

PUBLICATION

Bank Websites Targeted for Title III ADA Violations – 12 Ways to Comply

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An increasing number of companies in the banking industry are reporting receiving demand letters from law firms alleging website violations under Title III of the Americans with Disabilities Act (Title III). These letters claim that the institution's website contains accessibility barriers, including but not limited to, failure to provide text content, inability of the user to re-size text, lack of functionality through the keyboard interface, inability to program the default human language of each web page, and absence of labels or instructions when the website content required user input.

Legal Background

Title III requires places of public accommodation to provide "auxiliary aids and services" to customers that have a hearing, vision or speech disability unless taking such steps would: (1) fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered, or (2) result in an undue burden.

The United States Department of Justice (DOJ) and courts interpreting Title III have extended its requirements to the websites of places of public accommodation. Some courts have distinguished between entities that have physical offices open to the public and companies with an online-only presence. For example, the Ninth Circuit refused to extend Title III to exclusively online companies, interpreting "place of public accommodation" to require "some connection between the good or service complained of and an actual physical place." However, the First Circuit and other district courts disagree with this interpretation, noting that "places of public accommodation" are not limited to "actual physical structures."

What This Means for Companies

In 2010, the DOJ released an Advance Notice of Proposed Rulemaking on website accessibility, at which time it solicited comments on costs and alternatives to making websites accessible to individuals with disabilities. Since then, the DOJ has stated that it does not anticipate publishing proposed Title III website accessibility regulations until 2018, leaving companies open to heightened litigation risks.

Enter the Worldwide Web Consortium (W3C), an international organization that develops protocols and guidelines to assist web developers in creating accessible website content for disabled users. W3C developed the [Web Content Accessibility Guidelines 2.0](#) (WCAG 2.0 or WCAG-2), and it is widely expected that WCAG 2.0 will form the basis for the 2018 proposed DOJ regulations. In the interim, WCAG 2.0 Level A and AA proposals are viewed by several legal observers as the standard by which websites are judged to comply with Title III. The courts, by contrast, have yet to weigh in on this issue.

12 Ways to Comply

WCAG 2.0 offers 12 guidelines for websites seeking compliance with Title III. These guidelines require websites to:

1. Provide text alternatives for non-text content;

2. Provide captions and other alternatives for multimedia;
3. Create content that can be presented in different ways, including by assistive technologies, without losing meaning;
4. Make it easier for users to see and hear content;
5. Make all functionality available from a keyboard;
6. Give users enough time to read and use content;
7. Do not use content that causes seizures;
8. Help users navigate and find content;
9. Make text readable and understandable;
10. Make content appear and operate in predictable ways;
11. Help users avoid and correct mistakes; and
12. Maximize compatibility with current and future user tools.

Companies in all industries, but especially banks, should consult with their counsel and IT professionals to determine whether they should modify their websites now to address the above factors. While it may be tempting to wait until the DOJ publishes new rules addressing this issue, delays in modifying deficient websites could result in heightened litigation risks, especially for companies in industries being targeted by plaintiff law firms and/or consumer activists.

For additional information on the litigation risks a company faces for website non-compliance with Title III, please contact the authors of this alert or your regular Baker Donelson attorney.