



THE ADA AND YOUR WEBSITE

PRESENTERS: AARON GOLDSTEIN & SHANE SWILLEY



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PRESENTER: SHANE SWILLEY

Shane is a partner in the labor and employment group of Cosgrave Vergeer Kester LLP. Shane provides clients with advice and counsel on personnel matters, HR investigations, company policies and procedures, employment agreements, and compliance with employment laws. He also litigates claims of discrimination, retaliation, wage-and-hour violations, and violations of other employment laws before administrative agencies, in arbitration, and in state and federal court. In 2012, 2013, 2014, 2015, and 2017 he was listed in Oregon's Super Lawyers as a Rising Star for labor and employment law.

PRESENTER: AARON GOLDSTEIN



- Business Analyst, ADA Digital Accessibility Specialist, and Executive Assistant at DigiPro Media
- Employed at DigiPro Media for over 2 years
- Worked with and educated dozens of clients on the nuances of digital accessibility and becoming ADA web accessibility compliant.
- Knowledgeable about the standards and regulation revolving around this issue and extremely familiar with DigiPro Media's numerous accessibility SaaS solutions.

ADA COMPLIANCE ON THE INTERNET



What is Accessibility Compliance?



Why Does it Matter to my Business?



How Can My Business Mitigate Risk?



WHAT IS ADA WEB ACCESSIBILITY COMPLIANCE?

UNDERSTANDING
DIGITAL
COMPLIANCE WITH
THE ADA

What is an “Accessible” Website?



- A website is “accessible if it can be successfully accessed and navigated by all people, regardless of disability or impairment.
- How do blind people use computers?

THE LAW:

Title III of the Americans With Disabilities Act (ADA)

- Prohibits discrimination on the basis of disability in “places of public accommodation.” This statute pertains to:
 - Hotels, restaurants, bars, retail stores, etc.
 - Applies to all private entities who own, lease, lease to, or operate a “place of public accommodation”

THE LAW:

Title III of the Americans With Disabilities Act (ADA)

- A place of public accommodation is required to provide “auxiliary aids and services” that are necessary to ensure equal access to the goods, services, facilities, privileges, or accommodations that it offers...
 - ...unless an “undue burden” or a “fundamental alteration” would result. (specific to architectural interpretation) – we are not aware of any successful use of this argument pertaining to web.
- This obligation is meant to assist individuals with disabilities such as vision, hearing, or speech impairments, that substantially limit the ability to communicate.
 - However, this obligation also applies to all groups and conditions listed under the ADA including epilepsy, dyslexia, and many other groups whose consumption of information may be impacted by the accessibility of a website – this includes any video content, interactive content, or other content which may trigger or impact a disabled individual’s condition

THE LAW

- **ADA regulations do not explicitly address website accessibility requirements or standards:**
 - **The responsibility for compliance with the law falls upon the American business owner.**
- **BUT regulations list of “auxiliary aids and services” that must be provided include “accessible electronic information technology”**
 - **This has been interpreted by the courts to apply to web and mobile sites**



WHY DOES IT MATTER TO MY BUSINESS?

THE BUSINESS CASE
FOR BECOMING
ACCESSIBILITY
COMPLIANT

SURF-BY-LAWSUITS

- A new & hip way to extort businesses!
- Serial plaintiffs (about 14 career) and knowledgeable ADA attorneys use code scanning software to find accessibility errors on a business's site
- Surf from website to website discovering errors and sending out lawsuits – similar to drive by plaintiffs utilizing google earth to find ADA infractions
- Some plaintiff attorneys have sent dozens or even hundreds of template accessibility lawsuits over the course of a few years
 - We have found that plaintiff attorneys have tried far more web accessibility cases than defense attorneys
- Due to ADA Title III provision, lawyers are entitled to attorney's fees for winning cases
- Very profitable business model for professional ADA attorneys



SURF-BY-LAWSUITS

THE PATH TO ADA TITLE III WEBSITE LAWSUITS



A typical brick and mortar business that primarily sells to customers in store.



Like most businesses, they offer a website to showcase their products and services.



Demand letters are sent by the lawyer to the business notifying them they are breaking the law.



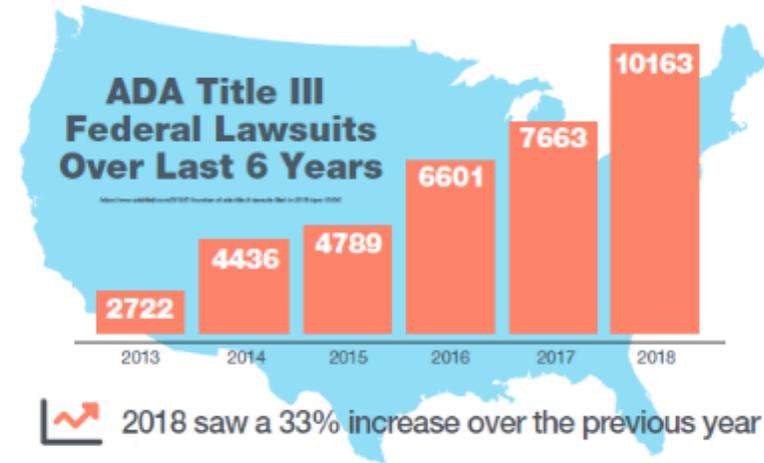
Lawyers specializing in ADA Title III lawsuits crawl the web looking for websites that are non-compliant.



The business owner, unaware their website is non-compliant, must now pay to settle the demand letter or pay higher costs to fight it.



Furthermore, the owner's website still must be updated to satisfy ADA Title III lawsuits or face further lawsuits.



1+ EVERY HOUR

10,000+ ADA lawsuits per year. That's 27+ every day.



\$50,000

AVERAGE COST OF SETTLEMENTS & LEGAL FEES
And nearly none of that goes to persons with disabilities.

SOURCE: <https://www.fda.gov/oc/ada-compliance-guidance/ada-compliance-guidance-2018>



\$2,250

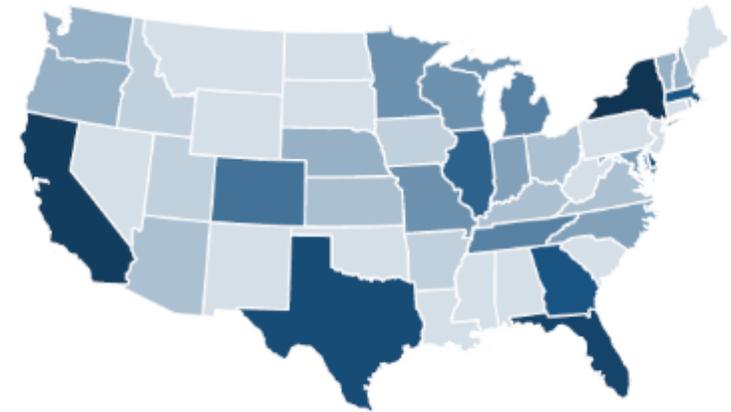
AVERAGE AMOUNT FOR DEMAND LETTERS
from lawyers related to ADA web accessibility.

A GROWING TREND

- The volume of ADA digital accessibility litigation continues to accelerate dramatically
- The number of lawsuits filed in federal court increased 210% YoY in 2017 and 177% YoY in 2018.
- That number is expected to triple in 2020
- The number of plaintiff firms continue to expand
- More and more states are affected by this phenomenon each year

COMPANY LOCATIONS

The targeted companies are spread across the USA and have impact abroad****



TOP 5 STATES



Additionally, 6% of companies sued are headquartered internationally including the United Kingdom, France, China and Brazil.



ADA Title III

News & Insights

[Home](#) » [DOJ Nixes All Pending ADA Rulemakings, Including Website Access Rules](#)

DOJ Nixes All Pending ADA Rulemakings, Including Website Access Rules

By [Seyfarth Shaw LLP](#) on December 22, 2017

POSTED IN [UNCATEGORIZED](#)



By: [Minh N. Vu](#)

Seyfarth Synopsis: *The Justice Department withdraws pending rulemakings for accessible websites, furniture and non-fixed equipment. The current Department of Justice's (DOJ) regulatory approach to Title III of the ADA is yet another example of what a difference an*

election can make.

NO END IN SIGHT

The federal government has offered no official guidelines on how the ADA applies to websites. This inaction has created a lot of uncertainty in the federal court system.

Compliance on the Internet

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Five Guys Must Face ADA Class Action, Judge Rules

Five Guys was unable to dodge a class action lawsuit alleging the fast food chain's website doesn't comply with the Americans with Disabilities Act requirements that the site be... [Read More](#)

Act

June 13, 2015

A local battle Federal comp seven Seattle However, a g Mike Meaghe

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Boston Market, Ruby Tuesday Class Actions Say Websites Violate ADA

A blind woman from New York says the websites for Boston Market and Ruby Tuesday fail to provide adequate accessibility features for blind persons. In two separate ADA... [Read More](#)

One man, 10 months, 124 ADA lawsuits over websites

June

On M suing plain up to hotel

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Quiznos Class Action Says Website Not Accessible to Blind Consumers

Sandwich chain Quiznos has been hit with a class action lawsuit alleging its website is not accessible to consumers. Plaintiff Andres Gomez, wh

Legal Alert

Court Permits Website Against Hooters To Proceed

6.22.18

Legal

Hotels fight recurring website accessibility lawsuits

by Carol C. Lumpkin, K&L Gates, Stephanie N. Moot, K&L Gates | Jul 26, 2018 12:08pm

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Potbelly Class Action Says Sandwich Website is not ADA Compliant

A class action lawsuit accuses Potbelly Sandwich Works LLC, owner of a chain of sandwich restaurants, of not making its website available to blind people, in violation of... [Read More](#)

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Apple Class Action Lawsuit Says Website is Inaccessible to the Blind

A consumer class action lawsuit says Apple's website is inaccessible to the visually impaired because it is incompatible with screen readers, and as a result, violates the guidelines... [Read More](#)

BURGER KING CLASS ACTION SAYS FAST FOOD WEBSITE VIOLATES ADA



Burger King Corp. has been hit with a class action lawsuit filed by a visually impaired woman who claims the fast food website's website is not fully accessible and independently accessible by the plaintiff and other visually impaired individuals.

ACTIVE INVESTIGATIONS

CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

NEW YORK POST



Blind woman sues 30 websites over handicap accessibility

By United in DeGregory and Emily Saul

January 2, 2012 | 10:27am

ADA lawsuits targeting hotels' websites for not disclosing how accessible they are

BY DAVID GOODHUE

JANUARY 22, 2019 07:44 PM, UPDATED JANUARY 23, 2019 02:12 PM



CLASS ACTION LAWSUIT AND SETTLEMENT NEWS

Chick-Fil-A Class Action Claims Blind Customers Can't Use Website

A class action alleges that the website for the fast food chain Chick-Fil-A violates the American with Disabilities Act (ADA), because it excludes blind people from being able... [Read More](#)

gent Lanie Quarterman, who uses a wheelchair, said the Comfort Inn University on its website fails to provide information about the accessible features of the

P.F. Chang's Class Action Says Website Violates the ADA

A potential class action lawsuit accuses P.F. Chang's China Bistro of violating the Americans with Disabilities Act for failing to make its website accessible to blind customers. Lead plaintiff... [Read More](#)

n woman recently filed individual lawsuits against more than 30 says are not handicap accessible online.

, who is legally blind, claims that the Web sites for companies such as ness, De Beers, Barney's, Donna Karan, and Kleinfeld Bridal aren't screen-reading software that translates the written content into either

WALDO GIL DEBONO

wave of Americans with Disabilities Act ("ADA") Title on hotels and motels and their reservation systems.

sed on the hotel's reservation system and how describes the ADA accessible rooms and the facility.

DOMINO'S PIZZA



- Sued in 2016 by Plaintiff Guillermo Robles
- Plaintiff brings civil rights action against Defendant for failure to design, construct, maintain, and operate its website to be fully accessible to and independently usable by Plaintiff and other blind or visually-impaired people
- Plaintiff Demands Domino's removes barriers to website for individuals with disabilities
- In 2017, District Judge S. James Otero dismissed Robles' lawsuit.
- Judge Otero held that ADA Title III does not specifically apply to the internet...



DOMINO'S PIZZA

- In 2019 the Ninth Circuit Court of Appeals in California overturned Judge Otero's decision and ruled in favor of the plaintiff.
- Domino's pizza has now petitioned the supreme court to way in on the matter.
- This is the first Digital Accessibility lawsuit to be potentially heard by the Supreme Court...

The industries that received the biggest focus in web accessibility litigation include:



Retail



Food Service Industry



Travel/
Hospitality



Banking/
Financial



Entertainment
& Leisure



Self-Service

AFFECTED INDUSTRIES

What about non-legal reasons to become ADA compliance?

- **Drive Innovation:** Accessibility features in products and services often solve unanticipated problems such as accurate indexing which can drive improved ranking, searchability, and usability
- **Enhance Your Brand:** Diversity and inclusion efforts are important to business success and are accelerated with a clear, well-integrated stance on accessibility
- **Extend Market Reach:** The global market of people with disabilities is over 1 billion with a spending power of more than \$6 trillion
- **Search Engine Optimization:** Accessibility coding best practices can help to improve 'sticky organic' SEO
- **Voice Enabled Search:** Accessibility coding best practices optimize web and mobile content for voice enabled search effectively allowing you to 'future-proof' your business

<https://www.w3.org/WAI/business-case/>

A MASSIVELY UNTAPPED MARKET

- The global market of people with disabilities is over 1 billion with a spending power of more than \$6 trillion. Accessibility often improves the online experience for all users
- There are over 25 million visually impaired people in USA. 5 million people with hearing impairment - **totaling over 30 million people**
- Friends and family members of these people may also choose more ADA friendly locations and businesses
- Catering to this largely undervalued market can increase revenue and mean the difference for your business's bottom line

A MASSIVELY UNTAPPED MARKET

Disability is especially common in these groups:

2 in 5

adults age 65
years and older
have a disability



1 in 4

women have
a disability



2 in 5

Non-Hispanic
American Indians/
Alaska Natives
have a disability



SEARCH ENGINE OPTIMIZED

Creating an accessible website allows your business to kill two birds with one stone: Many accessibility best practices will also vastly improve your website's search engine rankings. Some SEO / Accessibility best practices include:

- Image alt-text
- Removal of broken links
- Page titles that describe page content accurately
- Reader friendly content with the most important information first

VOICE ENABLED SEARCH

Future proof your business by optimizing for voice enabled search:

By now you are probably well aware of consumer devices such as the Amazon Alexa, Google Home, and many other voice enabled products. The future of internet access lies in voice commanded queries. By coding your website for accessibility, you can optimize for the rapidly approaching voice age. Many accessibility best practices may also optimize for voice command queries.

THE RIGHT THING TO DO...

Many experts have compared the recent push for web accessibility by the disabled community to a digital civil rights movement. Any time our culture makes strides towards the inclusivity of all people, we are creating a better society for future generations.

Years from now, we will ask ourselves why we had never considered the rights of disabled internet users to freely and independently access information online.

At DigiPro Media, we are deeply concerned by this issue, and we aim to make the internet a more inclusive place for all.

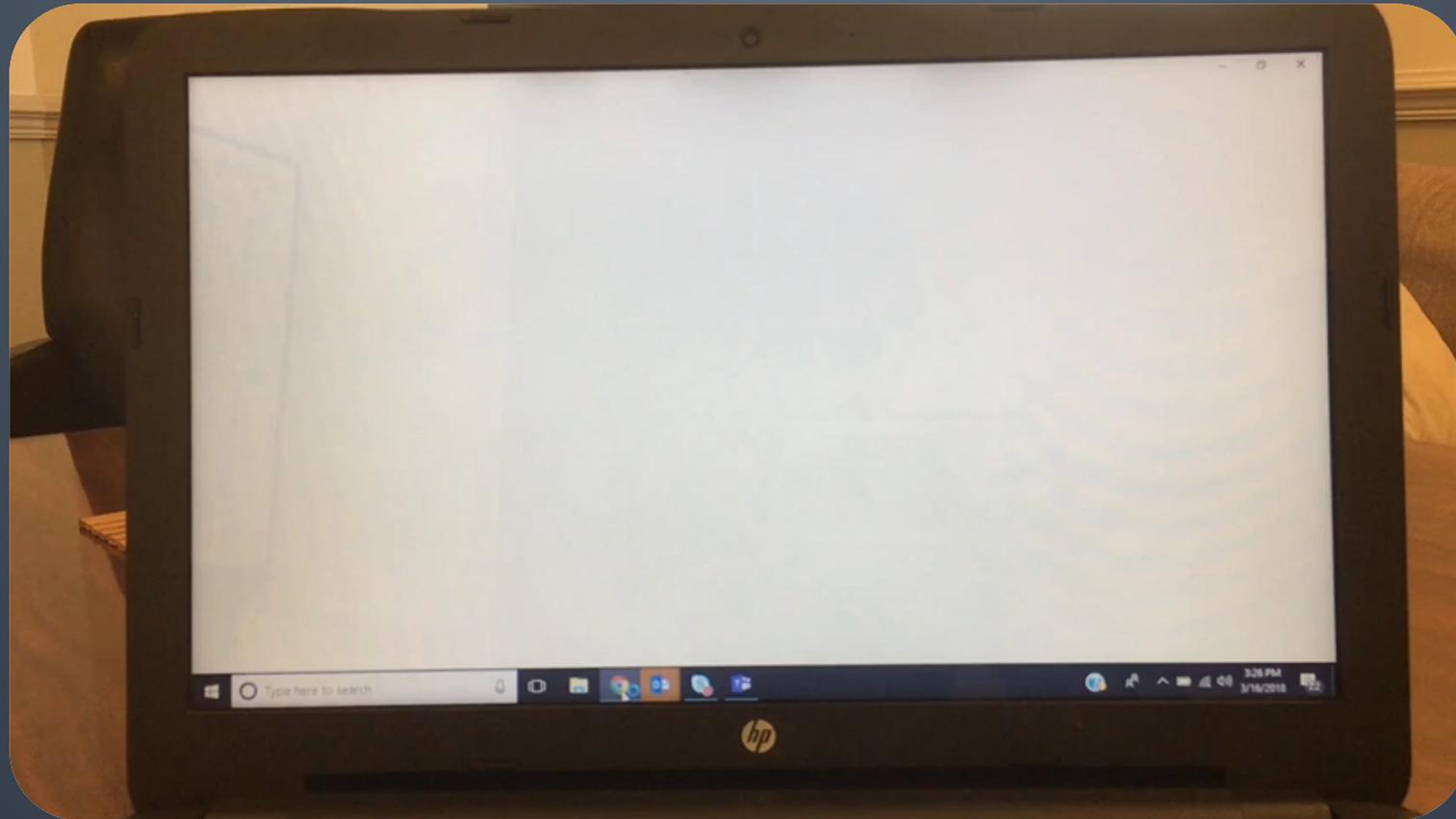
FROM THE PLAINTIFF'S VIEW

We believe that every person has the right to freely and independently access information online. For a disabled person, something as trivial as picking where to get lunch can be an extremely daunting task...

Consider the following:

- You are visually impaired
- You would like to eat at a local restaurant that has good tasting food at an affordable price - your budget is limited as your primary income comes from your disability status.
- You use your phone to search for “restaurants near me,” and after choosing a website you go navigate to the restaurant's menu...

FROM THE PLAINTIFF'S VIEW



FROM THE PLAINTIFF'S VIEW

- You are unable to use the menu on the website and so you are forced to ask a friend, family member, or restaurant staff to read you the menu items and their prices to you so that you can decide what to eat.
- You do not have independence in this scenario
- You wish you would have stayed at home...
- Additionally, if you are the restaurant owner, you have now lost this person's business...



HOW CAN MY BUSINESS MITIGATE THE RISK?

AVOIDING WEB
ACCESSIBILITY
LITIGATION



WHAT ARE THE RISKS?

- **ADA**
 - Private lawsuit – injunction; attorney fees; costs.
 - DOJ action – injunction; civil penalty up to \$55,000 for first violation, up to \$110,000 for subsequent violations; damages for aggrieved person
- **State Law**
 - Many states have implemented their legislation addressing web accessibility (such as California's Unruh Act)
 - Penalties related to web accessibility compliance vary by state and by the degree of the infraction



AM I AT RISK?!?

Most likely yes:

Most websites have accessibility issues, even those built on the most common platforms like WordPress, Squarespace, or WIX.

WCAG 2.1 and Section 508

Ensure your website and its content is easy for anyone to understand.

- The **Web Content Accessibility Guidelines (WCAG)** are part of a series of [web accessibility](#) guidelines published by the [Web Accessibility Initiative](#) (WAI) of the [World Wide Web Consortium](#) (W3C), the main international standards organization for the Internet.
- Section 508 addresses legal compliance through the process of market research and [government procurement](#) and also has technical standards against which products can be evaluated to determine if they meet the technical compliance.
- There is nothing in Section 508 that requires private web sites to comply unless they are receiving federal funds or under contract with a federal agency. Commercial best practices include voluntary standards and guidelines as the [World Wide Web Consortium's](#) (W3C) [Web Accessibility Initiative](#) (WAI).



Accessible Design Principles

Ensure your website and its content is easy for anyone to understand.

- Page titles that describe page content accurately
- Reader friendly content with the most important information first
- Use of Alt-Tags on images to make them more informative
- Internal and external link descriptions that are descriptive and more meaningful
- Text labels on buttons and form fields to give the user information on what to do
- Pages and navigation built in ways that people can navigate without the use of a keyboard
- Accessible human validation on Web forms (Captcha)

Is there an alternative to making your website accessible?

- If you provide an “equivalent” alternative means of accessing the goods and services available on the website
- A 24-hour staffed phone service that can provide all of the same information and services that your website provides may be sufficient

How to avoid litigation?

- Start your journey towards accessibility as soon as possible.
 - Engage digital accessibility expert to audit website.
 - Prioritize screen reader user and closed captioning issues
 - Strive to meet WCAG 2.0 AA standard
- Alternatively, establish a 24/7 phone service with operators who can perform all functions and provide all information on website for users with disabilities.
 - Publicize phone number on website and make sure screen reader can navigate to and read it

How to avoid litigation?

- Require compliance with WCAG in contracts with vendors that provide software, development services, or content for website
- Train website team or web developer to make website accessible and maintain it
- Re-audit website regularly; more frequently using automated scans

Questions?

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