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VIRTUAL

 THE HOSPITALITY LAW
CONFERENCE SERIES 20

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Website Litigation Under the ADA: Protect Your Property From Lawsuits

Title III Obligations

- Applies to hotels, resorts, spas, restaurants, etc.
- Prohibits hotels from denying services and accommodations to individuals with disabilities.
- Must modify policies, practices, and procedures – unless doing so fundamentally alters goods and services
- Must remove barriers to access



ADA and Website Accessibility

1. Does your website need to be accessible for users with visual, hearing and physical impairments?
 - Slightly more complicated, but yes
2. Does your website need to provide information regarding various accessibility features at your hotel?
 - Yes



Must my website be accessible for those hard of hearing and seeing?

- Most Likely, Yes! Tension exists in courts and DOJ whether Title III applies to websites
 - Courts have ruled on both sides of the issue
 - No universally recognized standard for achieving website accessibility
 - Trend is for courts to find that websites are places of public accommodation
 - This, even in the absence of guidelines for private companies' websites, the trend is to comply with the gold standard -- WCAG 2.1.



Robles v. Domino's Pizza

- Case centered on the inability of individuals who had limited vision to use Domino's website to order pizzas online with the use of screen-reading software.
- In March 2017, a California district court dismissed the lawsuit, holding that while Title III applied to the internet, allowing the case to proceed in the absence of clear web accessibility regulations from the DOJ would violate Domino's due process rights.
- The Ninth Circuit reversed. It held that Title III applies to websites and that the lack of official web accessibility regulations does not raise due process concerns. It also suggested that lower courts could reference WCAG 2.0 guidelines when structuring remedies.
- Domino's petitioned the Supreme Court to hear this case, where it could prove to be a landmark battle over the rights of disabled people on the internet.
- On Oct. 7, 2019, the Supreme Court denied Cert.

Common Website Accessibility Issues

- **Users with visual impairments:**

- Menus in PDF Format
- Pictures, symbols, maps, diagrams, etc. with no written descriptions
- "Click here" links
- Text as an image file (as opposed to html)

- **Users with hearing impairments:**

- Video and audio files with no captioning

- **Users with physical impairments:**

- Navigating website without a mouse or a keyboard



Policy and Remediation

- Retain an Accessibility Consultant
 - They can help you build safeguards into your contracts to protect against client liability for inaccessible deliverables



Accessibility Statements

- A prominently displayed accessibility statement on your website reduces your potential legal exposure for an ADA website claim.
- If you are an owner or operator of a place of public accommodation, hopefully your website already contains an accessibility statement.
- At a minimum, it should include language that your website and your property are accessible to all guests.
- It should also provide a phone number, email address, and contact person for questions regarding potential accommodations that can be made.

Hotel Accessibility Information on Website

- Hotel websites are subject to the ADA because it provides information about their goods and services to the public
 - ADA regulations - 28 CFR 36.302(e)(1)
- A public accommodation that owns, leases, or operates a place of lodging shall:
 - i. Modify its policies, practices, or procedures to ensure that individuals with disabilities **can make reservations for accessible guest rooms during the same hours and in the same manner** as individuals who do not need accessible rooms;

Accessibility Information on Website

- ii. Ensure that **accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented** and the accessible room requested is the only remaining room of that type



Accessibility Information on Website

- iii. Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the **guest room requested are blocked and removed from all reservations systems;**
- iv. Guarantee that **the specific accessible guest room reserved through its reservations service is held for the reserving customer,** regardless of whether a specific room is held in response to reservations made by others;

Accessibility Information on Website

- v. **Identify and describe accessible features in the hotels** and guest rooms offered through its reservations service **in enough detail** to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs.



Accessibility Information on Website

1. At a minimum, provide information regarding whether common areas of your hotel are accessible
2. Where should that information be provided?
 - Popular common areas
3. Are there accessible routes to get to these areas?
4. If so, describe those as well.
 - ❖ Do not provide inaccurate information!

Accessibility Information on Website

1. You also need to provide sufficient information regarding the accessibility of your rooms.
2. What does that mean?
 - Bed type, number of beds, type of bathroom (roll-in shower, tub with accessible seats), non-slip grab bars, etc.
3. How should this information be provided?



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Questions?



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