

Lack of Clear Guidance Fuels Web Accessibility Lawsuits

PUBLISHED ON
January 31, 2020

Web accessibility is increasingly becoming the subject of scrutiny under the Americans with Disabilities Act as businesses, nonprofits and municipalities are being dragged into litigation because their websites may not conform with federal accessibility regulations.

While lawmakers wrote the ADA three decades ago before most people even knew what the World Wide Web was, and the federal government has been amorphous at best when it comes to defining what constitutes accessibility, the courts have begun to determine accessibility standards. Websites with certain characteristics or without modifications can be difficult or impossible for individuals with visual impairments to access, which could be a violation of the ADA.

As litigation grows in this area, all website owners should be asking themselves a few questions when it comes to accessibility and compliance with the ADA:

Does the ADA apply to my website?

State and local government entities are covered by Title II of the ADA. Title III of the ADA applies to places of public accommodation, such as restaurants, hotels, museums and retail shops.

The [Department of Justice's longstanding position](#) has been that certain websites qualify as places of public accommodation. Federal courts are split on the issue of whether the website has to be connected to a physical location for the ADA to apply.

Courts in the Second Circuit do not require a website to be tethered to a physical location to be considered a place of public accommodation. However, the Eleventh Circuit requires a connection between the website and a physical place. Yet other circuits, such as the Third Circuit, have required a nexus to a physical place for the ADA to apply but have not specifically decided a website accessibility case.

What are the minimum requirements for web accessibility under the ADA?

Generally, [state and local government websites must conform](#) to the [Web Content Accessibility Content \(WCAG 2.0\)](#) principles of accessible design level AA. The principles provide three levels of conformance, A (lowest), AA, and AAA (highest), and designate certain features that a website must have to achieve conformance to one of those designated levels. In addition, state and local governments can refer to the DOJ's Best Practice Tool Kit for information on minimum requirements.

Under Title III, however, the [DOJ stated that](#) private entities' non-compliance with WCAG 2.0 or other published standards does not necessarily indicate non-compliance with the ADA under Title III.

What are courts saying about inaccessible websites?

Even though the DOJ says that WCAG 2.0 compliance is not necessarily required for ADA compliance, some

federal courts, including the Western District of Pennsylvania, have ordered private entities to comply with WCAG 2.0 AA standards to remedy alleged web accessibility issues.

The U.S. Supreme Court declined to hear a case challenging that type of order in October 2019. Therefore, courts may order private entities covered by Title III to comply with WCAG 2.0 even though the DOJ stated that non-compliance with WCAG 2.0 does not necessarily indicate non-compliance with the ADA.

What does this mean for my business website?

Without clear guidance, owners of websites that qualify as places of public accommodation are susceptible to lawsuits as litigants across the country ask courts to determine whether the websites offer equitable access to visually impaired individuals.

However, at least one federal court dismissed a case after the private entity remedied the alleged web accessibility issues by the time it filed the motion to dismiss.

The question of what minimum requirements for ADA compliance looks like is still open for interpretation. Website owners should evaluate their websites and undertake measures to provide equitable access opportunities.

The attorneys at Barley Snyder regularly provide advice on ADA compliance and advocate for clients when allegations of non-compliance arise. If you have questions about how the ADA applies to your website or any other ADA compliance questions, please do not hesitate to contact [Matthew Hennesy](#).

:



Matthew M. Hennesy

Partner

Tel: (717) 399-1579

Email: mhennesy@barley.com