

# CYBERSECURITY AND DATA PRIVACY INFORMATION MEMO

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## Preventing ADA Website Accessibility Lawsuits

An increasing number of businesses are facing lawsuits alleging that their websites violate the Americans with Disabilities Act (ADA). New York, in particular, has become a hotbed for these actions. Only California has seen more ADA accessibility litigations since 2013. Although there is no consensus yet among the federal courts regarding whether the ADA even applies to websites, defending these legal challenges can be costly. The best way for businesses to protect themselves from these lawsuits is to take proactive measures to ensure their websites comply with the ADA.

### Title III Act at a Glance

Title III of the ADA prohibits discrimination against persons with disabilities in any place of “public accommodation.” Such places generally include, restaurants, hotels, parks, retail stores and doctor’s offices, among many other. Although Title III may have been traditionally construed to apply to physical brick-and-mortar locations, some courts have ruled that internet websites are included in that list and therefore must be accessible to persons with disabilities. Following these rulings, plaintiffs have filed legal actions claiming that a business’s website violates the ADA because it is not accessible to individuals with disabilities.

### What Constitutes Compliance Under the ADA?

While Title III provides the standards required for a business’s physical location to properly accommodate persons with disabilities, it does not offer any regulatory guidance for accessibility on the internet or websites. In March 2022, however, the U.S. Department of Justice (DOJ) issued much needed guidance on website accessibility.

The DOJ guidance notes its longstanding position that the ADA applies to website accessibility and emphasizes that businesses have “flexibility” regarding compliance with the ADA’s general nondiscrimination requirements. Rather than offering prescriptive measures for establishing compliance, the DOJ points to existing standards as helpful resources. In particular, the DOJ’s guidance points to the Web Content Accessibility Guidelines (WCAG) and the Section 508 Standards of the Rehabilitation Act (Section 508), which the federal government uses for its own websites.

The WCAG is comprised of a set of four overarching criteria: (1) website content must be presentable to users in a way they can perceive; (2) interface and navigation must be operable for a wide variety of users; (3) information present on websites be understandable; and (4) content must be sufficiently robust to allow for interpretation by a wide variety of users, including those relying on assistive technologies. Under each of these criteria are specific recommendations governing the use of text, audio, fonts and menu layouts, among other website components. Additionally, while Section 508 only applies to federal websites, the amendment can still function as a guide for private organizations. Like the WCAG, Section 508 aims to improve accessibility by establishing standards for text alternatives, time-based media, content sequencing and the use of color, among other standards.

Due to the increased attention on ADA compliance for websites, businesses may want to consider consulting a web designer that is familiar with WCAG 2.0 guidelines. Bond attorneys regularly assist and advises clients on an array of data privacy and cybersecurity matters, including ADA website accessibility compliance. Anyone with questions regarding this topic is encouraged to contact [Mario Ayoub](#), [Jackson Somes](#) or the Bond attorney with whom you are regularly in contact.

