



November 2015

Is Your Website ADA-Compliant? Does It Need to Be?

[Title III of the Americans with Disabilities Act](#) (ADA) requires any “place of public accommodation” to be accessible to persons with disabilities. The ADA does not directly define “place of public accommodation.” Instead, it sets forth a long list of examples, such as hotels, restaurants, theaters, retail establishments, hospitals, business offices, transportation stations, museums, parks, schools, recreation facilities, and the like. 42 U.S.C. § 12181(7).

The listed examples are all physical locations. None is an electronic device or system. This is understandable since the ADA was enacted in 1990, prior to the rise of the public Internet.

Given the form of the examples, courts have taken conflicting views for many years whether (or under what circumstances) a website will be covered by the ADA and, therefore, must be accessible to persons with disabilities. Accessibility typically means that the site will provide (a) an audio option for a sight-impaired person to hear a spoken version of text on the screen, and (b) captioning for a hearing-impaired person to read a printed version of audio content.

The more traditional interpretation has been that a website is covered by the ADA only if the website is also associated with a brick-and-mortar location. Federal appellate courts in the Third, Sixth, and Ninth Circuits have adopted this interpretation. The reasoning tends to focus on the list of physical locations in the ADA and to conclude that a physical location must be associated with the website to authorize application of the ADA. Under this interpretation, for example, a department store’s website would need to offer accommodations to the hearing and sight-impaired, but a purely online merchant’s site would not.

An emerging trend in other courts, however, is to interpret the ADA more broadly to cover websites offering goods or services to the public without regard to association with a brick-and-mortar establishment. Federal appellate courts in the First, Second, and Seventh Circuits have taken this approach. Their reasoning tends to focus on the growing role of e-commerce and to conclude that the purpose of the ADA is better served by assuring disabled persons full access to the online economy rather than limiting their access to physical locations.

To further complicate the picture, the U.S. Department of Justice (DOJ) has been proposing since 2010 to issue regulations to address the issue of how websites should be categorized under the ADA. To date, no regulations have been issued. However, the DOJ recently issued a [unified agenda](#) statement that it plans to issue a set of proposed regulations in the spring of 2016.

If and when the DOJ issues such regulations – and assuming the regulations adopt the broader interpretation covering websites regardless of connection to physical establishments – it will then be an open question on how those regulations will be applied in the portions of the country where the federal appellate courts already have concluded that physical nexus is required to trigger the ADA. Absent clarification from Congress, it may become a question the Supreme Court ultimately needs to resolve. But it is reasonable to expect that the DOJ will initially take the position nationwide that websites need to be accessible to hearing- and sight-impaired persons without regard to nexus to brick-and-mortar establishments.

In the meantime, private lawsuits have become increasingly common against operators of websites lacking accessibility features for hearing- and/or sight impaired persons. Such lawsuits often get settled based on the operator’s calculation that the cost of providing accessibility features generally is less than the cost of litigating the issue.

Given the current circumstances, operators of websites offering goods or service to the public may wish to consider what changes are needed, if any, to make their sites accessible to the hearing and/or sight-impaired. The good news is that there are service providers who can assist in creating captioning and/or audio options. Even without a direct mandate to become ADA-compliant, some website operators might choose to do so where the cost is not excessive. Being ahead of the curve can also provide marketing and public relations benefits to companies going the extra step to accommodate all consumers.

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