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Supplemental

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IS MY COMPANY'S WEBSITE ACCESSIBLE?

Many of your clients or customers would answer, "Of course. I open Chrome or Internet Explorer, type in the address, and there I am, ready to log-in and shop, pay my bill, or schedule an appointment." For many others, however, the answer is not that simple. Users who suffer from disabilities, particularly conditions related to vision and hearing, might find navigating your website challenging. Since nearly all companies have a web presence and many increasingly depend entirely on web traffic, your company will want easy site access for everyone. A recent uptick in litigation and enforcement involving websites and Title III of the Americans with Disabilities Act (ADA) provides extra incentive to act now.

WHAT IS TITLE III OF THE ADA?

In broad terms, Title III prohibits discrimination by private companies on the basis of disability in places of public accommodation. To be considered a "public accommodation," a business must be generally open to the public. Title III contains 12 specific categories of public accommodation, including hotels, restaurants, movie theaters, banks, stadiums, day care facilities, gas stations, and professional offices. However, your company may be included even if it does not fit neatly into these categories because the Supreme Court indicates they "should be construed liberally to afford people with disabilities equal access to a wide variety of establishments available to the nondisabled." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 676-77 (2001).

Traditionally, Title III's requirements have applied to physical structures. For example, newly built stadiums must include ample wheelchair ramps, and most theaters now provide closed-captioning devices for the hearing impaired. However, litigators, state attorneys general, and the Department of Justice (DOJ) have recently argued that Title III applies to websites and that non-compliant websites violate the statute.

DOES TITLE III APPLY TO WEBSITES?

Introduced to Congress in 1988 and signed by President Bush in 1990, the ADA was not drafted with websites in mind. As the internet grew during the '90s and exploded in the 21st century, lawyers and judges struggled with whether Title III's bar on disability discrimination applied to electronic and virtual spaces. There are basically three approaches. Some courts, as well as the DOJ, read the ADA very broadly. They note that the original goal of the Act was to reduce disability discrimination and conclude that websites for public accommodations must comply with Title III. *See Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F.Supp.3d 565, 576 (D. Vt. 2015) ("[E]xcluding businesses that sell services through the Internet from the ADA would run afoul of the purposes of the ADA. . ."). Indeed, the DOJ is working on a revised regulation that, once finalized, would expressly place websites within Title III's reach. This approach means that public accommodation businesses must have ADA-compliant websites.

A second approach is somewhat narrower and provides that websites only fall under Title III if there is a “nexus” between the website and the business’s physical location. See *Young v. Facebook, Inc.*, 790 F.Supp.2d 1110, 1116 (N.D. Cal. 2011) (“Facebook’s internet services thus do not have a nexus to a physical place of public accommodation for which Facebook may be liable under the statute.”). This approach, for example, means that a movie theater selling tickets online and in the lobby must ensure that a visually impaired individual can buy his ticket from the website.

The final approach maintains that Title III applies only to physical spaces, not websites. See *Access Now, Inc. v. Southwest Airlines, Co.*, 227 F.Supp.2d 1312, 1318 (S.D. Fl. 2002) (“[T]o fall within the scope of the ADA as presently drafted, a public accommodation must be a physical, concrete structure.”). Courts adopting this approach have left it to Congress to revise Title III and expressly include websites within the law’s coverage.

STAYING AHEAD OF THE CURVE

Although no court has established a definite standard for Title III website compliance, most disability advocacy groups agree that a website is appropriately accessible if it conforms to the Website Content Accessibility Guidelines (WCAG) 2.0, Levels A and AA, prepared by the Website Accessibility Initiative. Notably, the DOJ, after beginning several civil enforcement actions, has entered into settlement agreements with companies after they improved their websites to match these standards. An overview of the WCAG guidelines may be found [here](#).

Furthermore, the software industry has developed myriad technologies to assist the disabled in navigating varying degrees of text and graphics found on different websites. These include voice-dictation software, voice-navigation software, and magnification software. Putting aside potential legal ramifications, most businesses will want their websites accessible to the broadest possible audience, including those with vision and hearing difficulties. And no company wants to stand out as being disability-adverse.

Website designers and coding specialists who understand the accessibility guidelines and who can adapt your website efficiently are increasingly backlogged. Therefore, it is best to consider your legal obligations and business needs now rather than waiting for a customer complaint or formal legal action.

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