

## Must Websites Comply With the ADA'

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PRACTICES Media and Entertainment Litigation

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Website ADA compliance litigation is all the rage, manifesting itself as an epidemic of “website drive-by lawsuits.” Beyond the litigation controversy, the issue is whether websites must be accessible to the visually-impaired via screen reader software to comply with the ADA. Circuit Courts are split.

Title III of the ADA requires that

[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

The statute defines “public accommodation” through a laundry list of 12 characterizations whose common denominator is that they are all physical places that must affect commerce, i.e., hotels, restaurants, retail stores, schools, stadiums, theaters, just to name a few. When the ADA became law in 1990, the public conscience largely associated disabled Americans with individuals with mobility issues, hence the installation of reserved parking spaces and wheelchair-friendly access ramps. Fast-forward a few years and one of the hot-topic issue has become the visually-impaired’s ability to access Internet. The substantive legal question whittles down to whether a website is a “place of public accommodation” under 42 U.S.C. § 12181(7), an expression that the statute leaves undefined.

### **Some courts require a nexus between a website and a physical place to impose ADA compliance requirements.**

One line of cases has construed § 12181(7)’s laundry list narrowly and held that websites are generally not places of public accommodation because they are not physical places where the public acquires good or services. This line of cases holds that a website need not comply with the ADA unless a sufficient nexus can be established between the website and a corresponding physical space. For example, in *Earll v. eBay, Inc.*, the Ninth Circuit Court of Appeals held that eBay was not subject to the ADA because its services were “not connected to any ‘actual physical place[ ]’.” Under this logic, streaming and social media sites are exempt from ADA compliance. But websites that are tied to a physical store may have to comply. In *Nat’l Fed’n of the Blind v. Target Corp.*, the plaintiffs complained that Target’s website was inaccessible to the blind and that they were denied “full and equal” access to the company’s stores and the goods and services therein. The court agreed and refused to dismiss the plaintiff’s complaint to the extent that the website’s inaccessibility impeded the visually-impaired’s access to the physical stores. It reasoned that § 12182(a) “applie[d] to the services of a place of public accommodation, not services in a place of public accommodation,” and it concluded that, in this case, the website offered an access to the services of Target’s physical stores. The court dismissed the plaintiffs’ claim to the extent that Target’s website offered information and services unconnected to its stores.

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