



## **Applying the ADA to the Internet**

These lawsuits have their roots in a 2010 administrative guidance by the United States Department of Justice. (DOJ) The DOJ enacted a clause that reads: “[The ADA will] establish requirements for making the goods, services, facilities, privileges, accommodations, or advantages offered by public accommodations via the Internet, specifically at sites on the World Wide Web (Web), accessible to individuals with disabilities.” This is with respect specifically to Title III, the provision of the ADA that regulates private businesses and nonprofits operating places of public accommodation. Traditionally, a “place of public accommodation” is a physical location, such as a school, hospital, gym, bank, or store. However, its definition can also include websites and online spaces in general.

In 2018, this DOJ policy was put into practice, and as of 2018, all e-commerce businesses are subject to ADA Online Compliance Standards. This is why there was such a large increase in ADA lawsuits related to websites in 2018 from 2017. These standards include, broadly speaking, ensuring that the website is compatible with screen reader software for people with visual disabilities, and are easily navigable for people with motor disabilities, including a spinal cord injury. Compliance with these standards is graded on a three point scale: a single “A” means the website is substandard, a “AA” score means the website meets requirements, and a score of “AAA” means the website goes above and beyond the requirements.

## **Impact and Limitations**

Of course, many website owners choose to ignore the ADA Online Compliance Standards, at their own peril. This is another reason why the number of online ADA lawsuits went up so much in 2018. These standards have made it possible for people with disabilities to

ensure that their access to online spaces is not impeded because of their disabilities, and these lawsuits have seen some success.

However, this success has not been universal. Circuit Courts of Appeals have disagreed on whether a website can be a place of public accommodation under Title III. Some Circuit Courts have ruled that a website is always a place of public accommodation, and those Circuits are where these lawsuits have found the most success. Other Circuits have ruled that a website can be a place of public accommodation, as long as there exists a connection between it and a physical location, such as a mobile app for a pizza chain. The Ninth Circuit, which includes all of Arizona and California, has adopted this view. Finally, some Circuits have ruled that a website can never be a place of public accommodation, no matter what.

It may seem as though the disabled people living in the Circuits in the latter category are out of options if a website they wish to use is inaccessible. However, the internet knows no distance. Anyone in the United States can access any American website at any time, and because of this, multiple Circuits have long-arm jurisdiction over the same company. Talk with your attorney about what venue options you have. If you can file suit in a Circuit that sees a website as a place of public accommodation, you can ensure that the website you want to visit is accessible.