



## Lawsuits Regarding ADA-Compliant Websites Spike in 2018

12.10.2018

When discussing the accessibility requirements of the Americans with Disabilities Act (“ADA”)<sup>[1]</sup> most would think of handicapped ramps, accessible bathroom stalls, or motion or button-activated doors. But how many businesses have considered whether their websites can be accessed by people with disabilities, such as individuals with visual impairments?

The number of lawsuits filed against companies with inaccessible websites has sharply increased, from approximately 800 in 2017 to over 1,000 in just the first six months of 2018.<sup>[2]</sup> This increase may be attributable to *Gil v. Winn-Dixie Stores, Inc.*, the first website accessibility case that has gone to trial, where the court imposed an injunction against the website owner.<sup>[3]</sup> The Court ordered Winn-Dixie to comply with the Web Content Accessibility Guidelines (WCAG) Version 2.0, which is a series of web accessibility guidelines created to make the web more accessible for individuals with disabilities. Courts are split as to whether a website itself can be a public accommodation subject to the accessibility requirements of the ADA, or whether there must be a connection, or nexus, between the website and a physical, brick and mortar location. However, this distinction has not curtailed lawsuits against a wide range of industries, including colleges, hotels, restaurants, entertainment streaming services, and various retailers, including major online retail platforms.<sup>[4]</sup>

Despite calls from Congress to provide guidance,<sup>[5]</sup> on December 26, 2017, the Department of Justice (DOJ) formally withdrew its notice of proposed rulemaking regarding accessibility of web information.<sup>[6]</sup> With further direction from the DOJ unlikely in the near future, companies must turn to other sources for guidance, such as the WCAG, which is published by the World Wide Web Consortium through its Web Accessibility Initiative.<sup>[7]</sup> Some federal regulations, related to accessibility of federal government websites, currently mandate the use of the WCAG 2.0.<sup>[8]</sup> The guidelines describe errors that, at times, may be easily corrected, but nonetheless provide barriers to website readability. For example, in the newest version of the WCAG guidelines, the website should “reflow” so that, when the website is magnified to 400% view by a user with low vision, it adjusts to fit the page rather than requiring the user to continually scroll from left to right to bring the text into view.<sup>[9]</sup>

In some cases, website remediation can be costly. However, while plaintiffs may only receive nominal damages (or no compensatory damages at all) for website violations of Title III of the ADA, successful plaintiffs may be awarded attorneys’ fees. Attorneys, therefore, may be willing to take these claims on a contingency basis with little to no up-front cost to the plaintiff. Standing requirements to bring a claim are relatively low, with some courts holding that a plaintiff only needs to allege *intent* to use the company’s services.<sup>[10]</sup> Plaintiffs with disabilities and an internet connection could, conceivably, access hundreds of websites a day. Given these factors, businesses that fail to take proactive steps to audit their websites to comply with the ADA may face lawsuits (possibly from multiple separate plaintiffs at once or

as a class action) and costly attorneys' fee awards.

The most recent version of the WCAG, version 2.1, is available at <https://www.w3.org/TR/WCAG21/>, which provides additional criteria for mobile accessibility, individuals with low vision, and individuals with cognitive and learning disabilities. In addition, online tools such as WAVE (Web Accessibility Evaluation Tool), available at <https://wave.webaim.org/>, provide an easy-to-use resource for businesses to help identify possible visual accessibility errors that need to be examined further.

In any event, you'll want to contact legal counsel if your business has received a demand letter or complaint alleging that its website violates Title III of the ADA.

[1] 42 U.S.C. § 12181.

[2] Minh N. Vu *et al.*, *Website Access and Other ADA Title III Lawsuits Hit Record Numbers*, <https://www.adatitleiii.com/2018/07/website-access-and-other-ada-title-iii-lawsuits-hit-record-numbers/> (July 17, 2018).

[3] *Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340, 1350 (S.D. Fla. 2017).

[4] See *Nat'l Ass'n of the Deaf v. Harvard Univ.*, No. 3:15-cv-30023-MGM (D. Mass. Feb. 12, 2015); *Marett v. Rosewood Hotels and Resorts, LLC*, No. 1:16-cv-08877 (S.D.N.Y. Nov. 15, 2018); *Haynes v. Hooters of Am., LLC*, 893 F.3d 781 (11th Cir. 2018); *American Council of the Blind et al. v. Hulu LLC*, No. 1:17-cv-12285 (D. Mass. Nov. 20, 2017); *Cedric Bishop v. Amazon.com Inc.*, No. 1:18-cv-00973 (S.D.N.Y. Feb. 04, 2018); *Mendizabal v. Nike, Inc.*, 1:17-cv-09498 (S.D.N.Y. Dec. 4, 2017).

[5] On September 4, 2018, several United States Senators sent a letter to the Department of Justice and then-Attorney General Jeff Sessions "to urge the Department of Justice to help resolve uncertainty regarding website accessibility obligations" under the ADA. Letter from Senator Charles E. Grassley *et al.*, to the Honorable Jeff Sessions, Attorney General (Sept. 4, 2018) (available at <https://www.judiciary.senate.gov/imo/media/doc/2018-10-04%20Grassley,%20Rounds,%20Tillis,%20Crapo,%20Cornyn,%20Ernst%20to%20Justice%20Dept.%20ADA%20Website%20Accessibility.pdf>).

[6] *Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions*, 82 Fed. Reg. 60932-01 (Dec. 26, 2017).

[7] W3C: Web Accessibility Initiative, <https://www.w3.org/WAI/> (last accessed Dec. 3, 2018).

[8] See, e.g., 36 C.F.R. § Pt. 1194, App. A.

[9] W3C, *What's New in WCAG 2.1*, <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/> (last accessed Dec. 3, 2018).

[10] *Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340, 1350 (S.D. Fla. 2017).

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