

Features

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In the Crosshairs: Websites That Aren't ADA Compliant

Joe Dysart



Green industry businesses are discovering the hard way that websites forgetting to accommodate disabled people have become targets for usability lawsuits.

The great irony underscoring the trend is that for a few hundred dollars, scores of service providers can quickly analyze your website and advise—point-for-point—how to safeguard it against a lawsuit. Most of the lawsuits are coming from web surfers who have difficulty seeing, as well as users who have difficulty hearing.

In 2020, nearly 11,000 lawsuits were filed against website owners—charging that they were in violation of the U.S. Americans with Disabilities Act (ADA), according to Crownpeak, a service provider specializing in making sure websites comply with the ADA.

But perhaps even more harrowing were the more than 265,000 ADA demand letters sent to U.S. businesses in 2020. Those letters threatened lawsuits unless businesses became ADA compliant for any number of reasons, according to Crownpeak. Essentially, the ADA has triggered an open season on litigation against businesses that aren't in complete compliance. And business websites have become an easy mark for such litigation and protests.

“In the United States, it is largely accepted—due to overwhelming case law—that the Internet is a place of public accommodation and, therefore, it is broadly considered that business websites are subject to regulation by the Americans with Disabilities Act,” says Claire Van Note, a sales support coordinator with Accessible360, an ADA compliance service provider.

Even more concerning for green industry businesses is that 78% of the websites hit with ADA lawsuits were retail sites, according to “2020 Full Year Report: Digital Accessibility Lawsuits” by UsableNet—a consultant in ADA web compliance. Plus, many of the attorneys behind those suits got especially creative with their litigation, filing one lawsuit against a business for a website that was out of ADA compliance and filing a second lawsuit against the same business for a mobile app that also was out of compliance.

In a phrase, businesses are the very definition of low-hanging fruit for ADA lawsuits in the eyes of attorneys specializing in ADA litigation. Indeed, in a recent study, 97% of the world's top one million websites had an accessibility issue, according to WebAIM, a nonprofit research group affiliated with Utah State University.

What it Means for You

Not surprisingly, there's intense interest among businesses on how to comply with the ADA and similar regulations. One telling example: one library of digital accessibility rules maintained by Deque Systems, an ADA compliance service provider, hit more than 100 million downloads in December 2020—less than two years after it was made available on the web for free.

"The exponential rate of adoption we've seen in recent years is indicative of digital accessibility becoming more pervasive for the nearly one-in-four U.S. citizens with a disability," says Dylan Barrell, chief technology officer for Deque Systems.

Granted, there's been pushback against the ADA from some business defense attorneys, who've successfully argued that the Act doesn't apply to digital properties. Specifically, the United States District Court for the Southern District of Florida recently found that Winn Dixie Stores was exempt from providing an ADA-compliant website. The legal technicality: the ADA regulates 12 kinds of tangible physical places. A website by definition isn't a physical place, according to the Court.

Even so, other courts—including the United States Court of Appeals for the Ninth Circuit—have found the opposite, concluding that websites do need to comply with the ADA. Bottom line: unless you're looking to play the odds, your best move is to ensure your website complies with the ADA, according to Claire.

Not only will ADA compliance keep the attorneys at bay, but it can also be used as a marketing tool, enabling you to advertise that your website—unlike the 97% of other sites on the web—is user-friendly to disabled surfers.

"Besides being legally mandated per the Americans with Disabilities Act, more organizations are realizing the benefits of digital accessibility, ranging from capturing overlooked market share, lowering operational costs and boosting brand value," says Preeti Kumar, CEO of Deque Systems.

Adds William Littman, head of legal affairs at Crownpeak: "What's important is realizing that we're dealing with real people and real issues related to accessibility. These are people who need to have access to your website and accessibility is a feature that companies should adopt as a matter of course.

"There's really a lot more going on under the surface of the data that's published, and every business needs to remember that this is more than just trends and numbers. At the end of the day, it's about people."

Guidance for Compliance

Currently—despite all the lawsuit threats—there's still no law in the United States that sets out specific guidelines for how websites should comply with the ADA. Congress attempted to pass such a law in 2020, but it failed.

In the meantime, website owners and service providers advising on ADA compliance have been relying on guidelines developed by the World Wide Web Consortium (WC3) to prove ADA compliance. The WC3 is an international community of mostly web designers and related techies, which has maintained web accessibility guidelines for years now (www.w3.org/WAI/standards-guidelines/wcag/).

There are many ways to ensure your website matches WC3 guidelines, including reading the WC3 guidelines and doing it yourself, or hiring an ADA consultant to eyeball your website and draw up a list of changes needed.

But perhaps one of the easiest alternatives is to tap an online monitoring service for as little as \$390/year, which generally will check your website daily and alert you to any changes your site needs to stay in ADA compliance (see the sidebar "Resources to Help" for options).

An even less-expensive alternative: If you have a website that essentially remains unchanged, you could subscribe

to one of these online services for just a month—then cancel the service until you make additional changes to your website that could put your ADA compliance in jeopardy. **GP**

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Resources to Help

Here's a representative sampling of online compliance service providers that promise to ensure your website is ADA friendly:

- **accessiBe (accessibe.com), \$49/month:** This service provider uses AI to analyze your website and offers recommendations like screen readers and keyboard navigation tools that you can add to your site to make it ADA compliant.
- **EqualWeb, (www.equalweb.com), \$390/year:** Another compliance advisor that uses AI analysis, EqualWeb also offers plugins for ADA compliance, including text readers, screen reader adjustments, an accessibility menu and the like. Web-authoring platforms supported by the service include Wordpress, Wix and Shopify.
- **MaxAccess (maxaccess.io), starts at \$37/month:** This service provider scans your website every 24 hours to ensure it's ADA compliant. Features it looks for on your website include accommodation for color blindness, color contrast, toolbar options, screen options and the like.
- **Crownpeak Digital Quality Management (www.crownpeak.com/products/digital-quality-and-accessibility), call for pricing:** Crownpeak does a complete scan of your website for ADA compliance, including rich media, metadata, content presentation, links, URLs, mobile experience, images, PDF accessibility and the like.
- **Accessible360 (<https://accessible360.com>), call for pricing:** In addition to computer analysis for ADA compliance, Accessible360 also offers live user testing of your Web site.
- **Deque Systems Axe Plug-In (www.deque.com), call for pricing:** Deque uses a plug-in for Chrome, Firefox or Edge that tests your website for accessibility compliance—as well as any web applications that may be running on your website.
- **Silktide (silktide.com), call for pricing:** Silktide's analysis serves-up a task list your web designer can use to bring your website into full ADA compliance. The service explains the need for every accessibility task required. And Silktide also offers ongoing accessibility training via phone, chat, Webinar and video tutorials.
- **DubBot (dubbot.com), call for pricing:** DubBots' analysis produces a list of changes you'll need to make to your website—ordered by priority. The service also offers a detailed description of each ADA issue.