THE ADA BOOK

Critical Information on Web Accessibility

Kris Rivenburgh

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Introduction

After extensively researching the legal and technical aspects of web accessibility and Americans with Disability Act (ADA) website compliance, I came to the conclusion that I had to write this book as fast as I possibly could.

There is swirling confusion in the marketplace as news of accessibility lawsuits spreads and demand letters are being received; no one is sure how to proceed. What's more, the key components to both web accessibility (technical side) and ADA compliance (legal side) are known by only a relative few.

This book is a melding of both worlds so that you better understand web accessibility and ADA compliance and can thus make a more informed decision of the best direction to take.

My ultimate objective is to greatly reduce risk of legal entanglement (receiving demand letter/getting sued) to any reader of The ADA Book.

Of course, one benefit that will come of the mass lawsuits we're seeing now is that

people with disabilities will be able to better access the web. Having a more accessible web is a tremendous additional effect of bringing your website into compliance, but as the landscape stands, there is a fundamentally unfair and unnecessary transfer of wealth taking place.

Opportunistic plaintiff's law firms are being unjustly enriched by threatening various entities with legal action. And these entities –small businesses, companies, institutions, etc. – are in a position where it's more efficient to pay out money than it is to fight a legal battle.

Again, my hope with this book is that you never get to that point.

Having said that, here is my most important recommendation: Web accessibility requires immediate attention and action. Make it a priority, not a project to be handled next quarter or next month.

I can't emphasize this enough.

Businesses, companies, and organizations large and small have already been hit with demand letters/lawsuits and if you haven't already, it's probably not because you're compliant, it's because you're lucky.

Here are some of the big guys who have either been threatened with a lawsuit or who have been actually sued: Apple, Nike, Netflix, Amazon, Hulu, Pizza Hut, NBA, eHarmony, Rolex, Winn-Dixie, Pandora, Hershey, Burger King… and the list goes on.

And just because you're not a major corporation doesn't mean you're safe. Ice cream shops, local credit unions, and non-profits have all been hit up, too.

Plaintiff's law firms are sending demand letters as fast as they physically can, and more and more law firms are joining in on the free-for-all every week.

In the pages that follow, I'll quickly cover the law as it stands now so you can get some context and then I'll immediately lay out how to best reduce your risk of being sued.

The reason I don't delve too far into the technicalities of the law is because it's mostly a moot point: You need to make your website accessible.

If you think the current legal situation is unfair, no one agrees with you more than myself and other defense attorneys. Believe me, we are all well aware of how asinine it is to be in violation of regulations that don't exist.

Nevertheless, the last thing you want to do is get involved in a legal debate over due process and the merits of your case, because no matter what the outcome is you don't win.

If you win your case, you still lose time, money, and mental energy. And if you lose, you lose all three plus damages.

It's not worth it.

Of course, we'd rather not whip out our checkbook and settle with a plaintiff either.

As I stated above, the goal is to avoid any type of legal entanglement. In the pages that follow, I will lay out the very best measures in ADA website compliance demand letter/lawsuit risk reduction.

Notice I said risk *reduction*.

We can only reduce risk because we can't stop people from suing us. Just because you've been diligent and cautious doesn't mean a wayward lawyer will decide against threatening your business.

They may have a frivolous lawsuit, but they can still threaten to file or go ahead and file that lawsuit. We can't stop that.

Also, here's a little-known fact: It's really hard to make your website 100% accessible.

If you're just running a simple 5-page site or blog, yes, it's easier to accomplish. However, for larger, more media-intensive or dynamic websites, it's a Herculean task. In fact, I know of two companies that primarily offer website accessibility solutions and even their websites do not technically meet the guidelines they're helping customers meet.

This is not an indictment on either provider. I'm telling you this so you know just how difficult it is to make a website accessible.

This is the situation we find ourselves in.

If this all sounds gloomy to you, here are three bits of good news:

First, there is an endless supply of websites out there that are flagrantly inaccessible. If you're notably more compliant than the next guy, plaintiff's law firms will probably leave you alone.

Think about it this way: If you're a plaintiff's attorney, why pick on someone who's got a seemingly accessible website when you can go after someone who's got a completely inaccessible website?

It's more efficient to go after the easy wins.

Second, in this book I will tell you exactly what to focus on first to give you the cloak of accessibility while you work on getting everything else fine-tuned. This cloak can give you the edge you need to stave off legal letters in the crucial weeks that follow.

Third, I'm going to tell you how to do it in an efficient and cost-effective manner.

Another burst of good news:

There is no one more qualified to write this book in the world than me.

I'm an attorney. I'm a professional online marketer. I have experience in web development. I've studied the Web Content Accessibility Guidelines (WCAG) ad nauseum. I've invested 100+ hours into researching the law, reading settlements, reading demand letters, and reading what courts are looking for.

In sum, you're in the right place. Now, let's put you in the best position possible amidst this chaotic legal landscape.

What is accessibility about?

The reason we're updating websites to make them more accessible is because a significant chunk of the population has one or more disabilities, including visual, hearing, cognitive, motor skills, and other impairments.

This changes the way(s) in which they can access the web.

For example, if you are blind and cannot see what's on the screen, you need to access the content on the screen via a screen reader.

As website owners, we need to make access through a screen reader possible by coding our websites and uploading content in such a way that screen readers (and any other assistive technology) can convey the meaning of the content.

If we don't code our websites or upload content in an accessible manner, our digital offerings become inaccessible.

In the eyes of the law, inaccessibility is tantamount to discrimination against persons with disabilities.

We can certainly understand this concept. For decades, physical structures across the US have had to meet exact specifications under the ADA.

However, it is the manner in which ADA website compliance has suddenly been presumed in so many courts, DESPITE having no clear law or regulations, that is unfair.

Let's talk more about the law in the next section.

What is the website accessibility law in the United States?

When examining whether private websites must be accessible, the most important law is the Americans with Disabilities Act of 1990.

Title II of the ADA prohibits discrimination against individuals with disabilities from state and local governments.

Title III of the ADA prohibits discrimination against individuals with disabilities from "places of public accommodations" or private businesses that are open to the public, such as restaurants, bars, hotels, grocery stores, hardware stores, clothing stores, banks, movie theaters, museums, libraries, gyms, zoos, schools, and doctor's offices. To fall under Title III, a business of public accommodation needs to affect interstate commerce (i.e., affect more than just commerce within one state).

Essentially, neither the government nor private companies with places of public accommodation that serve the general public can discriminate against people on the basis of disability.

The problem is no subsequent statute ever expounded upon or amended Title III of the ADA so here's where the legal controversy comes into play for private businesses: Do places of public accommodations include websites?

At the time the ADA was written (1990), the Internet was not a thing; the ADA only contemplated actual physical buildings, facilities, and store fronts and thus only required accessibility for physical structures open to the public.

You can see this by the examples given of places of public accommodation in Title III: restaurants, hardware stores, zoos… they're talking about actual, physical places.

Here's an example: Under the ADA, a brick and mortar retail store like Sears needed to have wheelchair accessible ramps that led to its doors which were wide enough for said wheelchairs to enter the store.

That's fair. Sounds like the ADA we all know, right?

But websites?

Not only were websites not mentioned in the ADA, they weren't even a consideration.

Enter the Department of Justice (DOJ). The DOJ is an administrative agency that enforces federal statutes and can create rules to help interpret statutes. One of the statutes they're tasked with dealing with is Title III of the ADA.

The DOJ originally took an inquisitive, relaxed stance with website accessibility. Then, they went buck wild.

First, the DOJ published an [Advance Notice of Proposed Rulemaking](#) (ANPR) on website accessibility. An ANPR is a preliminary notice, published in the Federal Register, announcing that an agency is considering a regulatory action.

In this ANRP, they asked the important questions you might ask when considering regulation on website accessibility, like what standard we should use to judge whether a website is accessible.

Next – and here's the buck wild part – they brought action against companies for not having accessible websites even though they never actually published any regulations!

Logically, you would think that the proper order would be to publish rules first and then you enforce them – not the other way around.

But it appears as if the DOJ decided Title III as it stands was enough and started bringing down the hammer against a slew of companies.

The following settlement agreements/consent decrees all center on improving the accessibility of a website:

[Peapod](#)

[H&R Block](#)

[edX](#)

[Miami University](#)

The list goes on: Hilton Worldwide; Louisiana Tech University; Quik Trip; The Museum of Crime & Punishment; McLennan County, Texas; and many other entities have all entered into settlements with the DOJ that included improving the accessibility of their websites as a stipulation.

Not only this, the DOJ has even intervened in private actions as well, filing Statements of Interest against defendants in various lawsuits. A Statement of Interest is basically the DOJ putting its opinion of the law, as it pertains to a lawsuit, on record with the court. It's a very aggressive move as courts typically defer to the DOJ's expertise (since it is the DOJ's domain) and often view the DOJ in an advisory capacity.

The DOJ has used, without exception, the WCAG 2.0 Level AA as the standard for what makes a website accessible. More on WCAG in the next section.

On what grounds was the DOJ bringing all these enforcement actions?

Well, first, as mentioned above, there's Title III of the ADA that prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, etc., of any place of public accommodation.

Another relevant section of Title III is this: public accommodations must take necessary steps to ensure individuals with disabilities are not excluded, denied services, segregated, or otherwise treated differently because of the absence of **auxiliary aids** and services, such as accessible **electronic information**.

The auxiliary aids and accessible electronic information parts have been construed to include websites, though, again, websites were not on the ADA drafters' minds when they wrote that.

Third, the DOJ is authorized to bring a civil action if the Attorney General has reasonable cause to believe that any persons with a disability are being discriminated against.

The DOJ blazed a trail in the accessibility arena and now state and federal lawsuits over website accessibility are red hot. Plaintiff's law firms have realized there is gold in web accessibility and are sending letters and filing lawsuits as fast as they possibly can.

What happened is that plaintiff's firms saw the DOJ taking action – along with a few other private settlements – and started dipping their toes in the water with success, and then, once they got a taste of victory, dove in head first, taking advantage of the ambiguity in the law.

Also, I think a measure of plaintiff success has come from the optics of the situation. Do any corporations really want to fight being accessible to the disabled? Do any courts want to look like they're ruling in favor of discriminating against persons with disabilities?

And with that, we have a tidal wave of momentum in favor of requiring website accessibility despite no clear law or legal standard in place.

It really and truly is a gold rush for plaintiff's firms. According to tracking by two prominent defense law firms, [Seyfarth Shaw](#) and [Baker Donelson](#), the number of ADA website accommodation complaints has grown exponentially since 2013. There is no plateau in sight; everyone is projecting multiple thousands of lawsuits in 2019 and even more in 2020.

And keep in mind, that's just the lawsuits. There are multiples more cases being settled after demand letters go out.

The bulk of website accessibility stems from Title III of the ADA. But that's not to say there aren't other rules and regulations in play.

Let's go over the big ones.

In 1998, Congress amended Section 508 of the Rehabilitation Act of 1973 to require Federal electronic and information technology (websites) to be accessible to people with disabilities, including employees and members of the public.

So, if you're an agency or division of the federal government, your website must be accessible. Case closed as far as federal government sites.

Section 508 also requires that technology sold to federal agencies be compliant. And Section 504 of the Rehabilitation Act includes that recipients of federal funding have accessible websites.

So if you're a company that deals with the federal government, there's a strong chance the Rehabilitation Act requires your website to be accessible as well.

Also, many states have anti-discrimination laws that require web accessibility of state and local governments and private companies.

There are also statutes that compel website accessibility for specific industries or circumstances (e.g., the Air Carrier Access Act (ACAA), the 21st Century Communications and Video Accessibility Act (CVAA, etc.).

We can continue with various smaller statutes but for the sake of getting to the important point, let's stay with Title III of the ADA because that's by far the most relevant law in play.

If you'll remember from the previous page, I wrote, "On what grounds *was* the DOJ bringing all these enforcement actions?"

I wrote "*was*" because the DOJ has gotten out of the website accessibility business.

For years, it was largely expected that the DOJ would finally publish formal website accessibility regulations but, with the change in administration from Obama to Trump, the DOJ has [officially withdrawn](#) from publishing regulations on "Accessibility of Web Information".

And with that, website accessibility is in the hands of the courts, and court rulings on motions to dismiss are overwhelmingly coming down in favor of plaintiffs, forcing defendants to quickly settle.

The two most popular motions to dismiss are 1) on due process grounds, and 2) on primary jurisdiction grounds.

The due process argument basically states there are no regulations that specify places of public accommodation must have an accessible website and, further, there are no regulations that outline how to make a website accessible, so therefore it is a violation of due process to hold an entity liable for violating laws that don't exist.

The primary jurisdiction argument states that since website accessibility cases require specialized agency expertise from the

DOJ, courts should defer to the DOJ and dismiss the case since the DOJ has not produced any regulations yet.

The due process argument has only worked once. The primary jurisdiction argument has not worked at all and is especially unlikely to work going forward now that the DOJ has withdrawn from website accessibility rulemaking.

I'll highlight the ways in which defendants have experienced success later when I discuss best practices for lawsuit risk reduction.

The only federal case that has actually gone to trial is Gil vs. Winn-Dixie. As you may have guessed, the plaintiff won. Winn-Dixie was ordered to make their website accessible under WCAG 2.0 AA standards, undergo annual website accessibility training for employees, adopt a website accessibility policy, and pay over $105,000 to the plaintiff.

In late 2018, another case, Gomez vs. General Nutrition Corporation (GNC) marked the second judgment to be decided on the merits. Again, the defendant lost, but this time on summary judgment with the judge determining that the website was inaccessible.

This is as far as I'm going to go into the legal landscape. There are many more details I could go into, but instead of going into lecture-mode, let's get practical and try to keep you out of harm's way. We'll start by learning more about the Web Content Accessibility Guidelines.

What is WCAG 2.0?

The WCAG are recommendations for making web content more accessible to people with disabilities. These guidelines are created by the World Wide Web Consortium (W3C). The W3C is a non-profit, non-governmental international community that works together to develop web standards.

Essentially, there is a group of people who are genuinely trying to make the web better, and they create standards for coders and developers to use when making websites and applications. One of their initiatives is to make the web more accessible for people with disabilities, hence WCAG.

WCAG 2.0 is a version of referenceable technical standards. Another version, WCAG 2.1, was recently published on June 5, 2018.

If that 2.1 update just threw you for a loop and you slapped your forehead in disbelief, definitely keep reading; you'll feel better after finishing this book.

For every guideline in WCAG, there are testable success criteria which fall under three conformance levels: A, AA, and AAA.

Unless you have a very special set of circumstances, all you have to do to become ADA compliant/accessible is meet success criteria AA.

A is not enough.

AA means you are doing great and includes all of A.

And again, you very likely don't have to meet AAA. However, if you meet AA, odds are you'll probably meet some of AAA.

Before we continue with going over how to meet WCAG 2.0 AA, there's something important you need to know: WCAG is not the law, at least not yet.

Yes, it is something that has become the de facto standard in the law, with the DOJ and all sorts of state and federal courts referencing it time and time again.

However, meeting every last little nuance and exception of WCAG 2.0 is not something I would toss and turn at night over; we're not in a situation where you banish your web developer to a dungeon and force them to memorize every single success criterion before emerging from the darkness.

Just for a moment, mentally step back from all of the accessibility details swirling through your head for a moment and let's think holistically.

Here's what I want you to remember: Your website can be ADA compliant without meeting every last guideline in WCAG. The ADA requires that people with disabilities are able to fully and equally enjoy the various goods, services, facilities, and/or accommodations of your website.

Full and equal enjoyment is what this is all about – that's the law: Can a person with a disability access your content and digital offerings to the extent (not the manner) that a person without disabilities can?

WCAG is a guide, a reference; it's something that helps get us to the full and equal enjoyment. It isn't the law but it is something that the law looks to. The following illustrates my point:

In June 2018, Congress wrote to the DOJ, pleading with them to provide some clarity amidst this frenzied web accessibility landscape. Assistant Attorney General Stephen E. Body wrote back with a [very revealing letter](#). Here is one paragraph that was particularly telling:

 "Additionally, the Department has consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute's requirements. Absent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication. Accordingly, noncompliance
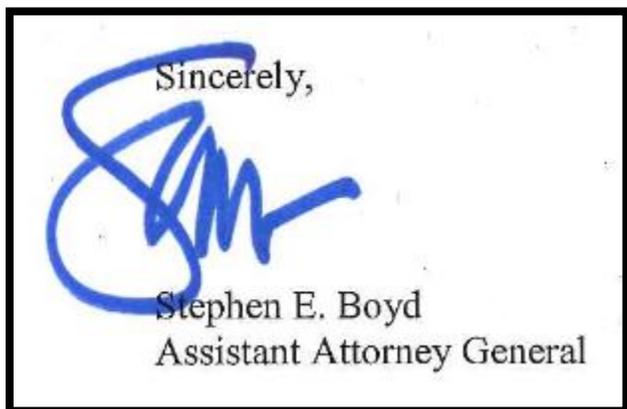
with a voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA."

To translate, in the first sentence, Boyd's saying that just because the DOJ hasn't come out with a specific regulation doesn't mean you can just not comply with the ADA. After that, Boyd is basically saying that businesses have flexibility in how they make their website accessible, and that noncompliance with WCAG 2.0 doesn't necessarily mean you have an inaccessible website.

Here's an example of where I believe WCAG 2.0 is unreasonable: One of the requirements is that any live presentations contain captions. Captions are not just subtitles of the dialogue but also include notations such as who speakers are and any other noteworthy audio.

So imagine trying to put on a live stream presentation that provides real-time captions.

This is really difficult to do! How many small businesses have the resources/ability to even pull this off? Do captions make the stream more accessible? Sure, but they also make it extremely difficult and much more expensive to broadcast, thus leading to significantly fewer live presentations on the web.

What's my point with all of this?

To give you the proper perspective, ideally, yes, our websites would meet every single success criterion under WCAG 2.0 AA.

But that's easier said than done, so don't get stuck on a difficult, small WCAG criterion your developer is having trouble with. Instead, focus on the big problem areas that are essential for full and equal access and work down from there because, remember, accessibility is the law, not WCAG.

As for optional things like in the live presentations example, if you can't provide captions, don't host the presentations.

To recap, WCAG 2.0 AA is not currently the law but it is clearly the de facto standard courts use to determine whether your website is accessible. Ideally, we want to perfectly meet every last success criterion under WCAG 2.0 AA, but practically,

sometimes this is cumbersome. Make sure that you focus on the success criteria that represent common obstacles to accessibility (and are common among accessibility lawsuits) first, as all success criteria are not equal in importance, and, again, WCAG isn't the law, accessibility is.

This will further reduce your risk of lawsuit as plaintiff's attorneys typically are not attacking on the more remote success criteria; they're usually looking for blatant and obvious inaccessibility.

By far, the two biggest problems that repeatedly surface in lawsuits are

- missing alt text
- no or poor closed captioning on videos

I'll cover how to address accessibility in detail below.

The WCAG Quick List

What actually are the guidelines in WCAG?

Below you will find a condensed and summarized checklist of the full WCAG 2.0 AA success criteria found here (remember Level AA includes Level A).

Think of this list as the Cliff's Notes version of WCAG 2.0 – it won't get you an A on the test but you'll get a solid B. Plus, you can come across as knowledgeable at cocktail parties.

The list below is a way of easing you into the WCAG waters so you have a better feel for what you need to do. At the end of the book, I'll provide a more detailed outline that includes a write-up of every last success criterion.

Here's the quick list:

Provide alternatives

· Alt Text: Add alt text to all meaningful images

· Add closed captioning to all videos with sound

· Add a text transcript beneath all video-only and audio-only files.

· Avoid images of text

No Automatic Content

· No Pop-Ups: Remove any distractors that activate on your website without being prompted by the user

· Static Website Forms: Forms must be fully controllable by the user.

Keyboard Accessible

· Your website must be fully accessible without a mouse, by using the arrow or tab buttons (no users should get trapped on an element where they can't tab backwards)

Intuitive Website

· Language and Title Tags: Set a language for your website and provide clear titles for each page.

· Skip to Content: Users must be able to skip your heading and navigation menu and get right to the content.

· Consistent Navigation and Flow: Your overall website and each page needs to be predictable and logical (e.g. Facebook has different types of pages but each page type has a consistent and predictable structure both within its category and the overall website scheme of Facebook).

· Descriptive Links and Headers: Word your headers in such a way that makes it obvious what the information following the headers is about. Also, craft your anchor text/text surrounding your links so that it makes the link destination clear.

· Labeled Elements: Put a label on each important element of your website so users know what follows.

· Multiple Ways to Access Content: Provide multiple ways to navigate through your website (e.g. search bar, site map, related pages section, navigation menus, footer links, etc.)

· Clear Forms: Make forms simple and easy to fill out.

· Clean Code: Your website must be coded properly and free of errors (e.g. none of your links send users to 404 error pages)

Font Thresholds

· Color Ratio: All font should sharply contrast from its background color at a 4.5:1 minimum threshold (if you're using soft pastels for your regular font and links, you may not meet this threshold).

· Scalable: Text should be able to be resized up to 200% without any loss of functionality (I recommend starting with a larger font base of 14-16 pt).

6. Only Necessary Time Limits

· There should be no time constraints on website access unless absolutely necessary.

Even a condensed version of WCAG 2.0 can seem daunting, especially as you imagine how to apply every item to your website. An understandable desire is to want to throw this accessibility project in a folder and hope it goes away somehow.

But that's the wrong route and here's a very compelling reason why: Whether you receive a demand letter or not, you're going to have to do this anyway so you may as well become accessible now without all of the extra legal costs.

Keep in mind, the above checklist is a summarized skeleton outline of WCAG 2.0 AA. I've included a more detailed and expansive WCAG 2.0 AA outline at the end of this book.

Before we get to more WCAG specifics, let's go over a practical, step-by-step blueprint for reducing your risk of having to deal with legal documents.

The Risk Reduction Blueprint

The following step-by-step blueprint is what I generally recommend to reduce legal exposure. I say generally because this is NOT a substitute for hiring an attorney or accessibility consultant as everyone's situation is unique. Moreover, this blueprint is not a one-size-fits-all – you may need to take a different chronological order; Again, everyone's situation is unique.

Here's an example of a unique situation that would require a customized accessibility blueprint:

Let's say you run a survey website that pays people for answering surveys. In this case, you need to make your forms accessible immediately because filling out forms is how people primarily interact with and access the digital offerings of your website.

Here are the two critical questions I examine first when evaluating a website and deciding what to fix first:

1) Where does the website stand on the major accessibility elements?
2) What is the primary offering/function of the website; what are people coming to the website to do?

Addressing these two questions and taking action on them is risk reduction at its finest: you're crossing off 1) the two biggest red flags plaintiff's lawyers are looking for and 2) your primary means of exposure.

Speaking to primary exposure, think of it this way: It's not overly tempting to sue someone for not meeting a WCAG success criterion for a tiny, inconsequential element of their website. However, what lights up a plaintiff's lawyer's eyes is seeing something that majorly frustrates a user's ability to engage and access with one of the website's main purposes.

For example, a plaintiff's lawyer might scan and find that the text/background color in footer on your archived blog post pages doesn't actually meet the minimum 4.5:1 contrast ratio in WCAG. Eh, that's not overly exciting.

On the other hand, if a car dealership website doesn't provide alt text for its photos of cars, that's a clear-cut victory. Browsing cars is a big reason why people go to car dealership websites and if a disabled user can't browse, then you've got yourself a classic case of an inaccessible website.

Of course, demand letters are sent over minor non-conformance items too but usually you'll see this bundled in with more blatant inaccessible elements of a website to bolster the claim and make settling seem that much more appealing to the business owner.

With that backdrop, let's dive into the blueprint.

Step #1

Make your homepage accessible.

What's happening now is many plaintiff's attorneys are simply browsing the Internet, looking for websites that are missing basic accessibility. This trend has been dubbed "surf-by lawsuits".

And just where do you think these attorneys are looking first and foremost?

Your homepage!

But there's also this: the vast majority of your traffic probably also visits your homepage.

The point being is that you have the most exposure at the homepage level so you should make it accessible as fast as possible. The very first thing you should do is update all of the meaningful images on your homepage to have descriptive alt text.

Meaningful images are those that are intended convey meaning to users of your website. Non-meaningful images are typically decorative images like an image of a dark bar used to separate your navigation bar from your main content area.

Step #2

Make your next top five trafficked pages accessible.

This is the same line of thinking as Step #1: Reduce the number of people that are exposed to inaccessible pages of your website by making the pages that people see accessible or, at least, more accessible.

You can only become accessible so fast so I highly recommend prioritizing the pages that receive the most attention.

Step #3

Work on alt text and closed captioning first.

Alt text is the text value assigned to an image's alt tag in HTML code. It allows people who cannot see an image to know what it is. Alt text is for people who are visually impaired.

Closed captioning (CC) is the text that appears on the bottom of a video that conveys both the dialogue and other information inside the video (such as doors slamming, laughter, background music, etc.). Closed captioning is typically for those who are hearing impaired.

Here's a stroke of luck for you: These are two of the easiest things (on the technical difficulty scale) to make a website accessible and yet they are also the most important.

Plaintiff's attorneys love when websites have missing alt text because it's super easy to spot and it instantly makes an image inaccessible – there's no dispute to this.

Same with closed captioning. All you have to do is click on a video to know if it has closed captioning.

Based on my research, missing or insufficient alt text on images and missing or insufficient closed captioning on video are the two most frequently cited obstacles to content accessibility. Again, these are homeruns for plaintiffs because:

1) They're easy to spot.
2) They make a website instantly inaccessible.
3) There is no wiggle room if they're missing. You either have alt text or you don't. You either have closed captioning or you don't.

Images with insufficient alt text or videos with closed captioning are enough by themselves for plaintiff's lawyers to send a demand letter.

For example, if your image is critical to the surrounding content's meaning and the alt text value is only a single word like "man", that doesn't come close to capturing the meaning and will probably give a heavy enough nudge to a lawyer who's looking for a reason to send a letter.

Similarly, if your closed captioning is incoherent, difficult to follow, full of misspellings that distort the meaning, etc., your video could be deemed inaccessible despite technically having closed captioning.

Of course, after these two elements are caught, it opens the floodgates to other inaccessibility bullet points. Plaintiff's lawyers will absolutely pour on as many other accessibility problems as possible to hammer home their point (that your website is inaccessible and therefore in violation of The ADA) and enhance their fees, damages, and final settlement.

Thus, the first thing you should do is update the alt text to all of your images on your homepage. Next, update all of your videos on your homepage to include closed captioning.

After that, proceed to update alt text for all of your meaningful images on your next five most trafficked pages and then update the videos for those pages.

As I alluded to a moment ago, another very important part of this is to make sure your alt text and closed captions are rock solid.

Just putting something, anything as your alt text won't save you if there's any type of scrutiny; With alt text, you need to genuinely convey the meaning of images. Usually this will take 6-18 words. On the same token, I don't recommend writing too many words because this can be overkill and frustrate a user's experience.

I think 30 words is a good cutoff point but there's no formula I can give you of how many words to use.

Here's a good way to think about what to put as alt text: How can I concisely and fully describe what this image conveys?

Your alt text descriptions should be sufficiently descriptive so that someone who is hearing only the text can easily gather what the image conveys. Sometimes this requires only a few words and other times a handful of words will be needed.

You need to put the same level of effort into closed captions.

Content accessibility isn't about simply checking off boxes, it's about genuinely, and in good faith, conveying the meaning of different types of media.

With closed captioning, this means:

1) conveying most of the sounds - especially the important ones - in a video
2) correcting any incorrect transcriptions (many times foreign transcribers or automated software create the subtitles used for closed captions and do not accurately portray what is happening)
3) making sure most of the words are spelled correctly and any misspellings are immaterial and do not confuse those following closed captions

Do closed captions and alt text need to be 100% perfect to be accessible?

No, but they do need to fairly accurately convey the meaning of the content.

Step #4

Remove inaccessible media/pages.

When one company owner heard about the commotion surrounding ADA website compliance lawsuits, he told his web team just to take his website down.

That's actually a great strategy depending on how important your website is for business.

I'm serious.

You can't get sued for an inaccessible website if you don't have a website.

There are a lot of small businesses like contractors and consultants who have a website up simply because it's good to have a website. I actually talked to an architect

recently who fell under this category; most of her business came from network referrals and the website just existed as her web presence.

If you're pondering this option, I will warn you: You probably will not be able to return to your current SEO/standing in Google if you go dark for an extended period of time and then pop back on the scene.

But, the sentiment here paves way to the fourth step in my blueprint: one inviting option is to remove your inaccessible media (images, video, audio, pdfs, other documents, etc.) rather than trying to remediate.

If you don't have time to deal with closed captioning, transcripts, alt text, etc. right now, consider removing the media until you do.

You can't get sued for inaccessible content if you don't have content.

I have personally taken a combination of these routes: I have taken two websites completely offline. I have bulk deleted images from two other websites because I didn't have time to add alt text to all of them. And I have majorly simplified a few others by deleting pages, widgets, forms, and stripping content.

In 2017, [UC Berkeley removed over 20,000 videos](#) from its YouTube and iTunes channels after the DOJ opened an investigation against them because some of their videos did not have closed captioning.

Simplify accessibility, if possible.

If you have an entire page that is an accessibility nightmare, again, you might want to just take it offline until you can deal with it.

Similarly, if you have a large amount of media sitting online (e.g. a library of how to videos on YouTube), you may want to unpublish and keep the media as private drafts until you've addressed its accessibility. Again, this will almost certainly negatively affect where your media shows in search results (e.g. Google, YouTube, iTunes, etc.).

If any media is particularly beneficial to you – say a YouTube video is bringing in leads to your business – add closed captioning to it as soon as possible so you can retain those favorable returns.

There's no general rule with when to go offline vs. stay online; you've got to weigh the risk vs. reward.

Right now I think most YouTube videos channels are safe. UC Berkeley represents an extreme example because of its notoriety and vast video vault. That said, if you run operate a popular YouTube channel, I do recommend you move swiftly when it comes to uploading smooth closed captions.

Step #5

Make your privacy policy and disclaimer pages accessible.

I know, I know, nobody goes to these pages but here's why this is important: People must have the ability to know their rights and what's going on when they access your website.

Besides your privacy page, think of your terms of service, affiliate disclaimer page, and any other pages with legal implications on your website.

If you're capturing a visitor's data, possibly generating a commission when they click on certain links, etc., then they need to have the ability to know about it.

Granted, most people breeze right over disclaimer type pages but this would be just the type of thing a plaintiff's lawyer would look for as they could claim that you have not disclosed pertinent information to their client.

Simply, if you have an inaccessible privacy policy page, then a person with a disability might not be able to know what it says.

The good news is these pages should be easy to fix as they typically consist of text only.

If there is any inaccessible media, fix it or remove it. Further, ensure that the heading structure on your legal pages flows in a correct hierarchical manner. You'll also want to check on language tags, title tags, and descriptive link text for these pages.

There are other items to check on (see the WCAG list below) but the items named above would be the areas that I would look to first in addressing disclaimer type pages.

Step #6

Create an accessibility notice on your homepage.

One way to deter legitimate complaints is by having an accessibility notice on your homepage. An accessibility notice offers support/help to anyone that is having trouble accessing your site.

I recommend offering both phone and email support. The actual support should be genuinely helpful in providing someone with access to the full benefits and offerings of the website.

For example, let's say you own an ecommerce site that sells furniture directly through the website. Your support must be able to assist someone with making an actual purchase off the website.

As a rule of thumb, every website function that someone without a disability can do, a person with a disability should be able to do via support.

I highly recommend that you have a support rep who's aware of various disabilities and how they affect accessibility, familiar with how the popular screen readers (JAWS, NVDA, and VoiceOver) work, and how to help a person with a

disability in a knowledgeable, respectful way. Of course, someone who's untrained but genuinely trying to help is much better than nothing but the best-case scenario is trained support.

If someone calls for accessibility support, they should be greeted with a live person (no automation) who will be ideally available 24/7 since your website is always online. However, if you can only provide support during business hours, it's better to offer live support during that window than none at all.

Another strong recommendation: Make this accessibility support phone line exclusively for accessibility help and not other general inquiries.

To truly fulfill this aspect of becoming more accessible (and thus reduce risk of a lawsuit), it needs to be apparent and obvious that this line exists to help those with disabilities access your website and is not a general customer service line.

Here is a generic accessibility notice example:

Accessibility Notice: We are continuously working to improve our website's performance and accessibility for all of our users, including people with disabilities. If you have a disability and have any difficulty accessing our website, please contact us by phone or email and we will make every effort to ensure you have full access to all of our digital offerings. You can call us at 1-800-555-5555 or email us at access@companywebsite.com.

The footer of your website is usually a good placement for an accessibility notice.

Very important note: An accessibility notice is not a substitute for an accessible website. This support notice is a risk mitigation measure, not a cure-all; it doesn't stop accessibility demand letters/lawsuits. However, it can prevent legitimate users from frustration and potentially pursuing legal options, it gives you a very small chance (but still a chance) to win in on summary judgment or motion to dismiss, and it looks favorably upon you in settlements.

To take accessible support up a notch, add accessible live chat to the mix.

Step #7

Check off easy WCAG 2.0 Wins.

These bullet points are usually easy to remedy or already taken care of with most websites:

- language and descriptive title tags
- consistent navigation
- no pop-ups/distractors
- no error pages
- clean code
- no time constraints

Depending on your website theme/design and elements you may even have more wins to pile up like:

- multiple ways to access content
- color ratio
- scalable text

If you can check off all of these WCAG success criterion, along with providing all the appropriate alternative means of accessing media, you're doing very well, well enough to create an accessibility policy page. More on this in Step #9.

Step #8

Hire a developer for specific fixes.

If any of the hopefully easy wins in Step #9 need brushing up (or you just need reassurance), have a competent developer specifically address each.

Also, pile these items on their plate:

- make all forms clear and easy to use (more detail in the WCAG expanded outline at the end)
- add a skip navigation or skip to content button to your website
- label all important elements on your website
- make your website keyboard accessible

Freelancer.com and Upwork.com are good places to look for a developer.

If you can afford to hire a developer or development agency experienced in coding for website accessibility, of course this is preferable. If they're good, they'll know exactly what to do and how to code it seamlessly into your website.

How much will this cost?

It depends on who you hire, how much work you need done, and how complex your website is.

For an agency, the starting price will be $5,000 for simpler websites. A more complex site can easily cost $20,000+.

If you're operating a smaller business, you can make the process more affordable by investing time and overseeing the project yourself.

You can start the project by posting to freelance sites like Freelancer and Upwork and itemizing exactly what you need. If you post your project as an all-encompassing accessibility project, you'll pay more than if you specify with clear and detailed instructions exactly what you need.

One important factor in contracting accessibility out is the sheer amount of manual work that needs to be put in. If you have hundreds or even thousands of pages on your site with media (images, video, audio, etc.), it's going to cost a lot to add alt text and closed captions and/or transcripts to all of that media.

Also, everything is going to need to be checked to ensure that 1) the alt text is appropriately descriptive, 2) the closed captions are smooth (video is transcribed properly, background sounds are accounted for, etc.), 3) audio alternatives capture everything, and 4) text transcripts are sufficient.

This is an intensive resource expenditure. If you have a few employees who can work on this in-house, it might work out for you to be cheaper and/or more efficient.

Of course, this is indeed a critical project. If you have a straightforward, simple website, it won't be a resource hog. The more complex/larger your website, the more resources it will take to reach a point where you can feel momentary relief.

I say reach a point of relief because we're not at a point where we can do A-B-C, X-Y-Z, and 1-2-3 and dust off our hands and call it a day while we peacefully ride our wagon into the sunset.

The law/requirements are uncertain. The attacks will get more creative (check out this Miami Herald article where a plaintiff's law firm is suing hotels for their website not describing the physical accessibility of the hotel itself). Also, technology (screen readers, browsers, apps, etc.) and various technological standards (WCAG 2.1, HTML5, etc.) continue to evolve.

One attorney in this field actually recommends hiring a developer through legal counsel. The reasons being that 1) any and all work done will be protected under attorney-client privilege and work-product doctrine (to try and prevent opposing counsel from discovering when and how your website was inaccessible) and 2) an attorney can better advise a developer on how to meet the accepted legal requirements.

For large companies, especially corporations, I'd suggest having your legal department weigh-in on the pros and cons.

For smaller companies, I don't think the reward matches the cost. Is it nice to have this level of legal protection? There's no maybe about it. Is this how you want to allocate another $7,500 - $25,000 (the cost is going to vary) on web accessibility for the associated incremental protection? Maybe not given your budget constraints.

I dislike the everything-through-counsel route because it makes website accessibility much more cumbersome than it already is.

Many lawyers do not comprehend all of the dynamics in play (that vary across industry) when it comes to maintaining websites so this option might seem appealing to them because they do not understand how much collaboration goes on or even just how many considerations must be taken into account when changing content or design.

For example, here are some website basics are almost universally cared about (or should be): search engine optimization (SEO), conversion rate optimization (CRO), design, copywriting, coding, user experience (UX), etc.

SEO affects your rank in Google.

CRO affects how well traffic converts to whatever your objective is.

Design affects what your website looks like.

Copywriting affects how your content (for sales) is written.

Coding affects how your website looks and functions.

UX affects how users interact with your website.

When it comes to web accessibility, all of these aspects are affected to at least a small degree so do you want to run your web accessibility project through your lawyer(s) and have them relay little bits of info back and forth between web teams and developers?

Probably not.

I would be interested to hear another attorney's point of view, though.

Step #9

Create an accessibility policy page.

Once you've made demonstrable progress in your accessibility efforts – and your website is more accessible, then I recommend creating an accessibility policy page.

What does this do?

Legally and practically, this gives you a cloak of accessibility progress; it shows your commitment to web accessibility. Again, this helps deter demand letters/lawsuits and may mitigate damages down the road.

If we were playing black jack, this would be yet another face card in the deck that works to our favor – it doesn't mean we'll win but it improves our odds of avoiding legal entanglement.

Here is the information I would potentially put on an accessibility policy page (what you include depends based on your website, accessibility progress, type of website, etc.):

- **Commitment to accessibility**: state how important making your website accessible is to you.
- **Some of the ways we make our website accessible**: (only state things you actually do, here are some examples) we test our site against WCAG, we work with advocacy groups, accessibility specialists, and people with disabilities to make sure we not only meet WCAG but go above and beyond
- **Steps we've taken to improve accessibility include**: List out what you've done so far (e.g. Here are some of the steps we've taken to make our site accessible to all of our users…)
- **Offer support (don't hide this, make it obvious)**: Re-emphasize the accessibility notice on your homepage
- **Solicit questions and feedback on your accessibility**
- **Provide resources to learn more**: Link to ADA.gov, Section 508, W3C and WCAG, a few accessibility tools

With an accessibility page, you want to emphasize what you have done and that you're continually working to improve your accessibility. DO NOT spell out ways your website doesn't meet WCAG standards. DO NOT make it appear as if the steps you've taken are exhaustive.

Of course, having an accessibility page does not make your website accessible and thus does not stop demand letters from coming in.

If you have not made significant strides towards accessibility, an accessibility page may work against you. If you claim to have a commitment towards accessibility and/or exaggerate the accessible nature of your website, it can draw attention to the fact that you haven't done anything which makes it all the more egregious that you created an accessibility page.

You might be wondering if an accessibility notice and/or page will draw more attention to your site and thus increase unwanted attention and possibly demand letters from plaintiff's law firms.

Probably not.

I think the most likely scenario of this happening is where you create a policy page but don't back it up with a mostly accessible website.

For example, if you don't have descriptive alt text for your images and yet have an accessibility policy page, you may draw ire.

Otherwise, if a plaintiff's law firm wants to send you a demand letter, they're going to send you one.

Another important note: I recommend against making a WCAG 2.0 conformance claim. If you make this claim, you're boldly stating that you have met all the success criterion for a specific conformance level.

This is an aspirational threshold to reach, especially since Level AA contains some very general language. Simply, even if you think you meet every list detail of WCAG 2.0 AA, it's a very daring and unnecessary move to claim that you do.

If you do want to claim conformance, you must:

1. Date the claim
2. Provide the guidelines title, version, and URL (Web Content Accessibility Guidelines 2.0 at http://www.w3.org/TR/2008/REC-WCAG20-20081211/)
3. State the conformance level satisfied (Level AA)
4. Provide a list of all URLS for which the claim is made.
5. A list of all web content technologies relied upon.

Again, you're much better off taking the "continually improving" angle vs. proclaiming perfection.

Making a WCAG 2.0 conformance claim, in a way, puts a target on your back.

Step #10

Appoint a web accessibility coordinator.

I pulled this step directly from some of the DOJ's settlement agreements. One of the
stipulations the DOJ likes to include in
their agreements is the appointment of a
web accessibility coordinator.

This isn't a legal requirement but it's a
practically advantageous position to
create.

First, it's indicative of a company that
takes website accessibility seriously
(again, a genuine commitment helps).
Second, a coordinator will help connect
executives to the project and make
them aware of progress. Third, web
accessibility is an ongoing thing in two
regards: 1) new content you upload to
your site needs to be accessible and 2)
ADA website compliance is anything but
a settled issue so you need someone
who is staying on top of the situation.

Does your web accessibility coordinator
need to be a new hire? Can they wear other hats?

No and yes.

Your web accessibility coordinator can definitely be someone from within your
company. Sure, they'll need some training but so does just about everyone else. As
evidenced by numerous new job postings (see the college job posts screenshot
above), there isn't a slew of qualified web accessibility coordinators just laying around.
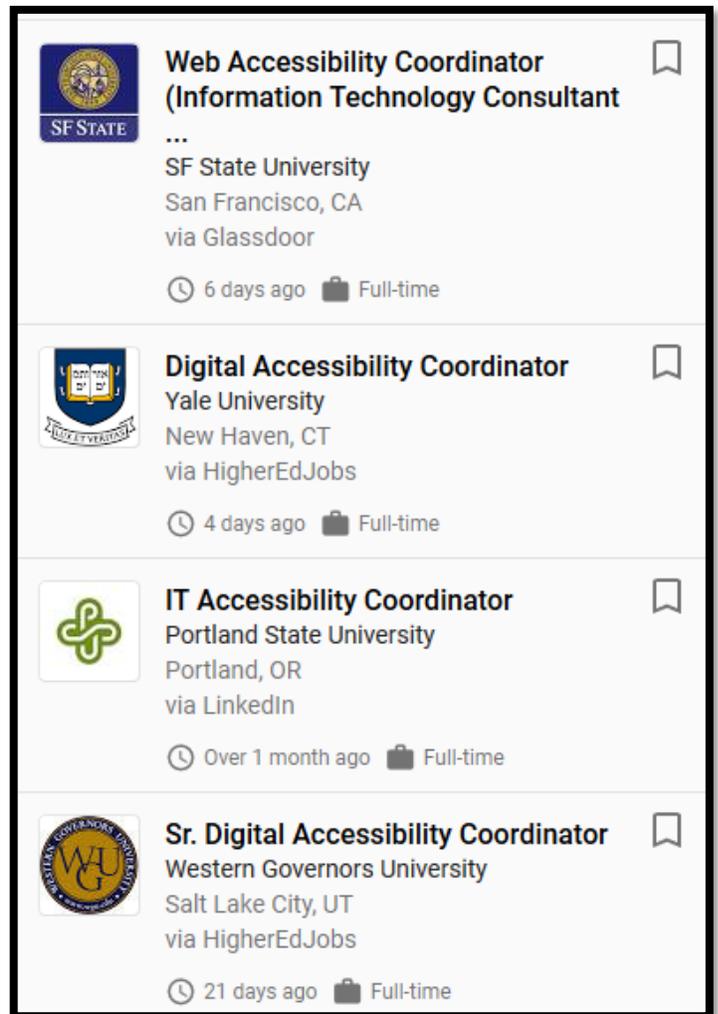
Most larger operations should make this a full-time position. For smaller companies, it's fine to have a person be a website accessibility coordinator and wear other hats.

Of course, you can appoint a web accessibility coordinator sooner than I have in this blueprint.

The reason I have appointing a coordinator as Step #10 is because it's much more important that you make your website more accessible immediately than it is for you to hire a coordinator. Generally speaking, I see web accessibility as an "all hands on deck" situation, meaning either you as a business owner or department executive (or other executive) start working on this now and put out the fire, so to speak.

If you can appoint a coordinator immediately, great. If not, if the appointment process gets too bureaucratic or bogged down, forget it for the time being and get to work patching up your website.

The exception is if you've got a big website and you know web accessibility is going to be a very large endeavor. In this case, yes you should quickly organize and assemble a coordinator and web accessibility team early on and then implement steps to make your website accessible.

Also, if you haven't already formed a web accessibility team by now, this may be the juncture where you may want to put one together. A team might just be your content editor, writer, and a developer.

When you create a team, how large that team is depends on the size of your company and the role your website plays but, at some point, I recommend assembling a group that specifically addresses web accessibility on a regular basis.

However large or small your team is, the point is that a group of people assemble periodically to address your web accessibility. This group will consist of people who are in charge of ensuring that content added to your website or changes made to your website are accessible.

Step #11

Hire an independent accessibility consultant.

This is yet another step taken straight from DOJ settlement agreements. I've packed this book full of DOJ enforcement stipulations because they're kind of like a collection of legal best practices.

Think of it this way: When the DOJ, the enforcement division behind Title II and Title III of the ADA (Title III is you, probably), has come out with actions against private companies for inaccessible websites/violations of ADA Title III, the stipulations they make in settlement agreements are the best things you can do to 1) become accessible and 2) appear to be accessible.

Does having a coordinator or a consultant make your website accessible?

No, but it does show a rigorous level of commitment and coordinators/consultants do make it more likely that your website eventually does become accessible.

Beyond optics and legal feel-goodness, there is a lot of practical benefit that comes packaged with an accessibility consultant. A consultant can:

- Perform a manual audit on your website
- Form a web accessibility plan
- Educate your company on how to be accessible
- Relay status and next steps to executives, your coordinator
- Convey what needs to be done to web developers
- Institute a training program for your coordinator, web accessibility team
- Alert you of changes in accessibility, new best practices
- Answer your questions
- Conduct annual audits

By no means is an accessibility consultant necessary but having one can definitely help move things along.

Step #12

Solidify your website's accessibility.

Now that you're out of scramble mode and optimally have a coordinator and consultant on your side, it's time to circle the wagons and start fine-tuning your website so that, just like in football, you can go into your best prevent defense.

To do everything you can to prevent a now more Hail Mary-ish ADA compliance demand letter, have everyone familiar with WCAG 2.0 – your consultant, coordinator, team, you, and possibly a developer – go back and scrutinize the accessibility of your website under a critical eye.

Don't shy away from pointing out inaccessible elements and shaky areas. Take this opportunity to attack your website as if you were trying to mind-bend ways it could be inaccessible. It's better you and your web team do this now than a plaintiff's law firm take up the same exercise later.

Under this re-evaluation, I recommend you go through the [original WCAG 2.0](#) on the W3C website and see if you can't check off or account for every item on the list. If you'd rather not go to this length, refer to my expanded summary outline of WCAG 2.0 at the end of this book. (Warning: It's always better to read the original source vs. an interpretation of the source.)

If you can, take this critical exam exercise to the next level with one or more people with disabilities. Just make sure they're not the type to run to a lawyer if they do find an inaccessible element.

If you do have an independent person with disabilities evaluate your website, add this on your accessibility policy page. You can say something like: "We've had our website evaluated by independent auditors, consultants, and people with disabilities to ensure…"

Step #13

New content/design accessibility training.

If you haven't assembled a web accessibility team by now, go ahead and do so. If you're a small business, this might just be you and an employee – or maybe it's just you. If you're a large organization, this could be group of several people.

How big your team is really depends on how much your business revolves around the web and how much upkeep is necessary.

For example, you might be an executive at a large corporation with $3 billion in yearly revenue but if your website hardly changes, you don't need a massive web accessibility team.

On the other hand, if you've got a website that's constantly updating content, adding different offerings, adding different pages, re-designing sections, etc. then you'll need a bigger team.

Once your team is in place, begin training them in web accessibility. Your consultant can help you with where to start.

Once you've got a team and training in place, then you can work on incorporating a training schedule (e.g. once or twice a year after all members are brought up to speed).

Again, I see no reason why members of an accessibility team can't wear multiple hats. For example, a content editor could be on your accessibility team.

Step #14

Only integrate accessible third-party plugins, applications, media, etc.

Now that we've got everything in order, we don't want someone or something to come along and mess it up.

This means for every external product or service you are considering integrating into your website, require 100% accessibility from vendors.

For example, if you're about to contract with an SEO agency for on-site optimization, make certain they know WCAG 2.0 cold and have them work with your web accessibility coordinator and/or consultant.

As another example, if you're thinking about installing a new social media plugin for your blog posts, make sure that 1) it does not run afoul of WCAG 2.0 by itself and 2) it won't cause accessibility issues once activated on your website.

Anything or anyone that might affect your website needs to be vetted for accessibility.

Important Legal Points

If you aren't acutely aware of how important making your website accessible is, here are three key legal points that will raise your alertness level to DEFCON 1:

1. **Being in the process of becoming accessible isn't a defense.**

This means just because you start trying really hard to become accessible and follow every last step above, it's VERY likely not a defense to your website being inaccessible.

So even if you've got 90% of the WCAG bullet points checked off and all you need to do is fix a few pictures on old blog posts, you can still have an accessible website.

And don't forget, you can always be sued no matter what. There is NOTHING that can stop you from being sued. It might be a frivolous lawsuit but if someone files the proper documents and pay the fees, they can still sue you. Of course, you can always receive a demand letter as well.

If this all sounds harsh, that's because it is.

Just remember that trying isn't a defense. About to get started isn't a defense. Planning on it isn't a defense. The best defense is having an accessible website.

If you get sued, definitely consult your attorney and see if there are any other defenses you can raise.

The ADA is a strict liability statute so if you're in violation of it, you're in violation. In the legal world, it doesn't matter if it's just a little violation or you were trying really hard to be in compliance.

Recall from the legal section above that the actual standard for what constitutes having an accessible website is uncertain. However, what we do know is that, according to the prevailing legal sentiment, the ADA requires that your website be accessible to those with disabilities. What accessibility means is up for interpretation, but, if a court finds your website to be inaccessible, you're in violation of the ADA.

The above paragraph takes away nothing from what I have stated previously. What it should do, however, is put you on notice that, ultimately, good may not be good enough.

2. Having already been sued isn't a defense.

If you've already received a demand letter or lawsuit, DO NOT think you're immune to receiving another one. You can absolutely be sued by different plaintiffs in the same or different states and have multiple website inaccessibility lawsuits looming over you.

This can happen to anyone – big corporations or small businesses.

The best defense against multiple lawsuits for those that have received a demand letter or been sued is the following:

1) Hire an attorney. Always hire an attorney. This book cannot prepare you to represent yourself.
2) If your attorney advises it, negotiate a settlement agreement quickly.
3) If your attorney advises it, make the settlement a court approved settlement where you voluntarily enter into a public court order.

Why make it public?

Because this very likely shuts down lawsuits in other states. If you're already under a court order, other court orders would provide the same remedy and thus are not needed.

Many businesses think the proper route is to keep web accessibility a private matter. Tactically, this may be VERY WRONG and open you up to be sued over and over and over again.

3. You are responsible for what's on your website.

I alluded to this above but it's worth highlighting: You are responsible for what's on your website.

Consider all of the third-party offerings you can embed on your website: YouTube videos, Facebook widgets, tweet cards, news headlines, etc.

If it's on your website, you can be held liable for the accessibility of it so be cautious with the third-party material you allow on your website.

4. Insurance may potentially protect you.

One piece of good news is you may be currently covered from ADA website compliance claims by insurance.

Employment practices liability coverage can sometimes include coverage for discrimination brought by customers. Cyber coverage can also potentially cover you. Of course, you'll have to look at your policy to see if ADA website compliance falls under the range of protection.

You should check and see whether it's possible under the provision language that you are protected against website accessibility claims.

If not, or if you have no insurance, it's certainly worth looking into.

Frequently Asked Questions

In this section, I'll address common questions regarding ADA website compliance that I commonly see, receive from readers, and anticipate. Below are my answers.

Q: Am I safe on social media?

A: It depends. I think Twitter, Facebook, and Instagram offer a significant level of protection. Once you're on those platforms, they control the site structure and the means by which content is uploaded so the liability for inaccessible content very likely falls on them.

If your website doesn't rank in Google and mostly receives direct traffic, you may want to use your business's Facebook page as your web presence and simply redirect your domain there. This action will tremendously reduce your risk.

With YouTube, I think it's more questionable how safe you are because YouTube's Studio feature allows you to edit subtitles.

Note: Subtitles only convey dialogue. Closed captioning includes additional or interpretative information of all meaningful sounds (e.g. door slamming or music playing in the background).

As you read earlier, upon pressure from the DOJ, UC Berkeley felt its best option was to remove thousands of lecture videos which were hosted on its YouTube channel. This indicates to me that there may be some instances in which liability can be extended to a YouTube channel.

At this point, all anyone can do is speculate but I do not think YouTube is a completely safe zone. However, I would definitely focus on your website first and then worry about YouTube.

Q: I've heard liability only extends to websites with a nexus to a brick and mortar location – am I safe if I'm only web-based?

A: Probably not. We know for sure that businesses with a nexus are covered by Title III of the ADA (as courts are currently ruling). To explain the nexus part, if you're a business with a physical retail location and also a website, you're covered under Title III and need to have an accessible website. The nexus means there is a connection between the website and the physical store.

As of now, courts are still divided on whether a purely web-based business falls under Title III. The one court that has been receptive to the only web-based defense is the 9th circuit but here's the problem: smart law firms won't sue web-based businesses in the 9th circuit now.

And, remember, websites are available anywhere, including all 50 states so someone can potentially sue you in any circuit court.

With the current landscape and surge of plaintiff's momentum, I don't think any website is safe. I think the best thing on every website owner's side is it takes time for plaintiff's lawyers to get demand letters out and right now they have their pick of the litter on who to go after.

Q: What sectors are plaintiff's lawyers targeting the most?

A: According to [Seyfarth Shaw](#), retail, restaurants, and hotels were hit the hardest in 2017. Financial services have also been crushed lately.

But by no means are you safe if you don't see your sector in that list. Everyone is getting surf-by demand letters and we will see the amount of lawsuits and sectors swell across the board in 2019.

Q: They're only going after really deep pockets, right?

A: Deep pocket companies have definitely been under attack but it's not just the McDonald's, Nike, Rolex, CNN, Hershey, Nintendo, Bed Bath Beyond, and Pandora types that are under siege (yes, those companies have all entered into web

accessibility settlements). Some plaintiff's law firms are smaller and don't want to clash against giants so they're hitting up smaller businesses for quick wins of about $5,000 a pop. A lot of smaller businesses can't afford to put up a fight so they make for an easy settlement.

Q: How much is a typical settlement?

A: Settlements are typically starting at $5,000. Most settlements end up between $5,000 - $50,000 plus the cost of updating the website but large corporations are usually going to pay a premium. The most I've read is [Target paying out $6,000,000](#) back in 2006 but other settlements that have been kept private could have easily exceeded this.

Q: I've heard that I'm only covered under the ADA if I have 15 employees, is that true?

A: No, you can be in violation of Title III with less than 15 employees. Title I of the ADA requires employers to provide equal opportunity of employment and prohibits discrimination based on disability. However, Title I only applies to employers who are employ 15 or more full-time employees for at least five months a year.

One important note here: Title I includes website inaccessibility, specifically online applications so you need to make sure, if you're an employer under Title I, that the application and career/job portion of your website is accessible.

Companies are also increasingly being sued for inaccessible online applications so pay very close attention to this as well. For the time being, it may be worthwhile to take your entire application process offline.

An option you may want to pursue is running your online applications through a third-party applications vendor who features accessibility.

Q: What about WCAG 2.1?

A: WCAG 2.1 is an updated version of the Web Content Accessibility Guidelines released in June of 2018.

2.1 AA extends existing 2.0 guidelines and also provides guidelines on how websites respond on phones. Here are a few examples of success criterion:

- Website content can be displayed properly in either landscape or portrait mode
- Any actions that can be done with pinch zooming and swiping but also be able to be accomplished with simple actions like single taps and holding down elements
- The purpose of fields in forms can be automatically detected and filled out for users
- All items and elements on a website such as graphics and buttons meet a minimum 3:1 color contrast ratio
- When an item or element on a website receive focus, if any additional content (such as a pop-up) becomes visible, it doesn't significantly impede access to the original content

Some law firms are concerned about WCAG 2.1. I am not that concerned for multiple reasons:

- It was only recently released in June of 2018
- No courts have cited it
- Everyone (plaintiffs, courts, businesses) is still trying to catch up to 2.0
- I haven't seen 2.1 referenced as the basis for any lawsuits
- Some of the criterion WCAG 2.1 is very difficult to implement, there are literally not enough skilled coders to handle all of the projects that would be needed (products will come out that make integration easier, though)
- WCAG 2.1 works on top of 2.0 so you need to focus on 2.0 first anyways
- WCAG 2.1 has a fair chance of not getting adopted by US law
- As Assistant DA Boyd said, there should be flexibility when it comes to meeting WCAG 2.0

WCAG 2.1 is really an ideal more than anything else right now. It's very, very hard to have a website that can not only meet everything in WCAG 2.1 but look and perform the way a business needs it to do in a cost-effective manner.

As of now, it's simply unrealistic for most businesses – even ones with big budgets – to check off all of the WCAG 2.1 items. 2.1 is definitely something to keep an eye on but it's not a pressing concern of mine right now.

Q: What are some tips to becoming accessible?

A: The two best tips I can give are to simplify and eliminate: Simplify your website and remove content.

These are two quick ways to become more accessible and speed is definitely called for right now.

Unfortunately, as was the case with Berkley, we're going to have a lot less content available on the web because of this onslaught of legal action against private businesses. I predict we will also see entities put once free content behind a paywall to recoup the costs of having accessible content.

You can simplify by removing non-essential widgets, fields, and forms. Also, you can decrease the number of functions available on your website.

All types of media and pages should be subject to a review as to whether or not to keep them online.

We'll see websites that are more static in nature and contain less media going forward.

Q: What are some other ways to reduce risk of a web compliance demand letter?

A: One way is to require registration to view content. Similarly, you can put content behind a paywall or, at a minimum, require registration prior to access.

Many types of sites already do this in some form: The Athletic, The Wall Street Journal, Costco, Quora, The New York Times, Forbes, and many other sites limit, to some degree, how much content you can see without joining and/or paying.

This limitation is part of their business model and not to avoid legal documents concerning website accessibility but the limitation can work to reduce risk, particularly from surf-by lawsuits.

Another way to reduce risk is to immediately check for any PDFs on your site. PDFs count as part of your website and are notoriously inaccessible documents. If you haven't specifically made your PDF accessible, odds are it's inaccessible.

Relatedly, check for any stray documents or media in your website file folders. Things like PowerPoint presentations, Word documents, spreadsheets, art, graphics, video etc. If you find something you're no longer using, remove it. Even if the document or media is still technically live on your website, you may want to remove it.

Of course, you can do the same for entire pages of your website. Over time, some pages/projects are abandoned or forgotten and it's a good idea to clean those up during your accessibility sweep.

I also recommend searching Google for your brand and website and making sure no inaccessible pages show up in the results. Let's use The ADA Book as an example.

I would search "ADA Book", "ADABook.com", and "site:ADABook.com" and ensure that every page that shows up on the first page of Google is accessible.

The reason you do this is because these are potential brand searches that could lead to someone discovering an inaccessible page, whether it be a crafty plaintiff's attorney or a person legitimately looking for your brand.

One more tremendous tip is to let external app and plugin providers host offerings/functions as much as possible. For example, I used a third-party app to allow for people who bought this book (you) to book an appointment with me. I did NOT integrate this app into my website.

I did the same with Google forms. I could have easily embedded the source code directly onto ADABook.com but instead I opted for Google to host it.

Another example of reliance on external platforms is using a customer service platform like Zendesk outside of your website. You can integrate Zendesk directly into your website but, for the purposes of accessibility risk, I don't recommend it. Instead, I would happily link to the Zendesk platform under the Zendesk domain name.

For example, linking out to mycompany.zendesk.com as the platform for customer service and then keeping all interactions there.

By allowing providers to host applications, you likely transfer the responsibility of accessibility onto them. This measure won't completely insulate you from risk but it definitely benefits you in a number of ways.

First, you don't have to deal with integrating different apps and trying to modify them for accessibility purposes. Second, you can disclaim to users that you are not responsible for the accessibility of third-party websites. Third, you keep your website simple and more static which makes it easier to maintain accessibility.

Of course, it's still conceivable that a plaintiff can come after you since platform X is where you choose to have users perform a particular web function but it's much better to have a lawyer saying an off-site, third-party website is inaccessible than it is for them to claim your website is.

By offloading to third-parties, you're rewarded with some accessibility buffer room and a few defenses you can raise. For example, we've already disclaimed this was a third-party platform, we can't be responsible for other websites, and they're inaccessible not us.

If you do need to integrate apps onto your website, search out vendors who specifically emphasize accessibility and/or meeting WCAG 2.0 criteria.

(Side note: Zendesk makes its accessibility a point of emphasis.)

Another risk reduction measure is to consult with one or more persons with disabilities specifically to identify potential weaknesses in your operations' accessibility. A visually

impaired person would be especially helpful since most troubles with web accessibility stem from vision impairment.

Someone who uses a screen reader and/or has a disability will have an entirely different perspective and be able to identify practical problems that people without disabilities will always miss. And again, this shows a genuine, real commitment towards website accessibility.

An additional tip is to ensure the common everyday obstacles that people with disabilities frequently encounter on the web are not a problem with your website. The biggest problem areas include:

CAPTCHAs, sites that can't be navigated with only keyboards, unexpected screen changes, bad color contrast ratios, inaccessible flash content, unhelpful sitewide search results, confusing or unclear forms, links and buttons that don't provide clarity.

Descriptive alt text and accurate closed captioning are chief among these problems but I've already harped on their importance.

While there is significant overlap with WCAG 2.0 and the above common complaints, I wanted to specifically point these problems out because while they may not currently fuel litigation, they may in the near future.

Again, these are the common, real-life problems that people with disabilities actually face in their daily routine; these people aren't trying to be litigious, they just want to access content and digital offerings.

If you address these issues, you stymie both surf-by claims and legitimate ones.

Q: Do all websites need to be accessible?

A: In a word, yes. Everything points to your website needs to be accessible, even if you're just blogging on garden flowers.

Now, is a garden flower blog likely to receive a demand letter? No, but all of the momentum is surging towards requiring accessibility of all types of sites.

Right now, your website definitely needs to be accessible if you're tethered to any type of commercial activity – whether it's happening on your site or not – or receive monies from the federal government.

Q: What are some products or services that provide efficient solutions?

A: This is something I am actively researching. Make sure to take advantage of The ADA Newsletter offer that comes packaged with this book. As a big part of the newsletter, I will provide write-ups on products/services/vendors.

The first emails sent out to subscribers will focus on products and solutions so definitely sign up for this.

Q: Who are some reputable law firms in website accessibility?

A: [Seyfarth Shaw](#) is the leading defense ADA website compliance defense law firm. [Minh Vu](#) is a partner at the firm and actually used to work for the DOJ. [Forster Boughman & Lefkowitz](#) is also well-regarded law firm in this field. [Baker Donelson](#) is another huge firm that also defends clients in website accessibility claims.

If you do need to hire legal counsel, look for an attorney/law firm that has a division and/or experience specifically in defending against ADA website compliance claims. There are many ADA centric law firms that have no experience in web accessibility so keep this in mind.

WCAG 2.0 AA Detailed Outline

Earlier on I provided a quick WCAG 2.0 checklist to give you some context of website accessibility. Now, I will dig into the details of WCAG 2.0 AA (AA includes A) by going down a still simplified but fuller item-by-item list with you.

This will give you an even better feel for what you need to do to make your website accessible and also help you communicate exactly what you need to a developer.

I highly recommend that you read the original [WCAG 2.0 source page](#) yourself (it's more thorough and has more requirements, examples, and exceptions) and use my outline as an easy to understand companion guide.

Note 1: I have removed any level AAA guidelines.

Note 2: You don't have to provide alternative content for content already provided as an alternative (e.g. if you provide audio as an alternative means of access, you don't have to provide an alternative to that audio)

Note 3: If you feel that your website warrants an exception to any of the following guidelines, consult the source link above to see if your website qualifies for an exception. For example, you may operate a parking space reservation website where time limits are essential to how you do business. If you do not see an exception listed below, check the WCAG 2.0 link above to see if your website qualifies for an exception.

Let's get started.

1.1 Provide text alternatives for non-text content.

What to do:

1.1.1

- Provide alt text for all meaningful images on your website, for decorative images (i.e. purely for design), leave the alt tags empty

- Controls such as search or submit buttons need to be labeled with a descriptive text alternative description
- For videos and audio, a short, descriptive text alternative should describe or act as a title so that users know what it is when they encounter it on a page

1.2 Provide alternatives for time-based media (audio and video).

What to do:

1.2.1

- For all prerecorded audio-only files, write a text transcript
- For all prerecorded video-only files (video with no audio), write a text transcript and/or record an audio track to convey the content in the video
- Text transcripts should sufficiently convey the same information available in your audio and video files

1.2.2

- For all prerecorded video files, add closed captioning (cc provides information beyond the dialogue of the video)

1.2.3

- Provide either an audio description (provides information about actions, characters, scene changes, etc. that are important and not apparent from video's audio) during the video or as an alternate video with audio description or provide all a text description of the video that includes full descriptions of all visual information of video content as well as a transcript of all dialogue

1.2.4

- Provide captions for all real-time presentations (e.g. live streams)

1.2.5

- Add an audio description for any pre-recorded video. If you've already done this to meet 1.2.3, then you've satisfied this item. This can either be recorded inside the original video or in a new video made to be an alternative.

1.3 Create content that can be presented in different ways.

What to do:

1.3.1

- Use structure and relationships to convey information as it is intended.

- Sighted users can see easily determine headers, subheaders, bullets, etc. and infer relationships (e.g. a line of text is a detail under a subtopic) but people who use screen readers cannot.
- Thus, they rely upon programmatic structure and relationships such as astericks to indicate required fields, use of header and subheader tags, double blank lines before titles and/or astericks to indicate listed items.
- To meet this requirement, organic and break up content with headings and subheadings, use correct HTML tags, and provide clear labels on forms with astericks to mark what is required.

1.3.2

- If the order of content affects its meaning, programmatically provide a correct sequence to the order of the content so that it can be read in linearly, in proper sequence.
- A good example of this is if you have multiple columns in a row, make sure that if the order the columns are read is important, that they be structured so that they are presented to screen readers in the correct order.

1.3.3

- Do not provide instructions for understanding and operating content that rely solely on sensory characteristics of components such as shape, size, visual location, sound, etc.
- For example, don't instruct, "click the green arrow for more information." Instead, label the green arrow "Next" and then provide clear instructions such as "To continue, select the green arrow icon labeled 'Next' in the lower right hand corner below the paragraph."
- The more means of relating instructions you can provide, the better.

1.4 Make it easy for users to see and hear content.

What to do:

1.4.1

- Do not use color as the only visual means of conveying information, providing instructions, or prompting action

- For example, don't use color codes alone as means of conveying information on a chart or graph.
- As another example, don't say "required fields are in red" or "errors are shown in red"
- You can use color along with other sensory indicators to convey information or prompt action.

1.4.2

- If any audio on a page plays automatically for more than three seconds, there must be a way to pause or stop the audio, or a way to control the audio volume independent of the computer system volume level.
- My personal recommendation is to avoid any automatic media entirely as it can be disorienting and annoying

1.4.3

- There needs to be a stark contrast between your font and its background color so it is easily viewable. The contrast ratio between your text and background colors should be at least 4.5:1
- Logo text has no minimum contrast requirement.

1.4.4

- Text must be able to be resized up to 200% without loss of content or function.
- This requirement is for people who have a more difficult time reading smaller text.
- It's not enough that your font can be scaled 2x, your page must main maintain usability and function.
- My personal recommendation is to use a minimum of 14 font size for your general content text

1.4.5

- Do not use images of text to convey information
- Logos are an exception
- For example, don't use an image of an inspirational quote on your website.
- In the few exceptions where you can use an image of text, provide alt text

2.1 Enable your website so that can fully function solely from a keyboard.

What to do:

2.1.1

- Make all functionality and content accessible via keyboard.

2.1.2

- Make sure that you can navigate to and from all elements of your website using only the tab and arrow keys. This guideline is referred to as the no keyboard trap.
- To test and see if you meet this success criterion, unplug your mouse and try to use your website using only a keyboard.

2.2 Provide enough time for users to read and use content.

What to do:

2.2.1

- For any time limits set by your website, have one of the following options available:
  - o User is able to turn off time limit before encountering it; or
  - o User is allowed to adjust time limit before encountering it. The adjustment should be to make the time range at least ten times the length of the default setting; or
  - o The user is warned before the time expires and is given at least 20 seconds to extend the time limit, and the user is allowed to extend the time limit at least 10x
- Exceptions: if the time limit is part of a live event (e.g. an auction), if the time limit is essential, if the time limit is over 20 hours

2.2.2

- If you have any moving, blinking, scrolling, or auto-updating information on your site, there needs to be a way for a user to pause, stop, or hide it unless the moving, blinking, or scrolling is essential
- For auto-updating information, the user must also have the option to control the frequency of the update

2.3 Do not design a website in a way that can cause seizures.

What to do:

2.3.1

- Your website should not contain anything that flashes more than three times in any one second period.

2.4 You must provide ways to help users navigate your website, find content, and determine where they are.

What to do:

2.4.1

- Provide a "skip" link at the top on pages with content blocks that are repeated over multiple pages so that users using a screen reader can get directly to your primary content without having to go through the same logo, navigation menu, advertisements, etc. that are repeated at the top of a set of your website's pages.

2.4.2

- Provide a descriptive page title for each of your pages so that users know what content to expect on a page.

2.4.3

- There must be a logical focus order so that elements on pages on your website can be navigated sequentially, in a way that preserves meaning and operability.
- This is a very vaguely worded guideline but basically it asks that 1) your website be keyboard navigable and 2) that users who navigate using a keyboard encounter content in an order that is consistent and in a logical sequence.

2.4.4

- Whenever possible, use link text (also referred to as anchor text) that identifies the purpose of the link without needing additional content.
- Whenever possible, make the page of the link clear from the context it's used in such as the text description preceding it. (e.g. For the best information on ADA web compliance, read the [The ADA Book](.).)
- Having the link and page title be similar is good practice
- Links with the same destination should have consistent descriptions and links with different purposes and destinations should have different descriptions

2.4.5

- Provide multiple ways to locate web pages on your website.
- The key here is to make it easy for users to locate and find content/offerings on your website. The best course of action is to make your website an open portal using any or all of the following methods: navigation links, footer links, related pages links, search bar, sitemap, breadcrumbs, etc.

2.4.6

- Use headings and labels to help users find information more easily.
- Headings and subheadings are typically used ahead of text. Labels are for elements like forms.
- Headings and labels do not need to be lengthy, just clear and descriptive

2.4.7

- When a keyboard is being used to navigate the website, a keyboard focus indicator is visible.
- For elements, this typically means it is boxed in by visible borders
- For text fields, this can mean a vertical bar is displayed in the field, indicating a user can insert text

3.1 Make text content readable and understandable.

What to do:

3.1.1

- Put a default language for each page.

- You can set the default language for your website and it will show up on each page.

3.1.2

- If different pages or sections of your content contain languages outside of your default language, make sure to code those different languages in so the screen reader can adjust.

3.2 Make pages appear and operate predictably.

What to do:

3.2.1

- Make sure that no elements change because they receive focus.
- For example, pages don't automatically open just because a user tabs over a link.
- For example, forms do not submit automatically when a submit button receives focus.

3.2.2

- Users should maintain control when entering data or selecting a form so that it has predictable effects.
- Users must be allowed to enter data or make selections without changing the setting of that control.
- For example, if a user checks a checkbox or enters text into a text field, they should decide when to proceed to the next checkbox or field, the form should not jump automatically as this can disorient some users.

3.2.3

- Navigation menus should have a consistent and predictable order and layout so that users who interact with the website are familiar with the navigation and know where to find specific pages.

3.2.4

- Elements and components that are used repeatedly across a website should be identified consistently. The same items with the same functions should have the same text alternatives across a website.
- For example, your social media share icons should all be labeled consistently throughout your website as they represent the same thing.

3.3 Help users avoid and correct mistakes.

What to do:

3.3.1

- If an input error is automatically detected, the error is identified and described in detail to the user in text.
- For example, when purchasing tickets to a basketball game, a user does not fill out a field. This should prompt an alert notifying the user which field was missing.

3.3.2

- Websites should have instructions and labels that identify controls in a form so that users know what input data expected.
- It is important that instructions are concise and do not contain unnecessary information.
- For example, providing examples of expected data formats helps users.
- Labeling fields with precise expected data is also helpful (e.g. Writing "Enter First Name Here" inside a field)

3.3.3

- Write suggestions to fix errors on forms. This guideline works on top of 3.3.1.
- For example, if a user enters "12" for a month, an acceptable suggestion might be "Please provide the name of the month."

3.3.4

- For the entry of important information (legal and financial data), a website must allow for 1) submissions to be reversible, 2) data entered to be checked and/or corrected by the user, and 3) confirmed by the user (i.e. the user can review and confirm the information before submitting)
- This is to prevent users with disabilities from making irreversible mistakes that have serious consequences.
- For example, entering 1000 shares of stock to buy instead of 100 or purchasing two of an item instead of one.

4.1 Maximize the capability of your website with as many assistive technologies (such as browsers, screen readers, and different devices) as possible.

What to do:

4.1.1

- Websites should be built on clean code, with an emphasis that start and end tags are closed and attribute syntax is correct
- This guideline ensures that websites can be read and show properly across a number of technologies
- This is a general guideline but an important one as many websites have instances of coding that is "good enough" in that it works for the desired look and basic function but not technically sharp which can result in a degraded experience for users with disabilities

4.1.2

- This is a highly technical success criterion that primarily applies to websites with custom code
- This success criterion is primarily for web authors who develop or script their own interface components (or third party plugins on your website)
- If you are using custom code, additional measures need to be taken to ensure that the controls provide important information to assistive technologies (screen readers) and allow the assistive technologies to control them

Parting Words

I think what lulls so many people to sleep with web accessibility is you don't have to do anything to be in trouble, so to speak.

One day you're just sitting there humming along to your favorite song, drinking a tall glass of lemonade, and then, BAM, someone just threatened to sue you in the great state of Florida if you don't pay up.

But wait, you didn't do anything. No really, you didn't. It's not like you logged into your website last month and started yanking out code so people with disabilities couldn't read your website.

Exactly.

In this situation, all it takes is inaction on your part to lead to liability; the way the legal world has worked it, you've already done something wrong and if you don't fix it in time, you are liable.

You can fight it in court if you want to, but, unjust as it may be, you'll probably still lose even then.

I hope The ADA book has shaken you out of your slumber and into action mode.

I'm someone who subconsciously looks for silver linings. I do it anytime something seemingly negative happens, it's just an auto response I picked up somewhere along the way.

Sometimes there really is nothing good that comes out of a bad situation. But most times you can find something and this is one of those times.

The good parts about all of this (as much as I don't like the law firms who profit obnoxiously from it and then virtue signal as if they would do the same if it weren't a windfall) are:

1. Many people with disabilities really do have an uphill battle with everyday life so it's a definite great thing that improved web accessibility will benefit them.

2. It's completely possible that you could end up with a net gain after all is said and done. I estimate 10% of people have disabilities that significantly impact their ability to use the web. You may be completely missing out on this segment of the population because they simply can't checkout (subscribe, etc.) on your website.

3. Accessible websites may actually convert people without disabilities better too. Two of the popular modern web design characteristics over the past decade have included smaller font and softer font colors (which don't contrast well and are harder to read). I think bigger and bolder is a change for the better.

4. You now have a great opportunity to step back and re-evaluate your website. Sure, you'll address accessibility as a priority but this transition could also be a gateway into a bigger overhaul or upgrade. Maybe you use accessibility as a catalyst for other initiatives like on-page SEO and improving conversion rates. Maybe you decide to rebrand under a better domain name and expand the scope of your business.

See, there's definitely some good in here.

You know what else is good?

You finished the book!

Thank You!

Thank you very much for purchasing The ADA Book.

If you have any questions of if there is anything in this book that needs clarification, please feel free to email me at kris@adabook.com.

If you enjoyed this book and would like to send me a testimonial or feedback, I would love to hear from you. Of course, we can anonymize testimonials. Again, you can email me at kris@adabook.com.