

Website could get you sued

Your pages need to be accessible to “screen reader” software.

By Gene Marks
FOR THE INQUIRER

Is your website a potential liability? Yes, it probably is.

Over the last three to four years, there has been an “explosion” of lawsuits and claims by disabled people, asserting that businesses’ websites (and, increasingly, their mobile apps) were not accessible to them because they were not up to code with Title III of the Americans with Disabilities Act, or ADA, according to Charles Marion, a lawyer with Blank Rome LLP in Philadelphia.

The issue received national attention after a decision in October by the U.S. Supreme Court to let stand a lower court ruling that opened the door for blind people to sue Domino’s Pizza for not making its website accessible. The lower court ruling decided that the ADA not only applies for making a company’s brick-and-mortar establishments accessible to disabled people, but covers their online properties, as well.

Dominos is not the only business exposed to these claims. According to a 2019 study, a whopping 98 percent of more than a million home pages of both large and small companies analyzed by an industry watchdog failed to meet all the recommended requirements of website accessibility for disabled people.

“The vast majority of claims are asserted by visually impaired individuals who use a ‘screen reader’ — software that enables the user to have content on a website read aloud to them when they move their cursor over the information on the website — but claim that they tried to access certain information on the business’s website using their screen reader but could not, because the website was not coded properly so as to be compatible with the screen reader,” Marion said. “Most of these lawsuits have been filed in California, New York and Florida, but we have seen an increasing

SMALL BUSINESS

number being filed in Pennsylvania.”

Thomas Barton, a lawyer at Drinker Biddle & Reath LLP’s Philadelphia office, said that the number of ADA filings is up 34 percent from 2017 and up about 300 percent since 2013. “While small businesses have been generally ‘flying below the radar’ because their sites get less traffic, these business are equally vulnerable — just as are their physical sites,” he says.

Barton expects that plaintiffs’ firms will soon “run through the list of major retailers and settle or sue them” and then those lawyers will start looking at smaller companies further down on the list in terms of size and revenue. In other words, the claims are coming to a small business near you.

“And, the exposure is not limited to pure retail but also includes restaurants, doctors’ offices, car repair facilities, and hair salons,” Barton said. “Businesses typically faced with an ADA claim will have to pay the disabled individual’s attorneys’ fees (or at least some portion), their own legal fees, and will have to agree to certain modifications to the website.” In some jurisdictions, the disabled people can also be entitled to statutory damages under state law.

So how can you tell whether your business website is ADA compliant?

“In its simplest form, a website visitor should be able to unplug their monitor and mouse and navigate your company’s website,” said Jason McKee, chief marketing officer of Accessibility Shield, a Norristown company that provides ADA compliance tools. “If you can’t do that or don’t understand what I mean, then you have an accessibility issue.”

It’s not surprising that both lawyers Barton and Marion recommend having a lawyer and an IT consultant familiar with ADA rules to review your site and suggest

changes to be made in order to be compliant, as well as having a protocol in place to ensure that the site is regularly evaluated and updated. But Karissa Demi, a software engineer for the City of Philadelphia, says that other, simple steps can also be taken almost immediately.

She recommends that small businesses avoid using fonts and colors that do not have enough contrast to be distinguishable to users with low-vision. She also suggests including descriptions for important images, employing techniques to ensure that pop-ups have the proper coding to make them dismissible for users with screen readers, and having a logical tab order for buttons and headings.

“But, unfortunately,” she concedes, “many websites are built without accessibility in mind from day one, so it makes it harder to retroactively correct the issues.”

There are also free tools available to check your site’s ADA compliance. For example, WAVE is a suite of evaluation tools that helps authors make their web content more accessible to those with disabilities. There are also tools available from the Bureau of Internet Accessibility and accessibility consulting firm Level Access.

Now that more people are becoming aware of the ADA’s accessibility rules, it’s becoming imperative for small-business owners to make sure their sites are compliant. “It’s a lawsuit that you’re going to lose,” McKee warned. And you’re potentially eliminating your audience, he said. “Market share or consequences of ending up in court: Take your pick. Thousands of lawsuits are happening every year and it’s not going away.”

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