


# Is Your Website at Risk for ADA Litigation in the United States?

**Litigation and Dispute Resolution**



The Americans with Disabilities Act (ADA) in the United States requires certain businesses to accommodate people with disabilities. Lawsuits against large corporations, small businesses, and government entities with consumer-facing websites are on the rise. Law360 reported 240 ADA lawsuits in 2016. Seyfarth Shaw noted an increase in such suits from 814 in 2017 to 2,258 in 2018. Defendants have included Amazon.com Inc., Applebees Inc., the Sherwin-Williams Co., Michael Kors Retail Inc., Forever 21 Inc., Prada USA Corp., at least 50 colleges across the United States, local governments, the Social Security Administration, and the Department of Homeland Security.

## The scope of the issue

As of January 2019, there were approximately 4.1 billion internet users and 333.8 million domain name registrations worldwide. An estimated 15 percent of the world population — or one billion people — have some form of disability. Disabilities impact the following ways people engage with technology online:

- They may need to enlarge text to read.
- They may use a toggle switch or voice keyboard to browse.
- Instead of looking at images, they may use screen-reading software to read descriptive text on the page.

A website that has not been configured for accessibility may bar the user from meaningful engagement in online transactions.

## Typical claims

Plaintiffs generally allege that these websites are discriminatory and in violation of the ADA because they are not accessible to people with vision, hearing, or other disabilities. Many of these lawsuits are styled as class actions and filed primarily in federal court in California, Florida, and New York. Plaintiffs also allege violations of applicable state and local human rights statutes, such as in California, where several plaintiffs claim websites violate the Unruh Civil Rights Act.

## The legal framework

The ADA applies to employers with 15 or more employees that operate 20 or more weeks per year. Title II of the ADA applies to state and local governments and requires their websites to be accessible to people with disabilities. In addition, Section 508 of the Rehabilitation Act of 1973 requires federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. Title III applies to private entities that operate a “place of public accommodation,” requiring them to provide equal access to "goods, services, facilities, privileges, advantages, or accommodations."

The ADA defines a “place of public accommodation” as a facility whose operations affect commerce and fall within at least one of 12 broad categories encompassing places that consumers may frequent, including grocery stores, hotels, restaurants, and theaters to name a few. If a private entity operates or leases space to many different types of facilities, of which only relatively few are places of public accommodation, the whole private entity is still considered a public accommodation. However, its ADA Title III obligations only apply to the places of public accommodation.

Fundamental to the ADA principles is the ideal that web content should be accessible to people who are deaf, blind, or who use voice, screen readers, or other assistive technologies to navigate the web. People with disabilities must have:

- An equal opportunity to participate;
- An equal opportunity to benefit; and
- Receive benefits in the most integrated setting appropriate.

## The tipping point

In 2017, the US District Court in Florida decided the case Gil v. Winn-Dixie Stores Inc. Juan Carlos Gil, a grocery store patron, sued Winn-Dixie after he was unable to fill his prescriptions online because the site was not coded to accommodate his visual impairment. The court found that Winn-Dixie violated the ADA because its website did not facilitate the use of screen-reader software that Gil needed to engage with the site. Gil sued nearly 70 companies on the same grounds.

## ADA applicability to websites

While there are no clear government standards pertaining to websites in the ADA, courts have recognized web accessibility standards called Web Content Accessibility Guidelines 2.0 (WCAG), created by an international consortium of volunteers.

Courts are split on whether the ADA limits places of public accommodation to physical spaces. However, the US Department of Justice (DOJ) issued a letter to the US Senate making it clear that while website owners have flexibility in determining how best to achieve compliance, websites are covered under the ADA.

Nonetheless, the question of when sites must be accessible is still not clear-cut and the answer depends, in part, on the business location. For example, in the *Winn-Dixie* case, the court rested its decision partly on the fact that the defendant's website was heavily integrated with, and operated as a gateway to, the physical stores. Hence, the website should have been accessible to the visually and hearing impaired.

## Remedies

A private party can sue under ADA Title III without the involvement of the DOJ. While financial damages are not available, a plaintiff can recover equitable relief, such as an injunction for the defendant to make its website accessible to people with disabilities by a specified date. The defendant may also be forced to pay a civil penalty. The court can award reasonable attorneys' fees if the private party prevails in the lawsuit. The suitability of any given remedy and reasonableness of a desired accommodation is determined on a case-by-case basis.

## What companies can do

- Audit the company's web presence and distinguish between consumer-facing and non-consumer facing websites. Assess the nexus between the different kinds of sites to determine exposure risk.
- Review applicable state laws to evaluate how courts apply the ADA to websites and any considerations for their nexus to physical locations.
- Review and remediate websites for compliance to ensure people with disabilities have equal access to consumer-facing content.
- Review mobile apps and evaluate potential exposure if these too are not accessible to disabled individuals.
- Explore the most cost-effective solutions, which may include incorporating patches from an existing website vendor, or purchasing or licensing software, that provides website compliance as an alternative to re-coding.
- Determine whether you can reduce or share legal exposure with website vendors through indemnification provisions, representations and warranties, and other contract provisions.

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