.¹²⁹ However, a private entity is not required to comply with these regulations if it demonstrates that implementing these criteria would fundamentally alter¹³⁰ or place an undue burden on the service.¹³¹

In addition to these requirements, the U.S. Department of Transportation (DOT) has issued transportation regulations to implement the corresponding Title III provisions.¹³² These regulations include criteria for university transportation systems,¹³³ vanpools,¹³⁴ airport transportation systems,¹³⁵ and private entities providing taxi services.¹³⁶ Under these regulations, taxi services that are “primarily engaged in the business of transporting people which provide demand responsive service[s]”¹³⁷ are not required to purchase or lease vehicles that are accessible to persons with disabilities,¹³⁸ but they may not refuse services or help and assistance to individuals with disabilities, or charge higher rates.¹³⁹

124. *Id.*

125. *Id.*

126. § 12182(b)(2)(A)(ii).

127. § 12184(b)(2)(B).

128. § 12182(b)(2)(A)(iii).

129. § 12184(b)(2)(C); § 12182(b)(2)(A)(iv).

130. § 12182(b)(2)(A)(ii)–(iii).

131. § 12182(b)(2)(A)(iii).

132. 49 C.F.R § 37.1 (2016).

133. § 37.25.

134. § 37.31.

135. § 37.33.

136. § 37.29.

137. § 37.29(a).

138. § 37.29(b).

139. § 37.29(c).

D. Public Accommodations Provisions

Title III prohibits discrimination on the basis of disability in any place of public accommodation.¹⁴⁰ Public accommodations are broadly defined as entities that “affect commerce”¹⁴¹ and fall within one of twelve categories.¹⁴² These categories include (1) “a laundromat, . . . travel service, . . . or other service establishment”;¹⁴³ and (2) “a terminal, depot, or other station used for specified public transportation.”¹⁴⁴ While this list of twelve categories is exhaustive, the legislative history of this provision asserts that the categories “should be construed liberally, consistent with the intent of the legislation that [persons] with disabilities should have equal access to the array of establishments available to [persons without disabilities].”¹⁴⁵ Accordingly, one of the ADA’s most impressive strengths is “its comprehensive character.”¹⁴⁶

Under Title III, owners and operators of public accommodations are prohibited from discriminating against persons with disabilities from fully and equally enjoying the services or facilities.¹⁴⁷ In other words, public accommodations must not deny use of their goods or services or provide alternative accommodations that are unequal to or separate from the goods and services available to others.¹⁴⁸ Discriminatory behavior includes “screen[ing] out” persons with disabilities and “fail[ing] to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford . . . services . . . to [persons] with disabilities.”¹⁴⁹ Furthermore, public accommodations must take affirmative steps to prevent discrimination,

140. See generally 42 U.S.C. § 12182 (2012).

141. § 12181(7).

142. § 12181(7)(A)–(L).

143. § 12181(7)(F).

144. § 12181(7)(G).

145. H.R. REP. NO. 101-485, pt. 2, at 100 (1990), as reprinted in 1990 U.S.C.C.A.N. 383 (“However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase ‘other similar’ entities.”); see also *Wheeler v. Hurdman*, 825 F.2d 257, 262 (10th Cir. 1987) (“In our review of the antidiscrimination laws we must be mindful of their remedial purposes, and liberally interpret their provisions to that end.”).

146. *Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Senate Committee on Labor and Human Resources and the Subcommittee on the Handicapped*, 101st Cong. 197 (1989) (statement of Hon. Richard L. Thornburgh, Attorney General of the United States).

147. § 12182(a).

148. § 12182(b)(1)(A)(i)–(iii).

149. § 12182(b)(2)(a)(i)–(ii).

such as considering how facilities are used by guests without disabilities, and then take reasonable steps to provide guests with disabilities a similar experience.¹⁵⁰ However, public accommodations are not required to adhere to these policies if they prove that the selection criteria is necessary for the services being offered,¹⁵¹ or the reasonable modifications would “fundamentally alter the nature of such . . . services”¹⁵² or create an “undue burden”¹⁵³ on the administrator of these services.¹⁵⁴

Additionally, there are specific rules for demand responsive systems. Demand responsive systems are systems of providing transportation to individuals on a non-fixed route system.¹⁵⁵ These public accommodations, when viewed as a whole, must “ensure[] a level of service to individuals with disabilities . . . equivalent to the level of service provided to individuals without disabilities.”¹⁵⁶

E. Internet and Web-Based Platforms as Public Accommodations

Because “[t]he ADA was signed into law on the brink of the [i]nternet revolution,”¹⁵⁷ the debate around the passing of the ADA did not include whether websites and online activities were public accommodations; instead the discussion centered on who was included

150. See *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135, 1137 (9th Cir. 2012) (holding that allowing Segways at the defendant’s theme parks was not an unreasonable modification to its existing policies and noting that “[n]ew technology presents risks as well as opportunities; we must not allow fear of the former to deprive us of the latter”).

151. § 12184(b)(2)(A)(i).

152. § 12182(b)(2)(A)(ii), (iii).

153. § 12182(b)(2)(A)(iii).

154. An “undue burden” is a requirement that constitutes a “significant difficulty or expense.” 28 C.F.R. § 36.104 (2016) (outlining factors in deciding whether an action is an undue burden).

155. § 12181(3). A “fixed route system” is a transportation network in which a vehicle operates “along a prescribed route according to a fixed schedule.” § 12181(4).

156. § 12182(b)(2)(C)(i).

157. Katherine Rengel, Comment, *The Americans with Disabilities Act and Internet Accessibility for the Blind*, 25 J. MARSHALL J. COMPUTER & INFO. L. 543, 550 (2008); see also Kenneth Kronstadt, Note, *Looking Behind the Curtain: Applying Title III of the Americans with Disabilities Act to the Businesses Behind Commercial Websites*, 81 S. CAL. L. REV. 111, 113 (2007) (quoting Robert H. Zakon, *Hobbes’ Internet Timeline*, <https://www.zakon.org/robert/Internet/timeline> (last visited Aug. 17, 2018)) (“Although the term ‘[i]nternet’ was first used in 1982 to describe a ‘connected set of networks, specifically those using TCP/IP,’ the [i]nternet as we know it today did not exist when Congress enacted the ADA in 1990.”).

as a person with disabilities.¹⁵⁸ However, partly due to the general increase in popularity of the internet,¹⁵⁹ conversations began to turn to whether the ADA should treat online activities as places of public accommodations.

Jurisdictions have advanced three approaches to address how the ADA should account for web-based activities and websites under Title III. First, some jurisdictions, including the Third and Sixth Circuits, take a narrow position that limits “places of public accommodations” to physical spaces.¹⁶⁰ When arguing that places of public accommodations must be distinct physical spaces, courts rely on the plain language of the ADA, which does not refer to the internet.¹⁶¹ However, because the internet barely existed when Congress passed the ADA, lawmakers and

158. See, e.g., *Toyota v. Williams*, 534 U.S. 184, 198 (2002) (narrowly defining “disability,” for ADA purposes, to be “an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives”), *superseded by statute*, ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008); *Sutton v. United Airlines*, 527 U.S. 471, 475 (1999) (finding that physical and mental impairments that can be mitigated by medications or personal changes are not necessarily considered “disabilities” under the ADA), *superseded by statute*, ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008); see also S. Rep. No. 101-116, at 100 (1989) (discussing the ADA’s definition of “disability”).

159. As of March 2017, there were approximately 286 million Americans—almost eighty-eight percent of the population of the United States—who use the internet. INTERNET WORLD STATS, UNITED STATES OF AMERICA, <https://www.internetworldstats.com/unitedstates.htm> (last visited Aug. 17, 2018); cf. PETER BLANCK, *EQUALITY: THE STRUGGLE FOR WEB ACCESSIBILITY BY PERSONS WITH COGNITIVE DISABILITIES* 60 (2014) (quoting Professor Gregg Vanderheiden: “Twenty years ago there was no ‘need’ to use the [i]nternet, and even ten years ago most things could be accomplished in another fashion. Today there are many things that can only be done with the [i]nternet”).

160. *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 613–14 (3d Cir. 1998) (noting that “[j]ust as a bookstore must be accessible to [persons with disabilities] but need not treat [persons with disabilities] equally in terms of books the store stocks, likewise an insurance office must be physically accessible to [persons with disabilities] but need not provide insurance that treats [persons with disabilities] equally with [persons without disabilities]”); *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1014 (6th Cir. 1997) (en banc) (finding that places of public accommodation need to be physical spaces that are open to public access).

161. *Ford*, 145 F.3d at 612 (“The plain meaning of Title III is that a public accommodation is a place This is in keeping with the host of examples of public accommodations provided by the ADA, all of which refer to places.”); *Access Now, Inc. v. Sw. Airlines, Co.*, 227 F. Supp. 2d 1312, 1318 (S.D. Fl. 2002) (“[T]he plain and unambiguous language of the statute and relevant regulations does not include [i]nternet websites among the definitions of ‘places of public accommodation.’”).

scholars have criticized this archaic approach.¹⁶² Furthermore, some courts are beginning to abandon the traditional “physical spaces only” analysis of ADA requirements. For example, relying on previous decisions, a defendant argued “places of public accommodations are limited to physical spaces.”¹⁶³ However, the district court denied the defendant’s motion to dismiss and distinguished the case’s facts from previous cases by instead finding a “nexus”¹⁶⁴ between the defendant’s brick-and-mortar stores and the defendant’s online presence.¹⁶⁵ This move towards a “nexus” test signals the rejection of courts to limiting places of public accommodations to only physical spaces.

Second, some jurisdictions, including the Ninth and Eleventh Circuits, require that there be a “nexus” between a physical space and the intangible services.¹⁶⁶ The theory behind this approach is that the ADA should regulate online activity that has a nexus to a physical place because the online activity provides “access to the goods and services

162. See, e.g., Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Entities, 81 Fed. Reg. 28658, 28658 (proposed May 9, 2016) (to be codified at 28 C.F.R pt. 35) (acknowledging that when the Department of Justice promulgated final rules implementing Title III in 1991, “the Web was in its infancy”); Colin Crawford, *Cyberplace: Defining a Right to Internet Access Through Public Accommodation Law*, 76 TEMP. L. REV. 225, 234 (2003) (“Such highly location-bound conceptions of public accommodation law are both wrong-headed and out of step with the historical development and purposes of public accommodation law.”); Patrick Maroney, *The Wrong Tool for the Right Job: Are Commercial Websites Places of Public Accommodation Under the Americans with Disabilities Act of 1990?*, 2 VAND. J. ENT. L. & PRAC. 191, 198–99 (2000) (“[T]he [i]nternet was simply not a part of mainstream life in 1990. Its rapid growth was unforeseen by lawmakers even a decade ago. The [i]nternet’s absence from the original debate over the ADA thus raises serious issues of statutory interpretation.”); Dana Whitehead McKee & Deborah T. Fleischaker, *ADA and the Internet: Must Websites be Accessible to the Disabled?*, 33 MD. B.J. 34, 36 (2000) (“To require businesses on the street to comply with the ADA, while permitting those in cyberspace to freely discriminate against [persons with disabilities] would defeat the purpose of the ADA.”).

163. *Castillo v. Jo-Ann Stores, LLC*, 268 F. Supp. 3d 870, 875 (N.D. Ohio 2018) (relying on *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997), and *Stoutenborough v. Nat’l Football League, Inc.*, 59 F.3d 580 (6th Cir. 1995)).

164. See *infra* notes 166–174 and accompanying text (discussing the “nexus” requirement that some jurisdictions take in deciding whether web-based activities are “places of public accommodations”).

165. *Castillo*, 268 F. Supp. 3d at 876–77, 880–81. However, the court declined to determine whether the website itself was a “place of public accommodation.” *Id.* at 881.

166. See, e.g., *Rendon v. Valleycrest Prods., Ltd.*, 294 F.3d 1279, 1284–85 n.8 (11th Cir. 2002) (finding a nexus between the telephone automated hotline and the physical space of a theatre in which the game show at issue in the case took place); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 1994).

of that place of public accommodation.”¹⁶⁷ Based on this theory, “the [i]nternet is best viewed as a means for a place of public accommodation to provide access to its goods and services for, and to communicate with, its customers and clients.”¹⁶⁸

However, the reasoning behind this “nexus” requirement has also been criticized. For example, in *Rendon v. Valleycrest Productions, Ltd.*,¹⁶⁹ the court held that there was a nexus between a telephone automated hotline and a television studio,¹⁷⁰ while the court in *Access Now, Inc. v. Southwest Airlines Co.*¹⁷¹ distinguished its case from *Rendon* by holding that the defendant’s website was “located in no particular geographical location but available to anyone, anywhere in the world” and thus the “nexus” requirement was not satisfied.¹⁷² Since all internet sources are programed from a place, *Access Now*’s holding is senseless; it is difficult to reconcile how a “television station is more ‘concrete’ than a corporate office where the particular form of website is developed and authorized.”¹⁷³ Furthermore, as U.S. commerce becomes more web-based, this arbitrary “nexus” approach will not support the ADA’s purpose of allowing individuals with disabilities access to the internet.¹⁷⁴

The third and most expansive approach taken by some jurisdictions, including the First and Seventh Circuits, neither limits the definition of “place” to an actual, physical space, nor does it require a “nexus” between the online activity and a physical space.¹⁷⁵ Rather, this

167. Richard E. Moberly, *The Americans with Disabilities Act in Cyberspace: Applying the “Nexus” Approach to Private Internet Websites*, 55 MERCER L. REV. 963, 973 (2004).

168. *Id.*

169. 294 F.3d 1279 (11th Cir. 2002).

170. *Id.* at 1284 n.8, 1285 n.8.9.

171. 227 F. Supp. 2d 1312 (S.D. Fl. 2002).

172. *Id.* at 1321 (quoting *Voyeur Dorm, L.C. v. City of Tampa*, 265 F.3d 1232, 1237 n.3 (11th Cir. 2001)).

173. Crawford, *supra* note 162, at 257 (adding that “the ‘nexus’ concept is so malleable as to be rather meaningless”).

174. See, e.g., NAT’L COUNCIL ON DISABILITY, WHEN THE AMERICANS WITH DISABILITIES ACT GOES ONLINE: APPLICATION OF THE ADA TO THE INTERNET AND THE WORLDWIDE WEB 25 (July 10, 2003), https://www.ncd.gov/rawmedia_repository/960de0db_0548_4c4c_b000_6f1eabb0f84a.pdf (“With the passage of time, as more and more goods, services, informational resources, recreation, communication, social and interactive activities of all kind migrate, wholly or partly, to the Net, maintenance of legal distinctions among otherwise similar Web sites, based on their connection or lack of connection to a physical facility, will become increasingly untenable and incoherent.”).

175. See, e.g., *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999) (“The core meaning of this provision, plainly enough, is that the owner or operator of a . . . Web site, or other facility . . . that is open to the public cannot exclude [persons with

approach considers the purpose of the ADA and rejects the arbitrary inconsistencies of requiring internet entities, which have a connection to a physical space, to comply with the ADA but not requiring compliance from internet entities without such a physical connection.¹⁷⁶ This expansive view is consistent with the views of the Department of Justice (DOJ) under President Obama¹⁷⁷ and the DOJ under President Clinton.¹⁷⁸ Furthermore, because the internet represents an expanded method of transmitting information, providing

disabilities] from entering the facility and, once in, from using the facility in the same way that [persons without disabilities] do.”); *Carparts Distrib. Ctr., Inc. v. Auto. Wholesalers Ass’n of New England*, 37 F.3d 12, 19 (1st Cir. 1994).

176. See, e.g., *Carparts Distrib.*, 37 F.3d at 19–20 (stating that the purpose of the ADA would be better achieved if the ADA applied to more than distinct physical spaces); see also H.R. REP. 101-485, pt. 2, at 108 (1990), as reprinted in 1990 U.S.C.C.A.N. 303, 391 (“[T]he Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times.”).

177. Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Entities and Public Accommodations, 75 Fed. Reg. 43460, 43460 (proposed July 26, 2010) (to be codified at 28 C.F.R pt. 35) (emphasizing that “[b]eing unable to access Web sites puts individuals at a great disadvantage in today’s society, which is driven by a dynamic electronic marketplace and unprecedented access to information,” and soliciting public comments regarding proposed regulations to increase internet accessibility). Additionally, from 2010–2016, the DOJ entered into settlements with Peapod.com, Carnival Cruise Lines, and edX Incorporated, and required those entities to make their websites accessible to persons with disabilities. See Arjeta Albani, Comment, *Equality in the Age of the Internet: Websites Under Title III of the Americans with Disabilities Act*, 13 J. BUS. & TECH. L. 97, 113 n.136–38 (2017) (citing the press releases announcing the DOJ settlements). In May 2016, the DOJ under President Obama, issued a Supplemental Advanced Notice of Proposed Rulemaking that solicited comments relating to the application of websites of public entities under the ADA’s Title II. See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Entities, 81 Fed. Reg. 28658, 28658 (proposed May 9, 2016) (to be codified at 28 C.F.R pt. 35). This came as a surprise to some disability advocates, who expected proposed regulations for Title III websites. See Albani, *supra*, at 177.

178. Letter from Deval L. Patrick, U.S. Dep’t of Justice, Assistant Att’y Gen., Civil Rights Division, to Sen. Tom Harkin (Sept. 9, 1996), <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/tal712.txt> (“Covered entities under the ADA are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or computerized media such as the [i]nternet. Covered entities that use the [i]nternet for communications regarding their programs, goods, or services must be prepared to offer those communications through accessible means as well The [i]nternet is an excellent source of information and, of course, people with disabilities should have access to it as effectively as people without disabilities.”).

opportunities for social interaction, and generating commerce, it seems reasonable and appropriate to apply ADA public accommodation principles to the internet.¹⁷⁹

F. Recent Litigation Involving Transportation Network Companies

With the growth of ridesharing apps,¹⁸⁰ individuals, often represented by disability organizations, have alleged that TNCs are violating both the ADA and state laws.¹⁸¹ Two of these cases provide substantial insight into Uber's potential future obligations under the ADA.

In *National Federation of the Blind of California v. Uber Technologies, Inc.*,¹⁸² the plaintiff alleged that Uber, in refusing service to individuals with disabilities and prohibiting service animals from entering the vehicles, was violating the ADA in two ways.¹⁸³ First, the plaintiff alleged that Uber is a public accommodation, and thus should be regulated under § 12182.¹⁸⁴ Although Uber asserted that it was not a public accommodation, the court rejected this counterargument and found that the plaintiff's classification of Uber as a "travel service" established a plausible claim, and thus survived Uber's motion to dismiss.¹⁸⁵ Second, the plaintiff argued that Uber is a "specified public transportation service," and thus should be regulated under § 12184.¹⁸⁶ Uber did not ask the Court to dismiss this part of the complaint.¹⁸⁷ The

179. Crawford, *supra* note 162, at 257–58.

180. See, e.g., Robert Hahn & Robert Metcalfe, *The Ridesharing Revolution: Economic Survey and Synthesis*, in MORE EQUAL BY DESIGN: ECONOMIC DESIGN RESPONSES TO INEQUALITY 3 (Scott Duke Kominers & Alex Teytelboym eds., 2017) <https://www.brookings.edu/wp-content/uploads/2017/01/ridesharing-oup-1117-v6-brookings1.pdf> (commenting that Uber has increased significantly since it began, growing "from fewer than 1000 in January 2013 to almost 40,000 new drivers starting in December 2014, and emphasizing that "more than half of American adults have heard of ridesharing apps like Uber and Lyft, with 15% actually using the services").

181. See, e.g., Pls.' Compl. at 2, 9, Equal Rights Ctr. v. Uber Techs., Inc., No. 1:17-cv-01272 (D.D.C. June 28, 2017) (alleging that uberWAV is ineffective and thus, Uber is violating both the ADA and the Washington, D.C. Human Rights Act); Compl. at 18, Access Living of Metro. Chi. v. Uber Techs., Inc., No. 1:16-cv-09690 (N.D. Ill. Oct. 13, 2016) (demanding that Uber be subjected to the ADA and make more accessible vehicles available).

182. 103 F. Supp. 3d 1073 (N.D. Cal. 2015).

183. *Id.* at 1083.

184. *Id.*

185. *Id.* at 1083–84.

186. *Id.* at 1083.

187. *Id.*

court's denial of Uber's motion to dismiss is indicative that web-based services may be required to comply with the ADA.

In *Ramos v. Uber Technologies, Inc.*,¹⁸⁸ the plaintiffs claimed that both Uber and Lyft were violating § 12184 by, inter alia, not providing services to persons with disabilities, not providing training for their drivers, and not providing any method for securing wheelchair accessible vehicles.¹⁸⁹ While the plaintiffs argued that Uber and Lyft are primarily engaged in the business of transporting people, Uber and Lyft asserted that they are primarily mobile-based ridesharing platforms that connect drivers and riders, and thus are not required to adhere to § 12184 requirements.¹⁹⁰ Uber and Lyft also argued that they do not control or operate the vehicles.¹⁹¹ Both companies claim they only control the app, and thus are not obligated to make "reasonable modifications" consistent with § 12182(b)(2)(A)(ii).¹⁹² The court found that there was at least a plausible claim that Uber and Lyft provided "specified public transportation services" or were "primarily engaged in the business of transporting people," and thus denied Uber and Lyft's motion to dismiss.¹⁹³ Additionally, the court held that Uber and Lyft at least have some control over the drivers' operating conditions, and therefore are responsible for more than just the app.¹⁹⁴

III. ANALYSIS

As suggested by plaintiffs in recent litigation regarding TNCs and their compliance with the ADA, Uber may be subjected to § 12184 requirements. However, the more expansive approach, in line with the ADA's purpose of eliminating discrimination against persons with disabilities, is to require that Uber comply with § 12182. While a strong argument that Uber should comply with § 12184 regulations exists in that traditional taxi services adhere to § 12184 regulations, this argument is not consistent and does not address Uber's assertion that

188. No. SA-14-CA-502-XR, 2015 WL 758087 (W.D. Tex. Feb. 20, 2015).

189. *Id.* at *1.

190. *Id.* at *11.

191. *Id.*

192. *Id.*

193. *Id.* at *10.

194. *Id.* at *11 (explaining that Uber dictates the requirements for both drivers and vehicles, and that the drivers are considered "independent contractors" of Uber). Note that in *Ramos*, the plaintiffs did not allege that Uber and Lyft are public accommodations that should be regulated under § 12182. *See* 2015 WL 758087, at *1 (stating that the plaintiffs brought suit only for violation of § 12184).

it is primarily a technology company rather than primarily a transportation company.¹⁹⁵ If a court were to accept this claim, Uber would not be responsible for following § 12184 regulations. On the other hand, even if a court were to accept Uber's argument, a court could still mandate Uber's compliance to § 12182 regulations, regardless of whether the court only considers physical spaces to be places of public accommodation. This Comment will present and analyze three rationales for defining Uber as a "public accommodation" under the ADA. First, Uber should be subjected to obligations under § 12182 because (1) web-based activities are distinct places of public accommodation, (2) the physical vehicles that Uber operates are places of accommodation, and (3) Uber is a "travel service" or "other service establishment."¹⁹⁶

A. *Web-Based Activities as Public Accommodations*

Because of the similarities between taxi services and Uber's services, it may seem logical that Uber should be governed under § 12184—the provision that governs taxi services.¹⁹⁷ However, to avoid these obligations, Uber has consistently held that unlike taxis, it is not primarily engaged in the business of transporting people; rather, Uber insists that it is primarily a technology company.¹⁹⁸ While Uber's argument that it is primarily a technology company is perhaps disingenuous and weak,¹⁹⁹ even if a court were to accept it and thus

195. As evident in *Nat'l Fed. of the Blind*, 103 F. Supp. 3d 1073 (N.D. Cal. 2015), and *Ramos*, 2015 WL 758087, at *1, there is a plausible claim that Uber should be regulated under § 12184. See also Rachael Reed, Comment, *Disability Rights in the Age of Uber: Applying the Americans with Disabilities Act of 1990 to Transportation Network Companies*, 33 GA. ST. U. L. REV. 517, 529–36 (2017) (arguing that Uber should be subjected to § 12184 requirements).

196. See generally *supra* notes 25–26 and accompanying text.

197. "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is *primarily engaged in the business of transporting people* and whose operations affect commerce." § 12184(a) (emphasis added); see also 49 C.F.R. § 37.29(a) (2015) (outlining the DOT provisions that govern taxis).

198. See *Ramos*, 2015 WL 758087, at *10 (pointing out that Uber and Lyft assert that they are "simply mobile-based ridesharing platforms [that] connect drivers and riders"); see also Reed, *supra* note 195, at 529 n.75 (noting that Uber's website had been modified so that it is more closely aligned with Uber's assertion that it is a technology company by using language such as "seamlessly connecting riders to divers through our apps").

199. See Liz Alderman, *Uber Dealt Setback After European Court Rules It Is a Taxi Service*, N.Y. TIMES (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/business/uber->

eliminate the possibility of regulation under § 12184, Uber's technology operations should be subjected to regulation under § 12182.

1. *Jurisdictions that recognize web-based activities as places of public accommodations*

First, in a jurisdiction that takes an expansive approach and finds that all online activities are places of public accommodations, Uber's assertion that it is a technology company clearly subjects it to § 12182 regulations. In *Doe v. Mutual of Omaha Insurance Co.*,²⁰⁰ the court noted that the core meaning of § 12182(a) is that:

the owner or operator of a . . . [w]eb site, or other facility (whether in physical space or in electronic space) . . . that is open to the public cannot exclude [persons with disabilities] from entering the facility and, once in, from using the facility in the same way that [persons without disabilities] do.²⁰¹

Since Uber asserts that “[they’re] proud to connect people”²⁰² and that they are “continu[ing] to develop technology that helps make millions of rides safer every day,”²⁰³ which clearly defines Uber's operations as a technology company, Uber's operations should be considered a place of public accommodation and covered under § 12182. Furthermore, likely in part a response to the recent lawsuits demanding that Uber comply with ADA regulations, Uber has updated its website to mirror its assertion that it is primarily a technology company. For example, in March 2018, Uber's website included the quote: “[w]hen you make transportation as reliable as running water, everyone benefits.”²⁰⁴ However, as of July 2018, Uber has deleted this quote and replaced it with technological references such as:

europe-ecj.html (highlighting a recent European Union decision that found that Uber was primarily a transportation company and noting that although this holding only applies to the European Union, it will likely be scrutinized by global regulators who have struggled with how to regulate this ridesharing economy).

200. 179 F.3d 557 (7th Cir. 1999), *cert. denied*, 528 U.S. 1106 (2000).

201. *Id.* at 559.

202. Reed, *supra* note 195, at 529 n.75; *see also* *Commitment to Community: Moving Everyone Forward*, UBER, <https://www.uber.com/community> (last visited Aug. 17, 2018) (“We’re firmly committed to moving everyone forward. How? By rethinking cities, collaborating to help make communities safer, standing up for inclusion and diversity, and helping to provide opportunities for all kinds of people in ways that never existed before.”).

203. *Always the Ride You Want*, *supra* note 29.

204. *Finding the Way: Creating Possibilities for Riders, Drivers, and Cities*, UBER, <https://www.uber.com/our-story/> (last visited Mar. 3, 2018).

“technology is at the heart of our approach” and “[t]ransportation isn’t the only thing we’re changing through our technology.”²⁰⁵ While Uber may have undergone a re-branding to steer away from § 12184 regulations, these marketing changes do not eliminate its ADA requirements under § 12182.

Finally, “[n]ow that the [i]nternet plays such a critical role in the personal and professional lives of Americans,” if Uber were to exclude persons with disabilities from its service, it “would defeat the purpose of this important civil rights legislation.”²⁰⁶ Therefore, Uber’s refusal to comply with the ADA regulations goes against the purpose of the ADA, which is “to bring individuals with disabilities into the economic and social mainstream of American life . . . in a clear, balanced, and reasonable manner.”²⁰⁷

2. *Jurisdictions that recognize websites as places of public accommodations if a “nexus” exists between the web-based activity and a physical space*

Uber should be subjected to § 12182 regulations even in a jurisdiction that takes a more limited approach and requires there to be a “nexus” between the intangible service and a physical space. In *National Federation of the Blind v. Target Corp.*,²⁰⁸ the court found that because the defendant’s online website was “heavily integrated” with the defendant’s physical stores and served in many ways as a “gateway” to the defendant’s physical stores, the defendant’s motion to dismiss was denied.²⁰⁹

Like the relationship between the *National Federation of the Blind* defendant’s website and its stores, access to Uber’s application serves as a “gateway” to the physical vehicles operated by Uber drivers, since the application must be used to request, set the course, and pay for

205. *Our Story, How We Got Started—and Where We’re Going*, UBER, <https://www.uber.com/about> (last visited Aug. 17, 2018); see also Reed, *supra* note 195, at 529 n.75 (highlighting additional quotes and websites in which Uber changed its message to reflect its technology company claim).

206. *Nat’l Fed’n of the Blind v. Scribd, Inc.*, 97 F. Supp. 3d 565, 575 (D. Vt. 2015); see also *id.* at 568–74 (recognizing that the ADA’s plain language and canons of construction are ambiguous, but that the ADA’s legislative history favor a more expansive reading that does not limit public accommodations to only physical spaces).

207. H.R. REP. NO. 101-485, at 99 (1990), as reprinted in 1990 U.S.C.C.A.N. 445, 447.

208. 452 F. Supp. 2d 946 (N.D. Cal. 2006).

209. *Id.* at 954–55; see also *Gil v. Winn Dixie Stores*, 242 F. Supp. 3d 1315, 1321 (finding that an adequate nexus existed between the defendant’s website and physical stores).

rides.²¹⁰ In other words, the Uber app serves as a conduit to the services offered by Uber.

Furthermore, in *Castillo v. Jo-Ann Stores, LLC*,²¹¹ the court found that the plaintiff had adequately pled that there was a nexus between the defendant's website and its brick and mortar store since the plaintiff's inability to access the website prevented her from accessing the defendant's physical locations and purchasing products.²¹² Similarly, a "nexus" must exist between Uber's online presence and its cars because the inability of a person with a disability to participate in Uber's services precludes these individuals from accessing Uber's app. Thus, because Uber's app is necessary to access physical locations, the two are inherently tied together—the business does not exist without the physical vehicles—making Uber services public accommodations.

Because the purpose of § 12182 goes beyond physical access, barring accommodations or omissions that prevent a person with disabilities from "fully enjoy[ing]" the services of a covered accommodation is inconsistent with the regulation, especially in a jurisdiction that required a "nexus" to a physical space.²¹³

B. Physical Vehicles as Public Accommodations

In a jurisdiction that does not recognize online activities as "places of public accommodations," classifying Uber-operated vehicles as places of public accommodation provides a successful channel through which to regulate Uber under § 12182.

The plain meaning of "or other station used in specified public transportation" suggests that Uber vehicles are places of public accommodation. Although "specified public transportation services"²¹⁴ are regulated under § 12184 if they are "primarily engaged in the business of transporting people,"²¹⁵ under § 12181(7)(G), a "public accommodation" includes a "terminal, depot, or other station used for

210. *How Does Uber Work?*, *supra* note 39; *see also supra* Section I.A.1 (outlining the process of Uber riders requesting vehicles through their mobile apps and Uber drivers subsequently accepting rides through their mobile apps).

211. 286 F. Supp. 3d 870 (N.D. Ohio 2018).

212. *Id.* at 876–81.

213. *Nat'l Fed'n of the Blind*, 452 F. Supp. 2d at 954.

214. "The term 'specified public transportation' means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or specified service (including charter service) on a regular and continuing basis." § 12181(10).

215. § 12184(a).

*specified public transportation.*²¹⁶ Thus, classifying Uber's operations as "specified public transportation" and defining vehicles as "other stations" will obligate Uber to follow § 12182 regulations.

First, Uber is engaged in "specified public transportation" because it provides the public with both general and charter service on a regular and continuing basis.²¹⁷ Second, although "vehicles" are not listed as means of transportation under the definition of "specified public transportation," Uber's vehicles should fall under "other conveyance[s]."²¹⁸

In *Deck v. American Hawaii Cruises, Inc.*,²¹⁹ the court found that cruise ships easily met the definition of "specified public transportation" because although cruise ships were not listed in the definition of "specified public transportation," they were "other conveyance[s]" because they are used primarily to transport passengers, operate on set schedules, offer regular and continuous transportation services, and their operations impact commerce.²²⁰ Applying the same logic, Uber's vehicles also easily meet the definition of "specified public transportation"—Uber-operated vehicles are primarily used to transport passengers, are operated via schedules set by passengers, and Uber's operations affect commerce.²²¹ Therefore, because Uber provides vehicle transportation to the general public on a regular and continuing basis, it should be deemed to be engaged in "specified public transportation."

However, finding that Uber engages in "specified public transportation" is only the first step in establishing that Uber's vehicles are "places of public accommodation," and thus subject to regulation under § 12182. Uber's vehicles must also be defined as "other station[s] used for specified public transportation."²²² Though the statute does not define "terminal," "depot,"²²³ or "station," dictionary

216. § 12181(7)(G) (emphasis added).

217. See *Get There*, *supra* note 77 ("Anywhere, anytime. Daily commute. Errand across town. Early morning flight. Late night drinks. Wherever you're headed, count on Uber for a ride—no reservations required.").

218. § 12181(10).

219. 51 F. Supp. 2d 1057 (D. Haw. 1999).

220. *Id.* at 1061. *But see* *Smith v. Pride Mobility Prods. Corp.*, No. 16-CV-04411-LHK, 2016 WL 6393549, at *6 (N.D. Cal. Oct. 28, 2016) (noting that a manufacturer of wheelchairs and wheelchair lifts did not in itself transport individuals nor offer a conveyance, and thus was not engaged in "specified public transportation" services).

221. *How Does Uber Work?*, *supra* note 39.

222. § 12181(7)(G).

223. "Depot" is defined as: "(1) A place where goods are stored until they are needed; a warehouse. (2) A place where buses are kept and repaired. (3) A railroad

definitions of “terminal” and “station” support establishing Uber’s vehicles as “other station[s].”²²⁴ “Terminal” can be defined as “a station on the line of a public carrier . . . where passengers embark or disembark”²²⁵ and “a freight or passenger station that is central to a considerable area or serves as a junction at any point with other lines.”²²⁶ “Station” can be defined as a “stopping place for . . . other land conveyances, for the transfer of . . . passengers.”²²⁷ Thus, the dictionary definitions of “terminal” and “station” both describe a temporary stopping place before the ultimate destination, which is what Uber-operated vehicles provide. Since Uber pitches its service as “[o]ne tap and a car comes directly to you. Hop in—your driver knows exactly where to go. And when you get there, just step out”²²⁸ and notes that “[w]hen you arrive at your destination and exit the vehicle, your trip is complete,”²²⁹ these statements suggest that passengers “embark or disembark” from the vehicles and that the vehicles are merely “stopping places” for passengers. Thus, Uber’s vehicles should be defined as “other stations.”

Uber may argue that, per *J.H. v. Just for Kids, Inc.*,²³⁰ vehicles are not “places” since the court in that case held that a van was not a place of public accommodation.²³¹ However, in *J.H.*, the plaintiff argued that the van was either a “place of education” under § 12181(7)(J) or a “social service establishment” under § 12181(7)(K).²³² While the court acknowledged that “[a] place can be defined loosely as a ‘space [or]

or bus station.” *Depot*, BLACK’S LAW DICTIONARY (10th ed. 2014). While these definitions do not necessarily lend themselves to supporting “vehicles” as public accommodations, the definitions of “terminal” and “station” do, and are thus the focus of this section.

224. “However, the plain or ordinary meaning of these terms may be discerned by resort to ‘commonly accepted dictionary definitions.’” *J.H. v. Just for Kids, Inc.*, 248 F. Supp. 3d 1210, 1220 (D. Utah 2017) (quoting *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1385 (10th Cir. 1998)) (using the plain meaning to define “place of education” or “social service center establishment”).

225. *Terminal*, DICTIONARY, <http://www.dictionary.com/browse/terminal> (last visited Aug. 17, 2018).

226. *Terminal*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/terminal> (last visited Aug. 17, 2018).

227. *Station*, DICTIONARY, <http://www.dictionary.com/browse/station> (last visited Aug. 17, 2018).

228. *Get There*, *supra* note 77.

229. *How Does Uber Work?*, *supra* note 39.

230. 248 F. Supp. 3d 1210 (D. Utah 2017).

231. *Id.* at 1222–23.

232. *Id.* at 1220.

room,”²³³ it ultimately rejected the plaintiff’s arguments by using canons of construction to determine that “places of education” and “social services” must be distinct physical spaces.²³⁴ However, since “terminal” and “station” invoke a sense of temporary spaces, more so than a distinct, permanent location, this same logic cannot apply to Uber’s vehicles.

Finally, Uber may argue that, even if the court establishes that vehicles are places of public accommodations, Uber “owns no vehicles,”²³⁵ and thus Uber itself is not responsible for complying with § 12182. However, an entity that “operates a place of public accommodation” is also subjected to ADA obligations.²³⁶ In *Ramos v. Uber Technologies, Inc.*, the court rejected Uber’s assertion that it does not “control the conditions under which the [driver’s personal vehicles] operate.”²³⁷ The court found that Uber “does appear to have some control over the conditions under which drivers operate” since it outlines specific criteria for who can drive for Uber.²³⁸ Further, the court noted that for Uber to assert that it cannot have control over its drivers “appears disingenuous.”²³⁹

Therefore, even if a jurisdiction that takes the antiquated approach that places of public accommodation must be confined to physical spaces, Uber should still be subjected to § 12182 because its vehicles provide this necessary physical connection.

C. Uber as a “Travel Service” and “Other Service Establishment”

The definition of public accommodation includes “a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service . . . or other service establishment.”²⁴⁰ Because Uber can be defined as both a “travel service” and “other service establishment,” it should be considered a public accommodation, and thus comply with § 12182.

233. *Id.*

234. *Id.* at 1220–21.

235. *See O’Connor v. Uber Techs., Inc.*, 82 F. Supp. 3d 1133, 1137 (N.D. Cal. 2015) (outlining Uber’s argument that because it does not own the vehicles, it does not employ any drivers, but rather the drivers are independent contractors, and thus these “transportation providers” are not entitled to protection under California labor laws).

236. 42 U.S.C. § 12182(a) (2012).

237. *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at *10–11 (W.D. Tex. Feb. 20, 2015).

238. *Id.*

239. *Id.*

240. § 12181(7)(F).

1. Plain language approach

Since the ADA has not defined “travel service,” taking a plain meaning approach in defining “travel service” suggests that Uber is such a service. The definition of a “travel agency,” meaning a “travel service,” is “a business that attends to the details of transportation, itinerary, and accommodations for travelers.”²⁴¹ Uber’s operations fit squarely into this definition. Uber attends to transportation details and itinerary by connecting drivers and passengers, displaying the arrival time of the vehicle, and offering a wide variety of vehicle accommodations.²⁴²

Second, even if the claim that Uber is a “travel service” is unsuccessful, Uber should still be classified as a public accommodation under the catch-all provision of “or other service establishment.”²⁴³ A “service establishment” is a “place of business or a public or private institution that, by its conduct or performance, assists or benefits someone or something or provides useful labor without producing a tangible good for a customer or client.”²⁴⁴ Again, Uber’s operations fit securely into this definition. Even assuming that Uber is primarily a technology company, by creating connections between riders and drivers, Uber is providing a service to individuals.

2. Legislative history

Uber may argue that its services are not comparable to the other services listed in § 12181(7)(F) since the listed services are physical structures. However, the legislative history of § 12181(7)(F) supports the view that Uber should be a public accommodation. When drafting this section, “Congress changed the language in § 12187(7)(F) from ‘other *similar* service establishments’ to ‘other service establishments’ presumably to make clear that a particular business need *not* be similar to the enumerated examples for it to constitute a service establishment.”²⁴⁵ Furthermore, Representative Tony Coelho asserted:

241. *Travel Agency*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2018), <https://ahdictionary.com/word/search.html?q=Travel+agency>.

242. *How Does Uber Work?*, *supra* note 39.

243. § 12181(7)(F).

244. *See* *Levorsen v. Octapharma Plasma Inc.*, 828 F.3d 1227, 1231 (10th Cir. 2016) (applying the plain-language approach to define “service establishment” and finding that such establishment simply provides a non-tangible service).

245. *Id.* at 1233 (emphasis added) (*comparing* H.R. REP. NO. 101-485, pt. 4, at 56 (1990), *reprinted in* 1990 U.S.C.C.A.N. 512, 545, *with* § 12181(7)(F) (emphasis added); *see also id.* (analogizing § 12181(7)(F) to § 12181(7)(E) by pointing out that Congress chose to remove the word “similar” “so that ‘a person alleging discrimination does not have to prove that a particular business is similar to one of the businesses listed . . . but

No matter what our disability is, where we live, or what we do, we all share the common experience of discrimination. And we all share a common dream: to live wherever we choose, to work and achieve whatever career goals we strive towards, to communicate with our neighbor, to travel where we choose, and like all other Americans, to freely use and enjoy public accommodations in our communities.²⁴⁶

In keeping with Congress' intent to read the ADA expansively and liberally to preserve the ADA's purpose, the definition of "other service establishment" must encompass Uber's services.

3. *Judicial interpretation*

Even if a court accepts Uber's argument that it is primarily a technology company, Uber should still be considered a public accommodation by classifying its operations as "travel service[s]." In *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*,²⁴⁷ the court reasoned that "[b]y including 'travel service' among the list of services considered 'public accommodations,' Congress clearly contemplated that 'service establishments' include providers of services which do not require a person to physically enter an actual physical structure."²⁴⁸ The court noted that "[i]t would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result."²⁴⁹

Additionally, in *National Federation of the Blind of California v. Uber Technologies, Inc.*, the plaintiff argued that "Uber's operations fall under the 'travel service' category."²⁵⁰ The court noted that, although the ADA does not define "travel service," Uber had not cited any binding authority that precluded Uber's service from regulation as a "travel service," and thus found that the plaintiff's claim was plausible and

rather, that the business falls within the general category described") (quoting 136 CONG. REC. 11,472 (1990)); H.R. REP. NO. 101-48, pt. 3, at 54 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 477 ("A person alleging discrimination does not have to prove that the entity being charged with discrimination is similar to the examples listed in the definition. Rather, the person must show that the entity falls within the overall category.").

246. *To Establish a Clear and Comprehensive Prohibition of Discrimination on the Basis of Handicap: Joint Hearing of S. 2345 Before the Subcommittee on the Handicapped*, 100th Cong. 13 (1988) (statement of Rep. Coelho).

247. 37 F.3d 12 (1st Cir. 1994).

248. *Id.* at 19.

249. *Id.*

250. 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015).

survived Uber's motion to dismiss.²⁵¹ These judicial interpretations suggest that Uber's operations are public accommodations.

CONCLUSION

The rapid growth of Uber and other TNCs will likely continue for the foreseeable future. However, with this growth comes the opportunity for Uber and other TNCs to continue discriminating against persons with disabilities—a portion of the population that continues to rise.²⁵²

While there is a strong claim that Uber should be subjected to ADA regulations under § 12184, the more expansive approach is that Uber should be considered a public accommodation and adhere to § 12182 provisions. However, because jurisdictions have taken different approaches in determining whether internet services are considered places of public accommodation, and the unlikelihood that the Trump administration will issue regulations favoring persons with disabilities,²⁵³ Uber should proactively implement § 12182 regulations. Disqualifying Uber from ADA regulations based on a technicality would be discriminatory for the millions of Americans with disabilities who want to access a service that has transformed the way individuals use transportation—and frankly, the way that individuals live their

251. *Id.* at 1083–84.

252. See Chana Joffe-Walt, *Unfit for Work*, NPR, <http://apps.npr.org/unfit-for-work> (noting that over “the past three decades, the number of Americans [with disabilities] has skyrocketed”) (last visited Aug. 17, 2018).

253. See, e.g., 82 Fed. Reg. 60932 (Dec. 26, 2017) (to be codified at 28 C.F.R. pts. 35, 36) (announcing the DOJ's withdrawal of proposed regulations pertaining to Title II and Title III of the ADA and stating that “[t]he Department is evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate”); Exec. Order No. 13771, 82 Fed. Reg. 9339 (Jan. 30, 2017) (“[I]t is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process”); Maggie Haberman, *Donald Trump Says His Mocking of New York Times Reporter Was Misread*, N.Y. TIMES (Nov. 26, 2015), <https://www.nytimes.com/2015/11/27/us/politics/donald-trump-says-his-mocking-of-new-york-times-reporter-was-misread.html> (addressing an incident in which it appeared that then-candidate Trump publicly mocked a reporter who has arthrogyriposis, which limits the functioning of his joints, by stating “‘Now the poor guy, you ought to see this guy,’ before jerking his arms around and holding his right hand at an angle. ‘Ah, I don’t know what I said! I don’t remember!’”).

lives. Furthermore, by proactively implementing § 12182 regulations, Uber could potentially improve its public image.²⁵⁴

After the city of London declined to renew Uber's operating license,²⁵⁵ Uber's new chief executive officer, Dara Khosrowshahi, sent an email to Uber employees that read in part:

Going forward, it's critical that we act with integrity in everything we do, and learn how to be a better partner to every city we operate in. That doesn't mean abandoning our principles . . . but rather building trust through our actions and our behavior. In doing so, we will show that Uber is not just a really great product, but a really

254. See, e.g., Mike Isaac & Katie Benner, *At Uber, New Questions Arise About Executive Behavior*, N.Y. TIMES (July 13, 2018), <https://www.nytimes.com/2018/07/13/technology/uber-barney-harford-behavior.html> (detailing complaints alleged against Uber's new Chief Operating Officer, Barney Harford, for making insensitive remarks towards women and minorities and highlighting a phone call in which Harford made provocative comments regarding an Uber advertisement); Mike Isaac, *Uber Founder Travis Kalanick Resigns as C.E.O.*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/2017/06/21/technology/uber-ceo-travis-kalanick.html> (reporting that Kalanick was forced to resign "after a shareholder revolt made it untenable for him to stay on at the company"); Maya Kosoff, *Mass Firings at Uber as Sexual Harassment Scandal Grows*, VANITY FAIR (June 6, 2017, 5:22 PM), <https://www.vanityfair.com/news/2017/06/uber-fires-20-employees-harassment-investigation> (discussing the firing of more than twenty Uber employees after an Uber engineer "came forward with allegations that Uber's human-resources team systematically ignored her reports of sexual harassment during the year she worked for the company"); Mike Isaac, *What You Need to Know About #DeleteUber*, N.Y. TIMES (Jan. 31, 2017) (outlining a movement to delete Uber's app after accusations that Uber initiated "surge pricing" when a New York City taxi union refused to pick-up passengers at the airport in response to President Trump's Executive Order banning refugees and immigrants from certain predominately-Muslim countries). Lyft has tried to capitalize on these public relations incidents, and to some avail. See, e.g., Marco della Cava, *Uber Has Lost Market Share to Lyft During Crisis*, USA TODAY (June 14, 2017, 4:13 PM), <https://www.usatoday.com/story/tech/news/2017/06/13/uber-market-share-customer-image-hit-string-scandals/102795024/> ("Over the past two years, Uber's market share of rides has dropped to 75% from 90% . . . [while] market share of rival Lyft rose to 24.7% from 21.2%."); Mike Isaac, *Lyft Gets \$500 Million in New Funding as Its Rival Uber Wobbles*, N.Y. TIMES (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/technology/lyft-gets-500-million-in-new-funding-as-its-rival-uber-wobbles.html> ("In an interview with Time last month, Lyft's president, John Zimmer, said of Uber's problems: 'We're woke.' He added that Lyft, in contrast to Uber, was 'a better boyfriend.'")

255. Prashant S. Rao & Mike Isaac, *Uber Loses License to Operate in London*, N.Y. TIMES (Sept. 22, 2017), <https://www.nytimes.com/2017/09/22/business/uber-london.html> (noting that the Transport of London, which regulates London's ride-hailing services, stated that "Uber's approach and conduct demonstrate a lack of corporate responsibility").

great company that is meaningfully contributing to society, beyond its business and its bottom line.²⁵⁶

If Uber truly intends to “meaningfully contribut[e] to society,” it needs to put an end to practices that discriminate against persons with disabilities and comply with ADA Title III regulations.

256. Justin Bariso, *Uber’s New CEO Just Sent an Amazing Email to Employees—and Taught a Major Lesson in Emotional Intelligence*, INC. (Sept. 23, 2017), <https://www.inc.com/justin-bariso/ubers-new-ceo-just-sent-an-amazing-email-to-employees-taught-a-major-lesson-in-emotional-intelligence.html>.