

UT TECHNOLOGY LAW CONFERENCE

# Websites: Privacy and Accessibility Litigation

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## Agenda

### 1. Website Accessibility Litigation

- a. Background and Legal Framework
- b. Recent Legal Trends

### 2. Website/Internet Privacy Litigation

- a. Background and Legal Framework
- b. Recent Legal Trends

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# Website Accessibility: Background and Legal Framework

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## ▶ What Is An “Inaccessible” Website?

- ▶ Examples of Website Accessibility Barriers
  - Poor color contrast
  - Use of color alone to give information
  - Lack of text alternatives (“alt text”) on images
  - No captions on videos
  - Inaccessible online forms
  - Mouse-only navigation (lack of keyboard navigation)

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## Americans With Disabilities Act (ADA)

- ▶ Prohibits discrimination against people with disabilities in employment, public services, public accommodations, and telecommunications
- ▶ Title III: a person owning, leasing, or operating a “**place of public accommodation**” may not discriminate against an individual with a disability regarding the “full and equal enjoyment” of goods and services
- ▶ What is a “public accommodation”?
  - Courts generally agree the ADA applies to websites connected with a physical, brick-and-mortar business
  - Courts split on application to websites for internet-only businesses

## State and Local Laws

- ▶ California Unruh Civil Rights Act
  - All persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all “business establishments of every kind whatsoever”
  - Two theories: (1) violation of ADA or (2) denial of access based on intentional discrimination
  - Applies to websites, even for out-of-state businesses, if sufficient sales to Californians
  - Unlike the ADA, which does not allow monetary damages, the Unruh Act allows recovery of up to 3x actual damages or at least \$4,000 *per occurrence*
  - Like the ADA, allows for recovery of attorney’s fees
- ▶ New York State (and City) Human Rights Laws
  - Compensatory damages, civil penalties and fines, and attorney’s fees

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