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access

# ADA Demand Letter Playbook

Your guide to responding and reducing future risk



## **You've received a demand letter claiming your organization's website or app is inaccessible to people with disabilities—what should you do next?**

As the leading digital accessibility solution provider, Level Access has worked with hundreds of clients facing litigation regarding the accessibility of their digital experiences. In this guide, we'll cover how to move forward proactively to secure the most positive outcome possible—and how we can help.

## Why did this happen?

Many organizations struggle with digital accessibility compliance as it relates to the Americans with Disabilities Act (ADA) because the law doesn't contain specific language defining its application to the digital world. But that hasn't stopped plaintiffs from taking legal action when it comes to inaccessible web experiences, citing the ADA. In fact, the number of web-related ADA lawsuits in U.S. federal courts has exploded in recent years, from 814 in 2017 to almost 2,900 in 2021. And those lawsuits represent a mere fraction of the legal action in this arena. In addition to lawsuits, it is estimated that 265,000 web accessibility-related demand letters were sent in 2020.



U.S. state and federal courts have overwhelmingly ruled that digital accessibility is required under Title III of the ADA and applicable state laws, and the Department of Justice (DOJ) has established best practices for ADA compliance through its private enforcement actions.

The best thing you can do to eliminate risk is make your organization's digital experiences accessible. This means making sure your websites, apps, and digital platforms conform to the latest Web Content Accessibility Guidelines (or WCAG), which are the technical standards for accessibility established by the World Wide Web Consortium (W3C). Court rulings and the DOJ have continually referenced WCAG as the standard in determining whether digital experiences are accessible.

## Where do you start?

Before taking action, it's crucial to update your legal counsel. You should also engage a team of digital accessibility experts who specialize in the WCAG technical standards as well as Title III of the ADA. This trusted accessibility partner will work closely with you and your legal team to help make your digital experiences accessible and reduce future risk. In this guide, we'll discuss the common steps along that path:

- ✓ Assessing the demand letter's legitimacy
- ✓ Validating its technical claims
- ✓ Strategizing with your legal counsel on a potential response
- ✓ Auditing your full digital portfolio
- ✓ Communicating your commitment to accessibility publicly
- ✓ Adopting a comprehensive digital accessibility policy



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# 1 Assess the demand letter's legitimacy

A demand letter is not the same as a lawsuit, but it can be a precursor to one, and should be closely evaluated by your legal counsel. First, assess the letter's legitimacy with your attorney. Here are some topics to keep in mind as you review:

- ▶ **Law firm:** Is the firm representing the plaintiff known for filing legitimate lawsuits based on valid errors, or does it have a reputation for filing suits en masse, seeking quick settlements?
- ▶ **Standing:** Does the plaintiff have standing to sue? Do they have personal jurisdiction to sue you and/or can they demonstrate they were, in fact, impacted by the claims in the letter?
- ▶ **Merits:** Are the claims made against you described clearly enough that you understand what the issue is and where it was found on your digital property? This understanding will help you and your legal counsel determine the best course of action.

How you interpret the details you gather in your research during this stage is ultimately up to you and your legal counsel, but a strong accessibility partner can help with this assessment, providing specific information from recent ADA filings.



## 2 Validate the accessibility issues identified in the letter

Once you have assessed the letter and determined its sender to be legitimate, it's important to understand the scope, technical accuracy, and severity of the accessibility issues it identifies.

The most efficient way to test for these issues is to engage an experienced, comprehensive solution provider. Level Access experts are ready to evaluate and document findings for each claim made. With a combination of technical and legal expertise, we can help you find answers to questions such as:

### Q Are the claims made applicable to the named digital property, and are they technically true?

In some cases, a plaintiff's law firm will send boilerplate letters to multiple possible defendants, citing the most common accessibility issues, not all of which may be true barriers on your digital experience.

### Q Are the issues cited still present, or have they been fixed or replaced?

If they have been resolved, noting this in a potential reply may lessen the plaintiff's case and/or desire to continue.

### Q If technically true and present, do the claims made significantly degrade access to the content in, and functionality of, your digital experience?

The mere presence of a technical violation of WCAG standards may not actually impact a user's ability to engage.

### Q Are the claims made applicable to the named disability(ies) of the plaintiff?

Related to personal standing, the claimed barrier to access may impact the plaintiff's standing to sue.

**Q** Are the issues within your power to fix or controlled by a third party, such as your content management system?

Understanding the origin of issues and limits of control your organization has over them can help with your response.

**Q** Are the issues cited based on false positives?

For example, some demand letters will include screenshots from an automated scan to illustrate the number of errors identified in your digital experience. However, these “errors” may include false positives—technical issues which are commonly found during an automated scan that don’t actually represent an accessibility barrier.

At this stage, documentation is key. Engage a partner who can quickly produce a formal report verifying whether the claims made in your demand letter are valid.



**Tip: Think long-term**

Want to future-proof your compliance efforts? Begin by developing an accessibility roadmap.

This roadmap should start with your plan to resolve valid issues identified in the demand letter. An experienced accessibility partner will work with you to prioritize findings according to their severity, and provide you with an efficient plan for fixing those issues. Then, you can work together to identify and plan to resolve further issues on your path to accessibility. This will also be essential if/when negotiating a settlement. When you partner with Level Access, our centralized platform creates a record of your accessibility progress over time. This record can be used to demonstrate your organization’s continued efforts toward, commitment to, and investment in digital accessibility.



### 3 Strategize with your legal counsel on a response

Responding to a legal demand letter is a complicated decision. It may not be in your best interest to respond, but if you do, here are key items to consider:

- ▶ Is there a strategic advantage to the timing of the response?
- ▶ Do you have evidence to rebut the claims made?
- ▶ Can you resolve any issues before responding?
- ▶ How much is the user experience impacted by the named issues?

The Level Access legal team specializes in ADA litigation and advises from decades of regulatory insight and experience, including experience from inside the DOJ. We stay up-to-date on current ADA case law, and can explain trends and provide the context you need to support your decision.



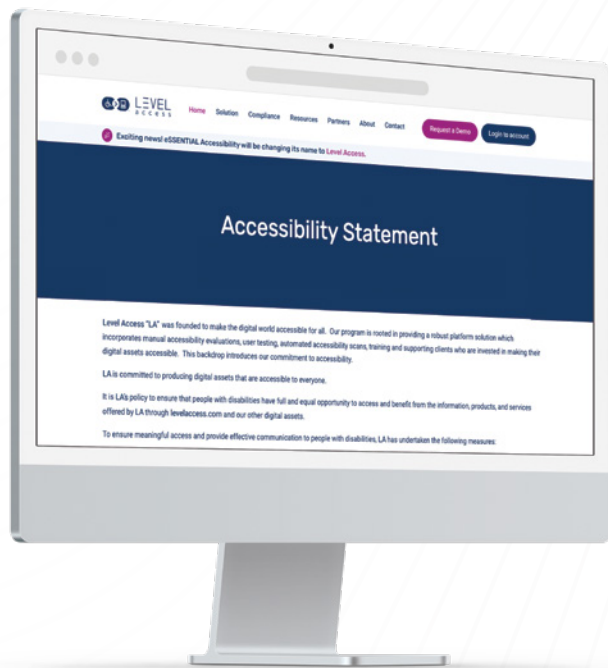
## 4 Audit all digital experiences thoroughly

It's possible your digital experience contains accessibility errors that are not named in the demand letter. Other digital assets you own that are not named in the demand letter may also contain barriers. A thorough audit of all of your digital experiences will identify these errors, setting you on the path to improved functionality for people with disabilities, and reducing your risk of receiving future demand letters.

An audit is a professional evaluation of how well your website or other digital experience meets the needs of people with disabilities. For a thorough review, it's best to engage an accessibility partner that offers manual evaluation alongside results from automated scanning. For example, Level Access has a team of expert professional evaluators, including individuals with disabilities who are native users of assistive technology, who will evaluate your experience against all applicable WCAG success criteria. We test for navigation, color contrast, alt text, access through keyboard use only, logical flow of content, and more. Our teams utilize a variety of assistive technologies on multiple web browsers to ensure all visitors can navigate your critical user paths, such as a checkout process, without experiencing a barrier.

A comprehensive audit should not only list all identified issues, it should detail how to fix those issues and rank them in terms of their severity. This ranking will help you prioritize your remediation work. As you remediate, you can also revisit and update your accessibility roadmap to monitor your progress over time and avoid future legal risk.

## 5 Communicate your commitment to accessibility



You've committed to the work of fixing errors identified in your demand letter. Now is a good time to share a clear, public notice by publishing an accessibility statement on your website and/or other digital experiences. Doing so not only highlights your commitment to accessibility, it provides visitors a channel for communicating with you about any barriers they may be experiencing, without having to resort to sending you a demand letter. This is not only supportive and welcoming to clients or customers with disabilities, it's also a legal best practice based on DOJ requirements in former private enforcement actions.

A trusted accessibility partner will help you craft and publish a statement to share relevant organizational policies, accessibility goals, and successes; show how you conform with WCAG success criteria; and provide contact information should a user want to report a problem.



Tip: Add an accessibility program interactive icon



Our globally recognized interactive icon signals an organization's commitment to digital accessibility and is provided to all partners for use on their websites. This icon links to information highlighting the effort and investment your organization has made to become accessible.

## 6 Adopt a digital accessibility policy

As you continue remediation work along your accessibility roadmap, you can use your experiences to inform and strengthen your company's digital accessibility policy. This type of policy sets principles and guidelines for ensuring your digital experiences don't contain barriers that would prevent people with disabilities from using them—whether they're employees within your organization, or members of the public who want to use your website or app. Over time, you'll want to make sure this policy is applied to all owned digital assets, including your employee intranet and any digital communication systems being used.

Eventually, a comprehensive accessibility program may also include coding standards that detail how digital assets should conform to WCAG standards, as well as mechanisms for monitoring and reporting on progress made. As it's built out, your policy should be shared with every relevant department within your organization, and be accompanied by access to training for employees. Accessibility training for web personnel in particular is a consistent mandate in DOJ enforcement actions.

Sound policy and its accompanying procedures can't be created overnight. That's why it's crucial to seek out a partner with a long-term, comprehensive approach to accessibility and compliance. A trustworthy partner should not only support you with technical remediation work, but should also have the governance and legal expertise to help create or review your digital accessibility policy, and provide training to help employees throughout the organization understand how digital accessibility applies to their work.

# Level Access: Reliable partner, comprehensive support

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## Unmatched expertise

As your digital accessibility and compliance solution provider, we provide unparalleled access to our legal team made up of renowned digital accessibility attorneys. Our experts will assist your legal counsel with a thorough understanding of the technical standards for accessibility and how they relate to laws such as the ADA.



## Fast and efficient

We'll work quickly to provide reports unique to each digital asset, validating your progress toward fixing the issues identified in your demand letter. We'll also test and retest as you work to make sure these issues are resolved.



## Technically proficient

Our expert manual evaluators, including individuals with disabilities, will test your user flows with a variety of assistive technologies on different web browsers. And we can help prioritize issues to fix based on their severity.

# Ready to help

Have you or your client received an ADA demand letter?  
Unsure of whether your site, app, or platform complies with  
global accessibility legislation?

Visit [levelaccess.com](https://www.levelaccess.com) or [contact us to](mailto:info@levelaccess.com)  
learn how we can help you respond to a  
demand letter, or avoid one altogether.

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