Is Your Website ADA Compliant?
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by Dan Solin

It started with an offhand comment from a developer I retained for a new website. He asked, “Do you want the website to be ADA compliant?”

ADA is the acronym for the Americans with Disabilities Act. It was signed into law on July 26, 1990 by George H.W. Bush. Among other things, it provides that people with disabilities can purchase goods and services in the same manner as everyone else.

I was aware of the ADA, but didn’t believe it applied to smaller employers and certainly not to the websites of my clients.

I decided to investigate further. What I found surprised me.

Does your website need to be ADA compliant?
I sought input from three attorneys with extensive ADA expertise.

According to David Reischer, an employment attorney and CEO of Legaladvice.com, Title III of the ADA prohibits discrimination on the basis of disability in a “public accommodation.” The legal issue is whether your website is considered a “public accommodation.”

Reischer says the focus of the ADA was mostly on physical barriers to businesses, but many recent lawsuits allege that any private company, which would include any financial advisor websites, would also qualify as places of public accommodation. These lawsuits allege that any website with access barriers have the effect of denying a person with the right of equal access and the number of people in an advisory firm would be irrelevant to their claims.

The law on this issue is unsettled. Some courts have held “public accommodations” are limited to physical spaces. Others disagree.

Justin Kelton, a partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, believes a website may fall within the purview of the ADA if it provides goods or services in connection with a business that is a public accommodation, although there is a split of authority on this issue. That means if you have a physical office open to the public and a website, it’s more likely your website is covered by the ADA.

Kelton believes the wise approach for most businesses is to ensure compliance (although each case should be evaluated individually).

Martin Orlick is a partner at Jeffer Mangels Butler and Mitchell. He’s the author of an ADA Compliance & Defense Blog and has extensive experience defending corporations in ADA related litigation.

In a recent interview, Orlick told me financial advisors (of any size) are making a “dangerous and expensive miscalculation” if they assume their websites are not required to be ADA compliant. While potential liability may differ from state to state, the cost of defending an ADA lawsuit can run into the tens of thousands of dollars, and may even require you to pay the attorney’s fees to the prevailing party if you lose.

To delve deeper into the legal issues (or making it easier for your counsel to evaluate your risk), this white paper by Hunton Andrews Kurth, authored by Jason P. Brown and Robert T. Quackenboss, summarizes the law as of January 3, 2019.

Solutions

Some platforms (like Twenty Over Ten) build in ADA compliance and accessibility features into their frameworks, but leave it to you to ensure your content is compliant.

If you are on WordPress, some themes are ADA compliant. There are also plugins that scan your website to identify ADA compliance issues.

Orlick recommends using a developer with no less than five years’ experience in ADA compliance to determine if your website is compliant.

Third-party providers like AccessiBe claim to achieve “worldwide compliance” by simply installing a “snippet of JavaScript” that modifies your code at the browser level. Its prices start at $490 a year and it promises a 48-hour turnaround. This website used AccessiBe on its website. Click on the icon in the lower left of each page to see how the site is accessible to a disabled viewer.

Other vendors offer a similar service.

A final thought

Most advisors want to do not just what the law requires, but what’s right. In the U.S., an estimated 48.9 million people have at least one disability. Access to the internet is even more of an essential service for them than it is for the rest of the population.

Making your website ADA compliant is not just good business. It’s the right thing to do.

For more information about marketing and branding opportunities with Dan’s upcoming book Ask: How to Relate to Anyone, click here.