Your School Could Be One Click Away From A Lawsuit

Insights

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The education industry continues to be at the forefront when it comes to using emerging technology and digital marketing. For most schools, their website functions as the new reception area (albeit virtual), where both current and hopeful students and their families access information, explore what the school has to offer, and connect with the community.

Though not necessarily an intuitive concept, you need to understand that in the eyes of the law, your website is akin to a physical structure that must be accessible to individuals with disabilities. In fact, websites have become the new hotbed of litigation brought under the Americans with Disabilities Act (ADA), and schools that increasingly rely on their web presence need to take note.

What Does The ADA Require?

Title III of the ADA prohibits disability discrimination by entities that are considered places of public accommodation. This category includes private businesses whose operations affect commerce and those that fall into any of the 12 types listed in the ADA, which specifically includes "a nursery, elementary, secondary, undergraduate, or post-graduate private school, or other place of education," as businesses subject to the law.

When Congress enacted the ADA in 1990, the existence of the internet and its pervasiveness in today's society was all but unfathomable. As a result, the ADA does not specifically address website accessibility. However, as Congress expressly stated upon its passage, "the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times" and technological advances "may require public accommodations to provide auxiliary aids and services in the future which today would not be required."

Increasingly, plaintiffs' lawyers are bringing legal actions or sending demand letters claiming that publicly available websites are inaccessible to users with disabilities, thereby disadvantaging those individuals in a modern society that is largely driven by an electronic marketplace.

How can websites be inaccessible? Many people with disabilities require "assistive technology" to enable their use of computers and to access the internet. Websites that are unable to communicate with assistive technology can create unnecessary barriers for users with disabilities, and help fuel website accessibility claims. For example, individuals who are blind or have poor vision may require screen readers—devices that read aloud the text on a monitor—to assist them in accessing a

website's content. These users cannot fully access a site unless it is designed to work with screen-reading software.

Another example of an issue to consider when addressing potential accessibility barriers is ensuring each individual website page is coded to allow navigation by means of a keyboard or single-switch access device, without requiring a mouse. Users who are unable to use a mouse with precision due to a physical impairment could find your website unnavigable without this design.

Recent Ruling Provides Warning

A federal court in Florida recently issued a potentially groundbreaking decision that could open the floodgates to a new trend in litigation of complaints filed under Title III of the ADA: the "surf-by" lawsuit. While businesses have been dealing with so-called drive-by lawsuits—claims filed by plaintiffs who spot technical ADA violations, such as inaccessible entrances, by simply driving down the street—for some time now, recent years have seen an explosion of the digital equivalent of such suits.

A surf-by lawsuit is initiated when an individual logs on to an organization's website solely to search for possible accessibility violations, and when found, files an ADA lawsuit, sometimes without prior warning. In one such recent case, *Gill v. Winn-Dixie Stores, Inc., the court held that Winn-Dixie's website was covered by Title III of the ADA because it offered "services," including a store locator. Significantly, the court ordered the retailer to make its website complaint with the* Web Content Accessibility Guidelines (WCAG) 2.0, a set of international standards outlining methods to make websites more accessible for individuals with disabilities.

If courts in other parts of the country rely on the reasoning from this decision when ruling on similar cases, there is no question that school websites, which generally offer a multitude of services, will be held to higher ADA standards. This legal landscape should motivate you to review your digital presence to ensure compliance.

Schools Are Targets For Demand Letters And Litigation

This is not a trend that is going away. In 2017 alone, plaintiffs filed in excess of 800 federal lawsuits alleging website inaccessibility, not to mention the countless demand letters resulting in an untold number of pre-litigation settlements. There is no doubt that this number will climb in 2018 and beyond.

Schools are not immune from this new trend. The last few years have seen an onslaught of website accessibility complaints targeting public and private school websites. While a number of these complaints are settled before litigation is filed, the members of our firm's Education Practice Group have seen an increase in the number of federal accessibility lawsuits filed against academic institutions. School websites can be particularly vulnerable since content is often updated continuously and by multiple individuals. Therefore, just because you hired a vendor to build an accessible website a few years ago, maintaining that accessibility can be a challenge in a school setting.

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How Can You Make Your Website More Accessible?

While the U.S. Department of Justice (USDOJ) has recently tempered its tone on whether to formally adopt the Web Content WCAG 2.0 as official federal regulations, it is clear that courts are already developing and will continue to shape this area of law by imposing their own technical obligations. A safe way for schools to protect themselves from exposure to these lawsuits is by following WCAG 2.0 for guidance on making their websites accessible for a variety of ADA-covered disabilities, and implement features that facilitate easier navigation and are compatible with assistive technologies.

Conclusion

Your school should anticipate being the focus of increased ADA scrutiny and challenges to the accessibility of your website, and prepare to respond accordingly. By taking some steps now to ensure compliance with the WCAG 2.0, you can decrease your risk of facing a future lawsuit.

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