Courts are currently split about the extent to which private websites are subject to the accessibility requirements of Title III of the Americans with Disabilities Act (ADA), and the U.S. Department of Justice (DOJ) has not yet published any clear regulations about the issue. The result is that private companies are without clear guidance regarding the extent to which their websites must be accessible to those with visual, auditory, or other disabilities.

Places of public accommodation are subject to Title III of the ADA, which provides that “[n]o 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.” 42 U.S.C. § 12182(a).

But courts are split about the extent to which Title III of the ADA applies to websites operated by places of public accommodation. For example, courts in the Ninth Circuit hold that Title III of the ADA applies only when there is a “nexus” between a challenged service offered over the Internet and a physical place of public accommodation. See, e.g., Nat’l Federation of the Blind v. Target Corp., 452 F.Supp.2d 946 (N.D. Cal. 2006). On the other hand, a court in Massachusetts recently held that web-streaming services offered by Netflix are subject to Title III of the ADA even without a “nexus” to a physical place of accommodation. See Nat’l Ass’n of the Deaf v. Netflix, 869 F.Supp.2d 196 (D. Mass. 2012).

The DOJ, which is responsible for enforcing Title III of the ADA, has publicly stated that it interprets Title III of the ADA to apply to websites operated by public accommodations. Although the DOJ has not yet published any regulations on this issue, the DOJ solicited public comments for potential regulations concerning websites in 2010. In its Advanced Notice of Potential Rulemaking, the DOJ made clear that it did not believe that the Internet itself should be considered a place of public accommodation, but that it believed Title III should apply to the websites of entities that provide goods or services that fall within the 12 categories of “public accommodations.” At the same time, the DOJ stated that it believed that public accommodations with inaccessible websites could comply with Title III by providing an “accessible alternative,” such as a staffed telephone line, for individuals to access the information, goods, and services of their website. But the DOJ did not say much else.
In the meantime, an organization called the World Wide Web Consortium (W3C) has developed Web Content Accessibility Guidelines, commonly referred to as “WCAG 2.0.” The **WCAG 2.0 guidelines** are technical standards for making internet content accessible to the disabled, but they do not have the force of law. It is possible that the DOJ may adopt the WCAG 2.0 guidelines, in whole or in part, when it eventually issues regulations for websites under Title III of the ADA. However, the WCAG 2.0 guidelines leave many issues unresolved.

While the WCAG 2.0 guidelines establish certain technical standards designed to increase accessibility, they do not address whether and to what extent such standards apply to websites operated by places of public accommodation under Title III of the ADA. Accordingly, when the DOJ eventually publishes regulations concerning websites under Title III of the ADA, it will be important for the DOJ to address not only technical standards, but also standards related to the applicability of the ADA to websites operated by public accommodations, such as:

- Are all websites operated by public accommodations subject to Title III, or does Title III only apply to websites that offer “goods, services, facilities, privileges, advantages, or accommodations” online?
- Will accessibility requirements apply to online advertisements related to places of public accommodation? Will they apply to mobile apps or advertisements?
- Will “alt attributes” or “alt-tags” (embedded, written descriptions) be required for all photographic, video, or audio content provided online by public accommodations?
- Will there be required **minimum contrast ratios** or font sizes for online text, even if a font or color scheme is an essential component of a company’s brand or trademark?
- Will there be any exceptions to the online accessibility requirements? For example, will small businesses be exempt from certain requirements, or will there be exceptions for when an accessibility requirement imposes an undue hardship?

**Takeaway:** Currently, there is a lack of clarity regarding what Title III of the ADA requires for private websites operated by places of public accommodation. When the DOJ eventually issues regulations concerning this issue, it will be important for companies that operate places of public accommodation to review the regulations carefully and ensure their websites are in compliance. In the interim, companies can refer to the WCAG 2.0 guidelines for additional guidance, but it’s important to note that those guidelines do not have the force of law and do not address all of the open questions concerning what Title III of the ADA may or may not require.