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Website Owners Hit with Discrimination Suits

Until recently, Title III of the Americans with Disabilities Act (the "ADA"), which prohibits discrimination on the basis of disability with regard to activities that occur in public spaces, has primarily been applied to traditional brick-and-mortar locations. As of late, however, there has been a proliferation of lawsuits brought against Website owners by visually impaired and/or blind plaintiffs – many of them represented by the same cluster of plaintiffs' law firms – who claim they have been discriminated against by such owners due to allegedly inaccessible websites. The plaintiffs claim that websites are places of public accommodation, and should therefore be subject to the ADA and other antidiscrimination laws.

For years, the Justice Department has delayed issuing clarifying regulations regarding whether and how the ADA should be applied to a company's online presence. In the absence of clear regulations and any applicable court decisions, there had not been much guidance available for Website owners with respect to providing accessibility options for blind and visually impaired persons. Accordingly, accessibility assistance was primarily provided by business websites on an ad hoc basis, and it varied by company.

Then, in June 2017, a federal judge in Florida issued the first web accessibility verdict, holding that the grocery chain Winn Dixie violated Title III of the ADA because its website was not accessible to the plaintiff – a blind individual who sought to use a screen-reader app to read aloud website content. The Court ordered Winn Dixie, in part, to update its website to conform with the Web Content Accessibility Guidelines 2.0 ("WCAG 2.0"), which are accessibility guidelines published by the Web Accessibility Initiative of the World Wide Web Consortium, an international Internet standards organization. (See www.w3.org/WAI/WCAG20/glance/ for a summary of the WCAG 2.0 guidelines). Two federal judges in New York also weighed in recently, refusing to dismiss lawsuits alleging that defendants' purportedly inaccessible websites (for a

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restaurant and retail chain, respectively) violate the ADA, as well as New York State and New York City civil rights laws.

In the past few months, the resulting wave of lawsuits has become a tsunami. Website owners large and small have been targeted in growing numbers. The lawsuits are generally in the form of purported class action suits alleging that the targeted Websites do not, in part, include adequate coding and text to allow so-called reader apps to navigate the sites' content and read it aloud for vision-impaired viewers. Although statistics for the first few months of 2018 are unavailable, it is estimated that in 2017, visually impaired plaintiffs filed over 800 federal lawsuits nationwide (many of them in the latter part of the year) in connection with allegedly discriminatory and inaccessible websites. Retailers (including Sephora and Nordstrom, but also smaller, less well-known establishments) appear to be the most popular targets, followed by restaurants (e.g., Shake Shack, McDonalds).

Although this is still a nascent area of law, Courts around the country have begun issuing various orders, sometimes with non-harmonious and/or conflicting opinions, leading to significant uncertainty regarding what is required of online businesses. Complicating matters, in December 2017, the Trump administration withdrew the rulemaking process for new regulations regarding website accessibility. As such, the Justice Department will apparently not be issuing clarifying regulations any time soon. Indeed, the landscape is likely to become even more complex and litigious, as a new breed of accessibility cases is being filed against website owners in California whose sites include allegedly inaccessible online employment applications.

Compliance with WCAG 2.0 is now considered a best practice. A comprehensive review of one's website, with a team that includes a knowledgeable attorney and an accessibility consultant, will yield specific and executable steps for recommended compliance. Such steps will include providing text alternatives for non-text content (such as graphics and photographs) and ensuring that all website functionality can be accessed by a keyboard alone.

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In view of the proliferation of suits being filed against website owners, and the lack of clear precedent, it is advisable to consult with experienced legal counsel before receiving a demand letter and/or a summons and complaint. Alternatively, if your website already has been targeted, you should immediately contact a lawyer familiar with the area.

The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact MSF's Intellectual Property Chair, [Jeffrey Weingart](#).



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