

# Saltmarsh

Saltmarsh, Cleveland & Gund

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

## INTERNET ADA COMPLIANCE, ENFORCEMENT & CHALLENGES



Web Accessibility Standards and Regulations



Why Web Accessibility Matters to a Financial Institution



Current Legislative Outlook



DigiPro Media Powered Solutions

PRESENTER:

STEVE BARSHOV

**DIGIPRO** MEDIA

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# THE LAW:

## Title III of the Americans With Disabilities Act (ADA)

- Prohibits discrimination based on disability in “places of public accommodation.”
- Pertains to Financial Institutions, Hotels, restaurants, bars, retail stores, etc.
- Applies to all private entities who own, lease, lease to, or operate a “place of public accommodation”

## WCAG 2.1 & Section 508 (Ensure your website and its content is easy for anyone to understand)

- The Web Content Accessibility Guidelines (WCAG) are part of a series of web accessibility guidelines published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), the main international standards organization for the Internet.
- Section 508 addresses legal compliance through the process of market research and government procurement and also has technical standards against which products can be evaluated to determine if they meet the technical compliance.

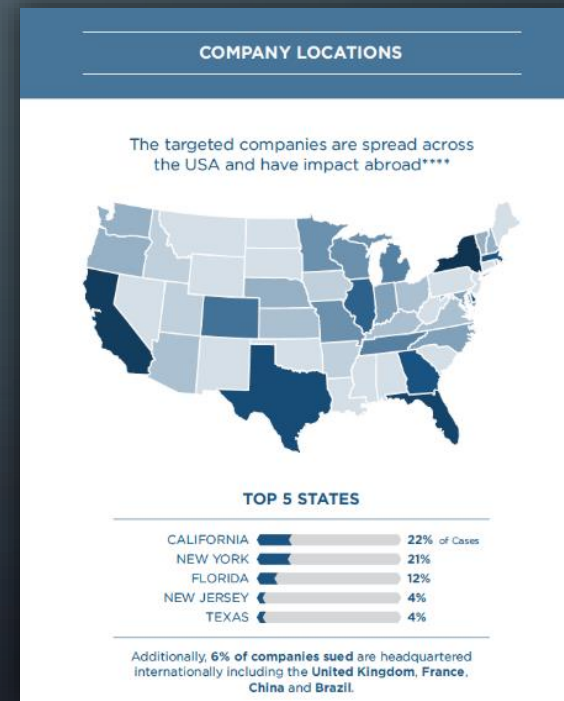


## SURF-BY-LAWSUITS

- New way to extort businesses!
- Serial plaintiffs (about 14 career) and knowledgeable ADA attorneys use code scanning software to find accessibility errors on the web
- Some plaintiff attorneys sent dozens or even hundreds of template accessibility lawsuits
  - We have found plaintiff attorneys tried more accessibility cases than defense attorneys
- Due to ADA Title III provision, lawyers entitled to attorney's fees for winning cases
- Very profitable business model for professional ADA attorneys

## A GROWING TREND

- Volume of ADA digital accessibility litigation accelerates dramatically
- Number lawsuits filed in federal court increased 210% YoY in 2017 and 177% YoY in 2018.
- That number is expected to triple in 2020
- The number of plaintiff firms continue to expand



# THE PATH TO ADA TITLE III WEBSITE LAWSUITS



A typical brick and mortar business that primarily sells to customers in store.



Like most businesses, they offer a website to showcase their products and services.



Demand letters are sent by the lawyer to the business notifying them they are breaking the law.



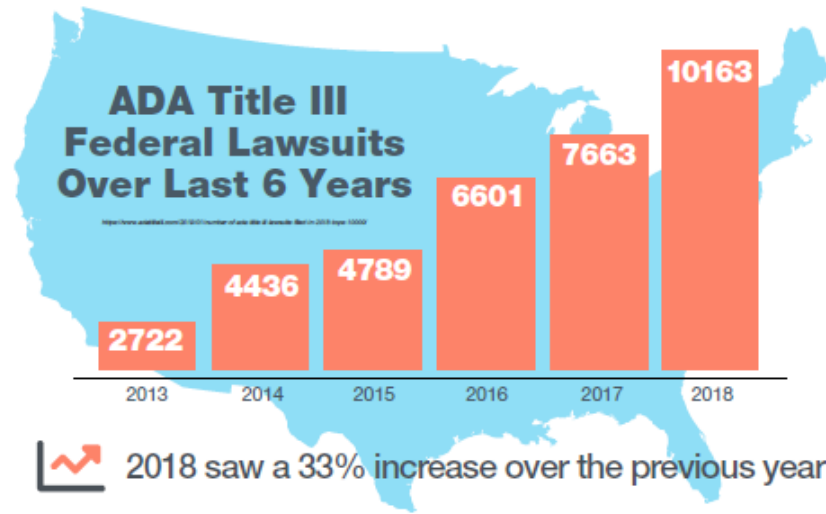
Lawyers specializing in ADA Title III lawsuits crawl the web looking for websites that are non-compliant.



The business owner, unaware their website is non-compliant, must now pay to settle the demand letter or pay higher costs to fight it.



Furthermore, the owner's website still must be updated to satisfy ADA Title III lawsuits or face further lawsuits.



## 1+ EVERY HOUR

10,000+ ADA lawsuits per year. That's 27+ every day.



## \$50,000

AVERAGE COST OF SETTLEMENTS & LEGAL FEES  
And nearly none of that goes to persons with disabilities.

SOURCE: <https://www.fticonsulting.com/publications/yearly-publications-overview-what-the-ada-title-iii-act-means-for-your-business>



## \$2,250

AVERAGE AMOUNT FOR DEMAND LETTERS  
from lawyers related to ADA web accessibility.

# SURF-BY- LAWSUITS

The industries that received the biggest focus in web accessibility litigation include:



**Retail**



**Food Service Industry**



**Travel/  
Hospitality**



**Banking/  
Financial**



**Entertainment  
& Leisure**



**Self-Service**

# AFFECTED INDUSTRIES



## ADA Title III

News & Insights

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### DOJ Nixes All Pending ADA Rulemakings, Including Website Access Rules

By [Seyfarth Shaw LLP](#) on December 22, 2017

POSTED IN [UNCATEGORIZED](#)



By: [Minh N. Vu](#)

**Seyfarth Synopsis:** *The Justice Department withdraws pending rulemakings for accessible websites, furniture and non-fixed equipment. The current Department of Justice's (DOJ) regulatory approach to Title III of the ADA is yet another example of what a difference an*

*election can make.*

## NO END IN SIGHT

The federal government has offered no official guidelines on how the ADA applies to websites. This inaction has created a lot of uncertainty in the federal court system.

# RIZZI V. MORGAN STANLEY SMITH BARNEY, 2018

- Plaintiff Albert Rizzi (Blind) brings lawsuit against Defendant Morgan Stanley for injunctive relief, attorney's fees, and costs under Title III of the ADA and New York state Human Rights Laws.
- Plaintiff claims defendant caused "marginalization of blind, vision impaired, and low vision patrons throughout US."
- Defendant's website was not compatible with assistive screen reader technology.
- "...as a result of the negligence, carelessness, recklessness and blatant disregard of the defendant, the plaintiff was damaged in the amount of \$1,000,000."
- "...as a result of the intentional conduct and willful disregard the plaintiff seeks punitive damages in the amount of \$8,000,000."
- **Court awards Plaintiff \$8M in punitive damages under NY Human Rights laws and \$1M plus interest and attorneys' fees under ADA Title III.**

<https://www.courtlistener.com/recap/gov.uscourts.nyed.415541/gov.uscourts.nyed.415541.1.0.pdf>

# CARELLO V. AURORA POLICEMEN CREDIT UNION, 2019

- Mathew Carello, blind individual, sued local credit union for inaccessible website content under Title III of Americans with disabilities act.
- By not having accessible, reader friendly content, Carello asserted Aurora Policemen Credit Union intentionally discriminated against him and people like him (Visually Impaired).
- Carello's suit dismissed by District Court because Carello was not eligible to become a member Defendant's institution.
- Seventh Circuit upheld District Court's decision asserting Carello's claims of "dignitary harm" and "informational harm" not substantial in holding the defendant responsible.
- "To demonstrate the right to obtain injunctive relief, Carello must show he faces a 'real and immediate threat' of future injury – could not do so because he is ineligible for membership to Defendant's Institution.

## Key Takeaways:

- Both Court's held Carello may have suffered dignitary harm – "stigmatic injury is one of the most serious consequences' of discrimination. [Allen v. Wright, 468 U.S. 737, 755 \(1984\)](#). At the same time, 'not all dignitary harms are sufficiently concrete to serve as injuries in fact.'"
- Had Carello been eligible for membership at the Credit Union, or had he already been a member, it is entirely possible the District Court may have ruled against Defendant.
- Following the suit, Aurora Policemen Credit Union has been identified as potentially easy target for Accessibility Litigation - must address web accessibility issues as soon as possible.





# WHAT ARE THE RISKS?

- **ADA**
  - Private lawsuit – injunction; attorney fees; costs.
  - DOJ action – injunction; civil penalty up to \$55,000 for first violation, up to \$110,000 for subsequent violations; damages for aggrieved person
- **State Law**
  - Many states implemented their own legislation addressing web accessibility (such as California's Unruh Act)
  - Penalties related to web accessibility compliance vary by state and by the degree of the infraction.

# APPROACHES TO WEB ACCESSIBILITY COMPLIANCE

## Standard/Manual 3-Step Approach:

1. Scan inaccessible website code to locate potential barriers to accessibility
2. Remediate by manually remove barriers and update content for accessibility
3. Conduct regular interval status checks to ensure ongoing compliance

## Technology Based Approaches:

### 1. Accessible Parallel Website:

- a) **Full Site Scan** – Scan inaccessible website code to locate potential barriers to accessibility
- b) New/accessible code injected into header of inaccessible website linking disabled users to a parallel 'version' containing necessary content in accessible format

### 2. Fully accessible platform:

- a) Built accessible "from the ground up"
- b) Platform ensures all content is and remains fully accessibility compliant
- c) Utilizes preprogrammed accessible design elements and forced compliance functions prior to publishing

# Questions?

**Saltmarsh**  
Saltmarsh, Cleaveland & Gund  
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

**Steve Barshov**

**CEO**

**DigiPro Media, LLC.**

[steve@digipromedia.com](mailto:steve@digipromedia.com)

(850) 292-8433

[www.digipromedia.com](http://www.digipromedia.com)

**DIGIPRO**  **MEDIA**



**DigiPro Media designs products, services and experiences to provide web accessibility, easy website migration and improved marketability.**

### **CommonAccess**

**We provide a quick, low-cost solution to protecting a company from ADA Title III web accessibility lawsuits.**

### **DigiPro Media**

**We offer affordable, comprehensive website services to design, build and host websites with built-in accessibility compliance.**

### **DigiPaaS**

**We have developed an integrated platform with advanced web productivity tools that can increase growth and operational efficiency.**