

# Client Alert

December 2013

## **Federal Website Accessibility Requirements For Places Of Public Accommodation Expected In The Next Six Months**

More than three years after first announcing that it was considering issuing regulations applying the Americans with Disabilities Act to websites, the US Department of Justice (DOJ) appears on the verge of announcing its proposed rules for website accessibility. While the DOJ originally stated that it anticipated issuing its Title II website accessibility rules for websites operated by state and local governments by November 2013, it now expects to issue these rules by the end of the year. These proposed regulations will “expressly address the obligations of public entities to make the websites they use to provide programs, activities, or services or information to the public accessible to and usable by individuals with disabilities under the legal framework established by the ADA.”

Next, in the spring of 2014, the DOJ will announce its proposed Title III website accessibility regulations, which will govern the websites of places of public accommodation, including websites operated by retailers, banking institutions and hospitality providers. Because any differences between the website accessibility rules under Title II and Title III are expected to be minimal, places of public accommodation should pay careful attention to the Title II website rules for state and local governments when they are issued this month.

These rules will address the scope of obligations to provide website accessibility, and they will also cover the technical standards necessary to comply with the ADA. Based on prior DOJ consent decrees and settlements, places of public accommodation should anticipate that the new ADA website rules will resemble standards set forth in the Web Content Accessibility Guidelines (WCAG), which are promulgated by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium. As described by the DOJ, the “WAI has created recognized voluntary international guidelines for Web accessibility” which “detail how to make Web content accessible to individuals with disabilities.”

The fact that there are no ADA rules and regulations currently governing website accessibility, however, has not stopped aggressive plaintiffs’ lawyers from filing lawsuits or threatening litigation based on allegedly inaccessible websites. Many of these lawsuits seize on technical violations and, once filed, state-specific damages and attorney’s fees are demanded in settlements. These lawsuits gained traction based on a federal court class action lawsuit filed in California against Target Corporation, where the court held that portions of Target’s website had a “nexus” to physical stores and were covered by the ADA. Since that lawsuit settled in 2008, a number of retailers, banking institutions and hospitality providers have settled lawsuits in California and other jurisdictions and brought their websites into compliance with the voluntary WAI guidelines.

The DOJ entered the fray by requiring a convenience store and gasoline retailer chain and a hospitality hotel and resort chain in consent decrees to initiate programs that will improve accessibility to their websites, which includes website modifications to comply with version 2 of the WAI guidelines. Both of these consent decrees arose from investigations into accessibility issues at their physical facilities — gasoline station parking lots and convenience stores, and hotel rooms. Nevertheless, during the course of the investigations, the DOJ found website accessibility issues and ordered modifications. Under these consent decrees, for instance, the places of public accommodation were required to make certain changes to their websites, including some combinations of the following:

- Provide text alternatives for photographs, charts, graphics so they can be changed into usable formats, such as large print or Braille, for visually impaired users;
- Make videos accessible via text and sequencing;
- Minimize use of blinking and flashing;
- Provide documents in text-based, not image based, formats for ease of reading;
- Provide alternatives to time-based media;
- Provide a second static copy of page where auto-refresh or timed response required;
- Provide keyboard-accessible content;
- Provide a navigable site;
- Add a “Skip Navigation” link; and
- Provide screen reading software.

Despite the lack of formal ADA website accessibility requirements from the DOJ, places of public accommodation should take a proactive look at website accessibility issues and take steps to protect themselves in light of potential litigation — including possible class litigation — from private individuals, disabled advocacy groups and the DOJ itself. Given the goals to make website-based goods, services and information accessible to persons with disabilities, and to minimize litigation risks, working with experienced legal counsel and website accessibility consultants to take proactive steps both now, ahead of the DOJ’s requirements, and later, once the new requirements issue, is highly recommended.

These efforts should include (1) making sure that access to physical facilities is compliant with federal, state and local accessibility laws and codes; (2) reading the DOJ’s advanced notice of proposed rulemaking from July 2010,<sup>1</sup> and the Title II proposed notice when it is issued later this month; (3) reviewing the WAI’s accessibility guidelines and assessing website compliance; and (4) having experienced accessibility defense counsel assist with advice to remediate problems and either preempt or, alternatively, shut down website accessibility lawsuits quickly and efficiently.<sup>2</sup>

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<sup>1</sup> The July 2010 advanced notice can be viewed at this link: [http://www.ada.gov/anprm2010/web%20anprm\\_2010.htm](http://www.ada.gov/anprm2010/web%20anprm_2010.htm).

<sup>2</sup> Version 2 of the WAI’s web accessibility guidelines can be viewed at this link: <http://www.w3.org/TR/WCAG20/>.