

The Global Hospitality Advisor



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The hospitality industry has long been vulnerable to “drive-by” lawsuits by disability advocacy groups who send a disabled “guest” to your hotel. They come, not to enjoy a meal, get a night’s rest or enjoy a holiday respite, but to count accessible parking spaces, check the paths of travel from the parking lot to the entrance of your establishment, and to measure the width of the entrance doors. After checking for a host of often highly-technical violations, the professional plaintiff files a lawsuit against you under the Americans With Disabilities Act (ADA) and related state law.

We are now seeing a new variation of the ADA drive-by: the Internet “surf-by.”

### **Internet Reservations: Do You Provide Enough Information to Avoid Liability?**

Here’s how the wave crashes on the unsuspecting hotel owner. A web surfer uses the Internet to book a hotel room and the website doesn’t offer adequate information for disabled users. The site doesn’t specify the number of accessible rooms available, or

## ADA Lawsuit Alert: Beware the Internet “Surf-by”

**A new twist on the ADA “drive-by” lawsuit**

By Martin H. Orlick

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if it does, it doesn’t list the amenities available in those rooms. Is there a roll-in shower? (Roll-in showers were not required in older hotels.) Do accessible rooms span the full range of room offerings? Is there a strobe emergency warning system for visually and hearing impaired guests? The surfer calls the hotel to determine if the room booked online, (and in many cases, to get the best rate, the room must be booked online), will meet the needs of their disability. If not, a little research by a disability advocacy group will determine how the complaint is filed.

In one case where we are currently defending the owner, the plaintiff claims physical, psychological and emotional injury because an accessible room with a roll-in shower was unavailable—and the plaintiff never showed up at the hotel in person! In May 2002, this plaintiff claims that he booked a room online, and then called the hotel to confirm that a room with a roll-in shower was available. According to the complaint, the plaintiff learned from the reservation desk that the hotel had no rooms with roll-in showers and that the property had 102 rooms.

## Federal ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)

Number of rooms	Accessible rooms required	Plus rooms with roll-in showers required	Plus rooms equipped for the hearing impaired required
1 to 25	1		1
26 to 50	2		2
51 to 75	3	1	3
76 to 100	4	1	4
101 to 150	5	2	5
151 to 200	6	2	6
201 to 300	7	3	7
301 to 400	8	4	8
401 to 500	9	4 plus one for each additional 100 rooms over 400	9
501 to 1,000 1,001 and over	2% of total 20 plus 1 for each 100 over 1,000		2% of total 20 plus 1 for each 100 over 1,000

**How to read this chart:** A property with 120 rooms must have 5 accessible rooms PLUS 2 more accessible rooms with roll-in showers, for a total of 7 rooms. A property with 120 rooms must have a total of 7 accessible rooms wired for the hearing impaired; PLUS an additional 5 non-accessible rooms must be so wired, for a total of 12 rooms.

**Additional requirements in California:**

- Hotels constructed after November 2002 are required to have at least one-roll in shower in its accessible guest room regardless of the number of rooms in the establishment.
- Visual emergency strobes for the hearing impaired must be hardwired, not portable, unless they conform to specifications of the California State Fire Marshal.

The plaintiff then cancelled the reservation and never bothered to visit the property. In July 2003, the plaintiff filed a lawsuit against the hotel and its owners for injunctive relief, damages (\$4,000 per occurrence from the date of the plaintiff's contact), and attorneys' fees under the ADA

and applicable California statutes. This is typical of many such complaints. In another current surf-by case, the plaintiff tried to book a reservation online. According to the complaint in that case, when the plaintiff discovered there were no roll-in showers, she allegedly suffered

severe emotional and physical injuries for which she now seeks payment.

### **How to Avoid Being Wiped-out by ADA Surf-bys**

We have seen some of these ADA lawsuits cost a hotel up to \$200,000. Until the government amends the law to provide a “period to cure” claimed violations before a lawsuit can be filed, the best way to avoid this kind of shakedown is to ensure that your properties are in compliance with the ADA. A hotel’s policies, procedures, and practices with respect to the ADA should be apparent to disabled guests and advocacy groups when they review the hotel’s website and online reservation systems. The absence of clear information about “accessibility” is a beacon for targeted litigation by advocacy groups. At a minimum, the information on your website should include:

- The number of accessible rooms available
- If the accessible room(s) available include roll-in showers and other amenities
- If rooms available are wired for the visual and hearing impaired

Be sure to investigate all online reservation systems that can book rooms for your establishment. Although many hotels’ websites give web surfers information on accessibility, the widely used third-party reservation sites and other distribution channels may not reflect your hotel’s ADA policies, practices and procedures. Providing all sites with current, accurate information about accessibility at your establishment is critical, as is checking periodically to ensure they accurately reflect your hotel’s policies and procedures. All

reservation staff must be familiar with the hotel's accessible features.

### **Monitoring the Tide: Website Accessibility**

As we continue to monitor ADA claims nationwide for trends, we are watching for more movement on the cyber front. In the leading case on Internet accessibility (Access Now, Inc., a Florida nonprofit corporation v. Southwest Airlines Co., S.D. Florida, 2002) the Court concluded that the ADA does not mandate that Internet websites provide complete access to visually impaired individuals. The Court recognized that plaintiffs were clearly able to access Southwest Airline’s services via other means such as the telephone, ticket counters and through travel agents. However, the Court acknowledged that not all courts feel so constrained by the statutory language of the ADA to limit its application to brick and mortar accommodations. Since that time, a Georgia court has decided that Atlanta’s public transit district is required to make its website accessible to the visually impaired. Further, the mandated development of an accessible format for federal websites may create momentum for private sector Internet accommodations. The standard federal website format could create the template for civil suits against private companies.

There is no doubt about it. A tidal wave of ADA lawsuits is engulfing the hospitality industry. But you don’t have to get swept out with the tide. If you are the victim of an ADA lawsuit, an experienced ADA lawyer can navigate you safely back to shore. Even better, with the right preventative strategy, you’ll stay out of the water completely.



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