

Website Law Alert - A Website's Non-Compliance with the Americans with Disabilities Act or the Copyright Act Can be Expensive

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If your website is not compliant with ADA standards, or you have posted images you do not own, you may be exposed to a lawsuit.

ADA Website Compliance



A wave of lawsuits has flooded retailers with claims that their websites do not comply with the Americans with Disabilities Act (ADA). These lawsuits reportedly hit a record high of over 10,000 cases in 2018, about 5 times more than the year before.

Many of the defendants are in the fashion and apparel industry, like Target, Marc Jacobs, and Brooks Brothers or in the restaurant, hospitality, or financial industries. A majority of these cases have alleged that features of a company's website make it difficult for visually-impaired persons to navigate the website.

Bringing cases for non-compliance is attractive for plaintiffs, not only because they can benefit the disabled, but also because the ADA statute allows plaintiffs to recoup attorneys' fees as well as damages. Although these cases usually settle for a monetary payment and an agreement to make the website more ADA compliant, they also can cause consternation and diversion of your attention.

Worldwide Web Consortium (W3C) sets standards for HTML programming, among other things. A part of the W3C is the Web Accessibility Initiative which used the same process to

develop Web Content Accessibility Guidelines (WCAG), which set standards for website compliance at three levels—A, AA, and AAA (with A being the minimum level and AA being the one most generally followed). The latest version of these Guidelines is at <https://www.w3.org/TR/WCAG21>. The Guidelines seek to assist people with a wide range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities.

The Guidelines are very technical and detailed, which makes them difficult to summarize or fully to comply with. A few of the most obvious steps you can take are:

- Make your website navigable by keyboard, not just by mouse
- Give links names so they do not just say “click here.”
- Adjust contrast ratios so words can be more easily read
- Add alternate text to social media and share icons
- Add verbal descriptions of pictures other than background images
- Avoid blinking elements that might set off an epileptic seizure

You should consult your IT department or website developer for more specific guidance and assistance.

Photograph Copyright Infringement



Hundreds of lawsuits have been filed claiming that websites are displaying copyrighted photographs without a license, which can constitute a copyright infringement. Plaintiff photographers have used web crawlers to find the photos they claim are infringements. The defendants have included media giants like CBS, Yahoo and Fox News, but also have included business corporations and even celebrities who posted images of themselves that were taken by others. The days are over when you might mistakenly believe that all pictures on the Internet are available for free use.

Under the Copyright Act, the court may “award a reasonable attorney's fee to the prevailing party as part of the costs.” Further, a plaintiff can elect to seek statutory damages of from \$750 to \$30,000 (or up to \$150,000 for willful infringement). So there is incentive for plaintiffs to bring these cases, even though most of them are settled. In contrast, the cost to obtain a license in advance can be modest.

You can avoid exposure to such claims in several ways:

- Use photographs or other images created by you or your employees
- Obtain a license from an outside creator or stock photo house where you found the image
- Some images are available for free under a Creative Commons copyright license, which is explained in our blog post at [http://www.cll.com/OnMyMindBlog/Explaining the Creative Commons copyright license](http://www.cll.com/OnMyMindBlog/Explaining%20the%20Creative%20Commons%20copyright%20license)

If you pay attention to these matters of website design and photograph posting, you will reduce the chance of becoming a defendant in one of these cases.