Is Your Website ADA Compliant?

Did you know that your website must be ADA compliant and that a failure to do so can lead to lawsuits and financial penalties?

For years, Title III of the Americans with Disabilities Act of 1990 (ADA) has provided the standards for businesses' physical locations. The ADA requires companies to accommodate impaired individuals adequately and prohibits discrimination based on disability. However, it does not directly address whether places of "public accommodation" include websites, mobile applications, or other emerging web-based technologies. But, it does not expressly limit its coverage to brick-and-mortar locations or exclude websites. Either, putting responsibility for the discrepancy on the Department of Justice (DOJ) and the courts.

Unfortunately, the courts are split on this issue. But, the DOJ, the primary agency responsible for enforcing the ADA, believes that Title III applies to all public-facing websites used by companies. With this in mind, companies must consider the guidance provided by the DOJ and court cases when considering ADA compliance for website accessibility.

How Does the ADA Apply to Businesses Today?

When the ADA was enacted in 1990, very few businesses used the internet, and any discrimination based on disability mainly occurred in person. As the internet has grown in importance, many have lobbied for formal online accessibility standards, primarily for the visual and hearing impaired.

While the DOJ and the courts have provided some guidance on the issue, Congress has yet to act. The current legal landscape offers a framework for applying Title III's requirements to websites, mobile applications, and other digital content. But it falls short of providing truly clear guidelines.

In the Middle of Difficulty Lies Opportunity

Applying the ADA to the virtual world without further guidance has brought an emerging legal industry to life, which has used the court system to hold businesses accountable. Many of these legal actions have been legitimate, and others have been driven by lawyers looking to make easy money. As a result, legal actions alleging website violation of the ADA have flooded the US, leaving many companies at risk and unsure of how to protect themselves.

The rise of litigation and uncertainty has prompted companies to take preemptive steps to make their websites accessible to those with impairments.

What are the Courts and the DOJ Using as Guidance?

In trying to sort through these issues, many courts have relied on the Web Accessibility Initiative standards, also known as the Web Content Accessibility Guidelines (WCAG). Developed in cooperation with individuals and organizations worldwide, WCAG provides a single

shared standard for web content accessibility. The DOJ has relied more specifically on WCAG 2.0, AA Conformance, to determine compliance requirements and whether a website violates Title III.

For the past three years, WebAIM, a project at the Center for Persons with Disabilities at Utah State, has run accessibility tests on homepages of the top one million websites. The 2021 report revealed that 98.1% of homepages had detectable WCAG 2 failures.

So, if you are wondering if your website is ADA compliant, the answer is probably no.

The fact is, unless a website is specifically designed and built to enable accessibility, it just isn't. And the growing awareness that digital accessibility is a civil right puts tremendous pressure on website owners to address these issues or face legal actions and public scrutiny.

How Do I Make My Website ADA Compliant?

The DOJ is charged with rulemaking to provide precise requirements for compliance with accessibility laws. However, in this case, the DOJ has abdicated its role going back to 2010, leaving people uncertain. Many expect the Biden administration's DOJ to adopt rules based on WCAG 2.0.

WCAG 2.0 outlines four principles of accessible design. Websites must be:

- Perceivable, which means users must be able to perceive the information being presented (it can't be invisible to any senses. E.g., it must be percievable by those who are visually impared).

- Operable, which means that users must be able to operate the interface (the interface cannot require interaction that a user cannot perform).

- Understandable, which means that users must be able to understand the information and the operation of the user interface (the content or operation cannot be beyond their understanding).

- Robust, which means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible).

Action Steps

Until we have more clarity, the best thing to do is to conduct a website audit with WCAG 2.0 in mind to determine compliance and then develop and implement a remediation plan if needed. If you have questions about ADA compliance, please contact your Carlile Patchen & Murphy business attorney today.