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# Ignoring Website Laws Will Cost You

```
...error' => $quote['error'],
    );
    }
    }
    $sort_order = array();
    foreach ($quotes as $key => $value) {
        $sort_order[$key] = $value['sort_order'];
    }
    array_multisort($sort_order, SORT_ASC, $quotes);
    $this->session->data['lpa']['shipping_methods'] = $quotes;
    $this->session->data['lpa']['address'] = $address;
    if (empty($quotes)) {
        $json['error'] = $this->language->get('
            error_no_shipping_methods');
    } else {
        $json['quotes'] = $quotes;
    }
    if (isset($this->session->data['lpa']['shipping_method']) ||
        empty($this->session->data['lpa']['shipping_method']) ||
        !isset($this->session->data['lpa']['shipping_method']['code']
        )) {
        $json['selected'] = $this->session->data['lpa']['
            shipping_method']['code'];
    } else {
        $json['selected'] = '';
    }
    } else {
        $json['error'] = $this->language->get('error_shipping_methods');
    }
    $this->response->addHeader('Content-Type: application/json');
```

```
...this.$items.eq(pos)
    .animate(to(pos))
    .pause = function (e) {
        if (this.paused = true)
            return;
        if (this.$element.find('.next, .prev').length &&
            this.$element.trigger($.support.transition) {
            this.cycle(true);
        }
        this.interval = clearInterval(this.interval);
        return this;
    };
    Carousel.prototype.next = function () {
        if (this.sliding) return;
        return this.slide('next');
    };
    Carousel.prototype.prev = function () {
        if (this.sliding) return;
        return this.slide('prev');
    };
    Carousel.prototype.slide = function (type, next) {
        var $active = this.$element.find('.item.active');
        var $next = next || this.getItemForDirection(type, $active);
        var isCycling = this.interval;
        var direction = type == 'next' ? 'left' : 'right';
        var fallback = type == 'next' ? 'first' : 'last';
        var that = this;
        if (!$next.length) {
            if (!this.options.wrap) return;
            $next = this.$element.find('.item')[fallback]();
        }
        if ($next.hasClass('active')) return (this.sliding = false);
        var relatedTarget = $next[0];
        var slideEvent = $.Event('slide.bs.carousel', {
            relatedTarget: relatedTarget,
            direction: direction
        });
        this.$element.trigger(slideEvent);
```



# The Law Offices of Thomas F. Nowland

Ignoring Business Website Laws Will Cost You  
Machete Slash Your Way Through A Jungle  
of Plaintiff Lawyers

- Informational Purposes Only -

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## Disclaimers

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# Business Website Laws

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## *American Disabilities Act Litigation*

### **ADA History**

The American Disability Act has been one of the greatest pieces of legislation to ensure justice for those who are disabled, but simultaneously the source of some of the most vexatious litigation and legal abuse.

It was passed in 1990 and made discrimination on the bases of disability illegal. It not only required that public and private employers never discriminate against customers, vendors or employees with disabilities, but also required that they provide reasonable accommodations. Partially, it “imposed accessibility requirements on public accommodations.”.

This could be something as simple as allowing service animals to accompany the individual with disabilities, to requiring hotel pools have equipment allowing people with disabilities to enjoy the water.

# Business Website Laws

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## Why It Matters

The issue with “professional plaintiffs” reached large scales soon after the law went into enforcement. While the ADA only calls for ‘injunctive relief’ as opposed to monetary relief (the court requiring a business to build a wheelchair ramp at their front, rather than the requirement plus damages) there were loopholes of sorts.

First off, the individual could recoup attorney fees. This created a class of attorneys who focused on ADA violations who become serial representation for many ADA court cases. If an individual with disabilities was an attorney themselves, then they could keep their representation fees. Further, if they sued in a state where there were private damages allowed, then the plaintiff would receive compensation. These states include Florida, Hawaii, Illinois, and California.

There is a growing trend of ADA lawsuits that focus on businesses with websites that make it impossible or require much extra effort to complete the same tasks if a person is disabled. Expendia.com and Hotels.com were some of the first to receive litigation on this matter.

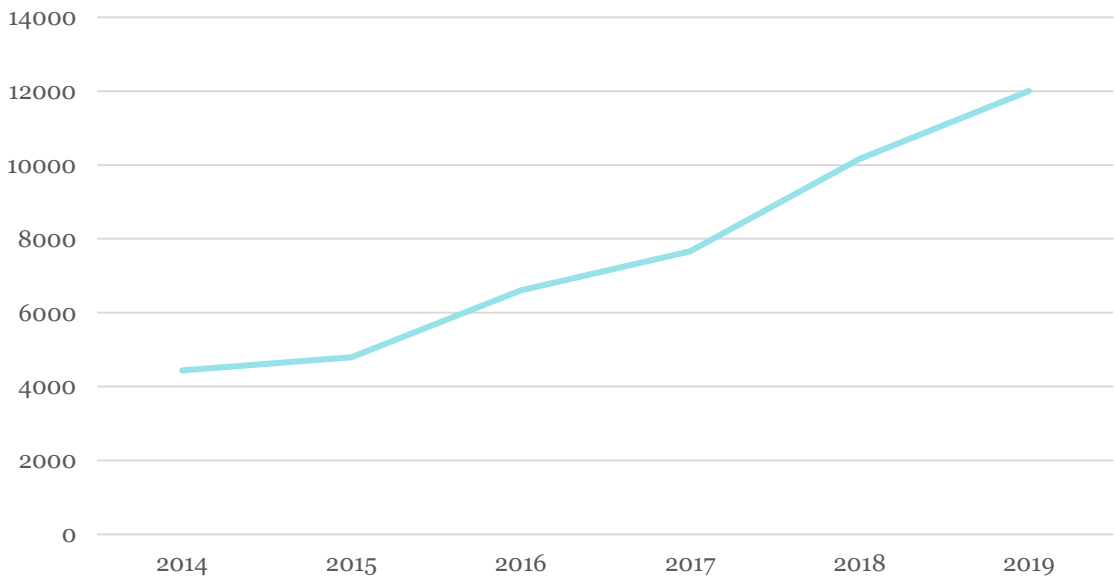
# Business Website Laws

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This leaves the prospect of any business with a website that does not make it accessible to blind or partially blind users open to litigation. More specifically, there is specialized software called 'screen readers' used by persons with disabilities, and if the software and your website don't play nicely, you could find yourself in a lawsuit.

## Weather Report

Federal ADA Website Lawsuits



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In the above chart, 2019's numbers are estimated, as the full analysis of new federal litigation from ADA websites is still ongoing. However, you can see that there is a definite upward trend. **California companies are the most likely to be sued**, yet cases exist all over the US. This is especially true for the top industries defending website ADA litigation.

## **Retail & Shopping Sites.**

If you sell anything online, you better work with a lawfirm of compliance expert, as this is the most likely industry to be sued.

## **Food service.**

Menu accessibility, online ordering, menu item descriptions, these are all areas of vulnerability for businesses.



# Business Website Laws

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## **Travel & Hospitality.**

- The ability to book experiences or travel services, pricing information, etc.,
- Banking & Finance.
- Entertainment & Leisure.

This includes a recent case where a man sued an online porn company for not including closed captions on the videos.

Yes, it might be frustrating. However, very few businesses can operate without a physical presence AND without a website.

The liabilities of being in the business jungle should not outweigh the rewards for hunting your treasures in this jungle. It's a matter of knowing what your threats are and tooling up for them.

To arm yourself to avoid or defeat ADA website litigation, find an experienced business law firm or compliance expert to help you make sure your website is compatible.

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## *GDPR Litigation*

Why should California based businesses care about a European Union law? In English, it translates as the “General Data Protection Regulation”, which regulates the ownership and transfer of personal/consumer data inside and outside of the European Union.

It dictates that any company or organization that will collect, process, or transmit personal data has technical and policy measures in place to protect the data.

It requires that companies clearly point out when data is collected, the purpose for collecting or processing the data, be transparent about policies such as how long the data is retained, and crucially, if the business plans to share that data with partners or third parties.

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It allows any consumer to request and receive a data collection policy of the company and requires known data breaches to be reported within 72 hours. This law became a model for similar laws that were adopted in multiple countries in South America, Asia, Africa, and the US (we will discuss the CCPA soon.)

However, the question remains. Do US businesses have to comply?

If your company has, does, or ever will have a customer or vendor that is within the European Union, you will fall under it's jurisdiction. European Courts can cause you many headaches if any of your customers or website visitors (if you are a media company) come from the EU. This can include actions such as seizing your materials, products, shipments, etc; when they go through EU areas. If you visit the EU, you can be fined when not in compliance, if it has been ordered.

If the matter is serious enough, there are international courts through which actions can be brought. Obviously, if your company has bank accounts, customers using EU bank accounts to

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pay you, representatives, or facilities in the EU, they are all subject to EU court jurisdiction. With 1 to 1.5 Trillion Dollars in trade between the US & EU each year, there are more than a few California businesses affected. (A few unusual example is the \$57 Million dollar fine against Google, and other large fines against Marriott hotel chains and British Air.)

Gracefully, companies with less than 250 employees are not required to maintain specific records of their data processing activities.

What if you say, “whew, none of those apply to me. I do not have to worry about complying!”

That’s excellent for you, however, California Consumer Privacy Act went into effect in 2020, which now means any California based business (and because state orders can be domesticated from any other US state,) many more millions of US business now faces litigation liability if it does not comply with these data protection principles.

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## *California Consumer Privacy Act Litigation*

Not to be outdone by the European Union, the California Consumer Privacy Act is a landmark piece of legislation that went into effect at the start of 2020. It's main purpose is to allow a California resident with the right to know what personally identifiable (and semi-anonymous) data is collected on them and to be informed if this data is sold or disclosed to third parties.

If so, a company would be required to inform the consumer who the third party is. It also gives the right to California residents the ability to say no to the sale of personal data, to review the data collected on them, and finally to request deletion/destruction of that personal data. There are protections included that prevent a customer from being discriminated against if they chose to exercise any of those rights.

Finally, it also requires the business the “implement and maintain reasonable security procedures and practices” towards the end of protecting that data.



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## **Is My Business Excluded From CCPA Compliance?**

Regardless of where your business is located, if it “does business” in California (meaning any transactions are done with California residents) you might have to comply with the CCPA.

If your organization earns more than half of its income selling consumer data/information, then you are absolutely required to comply.

If your business has marketed to, bought the data for, or has data on more than 50,000 individual consumers, you are required to comply.

Finally, if your company has gross revenues over \$25 million annually, you are required to comply.

## **How Exactly Do I Comply?**

If your content is likely to attract readership of minors under 13 years old, you must have a process in place (such as age verification) that obtains the parental or guardian consent. For minors older than 13 years old, but less than 16 years old, you must obtain their consent to share their data. This is under Cal Civ. Code 1798.120c

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If you are in the business of sharing or selling the data from your website, you must have a link on your homepage titled “Do Not Sell my Personal Information”. This page must have some mechanism that allows the consumer to opt out of the sale of their personal information. This is according to Cal Civ Code 1798.130a.

At the minimum, in your privacy policy, you should have different methods listed for how a consumer might send you a request for a copy of the information you have on them. The law is a little confusing, because it states at a minimum a toll free number should be provided. However, legislation requiring businesses to have a toll free number does not sound like that was the intent.

The same provision goes on to say that online companies must at least provide a working email address for which consumers can make these requests. (Cal. Civ. Code § 1798.130(a)). Update privacy policies with newly required information, including a description of California residents' rights (Cal. Civ. Code § 1798.135(a)(2)).

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Another way to comply is to have a Privacy Policy page accessible on your website, which explains California consumer's rights to privacy.

The company should also not request opt in to their data for 12 months after a California resident opts out. Cal Civ Code 1798.135.a.5

## **What kind of liabilities and punishments are defined in the law?**

Companies, activists, associations, and others can be authorized to exercise opt-out rights on behalf of California residents (Cal. Civ. Code § 1798.135(c)) Companies that become victims of data theft or other data security breaches can be ordered in civil class action lawsuits to pay statutory damages between \$100 to \$750 per California resident and incident, or actual damages, whichever is greater, and any other relief a court deems proper, subject to an option of the California Attorney General's Office to prosecute the company instead of allowing civil suits to be brought against it (Cal. Civ. Code § 1798.150).



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A fine up to \$7,500 for each intentional violation and \$2,500 for each unintentional violation (Cal. Civ. Code § 1798.155)

Privacy notices must be accessible and have alternative format access clearly called out.

The Department of Justice reviewed and approved all of this law's language in 2017.

If I am not even in California, do I have to comply? Very clearly YES. States enforcing each other's law is a well-trodden path. Yes there are some exceptions, however, States are generally supposed to give full faith and credit to each other's laws. In fact, that phrase 'full faith and credit' might tip you off to just how time-honored and entrenched this concept is. It happens to be Section 1 of Article number 4 in the US Constitution: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

States have a legal framework for complying with this, and if a judgement is issued against you or your company in California, it will likely be 'domesticated' to your state. Then enforcement of that judgement can begin on your bank, and your assets.

# Business Website Laws

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## Action Plan

First, we highly recommend that you get in touch with a competent California Business Law Firm to help you set up compliance with the CCPA. There are also private compliance firms available. Do NOT use this list as your only advice. It is not sufficient, and is not legal advice given to you by a lawyer. “I read it on a blog” is not going to be a great defense in court.

Begin by identifying and writing down all of the ways you collect, monitor, and manipulate personal information that might come from a California resident. Make a policy for how long you wish to keep that information and develop processes for deletion/destruction if you only wish to keep it a certain amount of time. Report this in your public privacy policy.

Make sure your existing privacy policy is updated with new CCPA rules.

If you sell personal information, start working on the homepage link and mechanism to allow customers to opt out.

If you sell personal information, create a toll free number just to be safe that will allow folks to have their data removed.

Include information about exactly what is collected.

Have policies in place for how to receive and respond to these requests for a consumer to review, modify, or delete their data.

Find a good California Business Law Firm to consult when disputes arise. Train employees on how to handle CCPA requests from a consumer if they happen to be the one fielding the request.

One area that will likely cause litigation is how the data you collect ends up with third party vendors. This includes technology vendors in the advertising, or website tech stack that you rely on. It is probably safe to map out where all of your consumer data might go, and state the purpose of that on your privacy policy.

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## *Other Laws*

### **Are there any other laws I should be worried about?**

The bigger your company is, the more laws you need to worry about. Here are a few other laws that affect business websites under less common conditions.

(By less common, we mean it is less common for a small business to have to worry about a particular law. Still, you are doing the right thing by pursuing this list to research if you might be affected, but you can always work with compliance professionals or business lawfirms to make sure you are fully compliant.)

### **Children's Online Privacy Protection Act (COPPA)**

This law was enacted in 1998, and is one of the oldest website laws on the books. It dictates how websites that store personal information should handle the storing or consent obtaining of the data of minors.

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## *Alternatives*

### **Communications Decency Act**

This law deals with objectionable content. Businesses need only look into this if the content on their website might offend polite company.

### **California Transparency in Supply Chain Act**

This law might affect retailers, manufacturers, suppliers, brokers, and importers, exporters, and white labelers with a presence in California. The whole aim is to have the companies provide an updating documentation chain showing that the company is doing everything it can to avoid slavery and human trafficking in its supply chain process. However, this compliance burden is typically only put on large companies. Talk with a business law firm to see if you are affected.

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There are other laws concerning how you administrate your business website, however, these typically tend to be industry specific. It is always a good idea to learn about the compliance requirements of your specific industry.

We wish you many profitable and lawsuit free days.



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