



# Does Your Website Comply with the ADA? Don't Wait for a Class Action to Find Out!

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## Is Your Organization's Website Subject to the ADA?

- Differing viewpoints on applying an old law to a new economy
  - “Place of Public Accommodation”
- Circuit-by-circuit variances
  - Nexus requirement
- District-by-district variances
  - Forum shopping and inconsistent rulings
- State-by-state variances
  - California
  - New York

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## What Puts a Website at Risk for an Accessibility Claim?

- “Low-Hanging Fruit”
  - The website does not publish an accessibility statement
  - Video content lacks closed captioning
  - The website contains broken links
  - The website is not screen reader compatible
  - The website does not contain alt-text descriptions for images
  - The website does not publish an alternative means for consummating a transaction, e.g., a telephone hotline for purchasing products

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## How May an Organization Reduce Litigation Risk?

- Remove the “Low-Hanging Fruit”
- Train Relevant Staff
  - Web design employees
  - Customer service representatives
- Vendor Agreement Representations and Warranties
- End-User Testing and Other Audit Practices
- The “Bronze, Silver, and Gold Standards” of Compliance
- Accessibility “Widgets” – Good, Bad, or Both?

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## How to Reduce the Risk of Copycat Claims?

- Demand letters versus complaints
- Be mindful of the accessibility of court filings
- State ethics rules limit your options
- Notice and cure provisions
- Set expectations when settling claims

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## How May Vendor Agreements Help Reduce Website Accessibility Litigation Risk?

- Common Representations and Warranties
  - *“Vendor promises that it shall comply with all applicable laws and regulations related to the Services provided to Company pursuant to this Agreement.”*
- Or...
- *“Vendor promises that its Services provided to Company pursuant to this Agreement shall comply with all applicable laws and regulations, including, without limitation, all laws and regulations regarding the maintenance and administration of Company’s Website.”*
- Indemnification Clauses
- Duty to Defend/Remediate

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## What Are the Typical Legal Defenses?

- Applicability of the ADA to your particular site
- Demonstrate that your site/business is reasonably accessible
- Remediate to pursue mootness argument
- Attack standing
- Utilize offer of judgment rules

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## Questions?



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