

# Is Your Winery's Website ADA Compliant?

As a series of lawsuits hit East Coast wineries, the industry pushes for best practices and education on accessible sites.

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**THE LAST FEW YEARS** have seen a severe increase in **Americans with Disability Act** (ADA) web accessibility claims—lawsuits that allege certain websites are unusable by those with disabilities because said sites are not coded to work with assistive technology, such as screen readers. According to the **Seyfarth ADA Title III News & Insights Blog** (*adatitleiii.com*), written by ADA Title III specialty team attorneys, the number of suits filed in federal court under Title III of the ADA in 2018 numbered 2,258 cases nationwide, up 177 percent from 814 lawsuits filed the year before.

The Seyfarth ADA blog also states that the vast majority of these suits have originated, and continue to occur, in New York, with a total of 1,564 suits that make up nearly 70 percent of the total web-compliant suits in 2018.

The trend continues into 2019. **UsableNet**, a web and app accessibility consulting site, has been tracking the latest numbers on ADA website suits around the country. According to their report, lawsuits have increased 31 percent within the first quarter (Q1) of 2019, compared to the same quarter last year. Once again, New York takes the biggest hit, with 396 cases thus far in Q1 2019.

Why New York? The Seyfarth ADA blog points to the ruling in the 2017 case **Blick Art and Five Guys**, in which New York federal judges ruled that the rules outlined in the ADA cover websites—even those *not* associated with a brick-and-mortar establishment. Since that ruling, a flurry of suits from New York-based law firms and lawyers (which the blog lists by name) have been after companies whose websites also fail to accommodate the needs of the disabled.

Though businesses of all sizes have been affected (including big names like **Apple** and **Harvard**), the bulk of the suits seem to go to smaller establishments—such as wineries.

## Winery Testimonial

**Scott Osborn**, president and co-owner of **Fox Run Vineyards** in New York's Finger Lakes District, said he first learned about the issue through the **New York Wine and Grape Foundation** (NYWGF), which alerted its members of the suits plaguing the East Coast wine industry.

"I started working internally with my marketing person and my daughter about getting an accessibility statement on the website," Osborn said. The **Bureau of Internet Accessibility** (BOIA) describes an accessibility statement as a business' "policy, goals, and accomplishments related to web accessibility...including instructions on how to use specific accessibility technology that is available on the website and how to contact the organization if a disabled visitor runs into problems."

Osborn also started working with a designer to update various pages of his website. The problem, however, is that designing a website to be completely accessible isn't as easy as updating the computer management software. All imagery—photos, bottle shots, event calendars—need to include "alt text," or an embedded written description, and the website needs to be coded in such a way that assistive technology software can read aloud those descriptions to the visually impaired. Similarly, any audio used on a website needs to include closed captioning capability for the audibly impaired. In addition, the entirety of the website needs to be accessible via keyboard navigation, as most visually impaired persons do not utilize a mouse.

"What was surprising to me is that I'm responsible for the third-party software as well," said Osborn, referring to his e-commerce point-of-sale system. "The shopping cart needs to be compliant; and if it's not, I can be sued for that." Osborn said his vendor, **Nexturnal**, is aware of the issue and "working extremely hard" to assist all their clients in creating ADA-compliant check-out experiences for customers.

So, he said, it takes time to find and fix all these little details. Though Osborn had an accessibility statement in place, ensuring that he and his company are in the process of working on the issue, Fox Run Vineyards was still hit with a lawsuit.

“In January I got an email from an attorney in New York that said, ‘You’re being sued, and I’m happy to defend you,’” Osborn said. “I got two more emails like that at the end of January. It wasn’t until February that we got served.”

Osborn said the suit came as a big surprise: “We had been working to update the site, which is frustrating. It’s not an easy fix.”

At this point, Osborn and his team are planning to redo the winery’s entire website. “We decided it needed an upgrade anyway,” he said. They’ve hired **User1st**, a company that specializes in website accessibility—upgrading what needs upgrading, embedding the proper software that auto-updates as needed and, most importantly, employing disabled persons to test the website’s functionality. “That’s the only way to ensure it is 100 percent accessible,” Osborn said.

## Building Standards

One of the underlying issues is that the American Disabilities Act was established in 1990 before the internet became the everyday tool it is today. Thus, there are no set standards written and enforced by the federal government.

Title III of the ADA states, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”

On face value, it does indeed seem that Title III is speaking specifically to brick-and-mortar establishments. Yet, many recent rulings have stated that websites are, in fact, a “place of public accommodation” as they are intended to provide access to businesses and the ability to engage with said businesses.

“Businesses need to take responsibility under what the ADA *intends*,” said **Stephanie Woodward**, director of advocacy at the **Center of Disability Rights, New York** (CDRNY). “And when we talk about ‘should this [the Title III] be further clarified,’ we mean how many times do we need to amend it to keep up with technology?” she asked.

Woodard said that the biggest argument her association hears is, “I didn’t know this was a requirement.” But, she said, it’s a business owners’ responsibility to be aware, not the disabled community’s to make them aware. “Being accessible is just as important as paying taxes,” she said.

That said, the CDRNY is a resource for the local New York community when it comes to educating businesses on the proper protocol for ADA-compliance, both in the physical and web spaces. Currently, the CDRNY is working alongside the **Greater Rochester Chamber of Commerce**, the **Lawsuit Reform Alliance of New York** and other advocacy partners to help inform businesses about the ADA lawsuits and answer questions regarding best practices and preventative steps.

“We [the CDRNY] certainly don’t think litigation is the necessary first step,” Woodward said. “We want to work with the community to ensure everyone is welcome to all businesses. The best way to do that is to educate.”

## Educating the Wine Industry

In April 2019, Osborn, along with several others in the United States’ wine industry, attended **WineAmerica’s 2019 Wine Policy Conference** in Washington, D.C. Here, attendees had the opportunity to meet with key congressional staff to discuss both state-specific and national issues as they pertain to the wine industry.

At this conference, Osborn, in coordination with the NYWGF, presented to U.S. legislative staff the recent rise in the ADA-compliant website suits and how they’ve affected the wine industry.

“I think the issue came as a surprise to most of the New York representatives we met with,” said **Sam Filler**, NYWGF executive director. “They were sympathetic to the issue, but I think they were surprised at the amount and scale of the lawsuits that have taken place.”

Although representatives were “sympathetic to the issue,” Filler said no one “promised anything.” But he also noted that current New York state senator, **Diane Sevino**, is preparing legislation for safe harbor, which would give companies a set amount of time to make the needed changes to their websites before being slapped with a suit. He also said that WineAmerica will be launching more educational resources for wineries nationwide.

“We want to work with the disability community to come up with a solution so businesses can take the steps needed and comply with what was intended by the ADA,” Filler said.

In the meantime, Filler said, the NYWGF is working with its associate members to educate them on best practices surrounding website accessibility, hosting webinars and providing other educational resources on the NYWGF website.

## Advice for the Industry

The takeaway from these lawsuits is that wineries across the country and of all sizes do need to be aware of their website’s capability to cater to customers of all abilities. “They [wineries] need to take the issue seriously,” Osborn said. “They could be excluding a huge portion of potential customers... access to a website is just as important as access to your tasting room.”

Though it didn’t save him from a suit, Osborn strongly suggests that a good first step is putting an accessibility statement in place. “It shows that you’re at least working toward accessibility,” he said.

He also said that **Web Content Accessibility Guidelines** (WCAG) 2.0, a voluntary international standard, provides a good checklist of what is needed to make a website accessible ([w3.org](http://w3.org)). “Adhere to that as closely as possible,” he said. “And work with a web developer to audit individual web pages and find out where there are any deficiencies in codes and labels.”

Osborn, Filler and Woodward all say that working with a local disability chapter is also a smart move. “Disability rights organizations want to help, not sue,” Osborn said. “Have them look at your site and tell you what you need. They’re one of the best resources.” **WBM**