



Is Your Company Website Sufficiently Accessible to the Disabled?

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ADA Title III Litigation Continues to Increase

Over the last two years, there have been an increasing number of lawsuits filed over the alleged failure of websites to accommodate persons with disabilities. According to a recent New York Times article, since January 2015, at least 751 website accessibility lawsuits have been filed under Title III. The vast majority of these suits have targeted retailers and restaurants. Now, other entities, such as academic institutions, are coming under fire, and we anticipate litigation to increase in 2018 impacting all industries.

Why The Upward Trend In Litigation?

A primary reason for this onslaught of website accessibility litigation has to do with uncertainty surrounding how to make a website legally accessible. Although Title III's requirement of full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation is explained in meticulous detail for physical locations under the ADA Accessibility Guidelines (ADAAG), no such technical guidance exists for websites. In other words, outside the nebulous mandate of full and equal enjoyment under the ADA, there is no legally binding technical standard that defines an accessible website under Title III. Notwithstanding, plaintiffs are claiming that websites are public accommodations and need to be accessible.

For years, the U.S. Department of Justice (DOJ) has been delaying proposed rulemaking for website accessibility standards. However, the DOJ has independently investigated numerous entities and intervened in recent lawsuits, taking the position that public accommodations must maintain an accessible website even in the absence of regulations or technical standards.

In various settlements and consent decrees, the DOJ has used version 2.0 of the Web Content Accessibility Guidelines (WCAG) as a benchmark for compliance. The WCAG is published by the World Wide Web Consortium (W3C), a non-profit website standards organization, and sets forth detailed benchmarks for accessibility. The standards of the WCAG are primarily focused on accessibility for blind users who utilize screen readers to browse the internet. However, although the DOJ has embraced the WCAG standards, it has not made them the official standard of Title III compliance.

Under the Trump administration, the rulemaking delay has no end in sight. On July 20, 2017, in issuing its Unified Regulatory Agenda, the DOJ placed rulemaking for websites under Title III on the Inactive Actions list, with no further information. Accordingly, there will be no regulations or guidance from the DOJ on this issue for the foreseeable future. However, this is not stopping the DOJ from requiring companies to ensure that their websites meet the WCAG standard.

This landscape of uncertainty has created a patchwork of conflicting decisions among various district courts throughout the country.

Some courts have accepted the WCAG standard as the unofficial standard for compliance under Title III. In June 2017, after the first ever trial on the issue, a court in the Southern District of Florida found that a company's website was not accessible under Title III, and ordered that the company modify its website to comply with the WCAG 2.0 Level AA standards.

Other courts have been more hesitant to use the WCAG standard. We updated you on one such case in the Central District of California in April of last year, *Did You Know...Federal District Court Dismisses Website Accessibility Claims Because of Lack of Due Process, Robles v. Domino's Pizza LLC*, Case No. CV 16-06599 SJO (SPx), where the Court dismissed a website accessibility suit on the grounds that the DOJ's failure to issue clear guidelines for website accessibility compliance violated Domino's due process rights.

Plaintiff's attorneys are taking advantage of the current uncertainty and demanding company compliance with WCAG standards. Without clear precedent from the courts or the DOJ, many businesses and other entities are hesitant to pay for costly litigation to fight these lawsuits and often settle before or immediately after a complaint is filed. Indeed, even after the business-friendly decision in *Robles*, plaintiffs took aim at popular food delivery service Grubhub, Inc., filing suit in July 2017, for failure to comply with the WCAG standards.

Steps To Take Now To Safeguard Against Litigation

Until the courts or the DOJ come to a consensus on the standards of an accessible website, the best defense is to become familiar with the WCAG Level AA standards and determine whether there might be website modifications that would improve accessibility for disabled users. Additionally, in updating or rolling out a new website, companies should work with their designers to make the website as close to compliant with the WCAG Level AA standards as possible. Consider other accessible measures that can be implemented, such as a live telephone support line for disabled users to call if they encounter difficulties navigating a website.

How Can Nossaman Help?

Nossaman attorneys have extensive experience with ADA website accessibility compliance and litigation. If you are served with a complaint or receive a letter threatening website accessibility litigation, or if you would

like a consult about how to take preventative steps now to protect against website accessibility litigation, contact us to help guide you through the process.