

ADA Website Lawsuits in 2020: Insights and Trends

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Today's Speaker



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Jason C. Taylor is the Chief Innovation Strategist and Advisor to the UsableNet CEO with nearly 20 years of experience in usability and accessibility. He is a global technology thought leader for multichannel customer engagement, actively advising leading companies on how to extend their brands across multiple channels for all users. He has been an active member of the accessibility and usability communities since 2001 which started with leading partnerships between UsableNet, Macromedia (now Adobe) and The Nielsen Norman Group.

Agenda

- 4 Years of Litigation: The Top Trends and a Review of 2019
- 2 The Domino's Effect
- A Breakdown of a Typical Week of ADA Website Lawsuits
- 4 Predictions for 2020
- 5 Q&A and Your Next Steps



Polling Question:

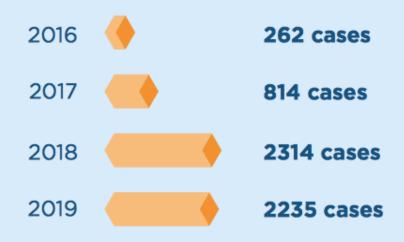
What role do you play in managing Web/App Accessibility?

I'm part of a team that is or will be testing and remedying
I'm a consultant
I'm external or internal legal counsel
I'm a member of our Marketing team
Other

2016-2019 Trends in Litigation



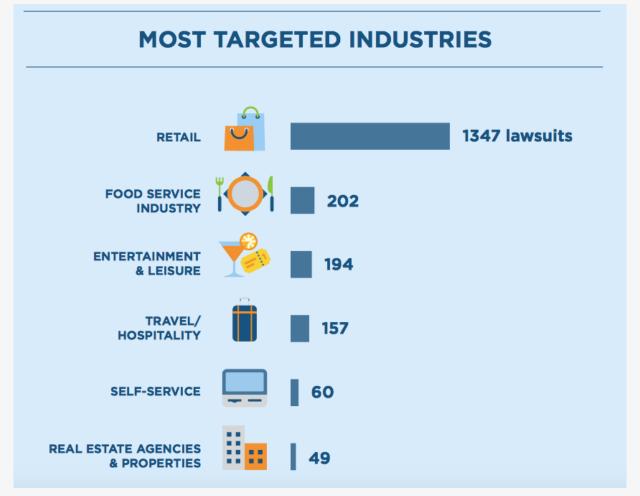
FOUR YEARS OF CONTINUED LEGAL PRESSURE



ADA and the DOJ

DOJ joined many private cases in 2000-2015 on the side of Plaintiffs to establish that Websites and Apps were subject to the ADA. Settlements agreed to included damages and remedying Websites to conform to WCAG. At the end of 2017, the DOJ suspended moving forward with ADA specifications, leaving a void now filled by private lawsuits.

	2000 – 2015	2015	2016	2017	2018	2019
DOJ ADA Web Settlements	222	46	4	2	0	0
Other ADA Web Accessibility Related Law Suits	0	57	262	814	2282	2000+



Why Retail, Food Service, Travel and Banking are the most targeted industries

Easy to visit and experience if a site or app is accessible or not

Existing DOJ settlements that clearly confirm that companies like these need to be accessible

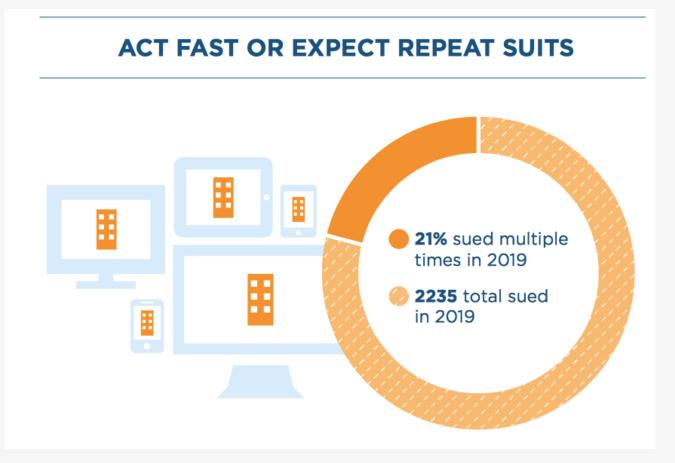
Difficult sites to maintain to WCAG 2.0 standards (complex functionality)

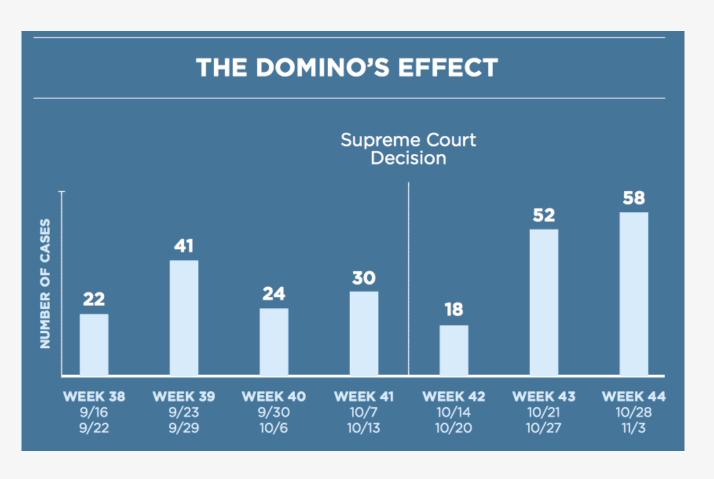
Multiple sites and Apps

History of ADA related suits in the physical world so plaintiff law firms familiar with landscape.

Larger Web and App Budgets so more likely to have funds to pay.







Breaking it Down: A Typical Week in ADA Digital Lawsuits

Week of Jan 6 - 10 - 70 ADA Website lawsuits filed in federal court

- 50% of lawsuits are large Brands with more than 100 M in Revenue
- Of the Large Brands 45% have received more than 1 ADA Website lawsuit
- Of the Large Brands 20% of lawsuits are related to Mobile (Native App)

By State

4 Active States where ADA Website lawsuits were filed: NY - 30; FL - 13; CA - 12; IL - 9 Of the 12 in California, 3 cases are from new 3 lawyers and 3 new plaintiffs App cases were filed by 1 law firm and 1 plaintiff in Florida

What's in a Typical Claim?

More than 75%

of Website lawsuits contain references to WCAG 2.0, 2.1 or both but don't reference level of service

Most App Lawsuits contain references to both A and AA levels





ADA Americans with Disabilities Act

What's in a Typical Claim?

- Missing text alternatives for non-text content (WCAG guideline 1.1.1 Non-Text Content)
- Difficulties to make a purchase because the wrong values are announced when a user selects a quantity or size (WCAG guideline 1.3.1 – Info and Relationships)
- A sighted user can see location suggestions and click the correct location but this is not announced to VoiceOver users, the zip code input field provides a full keyboard rather than a numeric- only keypad (WCAG guideline 1.3.5 – Identify Input Purpose)
- Missing announcement of the promo ad, used images of text, the deals and specials information provided by the text in the image is not accessible to VoiceOver users (WCAG guideline 1.4.5 – Images of Text)
- Wrong focus order (WCAG guideline 2.4.3 Focus Order)
- Unlabeled products, wrong name of the button (WCAG guideline 2.5.3 Label in Name)
- Unable to order a product if the user wants to pick it up in the store (WCAG guideline 3.3.2 Labels or Instructions, elements in the app should be labeled and give instructions)
- VoiceOver users are not notified that a pop-up is displayed on the homepage, buttons without name (WCAG guideline 4.1.2 – Name, Role, Value, all elements should be built for accessibility)
- Missing notice by Voice Over when selecting a product color (WCAG guideline 4.1.3 Status Messages)

Practical Strategies Next Steps



What You Will Need To Do?

SHORT TERM Reduce Legal Risk

- Pick a WCAG Standard (2.0 AA is most common)
- Inventory your Websites, Apps, PDFs, Multi-media
- Create and Publish Accessibility
 Statement
- Test for WCAG
- Perform User Testing
- Hire an Accessibility Expert

MEDIUM TERM Remediate Sites & Apps

- Update UX and Design with A11Y Principles
- Remediate JS, CSS and HTML Code
- Produce and test new templates
- Integrate A11y into Release process and testing

LONG TERM Maintain and Document

- Design and Market with A11Y in mind
- Train and Enable Dev and Test
- Manual Testing
- Automated Testing
- Perform Screen Reader monitoring on releases.
- Annual Audits
- Add A11Y to User Testing

Predictions 2020



Predictions for 2020 and beyond

- 1. Lawsuits at all levels will increase
- 2. Less Corporations will take a "wait and see" approach
- 3. Companies will start to see lawsuits for Native Apps alone
- 4. CMS platforms will launch accessible templates
- 5. Retail platforms will launch A11Y tutorials and education
- 6. Web agencies will have to take more responsibility for Accessibility of Client Websites
- 7. Greater awareness of inclusive design for the needs and behaviors of all customers
- 8. All major companies will hire or appoint an Accessibility Expert
- The Digital world will become more accessible!

Thank You Q&A



About this Webinar

UsableNet is a technology company with 20 years of experience is digital accessibility.

The information contained in the webinar is intended to supply general information to the public. It is not intended to constitute legal advice on any subject matter.

No case law is covered during this presentation. Many ADA lawyers can cover and provide a more detailed update on ADA Website case law and legal strategy.

Research for this presentation was compiled from available public records. All information is in the public domain.

The information compiled here can be used to help grow awareness. Sharing is encouraged. When sharing UsableNet research findings with team or others please reference UsableNet with back link to our 2019 ADA Report.