

## **Is Your Website Compliant with the Americans with Disabilities Act?**

In the past several years, there has been a significant increase in “website accessibility” lawsuits filed by hearing and visually impaired persons against companies with websites that lack auxiliary aids and services designed to render electronic information to them. These lawsuits claim violations of Title III of the Americans with Disabilities Act (“ADA”), under which it is unlawful to discriminate against disabled persons in the full and equal enjoyment of public accommodations. Because plaintiffs who prevail in such lawsuits are entitled to attorneys’ fees and also may be entitled to statutory damages, it is increasingly important for businesses to understand ADA website accessibility and strategies to avoid or minimize legal exposure.

### **Background**

Courts construing Title III have consistently held that websites offering goods or services to consumers, particularly those connected to physical locations, are “places of public accommodation.” Likewise, the Department of Justice has stated that “the ADA mandate for ‘full and equal enjoyment’ requires nondiscrimination by a place of public accommodation in the offering of all its goods and services, including those offered via Web sites.”

While plaintiffs have been bringing Title III claims for over a decade, the number of Title III “website accessibility” lawsuits has risen rapidly in the past few years. One study found that over 240 ADA website compliance lawsuits were filed in federal court between 2015 and 2016. In 2017 alone, that number increased to over 800.

### **What Websites Are Subject to the ADA?**

Federal courts have consistently found that websites of retailers, restaurants, hospitality and other service providers are “places of public accommodation” subject to Title III of the ADA. This conclusion is linked to the fact that websites of such service providers are directly connected to their physical stores. Plaintiffs often rely on a website’s “store locator” feature to allege that a website is sufficiently connected to a physical location.

It remains unsettled whether the ADA applies to websites operated by companies that lack a physical store. While some federal courts – including New York federal courts – have held that the ADA applies to such web-only businesses, others have held that it does not because there must be a “nexus” between the good or service complained of and a physical location.

## **What Are the Technical Standards a Website Must Meet to Comply with the ADA?**

Because there are no federal guidelines for website accessibility under Title III, courts have endorsed the guidelines promulgated by a private international consortium (the World Wide Web Consortium, or "W3C"), known as the Website Content Accessibility Guidelines 2.0 ("WCAG 2.0"). WCAG 2.0 provides specific guidance on technical requirements for website access to individuals with disabilities, including the hearing and visually impaired. Among other things, WCAG 2.0 prescribes the following:

- Provide text alternatives for any non-text content (e.g., images and videos), like closed captioning.
- Make all functionality available from a keyboard.
- Avoid content known to cause seizures.
- Help users navigate, find content and determine where they are on the website.
- Make text content readable and understandable to web navigation tools, including screen-reader technology.

Even though WCAG 2.0 has become the prevailing standard, the guidelines, much like the Internet itself, are still evolving. On June 5, 2018, W3C published an update known as WCAG 2.1 which adds additional requirements. It is reasonable to anticipate that WCAG 2.1 will become the next technical standard courts endorse for ADA compliance. Companies are encouraged to consider the additional guidelines in performing any remediation efforts.

Attorneys at Kasowitz Benson Torres LLP have extensive experience and familiarity with the legal standards governing Title III of the ADA and WCAG 2.0. If you would like to discuss these issues, please contact Mark W. Lerner (212-506-1728) or Jessica T. Rosenberg (212-506-1789).