

## Just when you thought your website was safe

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If you have been paying attention to Swiss Re Corporate Solutions' risk management the last couple of years, you may have noticed an emphasis on keeping your digital presence – primarily your agency website – safe, not only from a standpoint of digital security, but also confirming what you say is accurate and avoiding things that could cause a negative development in the unfortunate event of a claim.

In fact, our thoughts on agency website risk management began at least as far back as 2010 with an article by Sabrena Sally, "Agency Website Exposures: Don't Get Caught in the Web!," that was published in the IIABA Virtual University<sup>1</sup>.

More recently, the IIABA had a webinar (in which yours truly participated) titled "Agency Risk Management Essentials: Is Your Website Doing More Harm Than Good?" that is available for you on the E&O Happens website<sup>2</sup>. We included a flyer<sup>3</sup> of the same title that provides website tips to help prevent you from becoming a claims statistic and followed up with an article "Smart Site Safety"<sup>4</sup> by Virginia Bates. All of these are available by following the numbered links at the end of this article.

With all these things, just when you thought your website was safe, yet another problem rears its ugly head. And it's not based on anything new, but rather a law enacted in the 1990s (an eon ago in the digital world). This law is called the Americans With Disabilities Act of 1990, more commonly known as the ADA. At the time it was passed, many plaintiff lawyers referred to it as "The Plaintiff's Lawyers Full Employment Act" because it provided for the payment of attorney fees in addition to any damages that might be paid to a successful plaintiff. As expected, the number of claims and lawsuits related to the ADA skyrocketed. Along with greater recognition of workplace discrimination claims, the ADA helped create a boom in the insurance industry by the creation of what is now commonplace, employment practices liability insurance, or EPLI.

So what is this new issue you need to be concerned with? In January 2019, the IIABA Office of the General Counsel issued its "FAQ Regarding Website Compliance with the Americans With Disabilities Act (ADA)."<sup>5</sup>

Having seemingly exhausted other areas of claims to be made against businesses, some creative lawyers have discovered that not only does the ADA relate to brick and mortar businesses, they have now been successful in convincing the courts in at least some federal jurisdictions that the ADA also applies to websites. Just like you must have your brick and mortar building accessible to those with disabilities, you must now also make your websites similarly accessible. You may ask, does it affect an insurance agency website, or is it just for the big companies doing lots and lots of online business? The conclusion of the IIABA general counsel's office is that in all likelihood yes, it does apply to insurance agency websites even if you are not conducting any business directly through your website. The information from the IIABA answers seven important questions that you should take the time to look at and determine, "Is my website in compliance with the ADA?" If the answer is "no," then it is time to take a serious look at your website and determine if you do or you do not want to become one of the next statistics. So, just when you thought your website was safe ...

(1) <https://rms.iiaba.net/Resources/Pages/Publications/VU/SallyWebSites.aspx>

(2) <https://rms.iiaba.net/Resources/Pages/Webinars/Risk-Management/MoreHarmThanGood/default.aspx>

(3) <https://rms.iiaba.net/Prevention/Pages/Procedures/default.aspx>

(4) <https://rms.iiaba.net/Resources/Pages/Publications/Articles/Smart-Site-Safety.pdf>

(5) <https://www.independentagent.com/Resources/LegalAdvocacy/SiteAssets/Members-Only/Memoranda/default/ADA%20Website%20Compliance%20FAQ%20-%201.3.18%20Final%20Draft.pdf>

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