NADA

WEBSITE ACCESSIBILITY AND THE ADA

Does the Americans with Disabilities Act (ADA) Apply to Dealership Websites?

For several years, the U.S. Department of Justice (DOJ) has taken the position that the Americans with Disabilities Act (ADA) applies to public-facing commercial websites. In addition, plaintiffs across the country have asserted in demand letters or complaints against retail businesses that their websites did not provide equal access under the ADA for persons with auditory, visual, physical, and/or cognitive disabilities. While banks, restaurants, and large retailers have been the primary targets of legal action, franchised dealerships have increasingly been subject to similar legal complaints. The several federal court decisions that have ruled on the ADA's application to public-facing commercial websites are split. However, a recent U.S. Supreme Court decision not to review a 9th Circuit ruling that the ADA does apply, combined with the DOJ's position and the threat of lawsuits, suggests that it may be prudent for franchised dealerships to evaluate their public-facing websites for accessibility issues and concerns.

What is Website Accessibility?

Many people with a variety of auditory, visual, physical, and/or cognitive disabilities use assistive technology (e.g. screen readers, text enlargement tools, programs to control computers by voice) to enable their use of computers. Websites must be coded to integrate with these assistive technologies. Website accessibility issues include images without text equivalents and videos lacking closed captioning.

If the dealership's website is not compatible with assistive technologies, such as screen-readers, disabled customers may not be able to shop for vehicles, make online parts purchases, or learn more about what the dealership offers them. In addition to losing potential sales, dealerships risk facing legal action. To date, dealerships that have received demand letters have often elected to settle to prevent expensive litigation. In addition, many make a commitment to improve the accessibility of their websites.

Courts and businesses in search of guidance on accessibility often look to the Web Content Accessibility Guidelines (WCAG), a widely accepted standard for website accessibility issued by the World Wide Web Consortium (W3C). Variations of WCAG 2.0 have served to guide businesses seeking to address the accessibility of their websites. However, as discussed below, exactly how dealership websites may be conformed to WCAG 2.0 can be very complex.

Why is Website Accessibility Such a Complex Issue for Many Dealership Websites?

To fully understand what a dealership should do to address website accessibility concerns, it is important to understand that most public-facing dealership websites involve vehicle OEMs, website developers, vendors, dealerships, and other content providers. Addressing dealership website accessibility conformance is made complex because each of these parties exerts control over, has responsibility for, manages, and/or provides content to dealership websites.

OEMs select and contract with website vendors to develop and manage their "brand sponsored" dealership websites. This structure has several advantages for OEMs. First, they can work with vendors to develop branded websites to ensure consistency across dealerships. Second, they can contract out website development and management to one or more knowledgeable vendors. Website vendors (e.g. CDK, Dealer.com, Dealer Inspire, DealerOn, etc.) develop and help manage dealership websites and work with OEMs to develop content (e.g. pictures, graphics, marketing materials) and design layouts or templates which establish the overall appearance of the website. Dealerships contract with those same vendors to manage those websites on their behalf. Dealerships also contract for or directly upload content on their websites including vehicle inventory, marketing content, and other dealership-specific content. Importantly, how dealerships work with a given OEM, website developer/vendor or content provider will vary widely from brand to brand. This variability can be an armful for dealership employees charged with handling the websites of multiple brands and can make accessibility conformance a very challenging task.

Website accessibility and conformance with WCAG is also impacted by a website's layout, content, and third-party apps or plug-ins. OEMs, website vendors, and dealerships often turn to ADA accessibility companies (e.g. Accessibe, AudioEye, Siteimprove, Level Access, UserWay, etc.) to assist with conformance. These vendors offer a variety of different tools and services to help dealers audit, remediate, and manage ADA accessibility with the aim of conforming with WCAG 2.0AA or 2.1 guidelines. Unlike a wheelchair ramp, website accessibility is a moving target given that websites are updated

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continuously and that website technologies change over time. Instituting website accessibility is not a "one and done" matter. ADA vendors can often help to ensure that accessibility is maintained by instituting an auditing process and remediating issues in real time, over time.

NADA is exploring the degree to which vehicle OEMs and website vendors are working together to ensure that website templates, platforms, and content conform with WCAG. How OEMs and website vendors approach website accessibility can vary widely. For example, it appears that if an OEM has recently negotiated with a website vendor to be included on a list of approved dealership website platforms, accessibility was likely part of the discussion between them to help ensure that websites are built, managed, and maintained with accessibility in mind. For older arrangements between OEMs and website vendors, accessibility was unlikely to have been an issue initially, meaning that more work will be required to bring their dealership websites into conformance.

Since website accessibility varies across OEMs and website vendors, it is important that dealerships make the effort to learn how the specific brands they represent are working to address and provide guidance on website accessibility and to understand what funds may be available to assist with direct website accessibility costs.

What Efforts Can Dealerships Make to Improve the Accessibility of Their Websites?

While there is no way to completely ensure conformance or to fully eliminate litigation risks, there are steps dealerships can take to reduce them:

1. Perform a website inventory. Many dealerships have multiple websites and even websites that are no longer in use. Determine which websites are active and eliminate those that are not.

2. Contact each OEM, website developer, vendor, and content provider to determine the extent to which they are taking website accessibility into account in conformance with WCAG 2.0AA or 2.1 guidelines. Remember to contact any and all vendors that provide services that are integrated into the dealership's websites, including marketing, chat, video production, and other services.

3. Perform a website accessibility audit. Automated accessibility auditing tools can be downloaded from the Internet (e.g. Wave) and offer a quick and inexpensive method to identify potential website accessibility issues. The software scans the website and functions as a "test" to identify issues and determine whether the website complies with WCAG 2.0AA or 2.1 standards. In addition, consider live-user audits involving persons with disabilities who use their assistive technology to test websites. If a live-user audit is performed, the audit company will typically provide the dealership with a report identifying areas of concern. In either case, auditing results can be provided to the website developer and/or an accessibility vendor for remediation.

4. Set a dealership website accessibility policy. The policy should name an ADA vendor, specify which WCAG 2.0AA or 2.1 standards each website is striving to meet, and lay out a reasonable timeline. Policies should cover roles and responsibilities for staff, content preparation processes, quality assurance, and reporting, and should have the approval and backing of senior management. Good policies will help accessibility implementation, ensure that resources are available, and set priorities.

5. Include WCAG compliance in website-related vendor contracts, as part of due diligence reviews, and in vendor management processes.

6. Educate staff. Make sure customer representatives, advertising and marketing teams, and IT personnel receive adequate training on accessibility and are equipped to answer disability-related customer questions and requests

7. Post an accessibility notice on your website. This will inform the website users of the dealership's commitment to website accessibility and provide users with a means to have any and all questions and issues answered. Additionally, a policy notice can help deter demand letters and lawsuits. The Web Accessibility Initiative (WAI) has a generator tool that can create customized accessibility statements. Dealerships that are interested in this resource can access the WAI website here: https://www.w3.org/WAI/planning/statements/. A dealer example is found here: https://www.pensketoyotadowney.com/accessibility.htm.

Questions? Please contact NADA Regulatory Affairs at regulatoryaffairs@nada.org.