

Memorandum

To: North Carolina Bar Association

From: Esquire Interactive LLC

Date: November 2023

Re: The ADA and Website Accessibility – Legal Environment and Best Practices

Executive Overview

Current Status of the ADA and Website Accessibility

While the Department of Justice (“DOJ”) has made clear that the Americans with Disabilities Act (“ADA”) applies to business websites, to date, it has refused to develop specific regulations that can be used to measure compliance. Instead, under its recent “Flexibility Guidance,” the DOJ leaves it up to business owners as to what must be done to comply with the ADA, with the risk of financial consequences if their websites are found to be not in compliance.

Given these circumstances, this memo:

- Provides recommendations about a course of action for website owners with respect to website ADA compliance,
- Discusses top-level practical considerations concerning website user objectives,
- Summarizes the recent DOJ pronouncements and case law,
- Suggests best practices that can be implemented by website owners with respect to increasing website accessibility,
- Outlines the Web Content Accessibility Guidelines (WCAG) that should be considered, including Level A, Level AA, and Level AAA success criteria,
- Describes how to use the free WAVE tool, which can be used to check matters such as contrast and text size in connection with the WCAG, and
- Provides an overview of the pros and cons of using a website accessibility plugin.

Additionally, this memo notes that it may be possible for some law firms to claim a tax credit as part of making accessibility changes.

What Should Law Firms and Business Owners Do? Our Recommendations.

Based upon the current uncertainty and the matters discussed below, we suggest having an initial consultation with an experienced ADA consultant, such as our firm, to understand Website Accessibility Best Practices, the range of actions that can be taken with your website, the anticipated costs of such actions, your firm's risk profile in light of the anticipated costs and potential regulatory penalties, and developing a plan to keep your firm's website compliant in accordance with the standards chosen.

We specifically suggest:

- **Defining the scope of an initial website accessibility audit.**
 - We believe that an initial website accessibility audit should **always** be performed so that a firm will have an understanding about the accessibility of its website in light of generally accepted best practices.
 - We have a defined audit approach which includes using the WAVE tool¹ and tools that test for missing alt tags and undertaking a manual review of the several dozen WCAG Level AA “success” criteria.² We work with clients to identify the scope of this audit, including identifying the representative web pages upon which the audit will be conducted (typically, the home page, a practice area page, an attorney profile page, a blog home page, a representative blog post page, a contact page, and other key pages).
- **Reviewing the results of the initial website audit.** After conducting the defined audit, we then prepare an Audit Report of our findings and discuss the actions that can be taken to make a website more accessible (and the estimated costs).
- **Implementing the desired website changes.** Upon approval, the last step is to make the desired website changes based on the Audit Report and a client's objectives.

We note that it can be extremely expensive for large websites (those with hundreds or even thousands of pages and posts) to strictly comply with the Level AA Success Criteria. As a result:

¹ See below for more information about the WAVE tool.

² Please see [Attachment 1](#) for more information on these matters.

We strongly urge against contracting with companies that promote high-cost compliance plans and programs, automated ongoing website scans, paid plugins, and other matters that may not be helpful or cost-effective without first understanding the DOJ's Flexibility Guidance regarding ADA and website accessibility best practices.

If you would like to discuss the ADA and website accessibility matters, please feel free to contact us at ada@esquireinteractive.com or call us at 520.261.8645.³

The First Consideration – What Do Website Users Want to Do on Your Website? The Practical Considerations.

While this memo addresses a number of legal and technical matters that should be considered, the first issue that should be addressed is identifying **what** users want to do on your website, and **whether** there are any **roadblocks** to such matters for those who may have disabilities. For example, website users typically want to:

- **Navigate around a website to see other pages.** If website navigation can only be done by using a mouse and the person cannot use a mouse, navigation will not be possible for that person.
- **Understand your content – text and contrast issues.** If your website uses text in boxes where the text and background boxes are close in color, those with vision contrast issues likely won't be able to read the text.
- **Understand imagery.** People who are blind use screen readers, which tell them when they get to images. If you haven't used alt tags in the code to describe images, this will be a high source of frustration because those people will know that there are images, but they won't know what the images depict.
- **Submit Contact Forms – visual captcha considerations.** Contact forms that rely on users to select images to prove that they are not a bot don't work for those who

³ Although the CEO and the Director of Marketing of Esquire Interactive are both attorneys, **the information included herein is not legal or tax advice, and thus it should not be relied upon as legal or tax advice.** Our conclusions are based on current case law and Department of Justice regulations and guidance to date. Because new case law and regulations that impact ADA and website accessibility matters are likely, the information and conclusions set forth herein may change based upon such new regulations and case law. This memo does not address state law and regulations, or any associated compliance.

are blind. Consideration must be given to having a way for visually impaired people to submit contact forms without such challenges.

- **Understand Video.** As video is being increasingly used on websites, website owners should ideally ensure that videos have close captioning. If this is not possible, then video transcripts should be provided.
- **Make purchases.** If you're selling something on your website, it's critical that users be able to understand what is being sold and the various product options that may exist and be able to review orders and purchase products in the same manner as someone without disabilities.

Although the DOJ provides website owners with wide latitude for achieving ADA compliance, website owners should ensure at the outset that basic website usability objectives are achieved for those who may have accessibility issues.

Seeking Clarity from the DOJ – Recent Efforts and the 2022 DOJ “Flexibility Guidance”

While the DOJ made clear that business websites must comply with the ADA, they have failed to provide specific regulations regarding compliance. Instead, they provided a list of aspects that should be considered and leave it to business owners to determine how they will comply with the ADA. The DOJ has also previously provided a “safe harbor” by stating that noncompliance with certain recognized accessibility best practices does not equal noncompliance with the ADA.

Department of Justice Initiative on Web and Mobile App Accessibility

In a significant move towards digital inclusivity, the Department of Justice (DOJ) announced a notice of proposed rulemaking under Title II of the Americans with Disabilities Act (ADA) on July 25, 2023. This rulemaking is intended to provide clarity on the obligations of public entities, primarily at the state and local government levels, as they increasingly transfer their activities to the online sphere.

While the DOJ's actions mark a progressive stride for public entities under Title II of the ADA, it's noteworthy that, as of the current date, no specific guidelines have been issued regarding compliance standards for businesses. This delineation underscores a gap in the regulatory framework, where private sector website accessibility standards are yet to be defined by the DOJ. As such, companies seeking to proactively make their websites accessible should consider the DOJ's existing flexibility guidance and best practices until formal regulations are established.

The Flexibility Guidance

The DOJ has the authority to promulgate regulations under the ADA. After years of failure by the DOJ to provide clarity concerning the applicability of the ADA to websites and the

concurrent increase in lawsuits concerning the ADA and website accessibility, on February 28, 2022, 181 advocacy groups published a [Joint Letter to Enforce Accessibility Standards](#) (the “Joint Letter”) to Kristen Clark, the head of the US DOJ. The groups called for the DOJ to “adopt enforceable online accessibility standards by the end of the current Administration.”

In response to the Joint Letter, in March 2022, the DOJ issued Guidance on Web Accessibility and the ADA (the “Flexibility Guidance”)⁴ for state and local governments and businesses covered under the ADA.⁵

Importantly, this Guidance **does not** require that any specific guidelines be achieved for website compliance with the ADA. Instead, this guidance provides flexibility to website owners to determine what must be done to make their websites compliant with the ADA (which is why this guidance is being referred to as the “Flexibility Guidance”).

Key points of the Flexibility Guidance are:

- The DOJ now equates “places of accommodation” in Title III of the ADA to “businesses open to the public” by providing that Title III of the ADA prohibits

... discrimination against people with disabilities by businesses open to the public (also referred to as “public accommodations” under the ADA).

- The DOJ notes that a website with inaccessible features can limit the ability of people to access a public accommodation’s goods, services, or privileges available through that website, and that:

For these reasons, the Department has consistently taken the position that the ADA’s requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web. (Underline added, boldface in original.)

- The DOJ further notes that:

Even though businesses ... have flexibility in how they comply with the ADA’s general requirements of nondiscrimination and effective communication, they still must ensure that the programs, services, and goods that they provide to the public—including those provided online—are accessible to people with disabilities.

(Underline added, boldface in original.)

⁴ [Bit.ly/DOJ-ADAGuidance](#)

⁵ Namely, state and local governments under Title II of the ADA, and business open to the public under Title III of the ADA.

After making it clear in the Flexibility Guidance that business websites must comply with the ADA,⁶ the DOJ failed to offer standards or regulations concerning exactly what must be done to comply with the ADA. Instead, the DOJ provides the following:

Examples of what businesses should do to make websites accessible include (but are not limited to) the following practices:

- Color contrast in text – ensuring that text can be read by those with color blindness from backgrounds that may have a similar color as the text
- Text cues when using color in text - such as using red text to denote a required form field that must be completed
- Text alternatives (“alt text”) in images
- Video Captions
- Online forms – ensuring that forms can be used by those with disabilities
- Text size and zoom capability
- Headings – using techniques so that visually impaired website users understand the sections of a page
- Keyboard and mouse navigation – users should be able to navigate a website without having to use a mouse
- Checking for accessibility – using manual and automated tool checks to better understand potential problems
- Reporting for accessibility issues – the DOJ seems to imply that website owners should offer a way for users to report website issues.

(information after the dashes added to provide clarity)

In order to further emphasize that this list is not exhaustive, the DOJ further states that:

This is not a complete list of things to consider.

Flexibility Guidance Revision and Potential Safe Harbor

Interestingly, it appears that the original Flexibility Guidance has been revised.

- The DOJ Flexibility Guidance, as originally published, included what can be thought of as a “safe harbor” provision. This safe harbor provision stated that if a website **does not comply** with certain recognized accessibility best practices (such as **Level AA of the WCAG** - discussed below), this does **not mean** that the website is **not** in compliance with the ADA. Strangely, this “safe harbor” language was not included in the updated “Flexibility Guidance.”

⁶ The Court in a California Court of Appeal case disagreed with the Flexibility Guidance and the DOJ’s purported interpretation that the ADA applies to ALL business websites – including those that do not have a physical presence – by finding that the ADA does not apply to business websites that are not tied to a physical presence. See the *Martinez* case discussed herein.

- Although the DOJ did not include the “safe harbor” language in the updated Flexibility Guidelines, the DOJ previously indicated that “noncompliance with a voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA.”⁷ As a result, a business website *might* be compliant with the ADA, even if it does not strictly comply with the WCAG guidelines.

Will the DOJ Issue Specific Website ADA Regulations?

On July 11, 2022, U.S. Senator Patty Murray, Chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, sent a letter to the Department of Justice requesting that it create more specific regulations as to how the ADA applies to websites. The letter, which was signed by eleven other senators, requested that the DOJ provide organizations with clear guidelines for making their websites and digital assets accessible to everyone and avoiding digital accessibility lawsuits.

On July 29, 2022, the DOJ announced that they would begin the advanced rulemaking process for ADA Title II digital accessibility regulations (which would apply to states and local governments) in April 2023, picking up where they dropped off in 2017. The DOJ, however, did not address rulemaking for the website accessibility of businesses, which are covered under Title III of the ADA.

On July 25, 2023, the Department of Justice (DOJ) issued a Notice of Proposed Rulemaking, signaling a proactive step in drafting new regulations to enhance web and mobile app accessibility. This notice marks the commencement of a meticulous rule-writing process by the DOJ, aimed at establishing clear and actionable guidelines under Title II of the Americans with Disabilities Act (ADA) for public entities. As this process unfolds, stakeholders and the public await the finalized rules that will shape the future of digital inclusivity for individuals with disabilities. However, it is important to note that these guidelines will only apply to public entities; as such, private entities will need to consider case law and DOJ guidance to determine the best course of action for website accessibility.

Federal ADA Website Case Law

As of September 2022, there have been no U.S. Supreme Court cases considering the applicability of the ADA to websites,⁸ and only two federal appellate court cases that considered the applicability of the ADA to websites (one of which was subsequently vacated). Both of these cases occurred prior to the release of the Flexibility Guidance and concerned the threshold issue of whether the applicable business website was subject to the ADA (while today, the issue would be more properly framed as whether the website complied with the ADA).

⁷ Letter from the Department of Justice by U.S. Assistant Attorney General Stephen E. Boyd Affirming that the ADA Covers Websites, October 4, 2018, <https://myblindspot.org/2018/10/letter-from-the-department-of-justice-affirming-that-the-ada-covers-websites/>

⁸ The United States Supreme Court previously denied certiorari in the *Domino's* case.

[Robles v. Domino's Pizza, LLC](#)

In *Domino's Pizza*, a visually impaired customer brought a lawsuit after he was unable to order on Domino's website. The 9th Circuit Court of Appeals held that Domino's was required to make its website ADA-compliant, as the website served much like a physical store in which customers could order food. Specifically, the court noted that:

Customers use the website and app to locate a nearby Domino's restaurant and order pizzas for at-home delivery or in-store pickup. This nexus between Domino's website and app and physical restaurants—which Domino's does not contest—is critical to our analysis.⁶

⁶ We need not decide whether the ADA covers the websites or apps of a physical place of public accommodation where their inaccessibility does not impede access to the goods and services of a physical location.

The court thus found that:

Domino's website and app facilitate access to the goods and services of a place of public accommodation—Domino's physical restaurants. They are two of the primary (and heavily advertised) means of ordering Domino's products to be picked up at or delivered from Domino's restaurants. We agree with the district court in this case—and the many other district courts that have confronted this issue in similar contexts—that the ADA applies to Domino's website and app, which connect customers to the goods and services of Domino's physical restaurants.

[Gil v. Winn-Dixie Stores, Inc.](#)

In *Winn-Dixie*, a long-time visually impaired customer of Winn-Dixie was unable to order a prescription for in-store pickup on that company's website or to link prescription coupons to the customer's Winn-Dixie rewards card. The customer additionally complained that the Winn-Dixie website was not compatible with his screen reader software, which was used to vocalize website content.

Unlike *Domino's*, the 11th Circuit Court of Appeals held that the Winn-Dixie grocery store website **was not** a "place of public accommodation" and noted that:

"Absent congressional action that broadens the definition of "places of public accommodation" to include websites, we cannot extend ADA liability to the facts presented to us here, where there is no barrier to the access demanded by the statute."

Thus, the court held that the ADA did not apply to websites.

A week after the finding by the 11th Circuit Court of Appeals, the plaintiff filed a request for an *en banc* panel of judges to reconsider the ruling. At the end of 2021, the full Circuit Court of Appeals found that the original case had become moot,⁹ and the court vacated its prior decision.

⁹ The case was determined to be moot because the district court had granted Winn-Dixie a three-year injunction from complying with the ADA pending Winn-Dixie's appeal to the appellate court. The appellate court, however, did not rule on the case prior to expiration of this three-year period, and Winn-Dixie

Dissatisfied with this finding, Winn-Dixie filed a request for rehearing *en banc* on whether the appeal and underlying case were moot. On March 2, 2022, the Circuit Court of Appeals denied Winn-Dixie's request, putting an end to six years of litigation.

State Accessibility Regulation Case Law

To date, most state law accessibility cases have been brought under California's Unruh Act, the state's equivalent to the ADA. Plaintiffs have been successful in at least two cases: *Davis v. BMI/ BND Travelware* (2016) and *Thurston v. Midvale Corp.* (2018, aff'd Ct. App. 2019). In the *Thurston* case, the appellate court affirmed a lower court order requiring the Midvale Corporation to make its website conform with the WCAG 1.0 Level AA guidelines, as well as to pay \$4,000 in statutory damages plus attorneys' fees.

In another California Court of Appeal Case (*Martinez v. Cot'n Wash, Inc.*) for the Second Appellate District, Division One, the Court disagreed with the DOJ's broad interpretation with respect to businesses that do not have a physical location. Instead, the Court in *Martinez* found that the ADA does NOT apply to business websites where the business does not also have a physical presence. The Court noted that Congress has not chosen to amend the ADA to include websites, and that no regulations have been adopted regarding any standards of ADA compliance for websites.

In accordance with these state-level determinations, many firms are using the WCAG Level AA guidelines as a benchmark for accessibility compliance.¹⁰

The Web Content Accessibility Guidelines (WCAG)

What Are the WCAG?

Developed by the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI), the Web Content Accessibility Guidelines (WCAG) explain how to make web content more accessible for individuals with disabilities. WCAG covers web pages, applications, and other digital content.

There are three levels of conformance:

- **Level A** is the minimum level.
- **Level AA** includes all Level A and AA requirements. Most organizations strive to meet Level AA; we believe that this level is generally considered "best practices." See [Attachment 1](#) for this criteria list.

implemented website changes that it believed were necessary to comply with the ADA. As a result, the appellate court found that the case had become moot.

¹⁰ The WCAG Guidelines continue to be updated; as of August, 2022, the current version is 2.1, with version 2.2 in working draft format.

- **Level AAA** includes all Level A, AA, and AAA requirements. This is the highest conformance level, but likely, very few websites meet this level of compliance, as the requirements are rigorous and can be exorbitantly expensive for large websites. Additionally, much of the website coding commonly used to make a website inviting and interactive is not possible using Level AAA compliance. Thus, this standard is usually not recommended, and it is not legally required under any laws or regulations of which we are aware.

Should My Website Comply with WCAG Level AA Success Guidelines?

While such compliance is not strictly required for most business or law firm websites, we believe that it will be helpful to consider the Level AA Success Guidelines in connection with a website audit. Where there are significant deficiencies between these guidelines and the website (such as missing alt tags, large contrast issues, and similar matters), it will be helpful for a law firm to fix such matters.

About WCAG 2.0, 2.1 & 2.2

WCAG 2.0, 2.1, and 2.2 are iterations of the accessibility guidelines.

- WCAG 2.0 was published on December 11, 2008
- WCAG 2.1 was published on June 5, 2018
- WCAG 2.2 was scheduled to be released in the summer of 2022 (although it has not yet been released as of August 2022).

All requirements (called “success criteria”) from 2.0 are included in version 2.1 (i.e., the 2.0 success criteria are included verbatim), meaning that businesses that comply with WCAG 2.1 also comply with WCAG 2.0. All success criteria in 2.0 and 2.1 will be included in 2.2 compliance, including representative pages that may have a contact form.

WAVE Analysis of Primary Website Pages

WAVE¹¹ is a suite of evaluation tools that help businesses make their web content more accessible to individuals with disabilities. WAVE can identify many accessibility and WCAG errors, and it also facilitates the human evaluation of web content.

The WAVE tools should be used for both desktop and mobile versions of a website, as the same website, which may be compliant in the “desktop” version, may not be compliant in the “mobile” version without changes being made.

¹¹ <https://wave.webaim.org/>

Should Law Firms Use an Accessibility Plugin to Make a WordPress Website Compliant?

It's important to understand that accessibility plugins DO NOT make a website ADA-compliant. Thus, the term "ADA Plugin" is a misnomer, and these plugins should be better considered "accessibility plugins."

What is an Accessibility "Plugin"?

Accessibility plugins (and other similar applications) are sometimes referred to as "overlays," as they "overlay" the regular web page content presented by a browser and allow a user to modify aspects of the content presentation (such as to make text larger or increase contrast).¹² One of the most popular plugins is one developed by [UserWay](#), which offers both free and paid plugins. For those who have minor accessibility needs and who may not require a screen reader, an accessibility plugin may be helpful.

Should an Accessibility Plugin Be Used?

There is a split of opinion as to whether an accessibility plugin should be used, which may be summarized as follows:

Yes, an Accessibility Plugin should be used. Top accessibility plugins are designed to address a number of accessibility issues, such as increasing font size, contrast, and many other matters. When a website owner adds an accessibility plugin, they help those who may be visually or otherwise challenged better navigate a website. They may also potentially deter a lawsuit, as they show that a website owner has taken actions to make a website more accessible. However, the owners of some websites using accessibility plugins have been sued, but it is unclear if the use of the accessibility plugin was a primary factor in filing the lawsuits.

No, an Accessibility Plugin should not be used. Under this view, accessibility plugins can interfere with screen readers, and thus make it harder for those who are visually impaired to navigate a website than if no plugin was added. This view suggests that a website owner should take the position that someone with visual or other disabilities will already have a screen reader, which may (or may not) be the case.

What Does the DOJ Say?

In the Flexibility Guidance, the DOJ notes that:

¹² WordPress is by far the world's most used website platform. WordPress websites can make use of what are known as "plugins", which (like apps for a cell phone) extend the functionality of WordPress websites. Tens of thousands of plugins have been developed for WordPress websites, including a few that have been developed to help those who have visual or other impairments.

Automated accessibility checkers and overlays that identify or fix problems with your website can be helpful tools, but like other automated tools such as spelling or grammar checkers, they need to be used carefully.

Thus, the DOJ neither promotes nor discourages the use of accessibility plugins.

What do organizations devoted to helping those visually impaired suggest with respect to Accessibility Plugins?

We spoke with Chris Danielsen, Director of Public Relations for the National Federation of the Blind, for their organization's opinion on the use of accessibility plugins. This organization did not offer a definitive opinion on whether an accessibility plugin should (or should not) be used. Instead, they advised that website owners should take care to make their websites otherwise compliant with best practices, especially with respect to using alt tags and making sure that a website can be easily navigated by those who are visually impaired.

What Damages Could Be Assessed If I Fail to Make My Website ADA Compliant?

Department of Justice Lawsuits

Under the ADA, the DOJ is authorized to file lawsuits in Federal court in cases of "general public importance" or where a pattern of discrimination is alleged. If a company is sued by the DOJ and loses, "it will not have to pay the Department's attorneys' fees, but may be liable for monetary damages for compensatory relief (but not punitive relief) and civil penalties. Civil penalties may run as high as \$92,383 for a first violation or \$184,767 for a subsequent violation."¹³

The DOJ has brought a number of actions in recent years, including actions against:

- Hy-Vee, Inc.
- The Kroger Co.
- Meijer, Inc.
- Rite Aid Corporation
- Teachers Test Prep, Inc.
- H&R Block.

Common violations included:

- Images, buttons, and form fields are unlabeled or have inaccurate alt text
- Pop-ups are not reported to screen readers
- Tables are missing header information

¹³ [lesson 9 Page 1 \(ada.gov\)](#)

- Missing or incorrect captions

The ordered actions from the DOJ tended to include:

- WCAG Level AA Conformance (thus, business owners may want to consider Level AA compliance with their websites)
- Hiring a Website Accessibility Consultant
- Creating a Website and Mobile Application Accessibility Policy
- Developing a User Accessibility Testing Group comprised of individuals with different disabilities
- Annual Accessibility Training
- Ongoing Reporting Requirements

While the DOJ also issued small fines in some cases (generally around \$5,000), the major costs to defendants were attorneys' fees and the compliance costs noted above.

Private Party Actions

Private parties (without the assistance of the DOJ) may bring lawsuits to enforce Title III of the ADA, the section of the ADA that applies to business website accessibility matters. Under the ADA, a private party may potentially be entitled to reasonable attorneys' fees and equitable relief (such as a court order requiring a company to make its website WCAG Level AA compliant) but cannot be awarded financial damages. However, if a business chooses to settle to avoid litigation, a plaintiff may be awarded damages in accordance with the terms of a settlement agreement.

Under various state laws, private parties may also be entitled to compensatory damages. For example, in California, a successful plaintiff could be entitled to \$1,000 per offense under the California Disabled Persons Act and \$4,000 per offense under the Unruh Act, the state's equivalent to the ADA.

Website accessibility damages and attorneys' fees (both for the defense and fees ordered to be paid to the plaintiff's counsel) and complying with court-ordered equitable relief can be exorbitantly expensive. Thus, it is typically a best practice to proactively address accessibility concerns to minimize the risk of being involved in costly litigation.

Tax Incentives for Accessibility and ADA Compliance

Eligible law firms and other website owners may qualify for Federal tax incentives available to help cover costs of making improvements for clients with disabilities, including:

- **A disability access tax credit for small businesses** that remove access barriers to their facilities or take other steps to improve accessibility for clients with disabilities (which may include website accessibility improvements); and
- **A tax deduction for businesses of all sizes** that remove access impediments in their facilities or vehicles.

A law firm that incurs eligible expenses to become ADA compliant may use these tax incentives **annually**; however, they may not be applied to the cost of new construction and specific eligibility requirements may apply.

Disabled Access Tax Credit ([26 U.S.C. § 44](#))

Small businesses with total annual revenue of **\$1,000,000 or less** or those with **30 or fewer employees** may be eligible to claim the Disabled Access Credit.¹⁴ Eligible law firms may take a credit of up to \$5,000 (50% of the eligible access expenditures incurred during a tax year by an eligible small business that exceed \$250 but do not exceed \$10,250).¹⁵

Under Section 44 of the IRS Code, eligible access expenditures are “expenditures made by an eligible small business that enable it to comply with the applicable requirements of the Americans with Disabilities Act of 1990 (ADA).” A strict reading of this section may be somewhat circular, as it is not clear whether a law firm’s website must comply with the ADA, or what standards are applicable.

If you are interested in taking advantage of this potential tax credit, **we urge you to first speak with a qualified accountant to confirm that any expenses will be eligible for a tax credit based upon current IRS regulations.**¹⁶

For additional information regarding tax credits for ADA accessibility improvements, we recommend visiting the Internal Revenue Service website at www.irs.gov or calling (800) 829-3676 to order the necessary business forms and publications (i.e., Form 8826 (Disabled Access Credit) and Publication 535 (Business Expense Tax Deduction)).

About the Authors

Jeff Lantz

¹⁴ Internal Revenue Code, Section 44. See the other requirements associated with this credit.

¹⁵ Request for General Information, Internal Revenue Service (Dec. 2000), <https://www.irs.gov/pub/irs-wd/00-0272.pdf>.

¹⁶ Esquire Interactive **does not** provide tax, legal, or accounting advice. This material has been prepared for informational purposes only and should not be relied upon as tax, legal, or accounting advice. You should consult your own tax, accounting, and/or legal advisors before taking any actions or making any expenditures discussed in this memorandum.

Jeff Lantz is an attorney and the CEO of [Esquire Interactive LLC](#), an interactive digital marketing agency that has served hundreds of attorneys since 2009, and which developed the ePRESQ™ platform for custom law firm WordPress websites, FirmMetrics™, and FirmReviews™.

Jeff is passionate about helping attorneys and legal marketers develop successful integrated marketing plans. He has given dozens of presentations and wrote numerous published articles about law firm marketing. He is also an ABA book author - [Internet Branding for Lawyers: Building the Client-Centered Website](#).

He previously founded and sold three social media companies, practiced law as a corporate/securities attorney at Snell & Wilmer, and served as a senior attorney for BHP Billiton and as the General Counsel for Westar Aerospace & Defense Group. He graduated from Indiana University with an MBA in Finance, and with a J.D. (*cum Laude*), where he was a member of Law Review.

Desire'e Martinelli

Desire'e Martinelli is a dynamic, multi-faceted professional, currently serving as the Director of Marketing & Analytics at Esquire Interactive. With a strong background in business and law, she excels in website development, branding, and Internet marketing strategies tailored specifically for law firms and attorneys.

Desire'e leverages her deep understanding of the legal industry, gleaned from her extensive experience as a law firm marketing director, business and IP attorney, and entrepreneur. She skillfully navigates the unique marketing challenges law firms face, driving strategic initiatives to optimize their online presence and overall brand.

Desire'e holds a Juris Doctor degree, summa cum laude, from the University of Mississippi School of Law, with a concentration in business law. She developed a fervor for intellectual property, which was the cornerstone of her legal practice following graduation. As an attorney, Desire'e assisted clients with business formation, corporate matters, employment issues, and intellectual property matters.

Aside from her role at Esquire Interactive, Desire'e maintains an active presence within the legal community and is a business owner. She is a frequent presenter at Bar Association events and Continuing Legal Education (CLE) seminars, sharing her wealth of knowledge and experiences with fellow attorneys and legal professionals.

Attachment 1

Web Content Accessibility Guidelines (WCAG) Level AA “Success” Criteria

The following chart describes what factors need to be met for each of the identified “success criteria.”

1. Perceivable	
Information and user interface components must be presentable to users in ways they can perceive.	
Success Criteria	Description for Level AA Compliance
1.1.1 Non-Text Content	All non-text content that is presented to the user has a text alternative that serves the equivalent purpose.
1.2.1 Audio-Only & Video-Only Prerecorded	An alternative for time-based media is provided that presents equivalent information for pre-recorded audio-only content & either an alternative for time-based media ¹⁷ or an audio track is provided for prerecorded video-only content.
1.2.2 Captions	Captions are provided for all prerecorded audio content in synchronized media, except when the media is a media alternative for text and is clearly labeled as such.
1.2.3 Audio Description or Media Alternative (Prerecorded)	An alternative for time-based media or audio description of the prerecorded video content is provided for synchronized media, except when the media is a media alternative for text and is clearly labeled as such.
1.2.4 Captions (Live)	Captions are provided for all live audio content in synchronized media.
1.2.5 Audio Description (Prerecorded)	Audio description is provided for all prerecorded video content in synchronized media.
1.3.1 Info and Relationships	Information, structure, and relationships conveyed through presentation can be programmatically determined or are available in text.
1.3.2 Meaningful Sequence	When the sequence in which content is presented affects its meaning, a correct reading sequence can be programmatically determined.
1.3.3 Sensory Characteristics	Instructions provided for understanding and operating content do not rely solely on sensory characteristics of components such as shape, color, size, visual location, orientation, or sound.
1.3.4 Orientation	Content does not restrict its view and operation to a single display orientation, such as portrait or landscape, unless a specific display orientation is essential.
1.3.5 Identify	The purpose of each input field collecting information about the

¹⁷ A document including correctly sequenced text descriptions of time-based visual and auditory information and providing a means for achieving the outcomes of any time-based interaction

Input Purpose	user can be programmatically determined.
1.4.1 Use of Color	Color is not used as the only visual means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.
1.4.2 Audio Control	If any audio on a Web page plays automatically for more than 3 seconds, either a mechanism is available to pause or stop the audio, or a mechanism is available to control audio volume independently from the overall system volume level.
1.4.3 Contrast	<p>The visual presentation of text and images of text has a contrast ratio of at least 4.5:1, except for the following:</p> <p>Large Text: Large-scale text and images of large-scale text have a contrast ratio of at least 3:1;</p> <p>Incidental: Text or images of text that are part of an inactive user interface component, that are pure decoration, that are not visible to anyone, or that are part of a picture that contains significant other visual content, have no contrast requirement.</p> <p>Logotypes: Text that is part of a logo or brand name has no contrast requirement.</p>
1.4.4 Resize Text	Except for captions and images of text, text can be resized without assistive technology up to 200 percent without loss of content or functionality.
1.4.5 Images of Text	If the technologies being used can achieve the visual presentation, text is used to convey information rather than images of text.
1.4.10 Reflow	Content can be presented without loss of information or functionality and without requiring scrolling in two dimensions for vertical content (width equivalent to 320 CSS pixels) or horizontal content (height equivalent to 256 CSS pixels).

1.4.11 Non-text Contrast	The visual presentation of User Interface Components ¹⁸ and Graphical Objects ¹⁹ have a contrast ratio of at least 3:1 against adjacent color(s).
1.4.12 Text Spacing	In content implemented using markup languages that support the following text style properties, no loss of content or functionality occurs by setting all of the following and by changing no other style property: Line height (line spacing) to at least 1.5 times the font size; Spacing following paragraphs to at least 2 times the font size; Letter spacing (tracking) to at least 0.12 times the font size; Word spacing to at least 0.16 times the font size.
1.4.13 Content on Hover or Focus	Where receiving and then removing pointer, hover, or keyboard focus triggers additional content to become visible and then hidden, the following are true: Dismissible A mechanism is available to dismiss the additional content without moving pointer hover or keyboard focus unless the additional content communicates an input error or does not obscure or replace other content; Hoverable If pointer hover can trigger the additional content, then the pointer can be moved over the additional content without the additional content disappearing; Persistent The additional content remains visible until the hover or focus trigger is removed, the user dismisses it, or its information is no longer valid.
2. Operable User interface components and navigation must be operable	
Success Criteria	Description for Level AA Compliance
2.1.1 Non-text Content	All functionality of the content is operable through a keyboard interface without requiring specific timings for individual keystrokes, except where the underlying function requires input that depends on the path of the user's movement and not just the endpoints.
2.1.2 No	If keyboard focus can be moved to a component of the page

¹⁸ Visual information required to identify user interface components and states, except for inactive components or where the appearance of the component is determined by the user agent and not modified by the author.

¹⁹ Parts of graphics required to understand the content, except when a particular presentation of graphics is essential to the information being conveyed.

Keyboard Trap	using a keyboard interface, then focus can be moved away from that component using only a keyboard interface, and, if it requires more than unmodified arrow or tab keys or other standard exit methods, the user is advised of the method for moving focus away.
2.1.4 Character Key Shortcuts	<p>If a keyboard shortcut is implemented in content using only letter (including upper- and lower-case letters), punctuation, number, or symbol characters, then at least one of the following is true:</p> <p>Turn off A mechanism is available to turn the shortcut off;</p> <p>Remap A mechanism is available to remap the shortcut to use one or more non-printable keyboard characters (e.g., Ctrl, Alt, etc);</p> <p>Active only on focus The keyboard shortcut for a user interface component is only active when that component has focus.</p>
2.2.1 Timing Adjustable	<p>For each time limit that is set by the content, at least one of the following is true:</p> <p>Turn off The user is allowed to turn off the time limit before encountering it; or</p> <p>Adjust The user is allowed to adjust the time limit before encountering it over a wide range that is at least ten times the length of the default setting; or</p> <p>Extend The user is warned before time expires and given at least 20 seconds to extend the time limit with a simple action (for example, "press the space bar"), and the user is allowed to extend the time limit at least ten times; or</p> <p>Real-time Exception The time limit is a required part of a real-time event (for example, an auction), and no alternative to the time limit is possible; or</p> <p>Essential Exception The time limit is essential and extending it would invalidate the activity; or</p> <p>20 Hour Exception The time limit is longer than 20 hours.</p>
2.2.2 Pause, Stop, Hide	For moving, blinking, scrolling, or auto-updating information, all of the following are true:

	<p>Moving, blinking, scrolling For any moving, blinking, or scrolling information that (1) starts automatically, (2) lasts more than five seconds, and (3) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it unless the movement, blinking, or scrolling is part of an activity where it is essential; and</p> <p>Auto-updating For any auto-updating information that (1) starts automatically and (2) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it or to control the frequency of the update unless the auto-updating is part of an activity where it is essential.</p>
2.3.1 Three Flashes or Below Threshold	Web pages do not contain anything that flashes more than three times in any one-second period, or the flash is below the general flash and red flash thresholds.
2.4.1 Bypass Block	A mechanism ²⁰ is available to bypass blocks of content that are repeated on multiple Web pages.
2.4.2 Page Titled	Web pages have titles that describe topic or purpose.
2.4.3 Focus Order	If a Web page can be navigated sequentially and the navigation sequences affect meaning or operation, focusable components receive focus in an order that preserves meaning and operability.
2.4.4 Link Purpose (In Context)	The purpose of each link can be determined from the link text alone or from the link text together with its programmatically determined link context, except where the purpose of the link would be ambiguous to users in general.
2.4.5 Multiple Ways	More than one way is available to locate a Web page within a set of Web pages except where the Web Page is the result of, or a step in, a process.
2.4.6 Headings and Labels	Headings and labels describe topic or purpose.
2.4.7 Focus Visible	Any keyboard operable user interface has a mode of operation where the keyboard focus indicator is visible.
2.5.1 Pointer Gestures	All functionality that uses multipoint or path-based gestures for operation can be operated with a single pointer without a path-based gesture, unless a multipoint or path-based gesture is essential.
2.5.1 Pointer Cancellation	For functionality that can be operated using a single pointer, at least one of the following is true: No Down-Event The down-event of the pointer is not used to execute any part of

²⁰ process or technique for achieving a result

	<p>the function; Abort or Undo Completion of the function is on the up-event, and a mechanism is available to abort the function before completion or to undo the function after completion; Up Reversal The up-event reverses any outcome of the preceding down-event; Essential Completing the function on the down-event is essential.</p>
2.5.3 Label in Name	For user interface components with labels that include text or images of text, the name contains the text that is presented visually.
2.5.4 Motion Actuation	<p>Functionality that can be operated by device motion or user motion can also be operated by user interface components and responding to the motion can be disabled to prevent accidental actuation, except when:</p> <p>Supported Interface The motion is used to operate functionality through an accessibility-supported interface; Essential The motion is essential for the function and doing so would invalidate the activity.</p>
<p>3. Understandable User interface components and navigation must be operable.</p>	
Success Criteria	Description for Level AA Compliance
3.1.1 Language of Page	The default human language of each Web page can be programmatically determined.
3.1.2 Language of Parts	The human language of each passage or phrase in the content can be programmatically determined except for proper names, technical terms, words of indeterminate language, and words or phrases that have become part of the vernacular of the immediately surrounding text.
3.2.1 On Focus	When any user interface component receives focus, it does not initiate a change of context.
3.2.3 Consistent Navigation	Navigational mechanisms that are repeated on multiple Web pages within a set of Web pages occur in the same relative order each time they are repeated, unless a change is initiated by the user.
1 – 3 of 3 total 3.2.4 Consistent Identification	Components that have the same functionality within a set of web pages are identified consistently.
3.3.1 Error Identification	If an input error is automatically detected, the item that is in error is identified, and the error is described to the user in text.

3.3.2 Labels or Instructions	Labels or instructions are provided when content requires user input.
3.3.3 Error Suggestion	If an input error is automatically detected and suggestions for correction are known, then the suggestions are provided to the user unless it would jeopardize the security or purpose of the content.
3.3.4 Error Prevention	For Web pages that cause legal commitments or financial transactions for the user to occur, that modify or delete user-controllable data in data storage systems, or that submit user test responses, at least one of the following is true: Reversible Submissions are reversible. Checked Data entered by the user is checked for input errors and the user is provided an opportunity to correct them. Confirmed A mechanism is available for reviewing, confirming, and correcting information before finalizing the submission.
4. Robust Content must be robust enough that a wide variety of user agents, including assistive technologies can interpret it.	
Success Criteria	Description for Level AA Compliance
4.1.1 Parsing	In content implemented using markup languages, elements have complete start and end tags, elements are nested according to their specifications, elements do not contain duplicate attributes, and any IDs are unique, except where the specifications allow these features.
4.1.2 Name, Role, Value	For all user interface components (including but not limited to: form elements, links, and components generated by scripts), the name and role can be programmatically determined; states, properties, and values that the user can set can be programmatically set; and notification of changes to these items is available to user agents, including assistive technologies.
4.2.3 Status Messages	In content implemented using markup languages, status messages can be programmatically determined through role or properties such that they can be presented to the user by assistive technologies without receiving focus.