

Winery Websites and ADA Compliance

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The recent news of lawsuits filed against New York wineries has caused industry members to ask if they face any litigation risk if their websites are not accessible to people with disabilities under the [Americans with Disabilities Act](#) (“ADA”). The answer is “maybe.” There is considerable ambiguity in the law as to which companies are required to make their websites ADA-compliant and what actually constitutes ADA compliance.

This blog post provides a brief overview of the New York litigation and the current status of federal law governing websites and the ADA. Wineries should check in with their information technology vendors to determine what, if any, accessibility features are currently part of their websites, not only to avoid potential claims, but also to make sure their businesses are open to all consumers.

What’s the New York case all about?

The lead plaintiff in these actions is legally blind and uses screen-reading software to access website content. That software only functions correctly if the website incorporates certain screen-reading compatible features, such as alternatives text for images and videos. Plaintiff claims that the ADA requires the winery to make certain information on their websites accessible to visually impaired persons, including: e-commerce features, wine club membership instructions, ability to book or make reservations, hours of operation, and location of the winery. Plaintiff ultimately claims that Defendant’s failure to remedy such accessibility barriers is a discriminatory practice against blind and visually impaired people, in violation of the ADA and certain New York laws. Plaintiffs are seeking injunctive relief on their ADA claim and an order requiring the wineries to take “all the steps necessary” to make their websites compliant with the ADA.

This type of case is not unique to the wine industry. Over the past two years, there have been a slew of cases filed against businesses for allegedly violating the ADA by not making their websites accessible to people with disabilities.

What is the ADA?

The ADA is a federal civil rights law that prohibits discrimination based on disability. Under Title III of the ADA, any place of “public accommodation,” such as businesses generally open to the public, must provide individuals with disabilities full and equal enjoyment of goods, services, facilities, and accommodations. Places of public accommodation include shops and facilities serving food or drink.

States have also adopted their own laws that require businesses to provide access to persons with disabilities. For example, New York State's Civil Rights Law and California's Unruh Civil Rights Act set forth those states' accessibility requirements. Local governments may have their own regulations, too. Plaintiffs in the New York winery lawsuits have claimed that the wineries are also in violation of the New York City Human Rights Law because they operate a physical location in the city. *Note – this blog post focuses solely on the ADA requirements, and compliance with state and local laws regarding accessibility are beyond the scope of this article.*

Do winery websites need to be ADA compliant?

Here's where things get confusing. Courts have been all over the board on which businesses must make their websites ADA compatible.

In general, websites that service places of public accommodation are required to make their websites accessible to visually impaired persons. In the wine industry context, this means that, wineries that have tasting rooms, or that allow for tours, tastings, and on-site purchases, likely need to make their website accessible to the visually impaired under the ADA.

Wineries that have no physical location of their own for customers to visit, taste, or purchase wine are less at risk from an ADA claim. The Ninth Circuit Court of Appeals has held that a website that is not tied to a place of public accommodation or that is attached to a place that does not qualify as a public accommodation is not subject to the ADA. (eg. [Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104 \(9th Cir. 2000\)](#)). That being said, there are cases in which courts have concluded that a stand-alone website service without a physical location can itself be considered a place of public accommodation, and subject to ADA requirements. Moreover, in 2014, the DOJ entered into several settlements agreements with online-only vendors, requiring each time, compliance with the WCAG (see below). In other words, not having a physical location may not be enough.

How do I make my website ADA-compliant?

Ready for even more confusion? Currently, there are no federal guidelines for how to make a website ADA compliant. The [Department of Justice \("DOJ"\) had contemplated adopting a new rule to outline how private companies' websites can comply with the ADA](#). But in 2017, [the department decided to halt its proposed rulemaking activity](#) on this front.

Although the DOJ failed to issue guidance on website accessibility requirements, the World Wide Web Consortium, an international standards organization, has published coding standards for accessibility, the [Web Content Accessibility Guidelines, often referred to as WCAG 2.0 AA](#).

While there is nothing in federal law that states that implementation of WCAG 2.0 AA automatically means a website is ADA compliant, the complaints filed against the New York wineries all seek relief that would require the wineries to comply with WCAG 2.0 AA. Moreover, the DOJ has previously argued in ADA enforcement actions that companies can comply by making their websites and mobile apps conform to WCAG 2.0 AA standards.

Action Items for Wineries

Given the fluid state of the law surrounding the application of the ADA to websites, there is no clear answer as to which businesses must make their websites ADA-compatible, or even what is required for a website to be considered ADA-compatible under federal law.

Wineries should check in with their IT vendors and professionals to determine if their websites, apps, and mobile sites have implemented accessibility features per the WCAG 2.0 AA, and if not, assess if the cost of doing so would cause hardship to the company. Implementing such features may not only help stave off legal actions, but would also signal that your winery is accessible to all consumers.

For more information about these issues, please contact [John Trinidad](#) or [Louise Mercier](#).