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Is Your Website ADA Compliant?

Is your website accessible to individuals with disabilities? If it is not, or if you are not sure, now is the time to take a look at this issue. Title III of the Americans with Disability Act (ADA) prohibits discrimination on the basis of disability in places of public accommodation. This law, enacted in 1990, does not specifically address website accessibility because it predates the widespread use of the Internet. However, the Department of Justice (DOJ), which enforces the ADA, has made it clear that it interprets the ADA as applicable to websites. Courts are split on if and when a business is obligated to create an accessible website. The law is unclear in Arkansas and courts in other jurisdictions have held that the ADA applies to websites that have a connection to goods and services available at a physical location, such as a bank.

While the law is unsettled, this has not stopped private litigants and the DOJ

from attempting to enforce ADA website compliance. Many companies have received demand letters from plaintiffs' firms alleging the company is violating Title III of the ADA because its website is not sufficiently accessible to individuals with disabilities. Additionally, the number of lawsuits alleging inaccessible websites continues to increase. Since the beginning of 2015, more than 240 businesses have faced lawsuits claiming their websites are inaccessible to the blind in violation of the ADA.

There are currently no legally binding technical standards that identify what is required for a website to be compliant with Title III of the ADA. Many of the demand letters being sent by plaintiffs' firms claim that unless the company modifies its website to meet the standards in the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA), the company will continue to violate Title III of the ADA. The WCAG 2.0 AA Guidelines provide specific technical guidance on the design of a website to promote access to individuals with a disability. These guidelines include (1) providing alternatives for non-text content so that screen readers can recognize and vocalize them; (2) ensuring all functions can be performed on a keyboard; (3) ensuring image maps are accessible; and (4) adding headings to allow easier navigation. Keep in mind that an accessible website does not necessarily look all that different to people without disabilities. An ADA compliant website allows adaptive software used by individuals with disabilities to augment content and make it easier to consume.

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Without clear guidance from the courts or the DOJ, businesses are left in a difficult position of determining what specific standards their website must meet to comply with Title III of the ADA. However, even without clear guidance litigants continue to make demands and file lawsuits against companies claiming their websites are not ADA compliant. To mitigate the risks of becoming the subject of a legal claim alleging ADA violations, companies should conduct a website assessment to determine its level of accessibility and the costs and burdens associated with updates that would make it more accessible to individuals with a disability. For banks or other businesses that engage third-party vendors to design or maintain their website, review the WCAG 2.0 AA Guidelines with your vendor to determine what updates are cost effective and begin developing a plan for performing additional updates. Consult your vendor agreement to determine if it includes a representation that the website will be compliant with applicable law and the extent to which the vendor is obligated to indemnify the business for claims related to website noncompliance.

ABOUT THE AUTHOR



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