

US Government Reasserts Commitment to Ensuring Accessible Websites

Executive Summary

On September 25, 2018, in [a letter to members of Congress](#), the Department of Justice (DOJ) reaffirmed its longstanding policy that [Title III](#) of the [Americans with Disabilities Act](#) (ADA) applies to websites, though once again, it declined to issue specific regulations on what websites need to do to comply with the law.

The ongoing lack of clarity has resulted in thousands of lawsuits being filed against American companies for their websites' purported noncompliance with Title III.

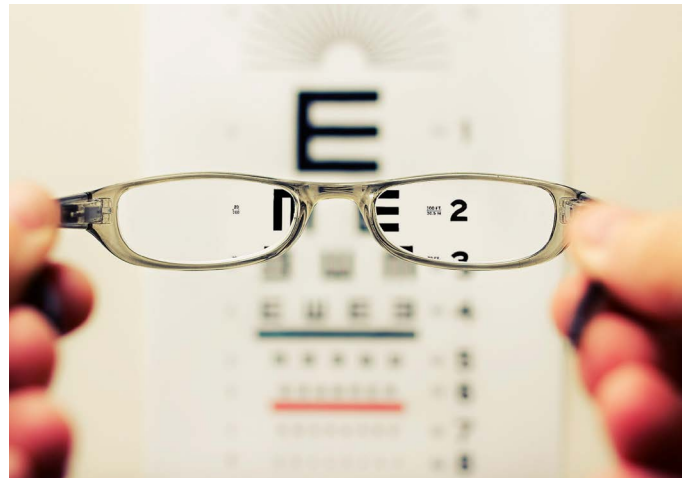
The uncertainty provides more impetus to design with accessibility in mind, a goal that also provides benefits to patients with disabling conditions and comorbidities, as well as the public at large. An accessibility review can be a great first step toward determining your best course of action.

In this POV we explain the importance of accessibility, how adherence to Title III affects websites, and how making content accessible to all users affects pharma.

What Is Accessibility and Why Does it Matter?

As the World Wide Web Consortium's [Web Accessibility Initiative](#) explains it, "Web accessibility means that websites, tools, and technologies are designed and developed so that people with disabilities can use them." This can include issues related to "auditory, cognitive, neurological, physical, speech or visual" ability.

Accessibility has also been proven to benefit the wider public, a phenomenon known as the "[curb-cut effect](#)." A design change made to help some often serves society as a whole. The name comes from the [slopes](#) at crosswalks, which don't only help those in wheelchairs. Their benefits have helped all of us: parents with strollers, kids on roller skates, travelers with suitcases, merchants pushing carts, or others using



wheeled conveyances. As the [Stanford Social Innovation Review](#) says, "Laws and programs designed to benefit vulnerable groups ... often end up benefiting all of society."

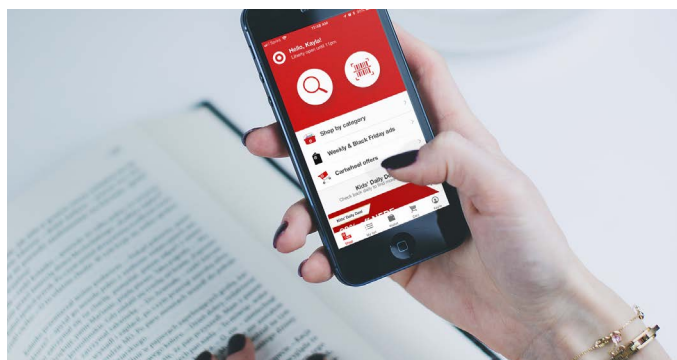
[Color-shifted displays](#), voice readings of text, and descriptive image tags are only a few examples of online accessibility features. While they can be useful for those with disabilities, they can be useful for others, too — people in bright sunlight or noisy environments; the aging; people using an older, limited, or broken device.

Making healthcare information accessible to all is especially important, since many conditions cause or correlate with disabilities. And of course, since the web is increasingly important to all of us every day, the importance of ensuring that its information is accessible to all of us is imperative.

What Is Title III and Why Does it Affect Websites?

Title III of the ADA stipulates that "[Public Accommodations and Commercial Facilities](#)" must be accessible.

In 2005-2006, the Target Corporation became involved in litigation with the National Federation of the Blind, which argued that the company's website was inaccessible to those with vision impairments, and therefore in violation of Title III. In 2006, the Superior Court of Alameda County, CA, ruled that Target could indeed be sued, and in 2007, the Federal Court for the Northern District of California ruled that a class-action lawsuit could be pursued. The parties settled in 2008, at which point Target promised to adjust their website and create a \$6 million settlement fund. In 2009, Target paid an additional \$3.7 million in attorneys' fees for the plaintiffs. The court [noted](#) that the "plaintiffs have broken new ground in an important area of law" by extending "important areas of disability law into an emerging form of electronic commerce that promises to grow in importance."



Specific requirements for exactly what makes a website appropriately accessible have never been stipulated, however. As a result, many [lawsuits](#) have been filed against websites on this front – more than 800 in 2017 alone. Businesses have been asking their members of Congress for help to provide clarifying legislation. And the House of Representatives has included instructions to the Justice Department to issue ADA guidance in its fiscal year 2019 appropriations bill (though the Senate did not include that in its version).

But you may not want to hold your breath. While this was originally [announced](#) in 2010, it was first promised by 2016, then again in 2018. However, it has yet to appear, and was put on the ["inactive list"](#) in 2017, which isn't promising for those hoping to see these standards in place.

What's Happened Recently?

In June 2018, U.S. Representative Ted Budd (of North Carolina's 13th District), together with more than 100 members of the House of Representatives [asked](#) then-Attorney General Jeff

Sessions to provide clarification on website accessibility standards for the ADA.

The [response](#) outlined the DOJ position. Some news outlets have written that it "reaffirms" the DOJ position, while other outlets have characterized it as "refusing" to provide guidance. While seemingly contradictory, both are actually true. The DOJ states that:

- Title III does indeed apply to websites for "public accommodations," such as a store, hotel, library or even a state park.
- "The absence of a specific regulation does not serve as a basis for noncompliance." Simply put: just because DOJ hasn't given specifics doesn't mean the law can be ignored.
- The lack of specifics means that "public accommodations have flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication." If one accessibility standard isn't met, that would not necessarily mean that a website is out of compliance.



Implications for Pharma

The absence of clarity probably means that litigation will continue apace for U.S. companies.

In 2016, there were 260 digital accessibility lawsuits filed. In 2017, there were 814. In August 2018 alone, there were 193.

We are not aware of any life-science companies that have yet faced litigation on this front, but that does not mean it won't or can't happen.

As noted above, a lack of detailed regulations does not mean organizations do not need to make their websites accessible. In most cases, working to meet the most recent [Web Content Accessibility Guidelines'](#) success criteria will be the best strategy. [WCAG 2.1 AA Level 2 accessibility](#) is already required of any entity that does business with the U.S. government.

Also note that Title III isn't the only accessibility law to be aware of. Other laws, including the Rehabilitation Act of 1973 (specifically sections 504 & 508) and the 21st Century Communications and Video Accessibility Act (which refers to the accessibility of text messaging, instant messages and video communications, including closed captioning), also require organizations to make digital properties accessible to individuals with disabilities.

Next Steps

The Intouch UX team is passionate about accessibility. We're fascinated by understanding the intricacies of accessibility law and accessibility design, and we enjoy the worthwhile challenge of creating in ways that are beautiful as well as welcoming for all users.

But we know that not every website budget or plan has historically allowed for accessibility considerations. These new affirmations are another reason to begin to explore increasing your properties' accessibility. Simultaneously, your activity can focus on:

- maintaining compliance
- improving search engine optimization
- reaching all of your target patients, caregivers, HCPs and other customers
- just doing the right thing

We can work with you to review your sites against WCAG 2.1 AA and other laws and provide recommendations for compliance. These can be minor or significant, varying greatly from one website to the next. For instance, while some changes to back-end code would likely not need MLR review; other updates could affect branding, design or layout, and would require review.

November is an especially good time in the budget cycle to complete an accessibility review, ahead of the proposed clarifying statements that are scheduled to be published in 2019.

Contact your Intouch team to get help understanding accessibility, what it means, and how your properties can better meet the needs of all their users.

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Want to learn more about Title III?

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