



What You Need to Know About Website Accessibility

by Mary Lou Santovec

An envelope arrives bearing a return address from an out-of-state attorney. Wondering if some unknown relative has left you a sizable inheritance, you quickly open it only to discover you're being sued for having a website that's not fully accessible to people with disabilities.

"The uptick in web accessibility lawsuits since 2016 has been unprecedented but unsurprising," shared Steve Barshov, CEO of DigiPro Media. Partnering with the National Restaurant Association, DigiPro Media helps operators address the issue of web accessibility. "Though these lawsuits have existed since the early 2000s, they have become far more prevalent in the media due to the sheer increase in volume," he noted. "The number of lawsuits for web accessibility filed in federal court rose to at least 2,258 in 2018 up from 814 in 2017." Barshov added that current statistics show that this number could "triple" in 2019. Worse, these numbers don't reflect operators who decided to settle for undisclosed amounts of money rather than risk a federal court trial.

While most lawsuits have been filed in California and Florida, it's only a matter of time before Wisconsin operators are impacted. If web accessibility isn't on your radar

screen, it needs to be—and fast. "The bottom line is this: your business's website must be compliant," Barshov advised. "If it is not, you are hurting your business's bottom line by disregarding a massively lucrative potential customer base and you are putting your business at significant legal risk by operating in direct violation of US law."

Examining the problem

Here's how we got here. The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. However, the World Wide Web didn't go live

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until August 6, 1991 and websites didn’t actually debut until much later. The ADA spelled out the requirements for physical spaces but it had no crystal ball to predict the growth of the electronic space, much less what would occur there.

You may be asking yourself how does something that’s as ephemeral as bits, bytes and electrical charges fit into the ADA? According to the Seventh Circuit Court, which represents Wisconsin, websites are “places of public accommodation” for purposes of



the ADA even without connections to “physical commercial entities.” In other words, a website doesn’t need to be “physically connected” to a restaurant in order for it to be judged under the same accessibility requirements.

Federal lawsuits are being filed under ADA’s Title III, which relates to public accommodations. Title III requires businesses to take “affirmative proactive measures” to ensure that people with disabilities have equal access to goods and services.

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Is your website ADA compliant?

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DigiPro Media is the exclusive web accessibility and digital solutions provider to the National Restaurant Association.

The right thing

“The disabled are the largest minority group in the United States,” said Peter Berg, project coordinator of technical assistance for the Great Lakes ADA Center, (adagreatlakes.org) housed at the University of Illinois-Chicago. It’s estimated that 20 percent of the US population and more than one billion people worldwide with spending power of \$6 trillion live with one or more disabilities. These disabilities include blindness or visual impairments, hearing impairments, cognitive, learning and neurological disabilities, as well as perception, physical and speech disabilities. The Center provides information and training to businesses, government entities and nonprofits to help them understand their rights and responsibilities under the ADA. “We’re not an enforcement agency,” Berg stressed. “We are a resource.”

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Assistive technology has been a godsend for those with disabilities or the limitations that come with aging. Tools such as screen readers, braille keyboards, captions for the hearing impaired, text-only websites and hardware such as an adaptive mouse enable them to overcome disabilities and live a full life.

While the ADA’s requirements for physical spaces are well-known, there are no “standards,” only “guidelines,” for website compliance. The guidelines come from the World Wide Web Consortium, an international group of volunteers who work to improve the accessibility of web



An Ounce of Prevention

Here are some steps your restaurant can take to improve your website’s accessibility:

- 1. Familiarize yourself with the Americans with Disabilities Act, specifically Title III. Understand that it’s a civil rights law, not a mandate for building construction. The ADA was created to prohibit discrimination against people with disabilities in all areas of public life.
- 2. Run diagnostic scans to ensure your website is in compliance with the latest guidelines. DigiPro Media offers a free scan and report (digipromedia.com/natrest) that comes with “actionable steps to take for each accessibility error.” Great Lakes ADA also offers a free website scanning tool. Document the results and any remedial actions you take.
- 3. Hire a web accessibility expert. Or, if you work with third party website vendors, make sure they’re well-versed in the latest WCAG 2.0 AA guidelines. When negotiating your next contract, consider shifting liability for non-compliance to the vendor. In addition to offering a free scan, DigiPro also has website solutions for restaurant businesses. WRA members have access to discounted services from DigiPro Media through a partnership with UnitedHealth Group and the National Restaurant Association (NRA). DigiPro’s Adot Pro offers a practical and reasonably priced solution that can give you immediate protection for your current website so that you will not have to completely revamp your website right away. You can obtain a free, one page scan at DigiProMedia.com/NatRest to identify non-compliant vulnerabilities to your current website. DigiPro also offers additional web accessibility service through DigiPaaS.
- 4. Make your landing pages such as your main page and ordering information accessible. Post a disclaimer on your site explaining what you’ve done to ensure accessibility to all visitors. Consider putting a contact form with your phone number on your home page and make it very clear how people can contact you.
- 5. Audit any new features for compliance. Your existing site might be compatible but that could be reversed as soon as you add an offer that is inaccessible to the blind and visually impaired.
- 6. Determine what you really need on your site. Informational websites that don’t offer gift cards, merchandise, ordering systems, allow customers to make reservations or request delivery services are less likely to violate Title III.
- 7. Ask your insurance broker about adding coverage for website accessibility.
- 8. Educate yourself as much as possible. As new lawsuits move forward to trial, new legal precedents are set, and the conversation is continually evolving.

content for those with disabilities. The Consortium developed Web Content Accessibility Guidelines (WCAG) as the international standard for accessibility. Although Title III has no guidance that requires using WCAG guidelines, WCAG is currently as close to a legal standard as you can get.

WCAG describes four categories that websites must comply with: perceivable, operable, understandable and robust. Each of those categories suggests ways to create disability-friendly websites.

Perceivable – Provide content that can be shown in different ways; alternatives to text for non-text content, multi-media and captions. Colors should have contrast.

Operable – Enable users to access all content with a keyboard. Give them enough time to read and use the site. Make sure they can navigate easily and find content. Avoid flashing lights; they can cause seizures in vulnerable users.

Understandable – Make text understandable to users with various levels of comprehension. Have content that appears and operates predictably and prevents users from making mistakes and/or allows them to correct them.

Robust – Make sites compatible with screen readers and other assistive technology.

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WCAG guidelines range from A to AAA depending upon complexity. WCAG 2.0 AA is currently the most used guideline.

So if there are only suggested guidelines from a group of volunteers, why the lawsuits? The US Department of Justice announced in 2010 that it would create regulations based on the guidelines of WCAG 2.0. Advocates waited to see the final result but in late 2017, the department declined to issue new regulations. This left business owners and their attorneys relying on court rulings. The floodgates opened.

A chain-only issue?

No one would argue that the Internet has become integral to living life. “It’s integrated into all we do,” said Berg. People with disabilities must be able to participate.

Many of the first lawsuits were filed against the big chains including PF Chang’s, Olive Garden and Outback Steakhouse. They were accused of having websites that were inaccessible to the blind and visually impaired. A Florida-based Dunkin’ Donuts location was sued because a customer’s screen-reader wasn’t able to search for locations or access the purchasing platform for gift cards. But it was a 2016 lawsuit against pizza giant Domino’s Pizza that caused a spike in litigation.

A visually impaired customer contended that the Domino’s website and mobile app were not compatible with his screen-reader technology. In a landmark decision, the Ninth Circuit Court ruled in the customer’s favor saying Title III applied to both websites and mobile apps. Domino’s has since appealed to the Supreme Court. Stay tuned.

Do small operators with only one location and a simple website have to worry? The answer is “yes.” While many operators use common website platforms like Wordpress, Squarespace or WIX, these platforms also have accessibility issues. “What we have seen from the data collected on the web accessibility lawsuits that have been permitted to proceed to trial is that no one group is

inherently safer than another,” explained Barshov. “Companies ranging from local pizza restaurants to massive food chains...have fallen victim to these web accessibility lawsuits.”

Activists for the disabled are sensing an opportunity to bring the issue forward while some attorneys are looking to cash in. Those who file lawsuits are disabled, but there are serial filers and attorneys filing what Barshov called “surf-by lawsuits.” In a “surf-by lawsuit” attorneys use code scanning software to surf various websites and file class action lawsuits against the owners of sites with accessibility issues.

While the ADA prevents the person who’s suing from recouping any money, it does allow the lawyers bringing suits to reap big dollar wins. “If a disabled individual sues a business under the ADA, they cannot receive any money from the defendant,” according to Barshov, “but their lawyer will.”

There are attorneys specializing in these types of lawsuits who are actively scanning websites looking for deficiencies. When they find one, the business is notified that they are being sued in federal court. “It has become commonplace to see attorneys who specialize in Title III litigation partnering with repeat or ‘serial plaintiffs’ and filing dozens—and in some cases, hundreds—of Title III lawsuits against small and medium-size businesses,” Barshov acknowledged.

“Many business owners settle out of court to ensure that their business is not associated with discriminatory practices.” This may bring a bit of breathing

space for the operator but it doesn’t solve the problem. “Just because you have been sued already does not mean you cannot be sued again,” cautioned Barshov. “Many businesses have been hit with lawsuit after lawsuit for the same accessibility issues.”

The unfortunate thing about these multiple lawsuits is that it doesn’t improve the lives of those who truly need accessibility. “At the end of the day, it doesn’t result in greater access,” said Berg. What often happens is that the business pays the lawyers to go away and the case is settled with no changes to the website. “If these lawsuits resulted in removal of barriers and improved access, they would be useful,” he added.

The US House of Representatives has tried to mitigate the trend through the ADA Education Reform Act passed in February 2018. But the Act only gives business owners “time to fix” the issues that prompted the lawsuit. However, even if the issue is fixed and doesn’t go to trial, the business is still forced to pay attorneys’ fees.

Regardless of the threat of litigation, businesses really should be making decisions based on the bottom line. “People with disabilities have money to spend,” said Berg. Access drives more business to your location. “[Without access,] you’re not just losing a sale to a person in a wheelchair, you’re losing sales to their family and friends,” he said. “Access makes good business sense.”

Accessible websites are also a boon for the smartphone user. “Accessible websites are much easier to use on a tablet or smartphone,” said Berg. **WR**

