

# You AUTO KNOW®

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## AMERICANS WITH DISABILITIES ACT WEBSITE COMPLIANCE

### Scenario:

One day you receive a certified letter from a law firm. You open the letter and it briefly states that the firm has reviewed your website and that you are in violation of the Americans with Disabilities Act (ADA). You scratch your head and think, "Well, my building is ADA compliant. What in the world is this all about?" Welcome to a new area of litigation.

The facts in the scenario are absolutely true. While your business and dealership are so intent on the appearance and the message that your website is trying to convey to current and potential customers that your web designers overlooked, or were not even aware of, the question of whether or not your website is compatible for visually and hearing impaired individuals. For example, does the website have screen reader and hearing assistive technologies that individuals can easily use? In one national case, Target was sued by the National Federation of the Blind. Target settled for \$6 million plus the revamping of its website to make it easily accessible to hearing and visually impaired persons. Further, since your websites are used to sell and service products, you are primarily at risk and law firms are increasingly sending out demand letters threatening litigation in federal court if you do not settle and revamp your website. Please be advised that the ADA has a fee shifting provision in it which means that you will pay the plaintiff's attorneys if they are successful.

Title III of the Americans with Disabilities Act provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who

owns, leases (or leases to), or operates a place of public accommodation." Case law has typically defined a "place of public accommodation" to be a physical location, for example, your dealership. At the time the Americans with Disabilities Act was passed in 1990, websites had not even gone live and therefore were not considered within the purview of the ADA. However, numerous courts have held that websites, alone, can be considered places of public accommodation and therefore fall within the scope of the ADA. However, other courts have stated that the website has to be tied to a physical location or it does not apply. For example, it would not apply to eBay. However, the law is not settled. Further, the government has recently stated that it will begin scrutinizing websites in order to determine whether or not they are violating accessibility standards for disabled individuals. In fact, the Department of Justice (DOJ) has stated that all websites must be accessible to consumers with disabilities even if it is not tied to a physical place. It must be noted that the government has no specific guidelines on the subject. The DOJ has repeatedly stated that it will set out formal guidelines but has now pushed that until sometime in 2018. The primary reason the DOJ pushed the enforcement of its proposed guidelines is that most state and federal websites are not compliant. However, as you know with the government, it is "do as I say, not as I do." Also, it must be noted that most of the court cases do not provide guidance on how to make websites ADA compliant. There are several questions to ask when you look at your website; these are not all inclusive. For example, can your website be negotiated only with the keyboard and not a mouse? Do videos have text for the hearing impaired? Are colors and text sizes reasonable, even with someone with low vision impairment? Can the site be easily navigated without additional clicks or read more tabs? Is the text itself understandable without going to another site? Is your website enabled for hearing and visually impaired individuals to use adaptive technology in order to aid them? As you know, a well thought out website is organized, easy to navigate, easy to read, and there is no missing or lack of information.

Since there are no DOJ regulations and the DOJ will not have any until sometime in 2018, some case settlements have possible ADA compliance with the implementation of the World Wide Web Consortium, Web Content Accessibility Guidelines 2.0 (WCAG). I have visited the website and it is extremely comprehensive and absolutely too long to even think about containing in this You Auto Know article. Instead, I have included the link to the site: <https://www.w3.org/WAI/WCAG20/quickref/>

The bottom line is you need to contact your web designer and begin the process of making your website ADA compatible. Quite frankly, without the federal guidelines, there is no right or wrong answer. However, if you do receive a demand letter and litigation is instituted, you can at least provide the defense that you attempted to comply with the ADA requirements. However, since there are no DOJ guidelines, your company did the best it could in order to accommodate hearing and visually impaired persons under the Americans with Disabilities Act. Again, this is not an absolute defense to the lawsuit. However, you must begin making the changes and this author would suggest that you begin immediately.



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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.

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