

DOES YOUR WEBSITE ACCOMMODATE THE DISABLED?



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The Issue

Does a website provider have a responsibility to make accommodations for the disabled? While it is not yet required by the American Disabilities Act (ADA) or any other statute for those who own websites for businesses, there is recent case law that suggests this issue is on the rise. The potential risk of a lawsuit exists for websites which do not give base level accommodations to those with disabilities. Case law and secondary sources provide guidance.

The ADA Provision

Under Title III of the ADA, for public services, businesses are required to make services, programs, or activities equally accessible by all; they are required to make modifications to policies and practices so that they apply equally to all including those with disabilities; and they must not operate programs or places that are not readily accessible or usable by individuals with disabilities. § 3:2. Requirements under Title II, Legal Almanac: The Americans With Disabilities Act § 3:2. Title III governs the general requirements with respect to disability. 42 U.S.C.A. § 12132, also governs the prohibition against discrimination for those with disabilities by making sure that no person with disabilities be excluded from participation in or be denied the same benefits as one without disability. Overall, the statutes generally require that with respect to those with disabilities, accommodations must be made so that they have equal access to things as they would if they were not disabled. This not only applies to public entities, but all private places that are open to the public as well.

Case Law and Web Guidance

The question that has come before the courts is whether a website is a public accommodation. Some federal courts have held a public accommodation must be a physical space such as a stairwell, entryway, or store front. The First, Second, and Seventh United States Courts of Appeals, however, have held that a website can be considered a public accommodation. The Third Circuit, which is the Circuit for Pennsylvania, has not ruled on the issue. One recent case from the Western District of Pennsylvania indicated that a website was a place of public accommodation. Because this decision was only on a motion to dismiss, however, a final ruling has not been made. In *Murphy v. Bob Cochran Motors*, the plaintiff is legally blind and alleges that defendant operates and maintains a website that is “largely unusable” by the plaintiff because it denies him full access to the content and services/products on the defendant website by not being accessible and compatible with his screen reading software. *Murphy v. Bob Cochran Motors, INC.*, 2020 WL 6731130, (W.D. Pa. August 2020). Most notably, the plaintiff contends that the website is a place of public accommodation to which Title III would apply. The defendant website operator moved to dismiss the claim. Ultimately, the Court ruled that the plaintiff has not only evidenced a sufficient nexus, but also adequately alleged that Cochran’s website blocked access to their services for disabled persons. Due to this analysis, the defendant’s motion to dismiss was denied. Accordingly, the state of the law is unsettled in Third Circuit, a situation that creates potential liability for website operators whose platforms are not accessible to those with disabilities.



Suggested Considerations for Your Website

To prevent litigation and achieve accommodation, the Web Content Accessibility Guideline website provides an outline of how website operators can improve their website, so it is geared to those who are disabled. Kirkpatrick, A., O Connor, J., Campbell, A., Cooper, M., **Web Content Accessibility Guide**, W3C, June 5, 2018, . The Guide provides four sub-sections pertaining to different parts of websites and shows how to make them accommodating and compatible with assistive technology. These sections are titled Perceivable, Operable, Understandable, and Robust. There is also a final sub-section titled Conformance, which deals with the three levels of conformance that are found throughout the other four sections: A, AA, and AAA. Each section contains recommendations based on the conformance level that a website can or aims to achieve, AAA being the maximum level and A being the minimum. It is not expected or legally required for website operators to achieve the maximum level of compliance. Instead, base level compliance is suggested. The Guide gives specific examples as to how a website can be made accessible to the disabled. A few examples are: providing captions for all pre-recorded audio content in synchronized media, giving instructions or understanding and operating content that does not solely rely on sensory things (such as color, shape, size, etc.) or not using only color to convey information. The website should be compatible with assistive technology, and not interfere with access to brick-and-mortar stores or products that a customer could purchase in person.

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