

# Accessible Websites

Where good business meets the ADA

May 20, 2020

**David L. Ovard**

Member  
Clark Hill

**Andy Roller**

Founder  
Expio Digital Marketing

**Jennifer M. Wade**

Senior Counsel  
Collin County

CLARK HILL

ClarkHill.com

---

# Your Speakers



**David L. Ovard** counsels and represents industry-leading clients in the areas of financial services, real estate law, business law, corporate law, partnership law, contracts law, online ADA compliance, and healthcare law. He represents clients in complex litigation, mortgage resolution matters including complex mortgage and foreclosure-related litigation, online ADA compliance, and advising clients as to appropriate methods of limiting liability exposure including strategies for protecting financial services, real estate corporate, and business entities.

---

# Your Speakers



**Andy Roller** founded Expio LLC in 2011 to focus on digital content marketing. Expio provides ADA-WCAG assessments and consulting, SEO, SEM, website design-dev, web maintenance and security, and social media management. Ideal clients are organizations over \$5M in revenue that have multiple domains and locations. Expio has experience across a wide range of B2C/ B2B/ P2P areas with deepest experience with Aerospace, Energy, Healthcare, Professional Services, and Software/ Tech.

In 2002, Andy developed an award winning leadership program at USC in conjunction with their Leadership Center that spread to dozens of universities. Prior to that he operated as a "solopreneur" doing leadership consulting, organizational development, and training facilitation.

---

# Your Speakers



**Jennifer M. Wade** maintains a practice in commercial litigation for the financial services and real estate industries. She assists investors and servicers in multiple real estate and litigation-related matters, including issues related to MERS, common owner associations, mortgage-backed security trusts, title insurance coverage, consumer protection law claims, and contested foreclosure matters.

---

# Agenda

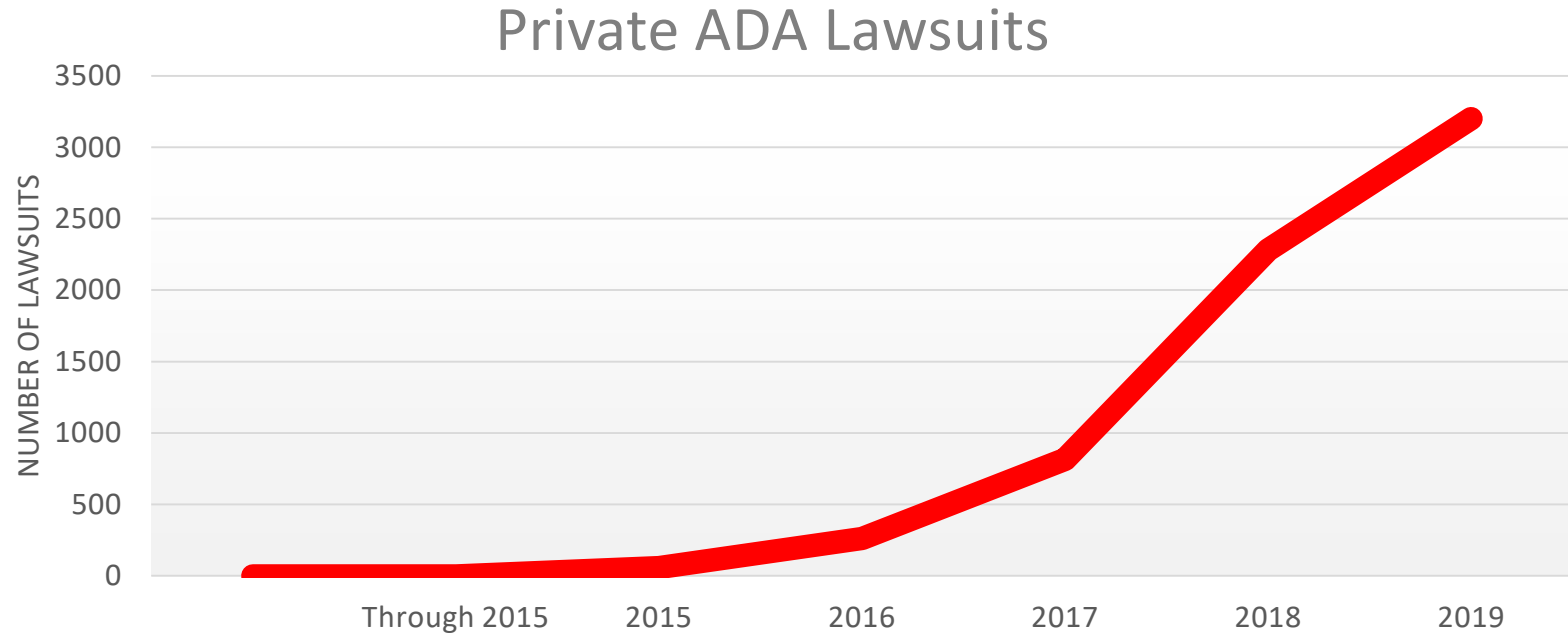
1. Why you should care about website accessibility.
2. Understanding more about accessible websites.
3. Understanding why the ADA applies to websites.
4. Understanding the ADA website litigation landscape.

# CLARK HILL

## Why You Should Care



# First Scary Statistic



---

## Second Scary Statistic

- 97% of the top one million websites fail a basic test of accessibility.





---

## Third Scary Statistic

- Over 25% of all website lawsuits are “re-suits,” where a company is sued for the second, third, or even seventh time.

The logo for UsableNet, featuring a vertical blue line to the left of the word "UsableNet" in a bold, blue, sans-serif font.

---

## Fun Fact

- No matter how small your business is, you are covered by Title III of the ADA and you may be sued over your website.

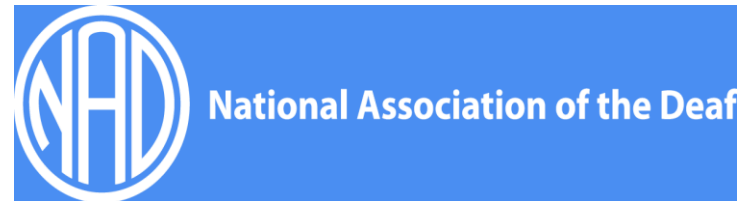
---

# It's Just Good Business

More than 11 million adults in the United States suffered from some severe hearing loss or deafness.



More than 33 million adults in the United States suffered from some form of vision loss.



---

# It's the Right Thing To Do



Accessibility for persons with disabilities.

# CLARK HILL

## How We Got Here



---

# Hints and Declarations

July 31, 1996

The Honorable Tom Harkin  
United States Senate  
Washington, DC 20510-1502

Re:

To what extent does the ADA require that Internet web pages be accessible to people with visual disabilities?

Dear Senator Harkin . . . .

CLARK HILL

## The Earliest Website Cases



CLARK HILL

*Netflix vs. Netflix:*  
Confirming the  
Battle Lines

The Netflix logo, consisting of the word "NETFLIX" in a bold, red, sans-serif font, is centered on a dark gray background with a subtle gradient.



CLARK HILL

2015:  
The Modern Era  
of Website  
Litigation Begins



CLARK HILL

Where We Are Today



---

# Theories of Website Accessibility

- No, they are not covered because internet is not mentioned in the ADA.
- Yes, but only if connected to a physical place of public accommodation.
- Yes if they offer the kinds of services and goods of listed public accommodations.
- Yes, no matter what, they are public accommodations.

---

# What Do the Circuits Say?

- First and Seventh Circuit
  - A place of public accommodation does not need to be a physical space.
- Ninth and 11th Circuit
  - ADA covers websites related to physical places of public accommodation

---

# What Will the U.S. Supreme Court Say?

- People with disabilities have fared very well with the United States Supreme Court outside of employment matters.
- *South Dakota v. Wayfair*
  - Several statements made in the majority opinion that indicate being on a website is the same as being in that place.

# CLARK HILL

What About  
Those Guys in  
Florida?



---

# What's My Defense?

- Due process, primary jurisdiction – no.
- Plaintiff standing to sue – maybe.
- Mootness by remediation – sometimes.
- Settlement - 99% of the time.



CLARK HILL

What is an ADA  
Accessible  
Website?





---

## There is No Legal Definition of Accessibility for Websites

- There are no Title III regulations.
- Courts say it must be decided case by case.
- §508 rules might be persuasive but are not binding.

---

There is an Industry Definition



---

# WCAG 2.x - Four Principles of Accessibility

- **Perceivable** - Information and user interface components must be presentable to users in ways they can perceive.
- **Operable** - User interface components and navigation must be operable by disabled users.
- **Understandable** - Information and the operation of the user interface must be understandable by disabled users.
- **Robust** - Content must be robust enough that it can be interpreted reliably by a wide variety of browsers and other user software.

---

# Perceivable


- What's wrong with this picture?



---

# Operable

- What's wrong with this popup box?



Our website uses cookies to provide a better user experience. You may choose to disallow cookies but your experience may be diminished. Click to choose

**ALLOW**   **DO NOT ALLOW**

# Understandable

- What language is this?

ውድ ታዳሚዎች በዚህ ድህረ ገጽ በአማርኛና በእንግሊዘኛ ቋንቋዎች የሚቀርቡ መጣጥፎች አጠር መጠን ብለው አስተማሪና አዝናኝ ይዘት እንዲኖራቸው። እንደዚሁም የሀገራችን የኢትዮጵያን ችግር እድገትና ልማት የሚያመለክቱ፤ የችግሮች ጠቋሚ ብቻ ሳይሆን መፍትሄ አምልካች፤ እድገትንና እንድነትን የሚያሳለምሱ፤ መቀራረብን፤ መፋቀርን፤ በልዩነት መቻቻልን፤ በጽሁፍ አቅራቢዎች መካከል ልዩነት እንኳ ቢነሳ የልዩነት ክርክሩ በፍሬ ሀሳቡ ላይ እንጂ በሰብአና ላይ ማተኮር አይኖርበትም።

የጽሁፎቹ መልክት ስነምግባርን የተላበሱ የአመለካከት ልዩነትን በጭዋነት የሚገልጹ፤ እንዲሁም እንፈልጋለን። ለሕብረትና ለመከባበር ቅድሚያ የሚሰጡ፤ እንዲሁም ሁሉም ሰብአዊ መብቱ እንዲከበር የምንሻውን ያህል እኛ ቀዳሚ የሰበደ መብት አከበሪዎች መሆናችን በዝግጅት አቀራረባችን በተምሳሌነት የሚጠቀሱ እንዲሆኑ እንሻለን።

የዝግጅት ከፍሉ እነዚህ ፍሬ ሀሳቦች መጠበቃቸውን ይከታተላል በመሆኑም የሚቀርቡ ጽሁፎችን የማውጣትና የማስቀረት መብት አለው ። በአጠቃላይ ግን ማንኛውም ጽሁፍ በይዘቱ መመስገንና ተጠያቂነት የደራሲው ሀላፊነት መሆኑን እናሳውቃለን።

በመጨረሻም የኢትዮጵያ ጠላቶችና የሰብአዊ መብት ተጋፊዎች እጅ ሰፊ በመሆኑ በጋራ ጠላት ላይ በማተኮር ለተሻለ የኢትዮጵያ ሕልውና መኖር እንተባበር፤ በእጋራ ለለውጥ አብረን እንድንሠራ ለውድ ወገኖቻችን ጥሪያችን በያላችሁበት ይድረሳችሁ።

የዝግጅት ከፍሉ

---

# Robust

- What's wrong with this picture?

WARNING: This website uses Javascript and is not compatible with web browsers and other software that do not have the necessary plug-in installed.

---

# But It's More Complicated Than That

- WCAG 2.x includes:
  - 4 principles.
  - Dozens of success criteria.
  - Thousands of pages of technical guidance and techniques.



# CLARK HILL

What Should  
You Do?



# CLARK HILL

First, fix it!



# CLARK HILL

You need a nerd



CLARK HILL

You need a  
lawyer



CLARK HILL

Settle if you can



# CLARK HILL

Fight if you must





# Questions?



**David L. Ovard**  
(469) 287-3924  
dovard@clarkhill.com



**Andy Roller**  
(888) 227-9903  
andy@expioconsulting.com



**Jennifer M. Wade**  
(469) 287-3966  
jmwade@clarkhill.com