121 ECOMMERCE

ADA COMPLIANCE
A COMPREHENSIVE GUIDE

TABLE OF CONTENTS

Is Your site ADA Compliant?

Do you even know what ADA compliance is?

If you don't, you're not alone.

ADA compliance is a lesser-known topic among online retailers but among predatory lawyers and watchdog groups, it is fast becoming an easy avenue to launch class-action lawsuits that result in hefty fines.

While ADA Compliance has been generally applied to commercial and other physical locations, websites are now under scrutiny and online retailers have had to pay large fines for their non-ADA compliance.

Although ADA compliance is not required by law, ensuring your website is ADA compliant can save you from costly lawsuits.

The topic is still in its infancy and much is yet to be determined.

This comprehensive guide provides you with essential information so you can decide whether your site needs to be ADA compliant or not.

What is the ADA?

ADA stands for the **Americans with Disabilities Act.**

In 1990, President George Bush signed it into law and it has become the United State's most critical law concerning accessibility and civil rights for people with disabilities.

What is ADA Compliance?

In 2010 the Department of Justice (DOJ) published the **ADA Standards for Accessible Design** which mandates that people with disabilities should still have full and equal enjoyment of goods, services, facilities, privileges, advantages, accommodation of any place of public accommodation by any person who owns, leases (or leases to), or **operates a place of** "public accommodation."

Who needs to be ADA Compliant?

This is where things get interesting. Until recently, ADA Compliance has been generally applied to commercial and public brick and mortar stores or other physical locations, including:

- Places of entertainment like theaters, movie theaters, and concert halls

- Restaurants, bars, and eateries

- Small and medium businesses of all types

- Inn, hotel, motel, or other places of lodging

- Museums, libraries, galleries, parks, zoos, amusement, or other places of recreation.

- Daycare center, senior citizen center, homeless shelter, food bank, adoption agency or other social service centers

- Gyms, health spa, bowling alley, golf course, or other places of exercise or recreation.

- Local government offices, employment agencies, and labor unions

- Retail stores

- Large enterprises

Do Websites Need to be ADA Compliant?

The establishment of the ADA affected nearly every kind of business in the physical realm. Websites and online spaces however were not initially mentioned due to the infancy of the internet in 1990.The proliferation of websites and internet usage we see today simply could not have been predicted.

As the internet usage became more prevalent and websites played a larger role in the way consumers interact with businesses, ADA's applicability to web accessibility began to change.

Since 2017, a clear consensus has emerged that ADA also covers the online realm. Disability rights activists, legal scholars, and court rulings have agreed that websites, internet portals, and transactional online websites must be accessible for people with disabilities.

In September 2018, Assistant Attorney General Stephen Boyd wrote a letter to members of Congress stating, "The Department first articulated its interpretation that the ADA applies to public accommodations' websites over 20 years ago. This interpretation is consistent with the ADA's requirement that the goods, services, privileges, or activities provided by places of public accommodation be equally accessible to people with disabilities."

ADA standards apply to commercial and public entities that have "places of public accommodation," which includes the internet.

The DOJ is currently determining the specific regulations but that does not mean website discrimination will be tolerated.

The DOJ's public position was clarified in the following statement made during a lawsuit filed against Netflix:

"The Department is currently developing regulations specifically addressing the accessibility of goods and services offered via the web by entities covered by the ADA. The fact that the regulatory process is not yet complete in no way indicates that web services are not already covered by title III."

- Statement of Interest of the United States Department of Justice in NAD v. Netflix.

Today, U.S. courts apply ADA and its accessibility requirements to the online domain; meaning, websites should comply with ADA rules.
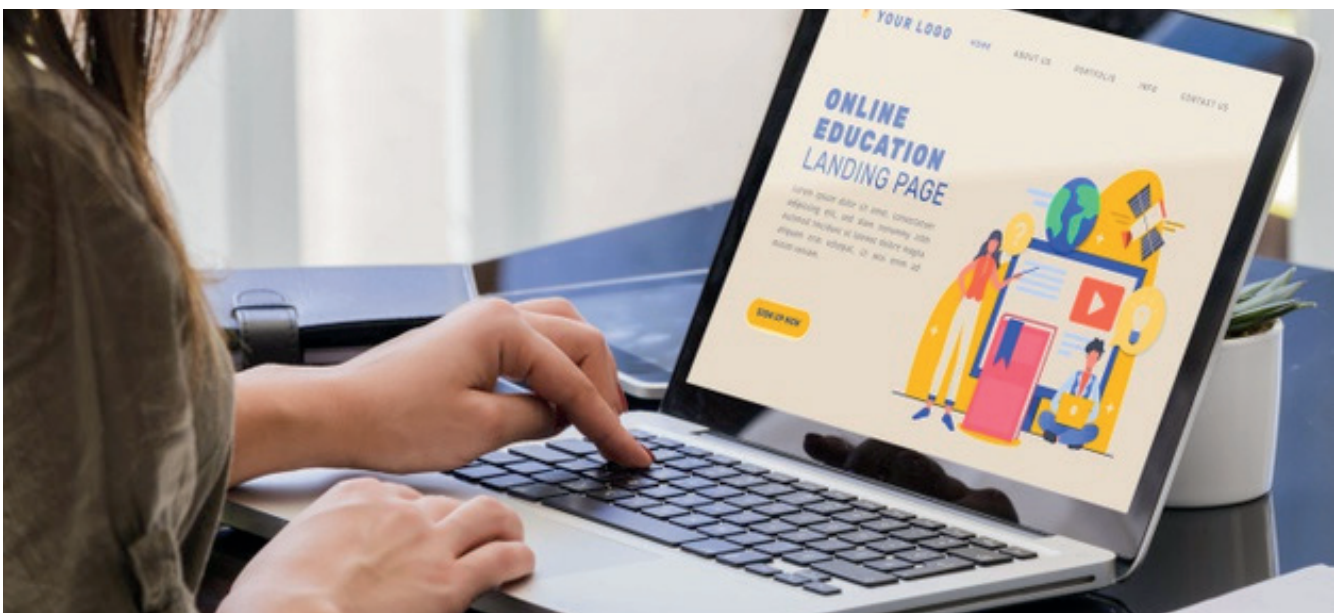
ADA Web Accessibility Lawsuits

The United States judicial circuits all are in general agreement that having a claim for discrimination under ADA would need to include the following elements:

1. He /she is disabled within the meaning of the ADA
2. The defendant is a private entity that owns, leases, or operates a place of public accommodation
3. The plaintiff was denied a public accommodation by the defendant because of his/her disability.

170% Increase
Number of ADA title III-related lawsuits 2017 vs. 2018 (Source)

150% Increase
Estimated increase in demand letters sent 2018 vs. 2019 (Source)
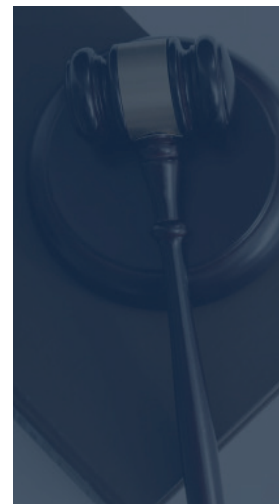
Despite the Department of Justice's move to adopt any official legal standard for the ADA, it has frequently referenced the Web Content Accessibility Guidelines (WCAG).

There has been a wave of lawsuits targeting companies whose websites do not accommodate people with disabilities, such as vision or hearing loss. These companies are being sued for not providing a website that meets the usability standards required by the ADA.

For example, a judge awarded $3.7 million in attorney's fees and costs to the plaintiffs in the case of **The National Federation of the Blind v. Target Corp.**

List of Lawsuits

The National Federation of the Blind v. Target Com., 452 F.; Supp.2d 946 (N.D.CAL.2006)
After the court-ordered settlement, Target made great strides in making accommodations to disabled individuals. On February 9th, 2010, the National Federation of the Blind (NFB), awarded the Gold Level NFB-NVA Certification to Target.com, and commended the company for its efforts in leading accessibility for blind and visually-impaired individuals. As of 2016, Target was designated a Strategic Nonvisual Access Partner of the NFB.

Domino's Pizza LLC v. Robles (2016)
Los Angeles man Guillermo Robles sued Domino's Pizza due to an inability to order pizza from the chain's website using their online website, which did not have compatibility with screen readers or voice navigation. The judges of the 9th Circuit Court initially threw out the case, but then reversed course after an appeal. Then, Domino's unsuccessfully lobbied to have the case heard by the Supreme Court in

late 2019, but were denied. The case is now going to trial, and is still ongoing.

Smith v. Hotels.com (2009)
In this lawsuit, filed in the California Superior County for Alameda County, Hotels.com and Expedia.com, two leading online travel companies, were found to be lacking in features that would allow disabled people to reserve online rooms that were suitable for their unique needs.

No damages were awarded, but the plaintiffs negotiated a settlement with Hotels.com and Expedia, in which the companies agreed to add additional features to their online travel reservation systems. In turn, this would allow people with disabilities to search for and book hotel rooms that have accommodations that they need.

Doe v. Mutual of Omaha Insurance Co., 179 F. 3d 557 (7th Circuit 1999)
In this case the court ruled that a place of accommodation includes places open to the public in both physical and electronic spaces, including websites. The court's final ruling was that insurance policies are not subject to the ADA.

Straw v. American Bars Association 2015 W.S. Dist. Lexis 16296
In this case the court ruled that a website alone was suficiently a public accommodation for the purpose of the ADA, even without the Bar Association having any physical site. Due to the lack of standing the court dismissed the complaint.

National Association of the Deaf v. Netflix, INC 869 F.Supp.2d 196 (2012)

The Court ruled that closed caption content must be available for the demand web-based video service or it is in violation of the ADA. Netflix Inc. and the National Association of the Deaf (NAD), a non-profit organization, have submitted a joint Consent Decree to a federal court in Springfield, Mass., ensuring closed captions in 100% of Netflix streaming content within two years.

National Foundation of the Blind v. Scribd, Inc. 97 F. Supp. 32 565 (D. VT. 2015)

Scribd, a digital library that operates on websites, was sued because their sites were not accessible to blind people using screen readers or Braille formatting software. The Court ruled against Scribd, deciding that even a business that provides goods and or services strictly online were still places of public accommodation.

Smith v. Hotels.com L.P., California Superior Court, (2007)

A case was brought against hotels.com for "ongoing discrimination against persons with mobility disabilities who desire to, but cannot, use hotels.com's worldwide reservation network to make reservations for hotel rooms".

In the more recent example of a lawsuit, Uber has just agreed to a $225,000 settlement lawsuit alleging discrimination against the blind. Uber announced it will be paying this money to the National Federation of the Blind over the next three years. The settlement is still pending approval from a judge.

The Department of Justice's Position

While the courts have reached a wide variety of conclusions regarding what is and what is not a "public accommodation," the Department of Justice (DOJ), who is in charge of enforcing the ADA, has taken up the position that ADA applies to the internet and web-based providers of goods and services.

The DOJ published an "Advanced Notice of Proposed Rulemaking ("ANPRM") in 2010 on Accountability of Web Information and Services of State and Local Government Entities and Public Accommodations. Even though no rules have yet been proposed, they are still aggressively enforcing ADA compliance. Typically, settlements call for the payment of the plaintiff's attorney's fees and for payment of the monitoring process. This can be expensive.

As explained above, the DOJ holds the opinion that websites must be ADA compliant, and not being so can result in costly lawsuits as more courts are giving deference to the DOJ's position. More and more companies are understanding the importance of updating their websites to be ADA compliant.

How Does a Company Comply With the ADA?

The ADA encourages self-regulation of accessibility standards and the Department of Justice is currently developing regulations to provide specific guidance to the entities covered by the ADA. Organizations are encouraged to do internal ADA compliance audits using the WCAG 2.2 level AA guidelines as a guide on how to become accessible until the

DOJ defines the regulations.

DOJ's guidance explains that the point of the ADA's requirements is to ensure accessibility to the goods offered by a public accommodation, not to change the nature or mix of the goods typically provided.

What are the WCAG?

WCAG stands for the Web Content Accessibility Guidelines.

They are the most widely recognized guidelines for web accessibility policy and are used as the standard for web accessibility legislation in most countries around the world.

The WCAG was created by the **World Wide Web Consortium**, known as the **W3C**. It is an **international community** that develops open **standards** to ensure the long-term growth of the internet.

Web accessibility was one of the earliest issues W3C addressed. Developed through the W3C, the first WCAG was published in 1999 defining how to make web content more accessible to people with disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological.

This was then revised in 2008 as **WCAG 2.0** and **updated again in 2018** as **WCAG 2.2** in the form we use today.

How does WCAG affect accessibility laws?

It's important to point out that the WCAG is not a set of laws that can be enforced. However, many governments have adopted it as the standard for their accessibility laws.

Here's a synopsis of international accessibility laws that rely on the WCAG.

United States
When businesses with websites that aren't accessible according to the ADA have been sued, courts have required those websites to reach WCAG 2.0 Level AA compliance.

European Union
In 2010, EU officials adopted WCAG 2.0 Level AA as mandatory for all official EU websites. In 2016, they expanded this requirement to all public sector online platforms to include WCAG 2.1. The EU also

adopted WCAG 2.0 as the standard for the new European Accessibility Act (EAA), which is slated to become law in 2025.

Canada

The Accessible Canada Act (ACA) was passed into law by the federal government in Ottawa in June 2019. The ACA requires a large number of public and private sector websites to become accessible according to WCAG.

Several provinces have also passed accessibility laws, including the Accessibility for Ontarians with Disabilities Act (2005), the Accessibility for Manitobans Act (2013), and the Nova Scotia Accessibility Act (2017), which all use the WCAG as the standard for compliance.

The four principles of WCAG

The full WCAG guidelines are long and complicated, with various points and requirements. However, it all comes down to four essential principles:

1. Perceivable　　2. Operable　　3. Understandable　　4. Robust

Perceivable

Information and user interface (UI) are presented in a way that users can perceive online content through their senses of sight, sound, and

touch. This can include captions for videos, text that can be modified for contrast, color, text size and spacing, font, and similar factors that make content easier to read.

Examples:

Text Alternatives

Providing text alternatives for any non-text content so that it can be changed into other forms people may need, such as large print, braille, speech, symbols or more simple language.

Time-based Media

Providing an alternative for time-based media.

- Level A compliance: Audio-only and video-only would be a prerecorded audio or video content with equivalent information.
- Level AA compliance: Providing all live audio content with captions.
- Level AAA compliance: Providing sign language interpretation for all prerecorded audio content in synchronized media.

Adaptable Content

Creating content that can be presented in different ways, such as a more simple layout, without losing information or structure. Essentially, make sure your content can be programmatically determined or available in text.

Operable

Refers to the way a user can use the site. Meaning, an operable site needs to be navigable entirely by keyboard, sight-assisted navigation, and other methods versus just relying on the movement of a mouse.

Examples:

Keyboard Accessible

Make all functionality available from through a keyboard interface, without requiring specific timings for individual keystrokes. Mouse input methods are acceptable as well, as long as the functionality can be accomplished via the keyboard.

Sufficient Time

Provide users with sufficient time to read and use content. If there is a time limit on any content, provide at least one of the following options for the users:

- The ability to turn off the time limit before encountering it
- The ability to adjust the time limit to at least ten times the length of the default setting before encountering it
- Warn the user at least 20 seconds before the time expires and provide the ability to extend the time limit by at least ten times the current limit with a simple action, such as pressing the space bar.

The exception to this is if the time limit is a required part of a real-time event and no alternative to the time limit is possible.

Seizures

Do not design content in a way that is known to cause seizures.

- Web pages should not contain anything that flashes more than three times in any one second period, or the flash is below the general flash and red flash thresholds.

Understandable

At a basic level, the information and the operation of the UI must be easily understandable by everyone. Meaning, limited use of technical terms or complex jargon and uncomplicated instructions.

Examples:

Readable

The content on the web page should be readable and understandable. The default language should be able to be programmatically determined. For Level AAA this would include a mechanism for identifying the expanded form or meaning of abbreviations.

Pronunciations

A mechanism should be available for identifying specific pronunciations of words where the meaning of the words, in context, is not clear and is ambiguous without the pronunciation. This too is a Level AAA guideline.

Predictable

Webpages should appear and operate in predictable ways. For

example, when any component receives focus, it should not initiate a change of context. Additionally, the navigation should be consistent; navigational mechanisms that are repeated on multiple website pages within a set of web pages should occur in the same relative order each time they are repeated, unless the user initiates a change.

Input Assistance

Users should be provided clear instructions to avoid and correct mistakes.

Examples of this would be:

- Labels and instructions should be provided when content requires user input.
- Input error is automatically detected, the item that is in error should be identified and described to the user in text.

Robust

Content must meet two requirements:

1. Use clean HTML and CSS code that meets industry standards.
2. Be compatible with a wide variety of user agents, including assistive tools and technologies.

Examples:

Parsing

Where content uses markup languages, the elements must have

complete start and end tags, elements are nested according to their specifications, elements do not contain duplicate attributes, and any IDs are unique, except where the specifications allow these features.

Name, Role, Value

All User Interface components should be able to be programmatically determined, such as all the names and roles. States, properties and values that can be set by the user can be programmatically set, and notifications of changes to these items should be available to user agents, including assistive technologies.

WCAG 2.2 AA Compliance Examples

Menus:

1. Users must be able to use the Tab key to navigate to the next element, and Shift+Tab to navigate to the previous element. Additionally, the focused element must be easily identifiable using a focus ring (outline).

2. Users must be able to navigate the menu bar using the left and right keyboard arrows. When reaching the end of the menu, and pressing the forward arrow key, the navigation should return back to the first item.

3. Dropdown menus must be opened using the Enter and the down-arrow keys.

4. Navigation must be possible within dropdowns using the up-and-down arrows.

5. Dropdown menus must be able to be closed using the Esc key.

Popups

1. Must be able to be closed with the Esc key.

Images:

1. All images must have an Alt attribute (alt tag. This is text that properly describes the objects in the image, and if the image contains texts (like typical banners) then the embedded text must also be present in the alt attribute.

Forms:

1. All fields must include a "LABEL" tag that is connected to the field by the "id" and the "for" attributes, or an "aria-label" attribute.

2. Required fields must include both visual cues (Asterisk (*), text, or other), and the "aria-required" attribute equals true.

3. Fields must include the "aria-invalid" attribute to inform screen-readers whether the field is currently valid or invalid. This attribute must change dynamically according to the validations. E.g. an empty required "name" field must include aria-invalid="true" to indicate that it's invalid, but change to aria-invalid="false" once the user fills it up.

4. When a form is submitted and errors are present, the keyboard focus must be taken to the first invalid field, and the user must receive an explanation (both visual and to the screen-reader) of what the error is with this field.

5. When a form is submitted successfully, a blind user with a screen-reader should be informed of that using an alert element or via other means.

Buttons:

1. Must contain text, title, or an aria-label.

2. Must be an actual "BUTTON" tag or alternatively, a "role" attribute that equals to "button" is present.

3. Buttons must include text/aria-label/title.

Links:

1. Must contain text, title, or an aria-label.

2. Must be logically ordered within the document (for example, a "read more" link must come after the title and the paragraph of a section).

3. Links must be accessible by keyboard navigation using the Tab key.

4. Links must provide a visual indicator if they are opened in a new window, and also announce that to a screen-reader using a hidden text or title.
5. Links must be noticeable on-page and look different than regular text.

Industries most impacted by web accessibility lawsuits:

eCommerce

Restaurants and Food

Automotive

Finance

Healthcare

Education

What's Next?

With the steep, continued rise of internet usage, online merchants need to be continually vigilant that their sites are easily accessible to the disabled population.

The WCAG guidelines are comprehensive and complex. While taking on the task to make your website ADA compliant with your internal resources may seem like a viable option, the best solution is to seek the services of a web development company that is experienced in ADA compliance.

Sources

W3C

ADA (American with Disabilities Act)

Web Content Accessibility Guidelines (WCAG) 2.2

About 121eCommerce

121eCommerce is a web development agency specializing in B2B and B2C ecommerce. As a Magento Certified Professional Partner and Adobe's 2020 Emerging Partner of the Year, 121eCommerce has a proven track record of creating ADA compliant websites. They've built a reputation as a go-to agency with a friendly staff and adhere to the tenants of transparency, honesty, and constant communication. With a knack for quick communication and detailed reporting, their friendly account reps and skilled developers are well-equipped to drive online growth.

Learn more at **121eCommerce.com**.

About Magento Commerce

Magento Commerce, part of Adobe Experience Cloud, is the leading eCommerce solution for merchants and brands across B2C and B2B industries and was recently named a leader in the 2019 Gartner Magic Quadrant for Digital Commerce. Magento is the #1 provider to the Internet Retailer Top 1000 and the B2B 300. Learn more at Magento.com.

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