



ADA Compliance and Digital Accessibility

Risks, requirements, and rewards

Introduction

Most people in the U.S. are at least aware of the Americans with Disabilities Act (ADA)—landmark 1990 civil rights legislation prohibiting discrimination against people with disabilities. While organizations often think about ADA requirements in the context of physical spaces—for example, the need for schools and shopping centers to provide ramps and elevators for those using mobility devices like wheelchairs or scooters—many don't know that the law also has implications for the digital world. And failing to comply with the ADA can have serious legal and reputational consequences.

In this guide, we'll explore how exactly the ADA applies to digital experiences, and what it requires. We'll also discuss the risks of non-compliance, and offer first steps organizations can take to start meeting their legal obligations and serving a broader community of users.

How does the ADA apply to digital experiences?

Title III of the ADA protects people with disabilities' equal right to access businesses that are open to the public as "public accommodations." These include stores, banks, hospitals, hotels, and restaurants. Since the ADA was passed before the mainstream adoption of the internet, Title III doesn't explicitly mention digital technology. However, the U.S. Department of Justice (DOJ), which enforces the ADA, has repeatedly clarified that Title III of the ADA applies to websites of businesses open to the public.

Digital experiences now play a key role in how customers engage with many establishments that are considered public accommodations. And accessibility issues on an organization's website can prevent people with disabilities from equally benefiting from the products, services, or privileges that an establishment offers. Because of this, the DOJ has maintained that products, services, or privileges provided by public accommodations—including those provided through a website—must meet the ADA's requirements. Many individual circuit courts have aligned with the DOJ's stance on the applicability of the ADA to the websites of businesses open to the public.



Importantly, the ADA's application to the digital world doesn't stop at websites: courts have ruled that mobile apps and other types of digital media associated with public accommodations are also covered by the law.



A rising tide of legal action

Because of the DOJ's stance and court alignment that the ADA applies to digital experiences, web-accessibility-related legal activity citing Title III of the ADA is rampant. Thousands of organizations are sued every year, with tens of thousands of demand letters issued.

Does the ADA apply to online-only experiences?

The DOJ is clear that any website that's part of a public accommodation is covered by the ADA, and this guidance extends to other forms of digital media. However, some individual circuit courts have disagreed as to whether a digital experience must have a "physical nexus"—that is, to be tied to a physical location, like a brick-and-mortar store—to require compliance with Title III.

In litigation surrounding Title III, some courts have ruled that organizations' websites constitute public accommodations only when they're integrated with physical places of business. But other cases have set a different precedent: for example, even though meal kit delivery service Blue Apron lacks a brick-and-mortar retail location, the company's website was still found to be non-compliant with the ADA.

Because of this lack of clarity, to mitigate legal risk, businesses should ensure all public-facing digital experiences are accessible, regardless of whether these experiences are tied to brick-and-mortar locations. After all, if an individual who lives in a circuit where online-only experiences are considered places of public accommodations files a lawsuit, you may be found in violation of the ADA, no matter where your organization is headquartered. And compliance aside, providing equitable experiences to all users is simply good business.



The ADA and digital accessibility in the public sector

The majority of digital accessibility lawsuits reference Title III of the ADA and involve private-sector businesses. However, the ADA also includes requirements specific to the public sector. Title II of the ADA prevents discrimination based on disability in state and local government programs and services, which include public K-12 and higher education institutions. To comply with the law, organizations covered by Title II must ensure that any digital experiences associated with their programs and services—including web content such as websites, electronic documents, and mobile apps—conform with WCAG 2.1 Level A and AA. (To learn more about digital accessibility regulations for state and local governments, and how to meet them, [access our guide](#).)

Notably, the DOJ [recently updated](#) Title II rulemaking to include specific technical standards for digital accessibility—signaling that similar changes clarifying Title III requirements may be on the horizon.



Understanding the ADA Title III requirements that apply to digital accessibility

We've established that the ADA has implications for the digital world, and that organizations face mounting legal pressure to comply. However, without specific technical standards, private-sector organizations may be unsure what, exactly, they're accountable for when it comes to complying with Title III of the ADA. On a high level, Title III includes three key requirements for organizations that pertain to digital experiences:

- ① Organizations provide effective communication to people with disabilities.
- ② People with disabilities have equal access to products and services.
- ③ Organizations establish policies, processes, and procedures for maintaining accessibility.

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Organizations provide effective communication to people with disabilities.

The ADA mandates *effective* communication, meaning that information pertaining to public accommodations is communicated in a way that people with disabilities can perceive, operate, and understand. Because digital experiences often function as a channel for communication between organizations and consumers, the concept of effective communication is often foundational to digital accessibility litigation. Many accessibility issues commonly cited in lawsuits, such as a lack of descriptive alternative (alt) text and content or functionality that are inaccessible to users of assistive technology (AT), are barriers to effective communication.





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People with disabilities have equal access to products and services.

To comply with the ADA, organizations must provide people with disabilities with *equal access* to public accommodations. Today, people access many products and services through digital experiences—for example, making a purchase on an e-commerce site, or submitting an online booking form for a doctor’s appointment. Organizations must ensure that all people, including people with disabilities, can use these digital experiences equally. Barriers that negatively impact a user’s experience may constitute barriers to equal access.

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Organizations establish policies, processes, and procedures for maintaining accessibility.

The ADA is clear that accessibility shouldn't be limited to a specific point in time. The law requires that organizations have *policies, practices, and procedures* in place for ensuring that people with disabilities have ongoing access to public accommodations. This requirement has been interpreted to extend to digital experiences associated with public accommodations. Digital technology is dynamic, so organizations need to establish clearly defined systems for preventing and addressing new accessibility barriers as experiences are updated with new content and capabilities. Sufficient processes for maintaining ongoing digital accessibility may include tooling, training, and support from a third-party expert.



WCAG: The benchmark for digital accessibility and ADA compliance

The ADA's application to digital accessibility is relatively broad—so you may be wondering what specific criteria organizations need to meet to achieve compliance. Although Title III of the ADA lacks specific technical standards for digital accessibility, the DOJ has consistently referenced the [Web Content Accessibility Guidelines \(WCAG\)](#) as the benchmark for compliance in its private enforcement actions.

WCAG is a set of standards developed by the Worldwide Web Consortium (W3C) to help ensure digital content is accessible to all users, including people with disabilities. These standards are rooted in the assertion that digital experiences should be perceivable, operable, understandable, and robust for a wide range of users. Together, these four principles are referred to by the acronym “POUR.”

Unpacking WCAG: Conformance levels and versions

There are three levels of WCAG conformance: A, AA, and AAA, where A represents the minimum level of conformance and AAA represents the highest conformance level achievable. Each level builds on the previous level, so in order to meet Level AA, you must meet all of Level A, and in order to meet Level AAA, you must meet all of Level AA. Most organizations focused on ADA compliance target Level AA, which is widely considered the benchmark for accessibility. Conforming with Level A alone will offer little to no legal protection.

There are also multiple versions of WCAG, as the guidelines are regularly updated to keep up with the changing technology landscape, and account for the needs of users with a wider range of disabilities. The latest version, WCAG 2.2, was released in September of 2023. Like WCAG conformance levels, every new version of WCAG expands upon the previous version. That means that, if your website achieves conformance with WCAG 2.2 AA, it will also be backwards conformant with WCAG 2.1 AA.

Putting WCAG into practice: Recommendations for ADA compliance

The DOJ has referenced WCAG 2.1 Level AA (at minimum) as the benchmark for compliance in its more recent ADA enforcement actions, and Title II of the ADA requires WCAG 2.1 Level A and AA conformance. However, the W3C encourages organizations to conform with the most recent version of WCAG as a best practice. Conformance with the latest version, WCAG 2.2 will not only provide improved accessibility for every user, but also ensure your organization is up-to-date in its compliance efforts, especially as we anticipate future policy changes and updated legal rulemaking.

To evaluate your digital experience's current level of conformance with WCAG 2.2, access our [Must Have WCAG Checklist](#).

Risks of non-compliance with the ADA

As the legal landscape surrounding digital accessibility remains active, organizations that fail to maintain compliant digital experiences face significant business risks, including the following.

■ Reputational damage

Lawsuits citing ADA violations can invite negative publicity, tarnishing a brand's image. The reputational consequences of accessibility-related legal action may be particularly detrimental to organizations at a time when brand values are a key driver of consumer loyalty. On the flip side, organizations that embrace accessibility demonstrate a genuine commitment to inclusion, which can be an important competitive differentiator, help win new business, and strengthen existing customer relationships.

■ Disrupted product roadmap

Organizations sued for ADA non-compliance most often resolve digital accessibility barriers within a fixed time frame as part of their settlement terms. This unplanned work can derail content production roadmaps, as developers must abandon other projects to rapidly address a large volume of accessibility issues. It's far more strategic for organizations to proactively commit to ADA compliance, as they can plan for accessibility and approach issue remediation on their own timelines. Eventually, proactive organizations can embed accessibility into the digital experience creation process, driving efficiency by reducing the need for reactive remediation in the first place.

Financial penalties and fees

A digital accessibility lawsuit has financial consequences, as organizations must pay legal fees (including attorneys' fees) as well as the cost of a potential settlement. Although rare, the DOJ may also impose financial penalties for non-compliance: the ADA authorizes penalties of up to \$96,384 for a first violation, and \$192,768 for a subsequent violation. And these costs don't account for the hours developers must spend fixing issues to meet the terms of a settlement: the development costs associated with reactively remediating issues is estimated to be \$100,000.

In contrast, organizations that consistently meet the ADA's requirements can not only avoid the costs of a lawsuit, but also increase their revenue by ensuring their products are available to a larger consumer base.



The ADA and state and local laws

The ADA's principles have been adopted into several state and local laws governing digital accessibility, including the New York State Human Rights Law, the New York City Human Rights Law, and the California Unruh Civil Rights Act. Organizations may be held accountable for accessibility issues under both the ADA and state and local regulations simultaneously, resulting in additional penalties and damages. And these can be costly: organizations that violate the New York City Human Rights Law, for instance, may face civil penalties of up to \$125,000. Notably, the New York human rights laws and Unruh Act may apply to organizations that are based outside of New York and California, if a plaintiff in one of these states encounters accessibility barriers.

Starting your journey to compliance

As digital experiences and technology continuously change, ADA compliance should be treated as a continuous process, not a one-time project. But with a clear path forward, you can start making swift progress toward your accessibility goals. Begin with the following key actions—and connect with a third-party digital accessibility expert to build a more complete roadmap aligned with your organization's unique needs.

- Use automated testing to establish a baseline understanding of your digital experience's accessibility.
- Request a manual accessibility evaluation of key pages, components, templates, and user flows (the steps users take to complete core tasks, like logging in or making a purchase). For accurate results, this evaluation should be performed by people with disabilities and accessibility experts using assistive technologies.
- Remediate issues surfaced through your evaluation, prioritizing those with the greatest impact on users and those that expose you to the most legal risk.
- Equip employees with the training and tools necessary to proactively embed accessibility into their roles.
- Publish an accessibility statement expressing your ongoing commitment to digital accessibility, and the work you're doing to uphold it. This statement should include a way for users to provide direct feedback about any accessibility issues they encounter.

Expert support for your compliance goals

At first, ADA compliance may seem complex—but you don't have to tackle it alone. As the market-leading digital accessibility solution provider, Level Access has helped thousands of organizations achieve compliance with the ADA and other U.S. and international accessibility laws. No matter the size of your organization or where you are on your accessibility journey, our tailored approach will provide you with the technology, expertise, and unlimited support you need to mitigate legal risk and elevate every user's experience.

To get started, contact our team today.

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