

The Potential Costs and Opportunities of an ADA Compliant Website

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521 - Current Issues in Law, Technology and Strategy

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March 14, 2022

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WasteNot Compost, a local Chicago waste-removal business, currently uses a website inaccessible to blind/low-vision customers. The website lacks read-aloud capability and large-print text modifications for disabled users. Its coding is also incompatible with host platforms that might otherwise be able to make accessible accommodations. This oversight makes room for future litigation citing non-compliance with the Americans with Disabilities Act of 1990 (further referenced as “the ADA”). Illinois Human Rights Act. Article 5 defines a place of public accommodation as “a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public” (2005, Illinois Code - 775 ILCS 5). As global dependence on technology increases, websites are often lumped under this umbrella and therefore are subject to the ADA’s regulation. However, if addressed proactively, WasteNot’s oversight provides an opportunity for expansion and inclusion. If the company moves to provide a compliant website, they not only avoid litigation costs but actually extend their business reach and open the door to corporate grants and sponsorships.

WasteNot’s site currently states the following mission: “Our mission is to reduce the amount of greenhouse gases emitted by landfills.” The mission is supported by the following five core values: Waste Not, Live Sustainably, Create Value, Collective Strength, Future Focused” (WasteNot, 2022). An accessibility initiative easily supports these stated values. Disabled people are part of the general community and therefore should be included in a mission towards ‘Collective Strength.’ The company would also ‘Create Value’ for disabled consumers who are concerned about the planet’s well-being by making accommodations, thus demonstrating their

‘Future Focus’. It is also a wasted opportunity to exclude any number of community members, and as the name suggests, a core business tenant is ‘Waste Not.’ Greenhouse gasses and climate change do not discriminate against disability. If every person is subject to the impacts of climate change then every person deserves the chance to contribute to a solution.

Companies might see accessibility initiatives as worthy philanthropic causes but ultimately inconsequential for business. That is an inaccurate and potentially damaging assumption - case law suggests that an inaccessible website qualifies as a non-compliance issue with the ADA. The first case to demonstrate this type of ruling was *Gil v. Winn-Dixie Stores*. The court ruled “that “Winn-Dixie has violated the ADA because the inaccessibility of its website has denied Gil the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations that Winn-Dixie offers to its sighted customers”” (Staneluis, 2023¹). Seton Hall Law contributor Marque Staneluis goes on to reference another case, *Markett v. Five Guys Enters. LLC*, writing “a plaintiff just needs to indicate that they were barred from full and equal enjoyment of the site without having to present the specific elements that barred the full enjoyment nor indicate whether the experience was equally shared amongst disabled and non-disabled individuals” (Staneluis, 2023). This case set a precedent for future plaintiffs looking to sue on the grounds of an inaccessible website. Because the case also ruled in favor of the plaintiff, it can be interpreted as a plaintiff friendly precedent - that is, “Judges will generally “follow precedent” - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues” (uscourts.gov). This increases the urgency of making appropriate changes to the company website. If, as Staneluis suggests, the plaintiff only has to demonstrate how they were individually impacted, then the company would

¹ The article cited here offers no publication date except for the year ‘2023’

be wise to err on the side of caution. WasteNot is, by these standards, currently vulnerable to litigation should the right potential plaintiff try to use the site.

According to the Wall Street Journal, “the number of U.S. lawsuits alleging that websites, apps and digital videos were inaccessible to people with disabilities rose 64% in the first half of 2021 from a year earlier...” (Alcantara, 2021). This indicates that users are both looking for accessible websites and holding companies accountable for failing to make reasonable accommodations. *TechTrends*’ writer, Steven Baule, lists the following as common complaints:

- An inability to navigate a website using only the tab and arrow keys
- During tab key navigation, the menu selection does not highlight or change color
- Colors are not contrasting enough for the visually impaired
- Descriptive “alt tags” are not present for all images
- Videos do not include closed captioning and transcripts
- PDF files are not optimized for ADA or do not include alternative text for informational images
- Online form fields are not effectively labeled (2019)

Unfortunately, WasteNot’s site does not score favorably with this list of examples. The Wall Street Journal quotes disability-rights lawyer, Lainey Feingold: “Digital inclusion is about including disabled people in the digital world, and it is so vital for participation, diversity, civil rights” (2021). In order for disabled people to participate in efforts that fight climate change, like the compost services offered by WasteNot, they first have to have access to the information.

WasteNot’s current service map disproportionately serves Chicago’s northside and surrounding suburbs (WasteNot, 2022). According to the City of Chicago’s 2018 Census, approximately 10.1% of residents in Chicagoland identify as having a disability. In 2015, Cook

County was listed as the county in Illinois with the highest number of disabled residents. The Chicago Food Bank reports that low income neighborhoods tend to have more people with disabilities (2022). The majority of Chicago's low-income neighborhoods fall in the gaps where WasteNot does *not* serve. This means that even though Cook County has one of the highest density populations of people with disabilities in Illinois, they are not given access to the same resources, including WasteNot's compost services. Revamping the company's website is not just a matter of accessibility and lawsuit prevention - it is also a door to safe expansion into other regions of Cook County. The company can proactively stave off lawsuits as they expand into new, diverse areas. While this initiative focuses specifically on website accessibility, it will hopefully open the door to further future accommodations.

There are a number of solutions to bolster the website initiative's success. First, it is imperative that experts are involved in the process and there are no better experts than disabled consumers. The Advisory Board Centre defines an advisory board as "a structured and collaborative method for organizations to engage with external advisors. Advisory boards act as a sounding board for either the owners, directors or shareholders of a company" (2022). By creating an advisory board of service users (particularly blind/low-vision customers who will immediately benefit from the website's changes), WasteNot directly involves the target audience and positions the company as an industry leader in access. It may also be beneficial to include existing disability service providers on the board to provide guidance. Such a board will require careful selection and active involvement but the payoff could make a huge difference in the initiative's success.

As accessibility is folded into existing business practices, internal engagement will be an important step. To ensure internal buy-in, the company must involve employees, particularly tech

support staff, in the launch. To capitalize on the company's internal network, WasteNot may want to consider conducting a formal network study to gain insight as to which employees are most likely to encourage their colleagues to adopt the initiative. However, a network study is an investment in its own right, so the company may want to consider smaller intermediary steps. Those might include adopting employee policies such as setting an appropriate response time requirement for fixing website glitches and addressing service-user complaints. For example, if IT is alerted that one of the website's accessible toggles are inactive, they must address the issue within 12 hours.

Once the website becomes public facing, it will be important to promote the changes directly to new customers who might benefit from the services. This can be done in multiple ways. A social media campaign might be the obvious choice, but a company with potential community impact like WasteNot might benefit more from direct contact with local hubs. Community Gardens like Grow Greater Englewood and Sistas in the Village could benefit from the compost services and simultaneously connect the company with a new area of Cook County, one that is closer to neighborhoods with more disabled people. WasteNot should also communicate directly with current service users to ensure customers know what to expect with the initiative's launch. The message can be spread through an email blast, a flier with the next bucket delivery, or a pop-up on the website landing page, something that draws attention to the new offerings. By communicating with current customers, the company has an opportunity to engage with their existing community and alert people who might have disabled loved-ones that want to use the services.

Inevitably, these accommodations will require upfront financial investments. Most obviously, a non-compliant website means WasteNot could be subject to expensive litigation and

legal fees. According to disability advocate Sherri Byrne-Haber, the average cost to settle a single lawsuit is about \$25,000 (Medium, 2019). Compare that to the average cost of updating a website with accessible technology. The initial build might cost between \$4,500 - \$6,500 plus \$500 - \$1,000 per month for maintenance (Atilus 2019). Even using the most expensive calculations, the annual cost of an accessible website is approximately \$18,500, which is a \$6,500 difference in favor of an accessible website instead of eating the cost of a lawsuit (and that assumes only one suit is brought against the company before compliance is met).

There are positive financial incentives to making a commitment to accessible accommodations. Accessibility offerings open the door to certain tax incentives such as the Disabled Access Credit, a nonrefundable credit (meaning the money does not have to be returned) for small businesses to cover the cost of expenditures related to providing services to the disabled (ADA National Network, 2022). There are also tax deductions to consider. Companies offering accessible services can claim up to \$15,000 in deductions (ADA National Network, 2022). Another way to offset the cost of website building and maintenance is through the pursuit of corporate partnerships and grants. For example, Patagonia offers a corporate grant. The application page states, “We are most interested in making these grants to organizations that identify and work on the root causes of problems and approach issues with a commitment to long-term change. We look for innovative groups with proposed projects that are quantifiable; that have specific goals, objectives and action plans, and that include measures for evaluating success” (Patagonia, 2022). WasteNot is a perfect candidate for this example because their compost work directly relates to long-term change and an accessibility initiative would further strengthen an application for the grant.

Ultimately, companies can expect to see further litigation and pressure surrounding accessible websites, particularly as courts continue to rule in favor of disabled plaintiffs. This is an opportunity to preempt costly, avoidable legal fees. While the proposed changes do require an investment of time and money, the move to support disabled consumers actually opens a wide door to expanded business opportunities and financial incentives. By consulting with experts, obtaining internal support, and publicly announcing the new website features, WasteNot's likelihood of success is increased. This initiative is intended to serve as a first-step towards a more inclusive business model while simultaneously offering protection from unnecessary litigation.

Citations

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