

Duff on Hospitality Law

## **Recent Verdict Strengthens the Growing Need for Websites to Increase Accessibility to Disabled Individuals**

By Hillary Hughes on 8.30.17 | Posted in Business, Technology

A recent case in federal district court in Florida foreshadows the beginning of an expanded reach of Title III of the Americans with Disabilities Act (ADA). As a whole, the Act prohibits discrimination on the basis of disability. Recently, a growing number of lawsuits filed by the Department of Justice (DOJ) and private litigants threatening class action lawsuits serves as a strong caution to businesses operating websites to increase accessibility of those sites to disabled individuals.

### **Who does Title III apply to?**

Title III of the ADA applies to private entities and covers:

- (1)** places of public accommodation;
- (2)** commercial facilities; and
- (3)** examinations and courses related to applications, licensing, certification or credentialing for secondary or postsecondary education, professional, or trade purposes.

A [place of public accommodation](#) is defined as a place maintained by a private entity whose operations affect commerce, and that falls within one of twelve enumerated categories (not discussed here).

There are inconsistent interpretations among courts regarding whether private websites are considered places of public accommodation subject to the accessibility requirements of Title III and if so, to what standard they are subject. While more specific criteria for accessibility of websites are expected next year, the DOJ has not yet published any clear regulations on the issue.

The court's decision in *Gil v. Winn-Dixie Stores, Inc.* offers insight into the direction that the law may be heading. The plaintiff, a visually impaired individual, alleged that the defendant food store's website was inaccessible to him. The court undertook to determine if the website was

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subject to the requirements of the ADA. If the website was a place of public accommodation, the court reasoned that it would be subject to the ADA. Although Winn-Dixie does not offer any products for sale directly through its website, the website does permit customers the opportunity to access digital coupons and refill prescriptions.

Many individuals with auditory, visual, or other related disabilities often use assistive technology to help them operate computers and mobile devices and easily access the same information that is available to users without disabilities. The plaintiff in the Winn-Dixie case used assistive software, but he was still unable to access 90% of the tabs on Winn-Dixie's website, including information such as store locations and hours.

Ultimately the court determined that since the website is "heavily integrated" with Winn-Dixie's physical store locations and operates as a gateway to them, the website constituted a place of public accommodation and is subject to the requirements of the ADA. The court determined that the online pharmacy, access to digital coupons, and ability to locate stores and hours were considered "services, privileges, advantages, and accommodations" offered by Winn-Dixie's physical store locations, and as such, the ADA requires that disabled individuals are provided "full and equal enjoyment" of both the website and the stores.

The court's decision confirms that websites with any public interaction will be considered a place of public accommodation and thus subject to the ADA. Essentially, if a website interacts with the public, it is likely a place of public accommodation. These interactions may be direct, such as e-commerce sales. As in the Winn-Dixie case they may also be less direct such as access to coupons, information regarding store locations and hours, and access to any other tab or page found on the website containing information about products or services that are associated with the physical store.

### **What is Required?**

The court adopted the [Web Content Accessibility Guidelines \(WCAG\)](#) as the accessibility standard for websites. The WCAG is a set of accessibility guidelines created by the World Wide Web Consortium (W3C) which is the primary international standards organization for the Internet. It was compiled based on the expert opinions of the W3C staff, member organizations, and interest groups. The consortium is led by Tim Berners-Lee, the inventor of the World Wide Web, and W3C CEO, Jeffrey Jaffe. The court noted that the internet provides the public with information that is easily accessible to viewers at any time. The ADA's purpose is to ensure disabled users are afforded an opportunity, **equal** to that of users without disabilities, to access the goods, services, facilities, privileges, advantages, or accommodations provided on websites.

## So How Does a Business with a Website Comply?

There are several steps a business can take to protect itself. The first is to make sure its website is accessible. Acknowledge the potential use of assistive technology by disabled viewers and create websites that are compatible by doing things such as:

- Adding text equivalents to all non-text content. A mere description of the image is not sufficient, the text must be equivalent to the image by including the same meaningful information that users without disabilities obtain by looking at it;
- Posting documents in a text-based format such as HTML or RTF in addition to PDF;
- Allowing viewers to adjust color and font settings in their web browsers;
- Including text captions describing any videos and other multimedia graphics;
- Minimizing blinking and flashing. If such features are necessary, allow them to be paused or stopped;
- Providing an alternative way for disabled viewers to access the information and resources such as a staffed telephone information line;
- Designing a plan to make content more accessible, posting the plan on an accessible webpage, and providing a phone number or email address encouraging viewers to provide feedback or request further accommodations regarding accessibility;
- Organizing mandatory web accessibility training to all employees who develop programs, code for, or publish final content to the website on how to conform with the Web Content Accessibility Guidelines;
- Conducting automated accessibility tests of websites;
- Requiring third-parties who interface with the website to also conform to the WCAG; and
- Consulting with legal counsel to ensure the website meets the relevant standards.

Businesses should be aware that these suggestions may be referred to for guidance, but do not encompass the entirety of the accommodations Title III of the ADA may require. It is strongly recommended that businesses operating websites conform with the [WCAG](#) in an effort to ensure that disabled individuals receive the **full and equal** enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a website.

## What Happens if a Website Does Not Comply?

Businesses should be proactive in bringing their website into compliance despite the current lack of formal regulations. Disabled persons encountering an inaccessible website may retain

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counsel to send out threatening demand letters to a website operator or file a lawsuit. As one of few decisions on the issue, *Gil v. Winn-Dixie Stores, Inc.* will serve as persuasive precedent to courts confronted with the issue in the near future.

Websites that fail to comply may find themselves:

- Receiving a demand letter from an attorney addressing the website's noncompliance;
- Defending a lawsuit alleging violations of the ADA; and/or
- Paying damages, settlements, significant attorney fees and costs.

In addition to protecting against the risk of liability, modifying websites to increase accessibility to disabled viewers potentially expands a business' market to promote its products or services to new customers who previously could not adequately access information about the business.

For any questions, feel free to contact [Hillary Hughes](#) or your attorney for more information on the applicability and requirements of these new guidelines.

This alert was prepared with the assistance of Meghan O'Brien, a legal extern and law student at New York Law School.

**Tags:** accessibility standard for websites, ADA, Americans with Disabilities Act (ADA), assistive technology, Florida, *Gil v. Winn-Dixie Stores, Inc.*, places of public accommodation, Title III, W3C, WCAG, Web Content Accessibility Guidelines, World Wide Web Consortium