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Does Your Company Have an ADA Compliant Website?

Title III of the Americans with Disabilities Act of 1990 (the “ADA”) prohibits discrimination based on disability in places of public accommodation. Under Title III of the ADA, a place of public accommodation is defined as a privately operated facility whose operations affect commerce and fall within at least one of the following 12 categories:

- a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- places of lodging;
- establishments serving food or drink;
- places of public gathering;
- sales or rental establishments;
- service establishments;
- public transportation terminals, depots, or stations;
- places of public display or collection;
- places of recreation;
- places of education;
- social service center establishments; or
- places of exercise or recreation.

It is important to note that private membership clubs and establishments and religious organizations and their controlled affiliates, including places of worship, are explicitly exempted from being places of public accommodation under Title III, so long as such facilities are not also leased for public events.

Title III of the ADA does not directly address whether public websites or mobile applications are included in the definition of

places of public accommodation. This is likely because when the ADA was enacted in 1990, far fewer people used the internet and discrimination based on disabilities typically occurred in person. Although not included explicitly in the ADA, the Department of Justice (the “DOJ”), the primary federal agency responsible for enforcing the ADA, has taken the position that Title III of the ADA applies to all public facing websites used by companies that operate businesses that qualify as places of public accommodation. However, DOJ guidance (and a circuit split among the courts) falls short of providing a concrete path to compliance for companies.

While the Online Accessibility Act has been introduced in the US House of Representatives and was referred to the Subcommittee on Consumer Protection and Commerce on February 19, 2021, the current legal landscape only provides companies with a framework on how to apply Title III's requirements to their websites, mobile applications, and other digital content. Companies must therefore consider both DOJ guidance and court decisions when creating their websites and mobile applications. In deciding whether a website violates Title III, both the DOJ and courts have relied on the Web Content Accessibility Guidelines (“WCAG”), which were prepared by the World Wide Web Consortium (“W3C”), a consortium of private and non-profit companies that works to provide international standards for web content accessibility. The courts have relied on WCAG 2.0 and the DOJ has relied more specifically

on WCAG 2.0, AA Conformance, for determining whether a website violates Title III and has the requirements for a discriminating website to become Title III complaint. Among other things, the WCAG asserts that web content should be “perceivable, operational, understandable, and robust” for everyone.

On March 18, 2022, the DOJ released Guidance on Web Accessibility and the ADA, which again falls short of providing clear web accessibility requirements, but confirms the DOJ's past stance that the ADA applies to the web content of places of public accommodations. The recent guidance also reaffirms the material role of compliance with WCAG international standards and signals an increased focus on the importance of making the internet more accessible to all.

The lack of clear web accessibility requirements, uncertainty surrounding the applicability of the ADA to websites, and the rise in litigation against businesses for such

potential violations, should prompt companies to take preemptive steps to protect against liability by adopting practices that ensure their websites, mobile applications and digital content are accessible to disabled persons.



The attorneys at Handler Thayer can assist you in reviewing the DOJ Guidance, recent court cases and the WCAG to help ensure your website does not violate Title III if your business is a public place of accommodation, not subject to an exception.

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