



ADA Web Accessibility Litigation is on the Rise

OVERVIEW

The Americans with Disability Act (“ADA”) has been law since 1990. This federal statute prohibits discrimination against disabled individuals in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

Title II of the ADA applies to state and local government and prohibits discrimination by public entities against disabled individuals in all programs, activities, and services. Among other things, Title II requires public entities to reasonably modify its policies, practices, or procedures to avoid discrimination, and mandates that public entities ensure effective communication with individuals with speech, hearing, vision and other disabilities. California state law has similar requirements.

While most public entities offer a broad range of auxiliary aids and services, such as large print materials, assistive listening devices, or sign language interpreters, one area where many organizations fall short is with electronic and information technology. The internet age has made the provision of information about municipal programs, activities, and services such as applying for permits, paying bills, and renewing licenses online standard practice for many public agencies. However, little attention has been given to ensuring that such electronic information, access, and services are equally accessible to those with disabilities.

Poorly designed websites can create barriers for people with disabilities, just as poorly designed buildings prevent some people with disabilities from entering. Access problems often occur because website designers mistakenly assume that everyone sees and accesses a webpage in the same way. Many people with disabilities use assistive technology, such as screen readers, text enlargement software, or programs that enable people to control a computer with their voice instead of a mouse or keyboard.

ADA WEB ACCESSIBILITY LITIGATION IS ON THE RISE

When Congress passed the ADA in 1990, the Internet was in its infancy. However, Congress intended that the ADA “...keep pace with

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the rapidly changing technology of the times.”[1] Congress acknowledged that technological advances may “...require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities.”[2]

An emerging legal issue is whether and to what extent the ADA protections extend to the digital world. In the last couple of years, hundreds of lawsuits against both public and private entities have been filed, and of those, at least 153 arose in California. While the Department of Justice (“DOJ”) has consistently maintained that the ADA applies to websites, federal and state courts are now following suit.

Public entities across the nation have entered into settlement agreements due to alleged violations of the ADA. For example, in 2015, as part of a settlement between Merced County and the DOJ, the County agreed to remove any barriers preventing full access to its website. The settlement required the County to:

“Retain an independent consultant, approved by the United States, who is knowledgeable about accessible website development, title II of the ADA, and WCAG 2.0 to evaluate Merced County’s website and any proposed online services for compliance with the ADA and, at minimum, WCAG 2.0 Level A and Level AA Success Criteria and other Conformance Requirements (WCAG 2.0 AA), and who shall be responsible for the annual website accessibility evaluation. Merced County will bear all costs and expenses of retaining and utilizing this independent consultant, including the costs and expenses of any staff. Merced County will compensate this independent consultant without regard to the outcome.”[3]

Similarly, in *Aleeha Dudley and United States v. Miami University, et al.*[4], a blind plaintiff filed an action against Miami University alleging that Miami University uses technology in its programs, services and activities that are inaccessible to individuals with disabilities in violation of Title II of the ADA. The case was resolved in 2016 by consent decree. Under the consent decree, Miami University will, within six (6) months, make significant improvements to ensure that all forms of technology is accessible to individuals with disabilities. The Court also identified individuals to whom Miami University will provide a monetary payment of \$25,000.00.

Notably, the Ninth Circuit on January 15, 2019 re-affirmed this premise in *Robles v. Domino’s Pizza, LLC*[5]. Although the suit was brought forth as a violation under Title III of the ADA, the same considerations have been made in settlement agreements with public entities. Robles accesses the internet using a screen reading software. He had on

multiple occasions attempted to order a customized pizza online from a nearby Domino's. Unable to order online, Robles filed suit seeking damages and injunctive relief. The Ninth Circuit held "the ADA mandates that places of public accommodation, like Domino's, provide auxiliary aids and services to make visual materials available to individuals who are blind."^[6] The Court furthermore found, "[t]his requirement applies to Domino's website and app, even though customers predominantly access them away from the physical restaurant: 'The statute applies to the services of a place of public accommodation, not services in a place of public accommodation. To limit the ADA to discrimination in the provision of services occurring on the premises of a public accommodation would contradict the plain language of the statute.'"^[7]

Here in California, Los Angeles and Orange Counties have seen a significant uptick in the number of ADA web accessibility cases filed in recent months, most seeking injunctive relief, an order directing the defendant to bring its website into full compliance with the ADA, and attorney's fees and costs. Although an individual may not be awarded punitive damages in a Title II action, compensatory damages, injunctive relief, attorney fees, and reimbursement of costs for violation of the ADA under 42 U.S.C. § 12133 are available to a plaintiff who prevails on an ADA claim.

COMMON PROBLEMS AND SOLUTIONS TO WEBSITE ACCESSIBILITY

There are a number of basic web-based hurdles that can lead to ADA claims. For example, vision-impaired people may use different technologies to access information displayed on a computer screen. One common tool is a screen reader, which speaks the visible text, but this technology cannot read or interpret visual data, such as images, graphics, or logos, even if words appear in those items. Thus, a photo of the mayor on a city's website would remain inaccessible to a visually impaired user using a screen reader. A relatively simple solution is to add a text caption, such as "Photograph of Mayor Smith greets children at the library." For more complex images, such as a map of city library locations, a text equivalent could simply provide the addresses.

Another common problem is documents posted online in PDF format. Like photos, a PDF is an image based format that cannot be viewed by a text reader. To address this barrier, documents should also be posted in HTML or RTF format, which is more compatible with assistive technologies.

Similarly, videos and other multimedia content can present access problems for hearing or vision impaired users. To address this, consider incorporating features such as audio descriptions of images

and text captions synchronized to the video images.

Some visually-impaired users may only be able to see web content if it appears in certain colors, and others cannot see it at all if it is too small. Users should be able to manipulate the color and font settings in their web browsers or operating systems to make pages readable. Avoid designing your agency's website so that these features cannot be adjusted by an individual user.

When navigation links are used, people who use a screen reader must listen to all the links before proceeding. A "skip navigation" link at the top of the webpage allows people who use screen readers to ignore navigation links and skip directly to webpage content.

An agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. These alternatives, however, are unlikely to provide an equal degree of access in terms of hours of operation and the range of options and programs available.

WHAT CAN BE DONE TO MEET ADA OBLIGATIONS?

There are several things public agencies can do to ensure they are meeting their obligations under the ADA. First, establish, implement, and post a policy on your web pages indicating that it will be accessible to disabled users, and then create a process for implementation. Second, work with IT professionals to ensure your web-based content and subsequent updates are accessible to disabled users. Third, train in-house staff and contractors responsible for webpage content and development on compliance issues. Fourth, provide a way for visitors to request accessible information or services by posting a telephone number or email address on your home page and ensure a quick response to users with disabilities who are trying to obtain information or services in this way. Finally, ensure that there are alternative ways for people with disabilities to access the information and services that are provided on your website. Remember, some people may not have, or be able to use, a computer.

For additional resources, please see:

ADA Best Practices Tool Kit for State and Local Governments

<https://www.ada.gov/pcatoolkit/chap5toolkit.htm>

Accessibility of State and Local Government Websites to People with Disabilities

<https://www.ada.gov/websites2.htm>

[1] H.R. Rep. No. 101-485, pt. 2, at 108.

[2] *Id.*

[3] Department of Justice Case No. 204-11E-383

[4] The United States District Court for the Southern District of Ohio, Western Division, Case No. 1:14-cv-038

[5] 2019 WL 190134

[6] *Robles v. Domino's Pizza, LLC*, 2019 WL 190134 , See also 28 C.F.R. § 36.303

[7] *Robles v. Domino's Pizza, LLC*, 2019 WL 190134 citing *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006)