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## What the Hospitality Industry Needs to Know about Website Accessibility Guidelines

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Do private businesses, including restaurants, hotels and travel businesses who offer services to the public through their website (i.e., sell a product or service on the website) have to make their websites accessible to persons with disabilities? While the answer to that question is almost certainly “yes,” it has still not been conclusively answered by either Congress or the California State Legislature. What we do know is that such businesses *can be sued* for having an inaccessible website, and that it makes sense to take all readily achievable efforts to meet the website accessibility standards as described herein.

Presently, it remains unclear whether Title III of the American’s with Disabilities’ Act (“ADA”) or California’s Disabled Persons’ Act, as currently enacted, require that websites for places of public accommodation be accessible to persons with disabilities. Even though the legislature has not acted, the Department of Justice (“DOJ”) has made clear that it believes that Title III of the ADA does apply to websites and has been considering several different types of regulations since at least 2010.

For several years, Title II of the ADA has required state and federal government entities to make their websites accessible, and there are currently regulations regarding what is necessary for compliance. But, it is unlikely that the Title II regulations will be adopted to apply to private businesses. While there are some competing regulations, most observers believe that the DOJ will eventually adopt some version of the Web Content Accessibility Guidelines (“WCAG”) 2.0 AA.<sup>1</sup> The WCAG 2.0 AA guidelines currently serve as the international standard with many countries already adopting the regulations. They are more comprehensive than the current regulations that apply to federal and state websites under Title II of the ADA.

While the fact that it has been more than four years since the DOJ’s initial comments regarding web accessibility, there is still no date certain for when regulations will issue (or what the final regulations will say). The most recent guidance from the DOJ indicates that it does not intend to issue any proposed regulations for public accommodation and websites until at least April 2016. Some have suggested that the delay in the promulgation of regulations is due to the required cost-benefit analysis. Indeed, the WCAG 2.0 AA are extremely technical, and if adopted will require hundreds of thousands of businesses to employ a consultant to ensure compliance—likely at not insubstantial cost. Despite the lengthy delay in providing regulations, in its Advanced Notice of Proposed Rule Making in July 2010, the DOJ stated that “[a]lthough the Department has been clear that the ADA applies to websites of private entities that meet the definition of ‘public

accommodations’, inconsistent court decisions, differing standards for determining Web accessibility, and repeated calls for Department action” have compelled the DOJ to explore creating a uniform standard for web accessibility under Title III of the ADA.

Consistent with its prior statements and despite the lack of guidance regarding how a business’ website must comply with Title III of the ADA, the DOJ has taken the position that it does apply, and has intervened in several private actions to enforce the law. For example, in March 2014, the DOJ, after intervening in a lawsuit originally brought by the National Federation of the Blind of Massachusetts, entered into a consent decree with H&R Block that required H&R Block to make its website and mobile applications accessible under the WCAG 2.0 AA guidelines.

What this means for private businesses is that even though there is no official guidance on what is necessary for a website to comply with Title III of the ADA, a business can be sued right now for having an inaccessible website. Accordingly, businesses that offer services to the public through their website (particularly if they are selling a product or service on the website) should make their websites compliant with the WCAG 2.0 AA. While there is no guarantee that the WCAG 2.0 AA guidelines will be adopted, as discussed above, they have been included in at least one consent decree and seem to be the most likely candidate to be adopted in some form. Therefore, if a business’ website meets those standards prior to the DOJ promulgating its rules, it will be in the best position to defend a lawsuit alleging its website is not accessible and very likely will be ahead of the regulations once they are issued.

In short, if your website is not already compliant with WCAG 2.0 AA, it is prudent to take all readily achievable efforts to meet those standards.

<sup>1</sup>The WCAG guidelines were created by the Web Accessibility Initiative of the World Wide Web Consortium (“WC3”). The WCAG 2.0 guidelines are the second iteration of these voluntary international guidelines for web accessibility. The “AA” guidelines denote an intermediate level of access, which contain enhanced criteria for more comprehensive accessibility that is still achievable by web developers. That is why the WCAG 2.0 AA guidelines are the most likely to be adopted.



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