

DAVIS WRIGHT TREMAINE LLP

Americans with Disabilities Act and Winery Websites

A Legal Resource Provided by Davis Wright Tremaine LLP

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The ADA, Websites, and Wineries

Title III of the Americans with Disabilities Act (ADA) prohibits “discrimination on the basis of disability by covered public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered” in compliance with certain accessibility standards. Whether websites fall under the ADA’s requirements is an open question, with different Circuit Courts of the United States taking different positions. For more information on this debate, please see the DWT advisory: *The ADA and Your Website*.¹

The ADA covers a broad range of accommodations, not all of which are physical. Of late, a substantial amount of attention has been paid to websites, not just actual brick and mortar wineries. In the Ninth Circuit (which includes Washington, Oregon, and California), the ADA has been interpreted to apply to websites that are connected to physical locations in the United States. There has been an increase in private litigation and pre-litigation demands against wineries in the Pacific Coast states and elsewhere alleging that those wineries’ websites are not, but should be, in compliance with the ADA.

Whether allegations are accurate and correct depends on the facts of each individual case (e.g., can the public visit the winery’s physical space?) and we recommend consulting with legal counsel to evaluate your particular business situation. In some parts of the country, even a website that is not connected to a place where the public can go can be considered, itself, a “place” of public accommodation under the ADA. Thus, if a winery is based in Oregon, for example, but its website can be used to purchase wine across the country, it is possible that someone in one of the jurisdictions where websites are themselves places could make a claim in jurisdictions that support such a claim, presuming that the business sells enough in that locality to warrant personal jurisdiction.

Given the increase in litigation and the apparent targeting of wineries, you may want to take steps to make your websites accessible as preemptive action to reduce the likelihood of receiving a demand letter. The U.S. Department of Justice uses the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, issued by the nonprofit World Wide Web Consortium, as its standard for a website’s accessibility.² These are the same standards that have already been adopted in most United States jurisdictions, Canada, the European Union, and elsewhere. These standards are revised from time to time, so it is important for wineries to stay up to date and to comply with the most recent standards.

Here are some of the basics for bringing a website into compliance with WCAG 2.1 Level AA:

Accommodations for those with auditory disabilities:

- For video with audio on the web, the standard accommodation is to caption the media. For audio-only files (no video), a transcript is sufficient. This process is simple and can be performed by a number of captioning services for \$2 to \$3 per minute of content. The file with captions is then simply attached to the audio or video file and can be selected by the user to display along with the video file. Note that “auto-captioning” like that available on You-Tube is currently not accurate enough to meet the WCAG 2.1 Level AA standards.

Accommodations for those with visual disabilities:

- *Low vision:* Low-vision individuals are covered under the WCAG 2.1 Level AA standards. The basic requirement with regard to such persons is to make it easier to read text. That means that the contrast between the background and

¹ Janet Grumer and Beatrice Nuñez-Bellamy, *DWT Advisory: The ADA and Your Website*, <https://www.dwt.com/blogs/employment-labor-and-benefits/2019/10/website-compliance-guidelines-for-businesses>.

² *W3C Accessibility Standards Overview*, <https://www.w3.org/WAI/standards-guidelines/> (link to WCAG 2.1 Level AA found on webpage).

the text should be sharp and that text should be enlargeable using standard tools. The content should basically be readable by someone with poor vision. Thus, text that is low contrast, like dark on dark, is not compliant.

- *Accommodations for those with visual disabilities:* For those who are blind or nearly so, there are two basic issues for accessibility: (1) navigability and (2) readability. Navigability involves the ability to operate the website using only the keyboard – primarily the tab and arrow keys – to access the content in an orderly fashion. This eliminates the need to hover a mouse around the keyboard to find content in a random fashion. Readability involves being sure that the text can be read by an individual's screen-reader software, which means that text that is posted should be roughly the equivalent of searchable text in a word or pdf document. For pictures, pictures of text, scanned text, buttons with graphic text, and other non-text postings that may or may not look like text, all such items should be tagged with alt-text, which is similar to a hidden caption that screen readers can read to a blind individual. After a website is either text or tagged with alt-text, a person with visual disabilities can use screen-reader software, which will read the text out loud to the person.

An accessible website remains accessible only if what is posted on it over time is accessible. It is important to implement training procedures for posting to ensure that all of the individuals empowered to post on a website know how to make the content accessible or know who to ask about it. Once accessibility has been achieved, periodic self-audits of website content are a good way to make sure accessibility is maintained over time.

In addition, all websites, accessible or not, should have an easily findable (and accessible) "Accessibility" page, expressing a commitment to accessibility and offering help with access issues. This will provide disabled users with a way to obtain services if they cannot for any reason access the website, or if they are having any difficulties doing so. While this does not alone make a website compliant, it does open the door to use by disabled individuals when the website isn't perfect.

Given the complexity of this issue, we recommend consulting with legal counsel to discuss your specific situation and to determine the best course of action for understanding how the ADA and similar state laws may apply to your website. As you modify your website over time, you should be certain that it is modified in compliance with the WCAG standards, which provide greater access for everyone. Any overhaul should include the WCAG standards as a requirement.

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