

# Accessible Website, Avoidable Litigation: Why ADA Compliance is a Necessity

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In today's digital climate, a company's website is a powerful tool and a huge contributor to the success of its business. But what if that website is also acting as a significant legal risk to the company? With the recent surge in litigation – particularly class action lawsuits – involving the alleged “inaccessibility” of websites, the importance of compliance with the Americans with Disabilities Act (the “ADA”) is at an all-time high.

## Understanding the Americans with Disabilities Act and Its Applicability to Websites

Title III of the ADA prohibits discrimination by public accommodations.<sup>1</sup> The general rule is that:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.<sup>2</sup>

Neither Title III nor the Code of Federal Regulations explicitly include websites in the definition of public accommodation.<sup>3</sup> Rather, “public accommodation” is defined as “businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors’ offices.”<sup>4</sup>

While the ADA was originally passed in 1990 with the intention of focusing on physical accessibility (and was therefore silent as to private websites), the ADA's scope has broadened as the internet has become a fundamental part of society. In fact, on September 25, 2018, the United States Department of Justice (the “DOJ”) issued a letter affirming that it has interpreted the ADA to apply to websites operated by private entities qualifying as “public accommodations” for the last 20 years. Despite this clarity from the DOJ, there remains a lack of legislative guidance as to specific requirements for website ADA compliance. As a result, we have seen significant litigation based on alleged ADA violations for non-compliant websites, leaving the statutory interpretation of “public accommodation” to the courts.

While federal circuits have taken different views on this issue, there are several courts that have concluded that a website is a place of public accommodation and is therefore subject to ADA regulations. Accordingly, now is the time for companies to ensure that their websites are fully accessible and functional to visually and hearing-impaired consumers.

## The Importance of Compliance with the Americans with Disabilities Act

While inclusivity remains a critical consideration for ADA compliance, limiting a company's exposure to potential claims under the ADA can save the company from incurring substantial financial penalties and reputational damage. Remedies under state statutes can vary, but remedies may include statutory, actual and/or emotional damages, punitive damages, an injunction requiring steps to be taken to ensure accessibility, as well as an award of attorney's fees and costs.

Perhaps the most important consideration for ensuring compliance is the potential for class action lawsuits, which can result in costly settlements.

## Steps to Ensure Compliance with the Americans with Disabilities Act

To reduce the risk of litigation, there are certain steps that should be taken by companies to ensure that their websites are ADA compliant:

1. Regularly conduct an accessibility audit to identify potential compliance issues and coordinate with the company's website developer to make websites ADA compliant;
2. Create and post a policy on the company's website describing the efforts taken to ensure that the website is ADA compliant; and
3. Have an attorney review contractual agreements with website developers to ensure that the company is protected in the event that the website developer fails to make the website fully compliant with the ADA.

## Conclusion

With ADA non-compliance litigation increasing, now is the time for companies to take proactive steps to protect themselves and reduce the risk of expensive and unnecessary litigation.

***Moss & Barnett can assist with providing an initial evaluation of your company's website for compliance with the necessary standards.***

<sup>1</sup> 42 U.S.C. § 12182.

<sup>2</sup> *Id.* § 12182(a).

<sup>3</sup> *Id.* §§ 12181-12189; 28 CFR § 36.104.

<sup>4</sup> Title III Regulations Supplementary Information, U.S. Dep't. of Just. Civ. Rts. Div. (March 8, 2012), [https://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm#supp\\_info](https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#supp_info) (last accessed August 13, 2024).

<sup>5</sup> Letter from Stephen E. Boyd, Assistant Attorney General of the Department of Justice, to Congressman Ted Budd (Sept. 25, 2018) (accessible at <https://www.adataleiii.com/wp-content/uploads/sites/121/2018/10/DOJ-letter-to-congress.pdf>) (last accessed August 13, 2024).

## Attorneys

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