

Electronic Information Accessibility: Five Steps To Mitigate Legal Risks

It seems like almost every day now a new report surfaces highlighting the recent and ongoing swell of ADA lawsuits filed against organizations for their inaccessible websites and electronic documents. Paradoxically, while the subject of the lawsuits is discrimination, the scope of businesses being targeted has been anything but discriminatory. Organizations in the retail, e-commerce, financial services, higher ed., technology, and healthcare industries have come under scrutiny for the lack of accessibility of their websites and electronic documents they use to communicate with consumers and employees. While digital accessibility litigation is not a new phenomenon, the high volume in which suits are now being filed is startling, putting any organization that owns a website and electronic documents at risk. Companies sued for lack of website compliance have included, entities as diverse as Redroof Inn, ToysRUs and the NBA.

The push by federal regulators and disability rights groups to make websites and electronic information available is being furthered by tangible manifestation in written law, as exemplified by New York City recently becoming the first major city to adopt [legislation](#) requiring government websites to meet accessibility standards.

Under the new law, the City must establish a website protocol within 6 months that incorporates: (1) Section 508 of the Rehabilitation Act (“Section 508”); (2) WCAG 2.0 AA; or (3) any “successor” standards. The Section 508 standard applies to the federal government websites and consists of a list of 16 requirements that are less rigorous than WCAG 2.0 AA. But last year the Access Board [proposed](#) a rule that would, among other things, adopt WCAG 2.0 AA as the new website standard under Section 508. Thus, if the City incorporates Section 508 in its website protocol, its agency websites may be subject to WCAG 2.0 Level AA once the final Section 508 regulations are issued.

In order to protect your clients from an ADA lawsuit as it relates to electronic information, you need to ensure that an organization is taking the following steps to address its digital accessibility:

1. Identify Who (If Anyone) Is Responsible for Accessibility within the Organization

While electronic accessibility is not a new concept, some organizations have been quicker than others to adopt good policies and procedures, including appointing a head of a company’s accessibility initiative. Examples may include an Accessibility Coordinator, a Webmaster, or a COO – it all depends on the size and nature of the organization. If there has not yet been someone deigned responsible for overseeing a business’ electronic accessibility plan, this is a crucial first step.

2. Identify What Electronic Information Is Available

A next step is taking a thorough inventory of the organization's electronic information, including both information that is being disseminated publicly, i.e. on a website, as well as electronic information being purveyed internally to employees. It's important to recognize that ADA lawsuits can be brought by consumers and employees, alike, so taking stock of the entire inventory of electronic information available is vital to safeguarding against litigation. Developing an inventory of the electronic information available is essential to determining which content is still relevant. In some cases, it might be helpful to determine the authors of the content as accessibility remediation often requires additional information (e.g., textual description of images) which authors are in the best position to provide. When taking inventory of the electronic information, it is important to include all categories of such information (web content, PDF documents, videos, etc.)

3. Identify How Much of the Information Is Accessible

Once you've taken stock of the electronic information that is available, you need to determine how much of it may already be accessible. Once you have a clear understanding of the scope of your problem by separating the information that is already accessible from the information that is not, you are one step closer to having an organized strategy in place for achieving full accessibility of your electronic information. Electronic information encompasses both digitally formatted information and electronic documents such as PDF files.

4. Identify Which Laws or Legal Requirements the Organization Needs to Adhere

This will require a bit of research. Established accessibility guidelines, requirements, and industry standards will vary depending upon the nature of an organization. For example, in the United States, an entity of the U.S. Federal Government is required by law to abide by regulations laid out under Section 508 of the ADA, and as previously mentioned, New York City has recently set a precedent amongst municipal governments for their legal accessibility requirements. However, under Title III of the ADA, corporate websites are being considered "places of public accommodation" and are subject to the same accessibility rules as physical buildings: *"A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the*

public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.” This has now been interpreted to mean that companies, organizations, and government need to apply accessibility standards to websites, tools, documents, and even mobile applications. As there have been numerous accessibility cases and settlements against organizations of all types, and new legislation and guidelines are being updated and created all the time, it is more important than ever for your organization to determine which accessibility guidelines and regulations will affect it in order to ensure the appropriate level of compliance. In the landmark case National Federation of the Blind v. Target Corp. plaintiffs were awarded more than six million dollars in damages and an additional 3.7 million dollars for attorney’s and legal fees. For guidance, companies can turn to the Web Content Accessibility Guidelines (WCAG. In most cases, compliance with WCAG 2.0 AA or Section 508 (which is being refreshed to become similar to WCAG 2.0 AA) is sufficient to meet accessibility requirements.

5. Ensure the Organization Has an Accessibility Plan that Prioritizes Steps Based on Relevant Criteria

Once a leader of an organization-wide accessibility initiative has been established, the scope and scale of the problem has been identified, and you’re aware of which established accessibility guidelines or regulations the organization needs to follow, it’s a judicious next step to prioritize which electronic information to begin making accessible first. You can determine this based upon the following relevant criteria:

- How often the information is used
- How important the information is to internal users (i.e. employees)
- How important the information is to external consumers (i.e. public seeking information)

Once you’ve answered these questions, you’ll be able to determine which pieces of your inaccessible information pose the largest risk and address those first.

By following these steps, your client will have a better chance of avoiding an ADA lawsuit and you’ll be in a much better position to protect your client from an ADA lawsuit as it relates to their electronic information, should one be brought.