

Businesses Must Ensure Websites Comply With The Americans With Disabilities Act

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Title III of the Americans with Disabilities Act of 1990 (the “ADA”) requires “places of accommodation” be accessible to the disabled. Although the ADA does not specifically address websites, courts have seen an increase in the number of lawsuits filed against businesses claiming that their websites are not fully accessible to the disabled and therefore do not comply with the ADA.

The courts are split on how the ADA applies to websites. The 3rd, 6th, 9th, and 11th circuits have found that Title III of the ADA applies to websites with an associated physical store or location. The 1st, 2nd, and 7th circuit courts have applied a broader standard, holding that a place of public accommodation does not have to be a physical structure.

While the courts are split, the Department of Justice (the “DOJ”) has long held the position that the ADA does apply to websites. Despite this position, the DOJ has continuously delayed publishing any proposed amendments to the ADA that would specifically address websites. In fact, the DOJ recently announced that any proposed amendments to the ADA would not be released until 2018. Website owners are therefore left with the risk of litigation without any real clarity or certainty as to how the ADA applies to websites and what specific set of standards should be implemented to ensure full compliance.

To reduce the risk of litigation, website owners must take steps now to implement best practices and industry standards to improve accessibility to the disabled. These improvements should include compliance with the Web Content Accessibility Guidelines (WCAG) 2.0 AA at a minimum. <https://www.w3.org/WAI/intro/wcag> These improvements should be made not only to traditional websites, but also to mobile applications. Website owners should also periodically audit any enhancements or improvements that are made to ensure continued compliance.

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