Can *All* of Your Customers Use Your Website? Be Proactive, Avoid a Legal Challenge and Broaden Your Customer Base

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When companies consider how to make themselves accessible to potential customers, historically, much of the attention has focused on the brick-and-mortar structures. Is it in a good location? Is it inviting? Does it meet the needs of their customers and workforce?

As a result of economy-wide trend towards online marketplaces (only hastened by the COVID-19 pandemic), equal—if not greater—attention should be paid to company websites and mobile applications to ensure their attractiveness and accessibility to all customers, even those with visual, hearing and other disabilities.

Businesses must realize that even the term "disability" should not be narrowly viewed. Take the brick-and-mortar example of a restaurant. A stairway without a ramp is not accessible to a person using a wheelchair. And that stairway also presents a barrier to an elderly person using a cane or walker, a wounded veteran with gait balance issues, or a new parent with a stroller. Or even a traveler with a wheelie bag desperate for a bite to eat. Bottom line: Accessibility is a universal need across the population.

Title III of the Americans with Disabilities Act (ADA) requires public places to have accommodations for people with disabilities. However, there is no legal clarity on how this applies to websites and apps belonging to businesses.

But there should not need to be. As Justice Oliver Wendell Holmes famously said, "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience."

A good business ultimately focused on profit should make its website accessible and cater to more customers, no matter what disabilities they may have. This has the added benefit of avoiding a potential lawsuit and the costs associated with it. For those who prefer to be governed by the stick instead of the carrot, more on potential legal liability follows.

Starting with the carrot, though, there are simple things that can be done in programming to help make all websites and apps more accessible and provide a better user experience to all customers:

1. Tag Images

Tagging images is one of the most important things that can be done to make your website more accessible. All images displayed should have a brief label that describes the image. For example, a picture of a rose may be tagged as "a single red rose." Someone using a screen reader will be able to hear the description, but someone without visual impairments will not see the description displayed.

2. Label Form Fields

When requesting website visitors fill out a form, such as providing contact information or a login, label the box where the information should be input as well as the field's heading. Screen readers read everything on the site, and if the box underneath the field heading is not labeled, the person using the reader will have difficulty determining where to fill in their information.

3. Contrast and Sizing

Websites and apps need to have adjustable contrast and font size. Altering a website to have a high level of contrast is important for low-vision users. When changing the font size, websites and apps should be able to format pages correctly and neatly without losing the ability to revert to the original size. Middle-aged customers who find their "reading vision" is declining will also appreciate the ability to preserve content while increasing the font size and reducing eye strain.

4. Caption videos

Provide captions for videos, so those that are deaf or hard-of-hearing can access the spoken content. Many software products automatically provide a reasonably accurate caption, and a small amount of review and editing can create a polished finished product.

5. Headings

Website visitors using screen readers can be alerted to what is being read and efficiently navigate from one part of the site to another when headings are used. Screen readers start at the top of the website and read to the bottom, meaning that multiple links or large bodies of copy on the site will be read all together. Headings will help by connecting the copy to a specific topic. For example, giving a list of links the heading "links" will help the user know what section of the webpage is being read to them, instead of hearing a string of links with no context.

To further ensure the accessibility of your website, follow the Web Content Accessibility Guidelines and learn how to design and develop an accessible website.

If the customer-focused incentive does not persuade a business to make its websites and apps more accessible, existing law may provide penalties. The law is not particularly clear, which ultimately means more work for lawyers and increased legal fees incurred by businesses to resolve lawsuits challenging website accessibility. Even if a court ultimately agrees that federal or state laws do not apply to a particular business website, many hours and dollars will be spent to reach that result.

When considering the ADA as it relates to websites, there seem to be three different schools of thought among lawyers and—most importantly—judges:

1. The ADA only applies to physical places and not websites and apps.
2. The law applies to websites or apps that have connections to a physical place for customers to visit, such as banks or restaurants, but not businesses with an online-only presence, such as Netflix.
3. Being online is such an essential piece of life today that all websites and apps need to be accessible to all people.

If a plaintiff challenging website accessibility succeeds, the Court may order the attorneys' fees incurred by that plaintiff to be paid by the business, which could amount to several hundred thousand dollars. Ouch!

One last point to consider is that while federal law remains somewhat ambiguous, states are starting to provide more clarity—and since websites are available nationwide and not just in a set geography, even businesses not physically located in a state can get in trouble with the law there. For example, California law (under the Unruh Civil Rights Act) requires websites to be accessible and entitle people to $4,000 in damages for each violation. It is unclear if a "violation" is considered the website as a whole or each piece of website content that cannot be accessed. Most businesses getting sued under the law choose to settle and fix their websites rather than go to court.

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