

**SO, YOU HAVE RECEIVED A LETTER FROM AN ATTORNEY TELLING YOU
THAT YOUR WEBSITE IS NOT FULLY ACCESSIBLE TO
VISUALLY IMPAIRED INDIVIDUALS
WHAT DO YOU DO NOW???**

So, you have received a demand letter from a law firm stating that your website is not fully accessible to visually impaired individuals. The name of the firm will be something like Pacific Trial Attorneys or . There will not usually be a demand for money or claim of damages. You might ignore it and do nothing. Your web page was prepared by you with GoDaddy or other website preparation program. Perhaps you hired a separate IT person or outsourced your website preparation to a company specialized in the creation of websites. You paid good money for this service. Your response “there is nothing wrong with my website”. You ignore the letter from the unknown law firm and go on with your business.

Don’t Ignore:

That is a mistake. Doing nothing will increase your costs and liability under the American Disabilities Act (ADA). The ADA was initially designed to allow people with disabilities to access physical locations. The typical situation is wheel chair access to a business or wheel chair accessibility to a restroom. This has recently been expanded to include accessibility to your website. In a case filed against Domino’s (Robles v. Domino’s Pizza Inc., 2019 WL 190134) the 9th Circuit Federal Court of Appeals held that ADA *does* apply to your website. This case became law on October 28, 2019 when the US Supreme Court decided not to hear the matter.

This has opened the floodgates for litigation by attorneys seeking to obtain attorney fees, costs and damages. The attorney is motivated to file suit because of the Private Attorney General Act (PAGA). This allows the attorney to receive his attorney fees and costs in a successful ADA claim against you. There are also fines and other charges. The reason for PAGA was to have private attorneys enforce statutes. All they have to establish is that your website was not fully accessible to visually impaired individuals.

The law firm has a visually impaired person access your website with a “reader”. The reader is either a program or device used to read websites. The “test plaintiff” does not even have to be living in the area of the business. All they need is a computer with internet access. If the attorneys take the case to Court and are able to establish a lack of access; then the attorneys can charge their attorney fees and costs to the business. Unfortunately this is not reciprocated (if you win, you can't charge your fees and costs to the plaintiff).

Correct your Website:

The answer is to make it so people with disabilities can enjoy the full use of your website; they can access content, navigate your website successfully, engage with different elements, etc. U.S. courts and the Department of Justice (DOJ) have frequently referenced the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA success criteria as a standard to gauge whether websites are accessible. The WCAG 2.0 AA success criteria are comprised of 38 requirements, individually referred to as success criterion. It is a complex and something that you may not want to do on your own. Once you have made the corrections and are WCAG compliant then you can have inserted in your website a “widget” on the front page showing that you are in compliance. This stops the potential litigant from proceeding further or filing suit.

Accessibility is not a redesign your website “set-it-and-forget it thing”. A very big chunk of accessibility is in how you upload media and create content. Yes, coding is a very important

part of the process but it's not the end of the story. For example, every image, video, or audio file that you upload needs to have an alternative means of access (e.g. alt text, closed captioning, transcript). Another important note: there is a separate set of legal best practices to web compliance as well: training, having a web page explaining your accessibility policy, appointing an accessibility coordinator, hiring an independent consultant, and inviting feedback.

For smaller businesses, you'll likely go without the coordinator and consultant formalities above due to budget constraints, but the bigger you are, the more thorough I recommend you become with your approach to web accessibility. Something else that will save you thousands of dollars: If you want someone to remediate (fix) your website, don't waste your money paying for scans and audits from companies that don't actually offer remediation.

What ever you do; do not ignore the demand letter or service of a complaint. If you are served with a complaint you have 30 days from the date of service to file an answer. The potential liability is too great.

Take Action:

Before you receive the demand letter or the filed lawsuit; take action. Have your website reviewed and make it compliant with WCAG. You must be proactive. Do not wait for your website to be hit. The increase in suits filed has grown exponentially. After the decision in the Domino's case was published on October 28, 2019 the number of cases filed in California has increased over 400%. Anecdodely: I have seen a minimum of 10 cases in the months of October and November 2019. This is compared to maybe two cases for all of 2018.

The cost of remediation of your website is nominal compared to the settlement of a suit filed against you. Don't wait; take action.