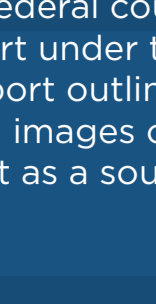
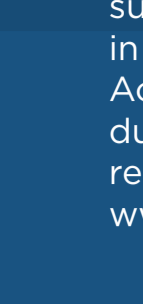


2021 YEAR END REPORT

ADA DIGITAL ACCESSIBILITY LAWSUITS

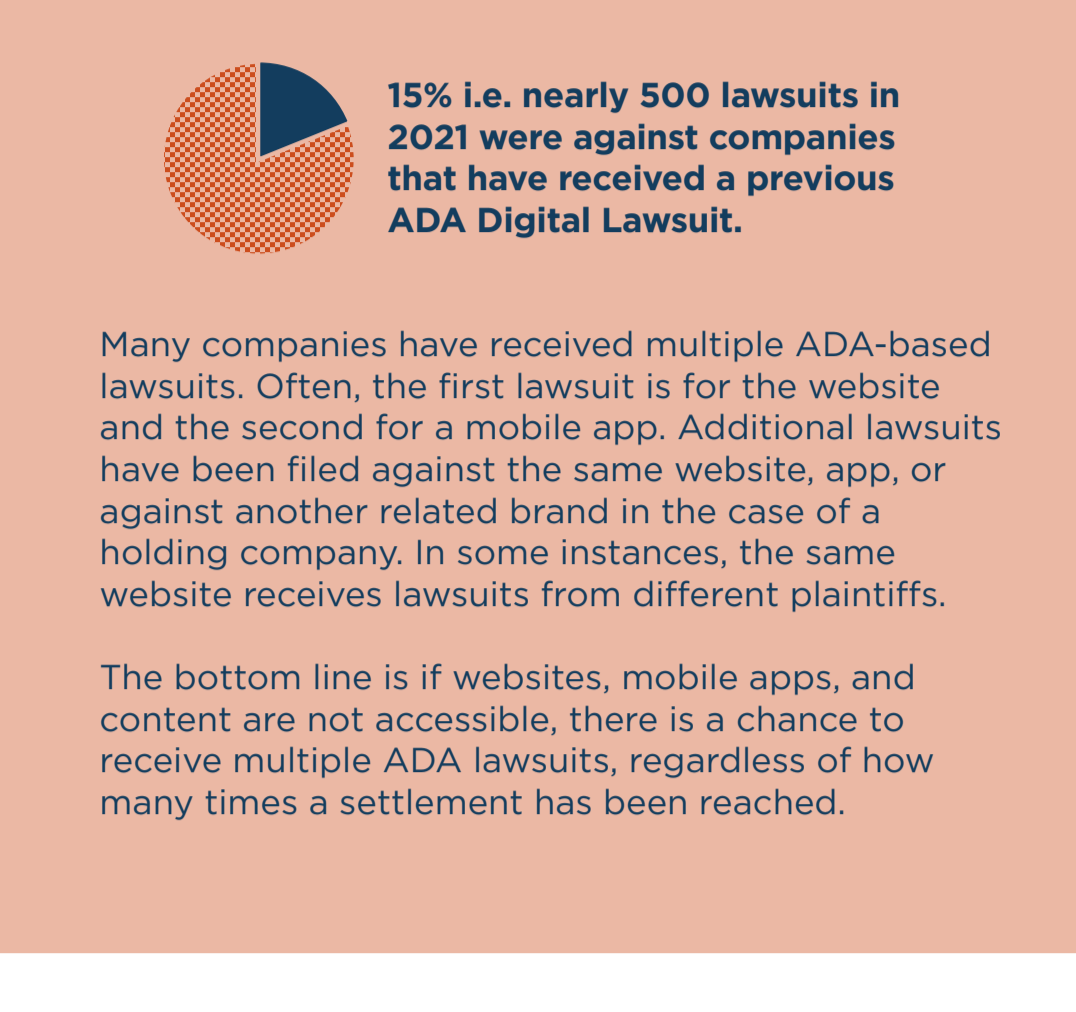
Websites, Mobile, and Video



The UsableNet research team monitors and documents all digital accessibility-related lawsuits where a website, mobile app, or video content is the subject of a claim in federal court under the ADA or in California state court under the Unruh Civil Rights Act. The following report outlines trends found during 2021. Data and images can be shared when referencing UsableNet as a source and linking to www.usablenet.com.

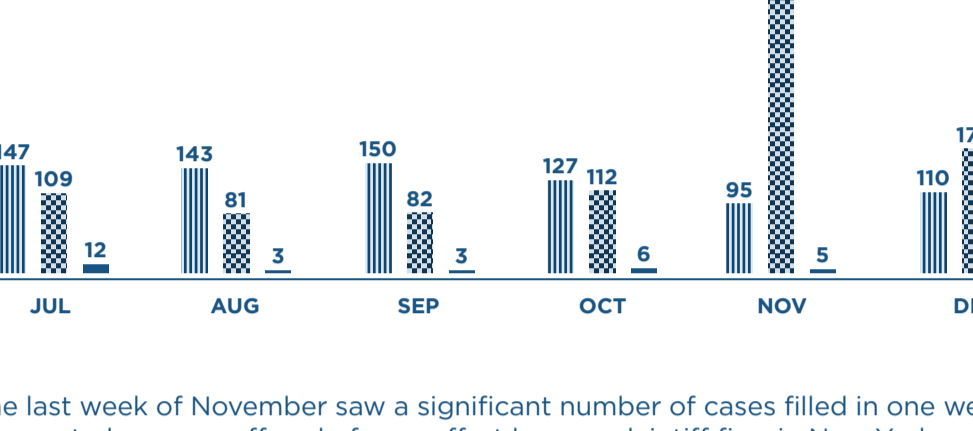
2021 DIGITAL ADA LAWSUITS EXCEED 4000

Over 10 lawsuits are filed every day.



ADA-based cases, where the subject of the claim was either a website, mobile app, or video content, reached a rate of over 10 per day in 2021 with over 4000 in total. That is a 15% increase from 2020. Cases counted include those filed in federal court and those filed in state courts such as California under the Unruh Act with a direct reference to violation of the ADA.

COMPANIES CONTINUE TO GET MULTIPLE LAWSUITS



15% i.e. nearly 500 lawsuits in 2021 were against companies that have received a previous ADA Digital Lawsuit.

Many companies have received multiple ADA-based lawsuits. Often, the first lawsuit is for the website and the second for a mobile app. Additional lawsuits have been filed against the same website, app, or against another related brand in the case of a holding company. In some instances, the same website receives lawsuits from different plaintiffs.

The bottom line is if websites, mobile apps, and content are not accessible, there is a chance to receive multiple ADA lawsuits, regardless of how many times a settlement has been reached.

THE EFFECT OF KEY ADA CASES

Key court decisions this year have affected the volume of cases in different ways. The Winn-Dixie ADA appeal decision in Florida's Eleventh Circuit was good news for companies facing federal website accessibility lawsuits. New York decisions are removing media and content sites as targets re-adjusted focus to nexus and traditional public accommodation.



*The last week of November saw a significant number of cases filled in one week. This appears to be a one-off end of year effort by one plaintiff firm in New York and not a weekly trend so far.

The Eleventh Circuit court decision significantly reduced the suits seen in Florida, but the New York-based decisions just changed the focus to industries that are not just online but have some sort of property or location that the website services.

INDUSTRY LEADER BOARD

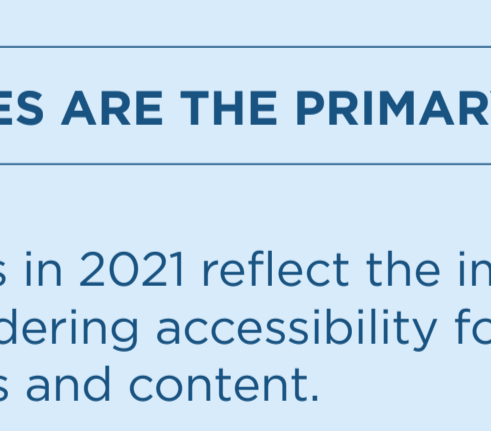
E-Commerce websites are cited the most in digital accessibility lawsuits. Companies with locations high on the target list.



Industry	Total Percent
e-Commerce	74%
Cross Industry Companies	5%
Food Service Industry	4%
Digital Media & Agencies	3%
Healthcare	3%
Entertainment & Leisure	2%
Banking/Financial	2%
Education	2%
Travel/Hospitality	1%
Automotive	1%
Real Estate Agencies & Properties	1%
Fitness & Wellness	< 1%
Telecommunications	< 1%
Insurance	< 1%
Self-Service	< 1%
Grand Total	100%

Recent cases have brought nexus (a business with a connected physical location) into focus. That could be fashion retail but also sports teams with stadiums, venues, restaurants, banking, and other business that have both an online and offline presence.

NO COMPANY IS TOO SMALL



The percentage of companies sued with revenue below 50 Million per year is growing.



2020: 30% > 50M revenue, 70% < 50M revenue

2021: 19% > 50M revenue, 81% < 50M revenue

This could be a natural progression or due to changing consumer trends. Many of the largest companies have already been sued and have accessibility programs, which would make for a natural progression to smaller companies. The increase in e-Commerce sales due to the pandemic has also brought more attention to smaller, up-and-coming e-Commerce brands.

LARGE E-COMMERCE BRANDS IN FOCUS



20% of the Top 500 e-Commerce websites received a lawsuit in 2021. Over the last 4 years, over 80% of the top 500 e-Commerce websites have been sued.

20% i.e. 98 cases in 2021 were against the Top 500 e-Commerce retails.

82% of the Top 500 received an ADA-based digital lawsuit since 2018.

412 of the Internet Retailer Top 500 list received an ADA-based digital lawsuit related to one of their brands in the last 4 years. Large e-Commerce sites are complex, changing content and code often, and many have also a physical location (nexus). This combination makes them very likely to receive lawsuits if they do not have a strong accessibility program in place.

LEADING ADA LAW FIRMS

Top 10 plaintiff firms file three-quarters of all digital ADA lawsuits. While the top ten defense firms represent less than 15%.

DEFENDANT LAWYERS	PLAINTIFF LAWYERS
<i>"We will defend you, but you should be accessible."</i>	<i>"We will sue you if you do not provide an accessible website."</i>
1 DENTONS US LLP	1 MIZRAHI KROUS LLP Started filing lawsuits in October
2 JACKSON LEWIS P.C.	2 JEFFREY A. GOTTLIEB, ESQ.
3 LEWIS BRISBOIS BISGAARD & SMITH LLP	3 WILSHIRE LAW FIRM
4 MORGAN, LEWIS, BOCKIUS LLP	4 SHAKED LAW GROUP, P.C.
5 OGLETTREE, DEAKINS, NASH, SMOAK & STEWART P.C.	5 LIPSKY LOWE LLP
6 SEYFARTH SHAW LLP	6 COHEN & MIZRAHI LLP Stopped filing lawsuits in July
7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP	7 MARS KHAIMOV LAW, PLLC
8 O'HAGAN MEYER LLC	8 CENTER FOR DISABILITY ACCESS
9 LITTLER MENDELSON P.C.	9 STEIN SAKS, PLLC
10 KAUFMAN DOLOWICH & VOLUCK, LLP	10 MARCUS & ZELMAN LLC

More than 1,000 different lawyers across hundreds of law firms work in defense on active ADA-based lawsuits. The number of plaintiffs and plaintiffs firms is less than 100. This reflects the focus of most plaintiffs and firms to file a significant number of lawsuits every month.

WEBSITES ARE THE PRIMARY TARGET

Lawsuits in 2021 reflect the importance of considering accessibility for all digital channels and content.

Desktop Websites	94%
Video Content	6%
Mobile App	4%
Combined Website & Mobile App	2%
Mobile Website	< 1%

The majority of plaintiffs and firms are focused on testing and filing against websites. There are a few plaintiff firms that have focused more on mobile apps and video, particularly in California.

IMPORTANCE OF MOBILE APPS

Mobile app usage has risen, and lawsuits have followed. Over 100 companies received a lawsuit across different industries.

Industry	Total Percent
Retail	25%
Digital Media & Agencies	16%
Food Service Industry	10%
Fitness & Wellness	7%
Banking/Financial	6%
Healthcare	5%
Entertainment & Leisure	3%
Travel/Hospitality	3%
Real Estate Agencies & Properties	2%
Education	1%
Automotive	1%
Insurance	1%
Telecommunications	1%
Cross Industry Companies	19%
Grand Total	100%

34% of companies who received a mobile app lawsuit had previously been sued for website inaccessibility.

ACCESSIBILITY WIDGETS AND OVERLAYS OFFER NO GUARANTEES

Over 400 companies who have an accessibility widget or overlay on their website have been sued.

The promise to prevent ADA lawsuits by using an accessibility widget or overlays isn't real. Many lawsuits in 2021 list widgets and overlay features as a barrier to equal access in addition to other inaccessible aspects of the website. This means these approaches give plaintiffs more claims to add to a lawsuit, not less.

Methodology

The UsableNet research team reviews all lawsuits filed in federal courts under the ADA and in California under Unruh – over 12,000 this year. The cases are reviewed to identify cases where a digital property is the subject of the claim and not a physical one. This allows UsableNet to keep our clients informed and provides them with the most up-to-date advice for planning their digital accessibility initiatives.

Source

Data is based on UsableNet's research team's collection across multiple legal sources from January 1, 2021, to December 13, 2021.

A trusted partner can help you improve accessibility and reduce legal risk. Contact us for a free consultation with an accessibility expert.

Get a free evaluation of your website against the latest accessibility standard (WCAG 2.1)

Test with UsableNet AGA