



Website Accessibility Lawsuits

What You Need to Know

Website accessibility lawsuits are a type of lawsuit brought against businesses that maintain websites and run eCommerce. Some are brought by the U.S. Department of Justice (“DOJ”), looking to enforce Section III of the Americans with Disability Act (“ADA”). Some are brought by public interest groups, looking to force websites into compliance with the ADA; for example, the San Francisco Lighthouse for the Blind sued ADP (the payroll and human resources company) for a lack of accessibility on its website and its mobile app. Most suits, however, are brought by serial litigants who, using website accessibility checker software, identify non-ADA compliant websites and then file similar lawsuits against these random defendants. This alert will focus on lawsuits brought by private parties, though the remedial suggestions set out below will provide protection against actions brought by the DOJ.

Is this a Real Problem?

Yes, website accessibility lawsuits are a growing problem. Recent data confirmed that over 80 percent of the top 500 eCommerce websites have been targeted in a recent four-year period. But smaller companies are targets as well, and in much greater numbers – 77 percent of all recent cases were against companies with less than \$25 million in revenue. Some better-known companies that have been sued include:

- Barnes & Nobles
- Domino’s Pizza
- Stanley Steemer
- Panama Jack
- Hasbo
- Amazon
- Parkwood Entertainment
- Marriott
- Walmart
- Nordstroms
- Northwestern
- Bealls

These cases are commenced by the service of a demand letter, and most are settled, without the names being made public; the companies listed above did not settle at the demand letter levels so court cases were commenced, which records are public.

What is the Legal Basis for a Claim?

The ADA is the primary basis for actions brought by private litigants. The ADA prohibits discrimination against individuals with disabilities in public places, which the DOJ has interpreted as extending to online spaces. The ADA applies to state and local governments (Title II) and businesses that are open to the public (Title III). Title III of the law prohibits discrimination in “places of public accommodations,” which the Department of Justice (DOJ)

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has interpreted to include websites and web content. Most, but not all, courts have ruled that websites can be regulated under the ADA, meaning that in most jurisdictions websites that are not accessible are in violation of the ADA.

The plaintiffs' bar, however, has state law options too. These state laws are parallel to the federal ADA in that the laws prohibit discrimination against the disabled. New York and California have strict anti-discrimination laws, so a great number of website accessibility lawsuits are brought in those two states.

What are the Types of Website Problems Being Alleged?

The primary types of problems fall into the following buckets:

- Website lacks ALT text on videos and images. ALT text exists as a backup form of content. When the main content, a picture for example, cannot be rendered, then you get the ALT text description instead, which in turn can be read by screen reading software.
- Website does not work with screen reading software or does not include screen reading option.
- Poor color contrasts on the website, or inability to change color or contrasts.
- Viewers cannot change the size of the website.
- Viewer cannot navigate website using a keyboard.
- Website links or buttons that are broken, go to outdated links, or provide a poor description.
- However, with certain exceptions, content found on pages behind passwords on the site are not subject to the accessibility standards.

What are the Possible Damages if Sued?

Penalties can be assessed for violating the ADA, and those penalties for first offense are approximately \$92k. The fine for repeat offenders is twice that amount per offense. Fines, however, are not the main drivers for private litigants. Instead, in addition to relief for the named plaintiff (typically forcing the noncompliant website to be remediated), the plaintiff's attorneys fees are paid by the defendant. Thus, these become "stick-up" lawsuits, where the real goal is for the lawyers to be paid their fees. Not surprisingly, most website accessibility lawsuits are brought by a few law firms that specialize in these types of cases.



What Steps Can You Take to Protect Yourself?

Several options are available to companies to protect themselves against website accessibility lawsuits.

- Undertake regular comprehensive website accessibility audits and maintenance and then remediate problems you discover. Third party service providers can be retained to run checker software to reveal accessibility issues. This best practice is important, given the varied and changing regulatory environment at issue.
- Make sure that the website has ALT text capabilities.
- Ensure that the website's coding works with screen readers that are used by those with sight issues.
- Be careful if relying on a website overlay widget, as they might not catch all issues. Website overlay widgets are software solutions that scan and fix accessibility issues but sometimes fall short of remediating all potential problems. That being said, widgets are a quick and easy first preventative step, so using them provides an accessible line of defense for your website.
- Make sure that the website meets the most current version of the [Web Content Accessibility Guidelines \("WCAG"\)](#). The WCAG is not a law, but is a voluntary, industry-accepted standard first published in 1999 by the World Wide Web Consortium. The most recent version of the WCAG is WCAG 2.2, which builds on the previous WCAG 2.0 and WCAG 2.1. WCAG 2.2 has 13 guidelines organized under four principles: perceivable, operable, understandable, and robust. A [summary](#) of those guidelines are as follows:
 - Perceivable
 - Provide text alternatives for non-text content
 - Provide captions and other alternatives for multimedia.
 - Create content that can be presented in different ways, including by assistive technologies, without losing meaning.
 - Make it easier for users to see and hear content.
 - Operable
 - Make all functionality available from a keyboard.
 - Give users enough time to read and use content.
 - Do not use content that causes seizures or physical reactions.
 - Help users navigate and find content.
 - Make it easier to use inputs other than keyboard.
 - Understandable
 - Make text readable and understandable.
 - Make content appear and operate in predictable ways.
 - Help users avoid and correct mistakes.



- Robust
 - Maximize compatibility with current and future user tools.

While the WCAG may only be a voluntary standard, reviewing courts in website accessibility lawsuits often measure a website's compliance against the WCAG standard. Also, if a court finds a website to be inaccessible to the disabled, it may order the offending website be brought into compliance with the WCAG standard. Thus, maintaining a WCAG compliance website is a powerful tool to combat a claim of website inaccessibility. The changing nature of the WCAG guidelines is another reason to audit your website for compliance regularly.

What You Should Do If You Receive a Demand Letter?

First do not panic, but certainly do not ignore it! Second, contact your lawyer for legal assistance in assessing the demand letter, creating an appropriate response, and formulating a plan. The plan should include a concrete timeline for improving the accessibility of your website.

If you have any questions about this alert, please contact Rick Van Arnam, DTA's regulatory affairs counsel, at rvanarnam@barnesrichardson.com.

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