To The Point
Americans with Disabilities Act (ADA) Title III and Website Accessibility

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Originally published by United States Department of Justice (DOJ) on July 26, 1991, Title III prohibits discrimination based on disability in the activities of places of public accommodations and commercial facilities. Using this as a basis, lawsuits asserting violations of Title III of the Americans with Disabilities Act ("ADA") are on the rise impacting both on-line and brick and mortar companies. With respect to on-line establishments, the lawsuits allege their websites, which offer goods and services to the public, are inaccessible to customers having disabilities. Some recent lawsuit examples include:

- A restaurant chain's website did not allow visually impaired customers to order customized versions of the restaurant's standard menu items
- A visually impaired customer could use a grocery store's website for ordering groceries and prescriptions, but was not able to use it with the coupon features or getting prescriptions refilled
- A video streaming service did not provide an audio description track that described the visual content of the video. Such a feature provides further context for visually impaired users, like closed-captions for the hearing-impaired

When the ADA was enacted, the focus was on physical access to facilities - ramps for wheelchairs, audio and visual warning alarms, and adequate entrance openings for mobility devices. Today, the web complements many services and products that were formerly only physically accessible. Some retailers have abandoned physical locations entirely, and now only distribute their products via their website and/or mobile apps.

Disabled members of our society can find unique challenges in the electronic, self-service, and heavily visual format of the internet. At the same time, the internet and associated websites can provide great freedom for those same individuals by providing them with easy access to services without having to make a trip to a physical facility. This not only expands their options, but can result in cost savings from not having to pay for physical transportation. It can also open companies to a customer group that otherwise would not be able to easily purchase their products.

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Addressing Website Accessibility

While ADA Title III does not provide specifications on how to improve web accessibility, guidance and potential recommendations can be taken from the ADA Title II Website Accessibility tool kit for state and local government websites. This document discusses the issue of website accessibility faced by people with disabilities such as:

- **Images without text equivalents** - This would impact individuals with low or no vision. A suggested solution is to add a text description (known as an "alt" tag, short for "alternative text") to every image that is accessible by a screen reader or a refreshable Braille display, and electronic device that turns text into read-by-touch Braille characters.
- **Specifying colors and font sizes** - When a website dictates color and font sizes, individuals with low or limited vision might not be able to read or interpret those specific colors or font sizes. Creating webpages that allow the user to change those colors and font sizes to best suit them is a suggested solution.
- **Video Accessibility** - Those who are deaf/hard of hearing may not be able to fully access video content without captions. Those who are blind might be able to hear the dialogue, but may need descriptions of scene changes or non-verbal facial expressions to fully understand the context of the video.

Some additional points the ADA Title II Website Accessibility tool kit suggests online businesses consider include the following:

- Include a "skip navigation" link at the top of webpages that allows people who use screen readers to ignore navigation links and skip directly to webpage content;
- Minimize blinking, flashing, or other distracting features;
- If they must be included, ensure that moving, blinking, or auto-updating objects or pages may be paused or stopped;
- Design online forms to include descriptive tags that can be read by screen readers, to provide persons with disabilities the information they need to complete and submit the forms;
- Include visual notifications and transcripts if sounds automatically play;
- Provide a second, static copy of pages that are auto-refreshing or that require a timed-response;
- Use titles, context, and other heading structures to help users navigate complex pages or elements

Section 508 of the Rehabilitation Act provides further direction for government agencies that need to manage website accessibility, and there is information provided there that may also be useful for the business community.

Action Plan for Website Accessibility

If you have determined that your company's public website may pose barriers for those with disabilities, the next step is to develop an action plan to fix the inaccessible web content. Again, ADA Title II provides guidelines for government entities that might also be applicable to business owners. These steps are outlined below, and are available on the ADA website:

- Establish, implement and post online a policy that your webpages will be accessible and create a process for implementation.
- Take steps to ensure that all new and modified webpages and content are accessible:
  - Check the HTML (hypertext mark-up language) of all new webpages. Make sure that accessible coding is used.
  - Make sure that websites are designed so they can be displayed using the color and font settings of each visitor's browser and operating system.
  - If images are used, including photos, graphics, scanned images, or image maps, make sure to include a text equivalent, by adding "alt" tags or long descriptions, for each.
  - If you use online forms and tables, make those elements accessible by labeling each control (including buttons, check boxes, drop-down menus and text fields) with a descriptive HTML tag.
  - When posting documents on the website, always provide them in HTML or a text-based format (even if you are also providing them in another format, such as a PDF - portable document format).
- Develop a plan for making your existing web content accessible. Describe your plan on an accessible webpage, and encourage input on how accessibility can be improved. Let visitors to your website know about the standards or guidelines that you are using to make your website accessible. When setting timeframes for accessibility modifications to your website, consider making the more popular webpages a priority.
- When updating webpages, remember to ensure that updates are accessible. For example, when images change, the text equivalents in "alt" tags and long descriptions need to be changed so they match the new images.
- Ensure that in-house staff and contractors responsible for webpage and content development are properly trained.
- Provide a way for visitors to request accessible information or services by posting a telephone number or email address on your home page. Establish procedures that ensure a quick response to users with disabilities who are trying to obtain information or services in this way.
- Consider periodically enlisting disability groups to test your pages for ease of use; use the feedback they provide to increase the accessibility of your website.

A final point to address is to ensure that there are alternative ways for people with disabilities to access the information and services that are provided on your website, in the event they are unable to utilize a computer at all. A common alternative method would be to provide phone access.

Website Content Accessibility Guidelines (WCAG)

While not part of the ADA guidelines, additional guidance can be obtained from the World Wide Web Consortium (W3C) which develops international standards and resources for website accessibility for people with disabilities. W3C maintains the Website Content Accessibility Guidelines (WCAG) which provides a single shared technical standard for web content accessibility worldwide. It is intended for web content and tool developers and others who want to a have a reference standard for accessibility. It is also the guide frequently used by the courts to determine whether or not a website is ADA compliant.

The guidelines are organized around their stated W3C accessibility principles which focus on whether the material on a website is Perceivable, Operable, Understandable, and Robust. Furthermore, the content must be future compatible, meaning that as access technology improves, the content must remain accessible.

In addition to tools for developers, information is provided for non-technical managers that must address and implement website accessibility programs. Going beyond the ADA guidance, these resources provide guidance to develop a business case for website accessibility changes, as well as to create a robust plan to make the needed changes, implement them and sustain them going forward.

While the WCAG guidelines have been relied upon by the courts concerning the ADA Title III accessibility lawsuits, and are becoming a global type of standard for web accessibility, there are no current plans to adopt these guidelines as part of the ADA or otherwise make them law in the United States.

Conclusion

As our society strives to become more inclusive and supportive of those with disabilities, it only makes sense for businesses to extend their web services to all potential customers, not just those who can easily access their websites and mobile apps. Developing and maintaining such a website will not only accomplish this, but help to avoid costly and time-consuming legal action.

References:

Americans With Disabilities (ADA) - https://www.ada.gov/index.html

Americans with Disabilities (ADA) Web Site Accessibility Under Title II of the ADA - https://www.ada.gov/pcatoolkit/chap5toolkit.htm

Section 508 – GSA Government-wide IT Accessibility Program - https://www.section508.gov/

World Wide Web Consortium - http://www.w3.org/

World Wide Web Consortium Web Accessibility Initiative - http://www.w3.org/WAI/

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