Why Law Firms Should Make Web Accessibility a Priority in 2018

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In our increasingly digital world, web accessibility has become a focus for everyone from disability advocates to firms committed to a high standard of corporate social responsibility. In this article, we will outline the key issues and demonstrate why your law firm should be making web accessibility a priority this year.

There May be Legal Risks for Inaccessible Websites

It’s been a busy, and profitable, few years for plaintiff disability firms. 2017 saw a record number of website accessibility lawsuits filed in federal and state courts and there is no sign that this trend is going to slow down. According to the Seyfarth ADA Title III Blog, “plaintiffs filed at least 814 federal lawsuits about allegedly inaccessible websites” in 2017. The authors admit that this estimate is quite conservative.
Lawsuits include actions brought against the beauty brand Glossier, the supermarket chain Winn-Dixie, McDonald’s, Kmart, home supply company Empire Today, Foot Locker, and many more companies operating in nearly every industry. While retail, fast-food, and hospitality industries were an early target, there has been litigation against healthcare operators, universities, education organizations, credit unions, and professional services. Some law firms may even find themselves in the embarrassing and costly situation of facing class action.

The Ubiquitous Web—Understanding Accessibility in a Digital Age

The internet is central to how the majority of us work, shop, socialize, stay informed, even find love. It has created a new category of merchant, the ecommerce site, the digital-only newspaper, and even ushered in online professional services providers, such as Law Scout, a fixed-fee online legal service provider, Rocket Lawyer, and LegalZoom. According to CNN coverage of a Nielsen Company audience report, “The average American spends nearly half a day staring at a screen”, about “10 hours and 39 minutes each day”. Several analytics firms report that U.S. users now spend upwards of 5 hours per day on mobile devices. While readers may find these stats alarming, they point to the centrality of the internet in modern life. No one would wish to be barred from entering the space where much of the world is choosing to spend their time.

Early on, the internet was heralded as a more open model of society, where anyone could join in the unfettered exchange of ideas. As internet pundit John Perry Barlow declared in his Declaration of the Independence of Cyberspace (1995), “We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth.”

Barlow wasn’t alone in his tech-optimism. Bill Gates has been quoted as describing the internet as “the town square for the global village of tomorrow.”

But if the internet is a town square, it is an exclusionary one, lacking clear signage and pathways. Nearly 1-in-5 people have a disability according to the U.S., Census Bureau Report (2016). Many older users find the internet difficult to navigate due to small type, insufficient contrast between colours, and clunky design.

Disability advocates and non-profits have long made web accessibility a priority. But there are obstacles. One is inertia, especially when it comes to government websites. Another is the reluctance of private entities to allocate part of their marketing budget to what is often, mistakenly, dismissed as a charity initiative (see below for the business case for web accessibility). But the most significant stumbling block may be misconceptions about how those with disabilities live and how important the internet is for expanding what is possible. For example, many people with visual impairments seek out and enjoy online videos—a fact that often surprise those of us without disabilities.

Web Accessibility and the Americans with Disabilities Act (ADA)

27 years ago, in 1990, President George H.W. Bush signed the Americans with
Disabilities Act (ADA) in the hopes that this would allow people with disabilities to secure “independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream”.

At the time, the first web server and web browser, called the WorldWideWeb had just been developed by Tim Berners-Lee. Except for perhaps a few prescient techies, smart investors, and writers of science fiction, no one could have predicted what the internet would become. Certainly the ADA did not account for a world of smartphones and online shopping.

The question of whether the ADA applies to the internet is centred around Tittle III of the Act, which protects against discrimination “on the Basis of Disability in Public Accommodations and Commercial Facilities”. Title III has lead to widespread accessibility improvements in infrastructure, the installation of wheelchair ramps, elevators, braille signage, and improvements in transportation services. These regulations may have lead to more accessible shopping malls, but in the age of Amazon, brick-and-mortar establishments are quickly being displaced by ecommerce.

The Department of Justice (DOJ), the body charged with enforcing the ADA, has previously suggested the Act may apply to the internet, but has thus far deferred implementing formal guidelines. Indeed, regulations were first placed on the departments “inactive list” and then officially withdrawn on December 26th, 2017.

Without clear guidance from the DOJ, the internet community has taken matters into their own hands. These are outlined in the Web Content Accessibility Guidelines (WCAG) 2.0. Developers looking to make a site accessible usually look to meet the standards outlined under Level AA.

The spirit of the law, if not the letter, would seem to suggest that the ADA does apply to websites. The internet is, after all, the agora of the digital age. But without clear guidance from the Department of Justice, the debate will continue to play out in courtrooms across the country. According to a recent article in the New York Times, 751 lawsuits have been filed over this issue since January 2015.

For law firms, the strongest motivation for pursuing accessibility may be risk-management. Having your law firm sued by a disability advocacy group would be a true PR disaster. In the forthcoming part two of this three part series on web accessibility we will explore the legal state of web accessibility in greater detail.

**The Business Case for Accessible Law Firm Websites**

There is a strong business case to be put forward for pursuing web accessibility for your law firm in 2018. The benefits go beyond minimizing litigation risk, to include corporate social responsibility, financial returns, and benefits to the technical aspects of your firm’s digital presence.

**Social Responsibility**

Regardless of whether your firm practices family law or business law, your firm exists to provide legal services to a community. Visitors to your website will
possess a range of capabilities, varying fluency in English, and have different expectations about how to access information. Making your firm’s website as user-friendly as possible demonstrates a commitment to openness and inclusion.

Many lawyers have an estranged relationship with their firm’s websites—thinking of them only when they need to update their bio—but for many clients and contacts, your website is their first point of contact with your firm. Creating an open, welcoming digital presence is more than good manners: it’s a good business decision.

**Optimized Web Presence**

Google is the undisputed king of search, used for nearly 75% of all searches in 2017. While the regulations surrounding web accessibility are being disputed in courts across the country, Google shows a clear preferences for websites that check accessibility requirements. More on this in fSquared Marketing’s forthcoming article on the union of accessibility and digital strategy.

**Financial Returns**

Web accessibility could save your firm from litigation, which is likely to be time-consuming, costly, and damaging to your firm’s brand. Beyond this, benefits include increased market share, SEO, and an improved user experience.

**Accessible design benefits all users**

Accessibility standards are considered best practices in the web development community. As you work to meet them, you are likely to improve the user-experience for everyone visiting your site.

You will be making it easier for an aging population. As the [Population Reference Bureau](https://www.prb.org) reports, “the number of Americans ages 65 and older is projected to more than double from 46 million today to over 98 million by 2060”. This is a lot of potential traffic and every internet-user, regardless of age, has experienced the frustration of trying to read too small text or make sense of a complicated navigation menu. Accessible design also helps the temporarily restricted: users who have an arm in cast, have misplaced their reading glasses, or are viewing your website on smaller screens or accessing through a slow internet connection.

The most effective websites are easy to use. Most visitors to a site are trying to complete an action or access information. Simplicity, and intuitive navigation, make it easy for users to engage with your firm—and that’s just good business.

**Accessibly Now— How to Get Started**

Having read this far, you’re probably ready to make accessibility a priority for your firm. Great, here are a few steps to take:

1. Ask your web team about accessibility measures on your current site.
2. Reference the [WCAG 2.0 guidelines](https://www.w3.org/TR/wcag20/) to see how your firm’s site stacks up.
3. **The WAVE**, a web accessibility evaluation tool, is a free extension for Chrome that can help you quickly identify errors with your site.

4. Make accessibility a key part of your firm's marketing plan for this year and beyond: as regulations evolve, you'll be ready.

5. Speak with potential agency partners about their ability to build to WCAG 2.0 standards (level AA or better).

If your firm is starting a new web development project in the near future, this is an opportunity to implement accessible design from the outset (and get a nice boost to SEO as well). If not, it may be possible to bring your current site in line with ADA.

Making your expertise accessible to as many people as possible demonstrates that your firm is open to clients of diverse abilities, and that you will take that extra step to provide excellent client service.

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