

LEGAL INTELLIGENCE REPORT

Trends and developments in the digital
accessibility legal landscape

Introduction

The legal and regulatory landscape surrounding digital accessibility continues to intensify, with plaintiffs and lawmakers alike prioritizing people with disabilities' right to access digital information, products, and services.

In April 2024, the U.S. Department of Justice (DOJ) published a new rule under Title II of the Americans with Disabilities Act (ADA), setting the Web Content Accessibility Guidelines (WCAG) 2.1 AA as the technical accessibility standard for state and local governments' websites and mobile apps. This move was widely interpreted as the precursor to similar requirements for Title III, which applies to businesses that serve the public.

Meanwhile, the consistently high volume of ADA Title III digital accessibility cases highlights that plaintiffs will hold organizations accountable for failing to prioritize diverse user needs.

To help organizations better understand the current digital accessibility legal landscape and understand their risk, UserWay's Legal Intelligence Group conducted an in-depth exploration of court dockets and case law in Q1 2024. Drawing on premium legal data sources, this report offers insight on key trends in U.S. digital accessibility litigation.

Key findings:

Digital accessibility lawsuits are frequent:

- ▶ A total of 1,136 digital accessibility lawsuits* were filed in federal and state courts in Q1 2024.

State-level litigation is ramping up:

- ▶ In both New York and California, major arenas for digital accessibility litigation at the state level, lawsuit volume increased month-over-month in both February and March.

Majority of litigation is initiated by a small group of law firms:

- ▶ 84% of all Q1 digital accessibility lawsuits were filed by just 11 plaintiff law firms.

Legal risks abound as diverse industries are targeted by lawsuits:

- ▶ Many types of organizations, from big box retailers to niche industries like sports team apparel and cannabis, have faced legal action.

Courts remain divided on whether testers have standing:

- ▶ After the U.S. Supreme Court declined to rule on the topic in December 2023, federal courts have differed on whether individuals who test the accessibility of business' websites without the intent to become customers have the right to sue these organizations.

* These lawsuits involve claims under Title III of the ADA, which applies to entities that are open to the public, including certain businesses. They also include claims made under related state anti-discrimination laws, such as the New York State Human Rights Law. Many are class action lawsuits. The plaintiffs in these cases, and the firms that represent them, allege that websites or mobile applications are inaccessible.

Digital accessibility litigation is widespread

Lawsuits regarding the accessibility of digital experiences are commonplace nationwide. We identified 1,136 digital accessibility lawsuits filed in the U.S. from January 1 through March 31, 2024.

Of this grand total, 611 lawsuits were filed in U.S. federal courts, 269 were filed in California state courts, and 256 were filed in New York state courts — (all state-level litigation that we identified took place in these two states). Federal lawsuits included claims citing Title III of the ADA, while state lawsuits cited state anti-discrimination laws — specifically, the California Unruh Civil Rights Act and the New York State Human Rights Law.

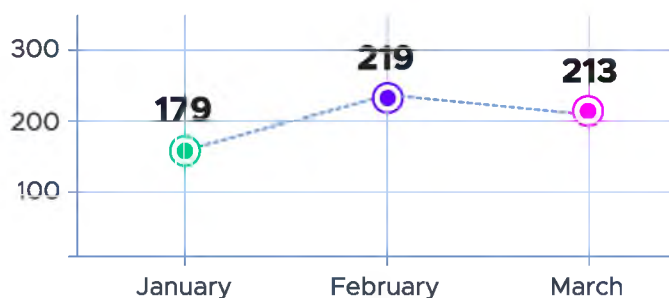
These high rates of legal activity, on both federal and state levels, underpin the critical need for accessible digital experiences to mitigate legal risk for businesses. And digital accessibility lawsuits can have financial and reputational consequences. State lawsuits can be particularly costly: while the ADA typically limits plaintiffs' recovery to injunctive relief and reasonable attorneys' fees, state laws also allow for compensatory damages and civil penalties.

Federal lawsuits hold steady throughout Q1

Over the course of Q1, U.S. federal courts saw a steady stream of digital accessibility lawsuits citing Title III of the ADA: 179 cases were filed in January, 219 were filed in February, and 213 were filed in March. The consistent pace of federal litigation indicates that accessible online experiences remain an ongoing concern for plaintiffs — and failure to prioritize digital inclusion presents a continuous risk for organizations.

Overall monthly number of federal cases

January:	179
February:	219
March:	213



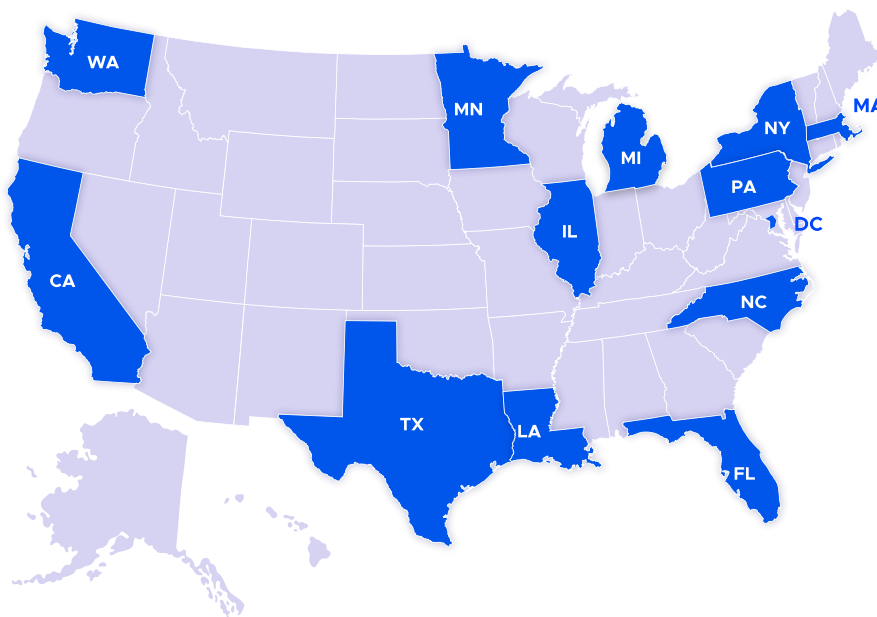
New York and Florida lead U.S. states in federal lawsuit filings

At the federal level, Q1 legal activity was largely concentrated in two states: New York and Florida. More than two-thirds (413) of all federal digital accessibility cases were brought before New York federal courts, while more than one in five (134) were filed in Florida courts.

The relatively large number of federal cases in both states can largely be attributed to the pro-plaintiff stance of certain district courts. Individuals are often more inclined to bring digital accessibility lawsuits before district courts where judges have historically taken the plaintiff's side — and case law in Florida has typically favored plaintiffs.

Pro-plaintiff rulings are also common in the Southern District of New York, which saw more ADA Title III digital accessibility lawsuits than any other U.S. federal court in Q1 with 237 complaints filed.

Number of federal cases filed this quarter broken down by state:



NY: 413

PA: 21

IL: 12

Other: 8*

FL: 134

MN: 20

CA: 3

*Including LA, MA, MI, NC, TX, WA, and DC

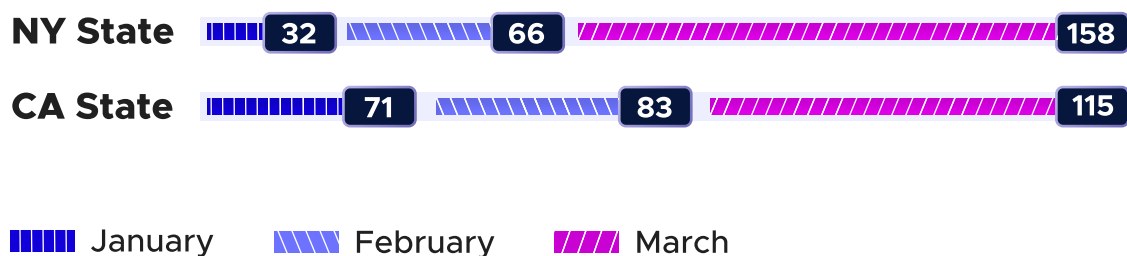
State lawsuits are on the rise

All state-level litigation related to online access that we identified in Q1 took place in New York and California. Both states have enacted anti-discrimination laws that run parallel to the ADA.

In New York, the New York State Human Rights Law protects people with disabilities' equal right to access to public accommodations, similarly to ADA Title III. Meanwhile, the California Unruh Civil Rights Act has adopted the same standards for discrimination as the ADA. These strong anti-discrimination laws, with their potential for more expansive remedies compared to the ADA, make New York and California particularly preferred jurisdictions for plaintiffs' lawyers to file web accessibility lawsuits.

Both New York and California case numbers increased substantially every month of the quarter, with New York courts experiencing particularly steep month-over-month surges. Lawsuits more than doubled between January and February, rising from 32 to 66, and leapt to 158 in March. Case volume in California grew more steadily: state courts saw 71 claims in January, 83 claims in February, and 115 claims in March.

Overall monthly numbers of cases



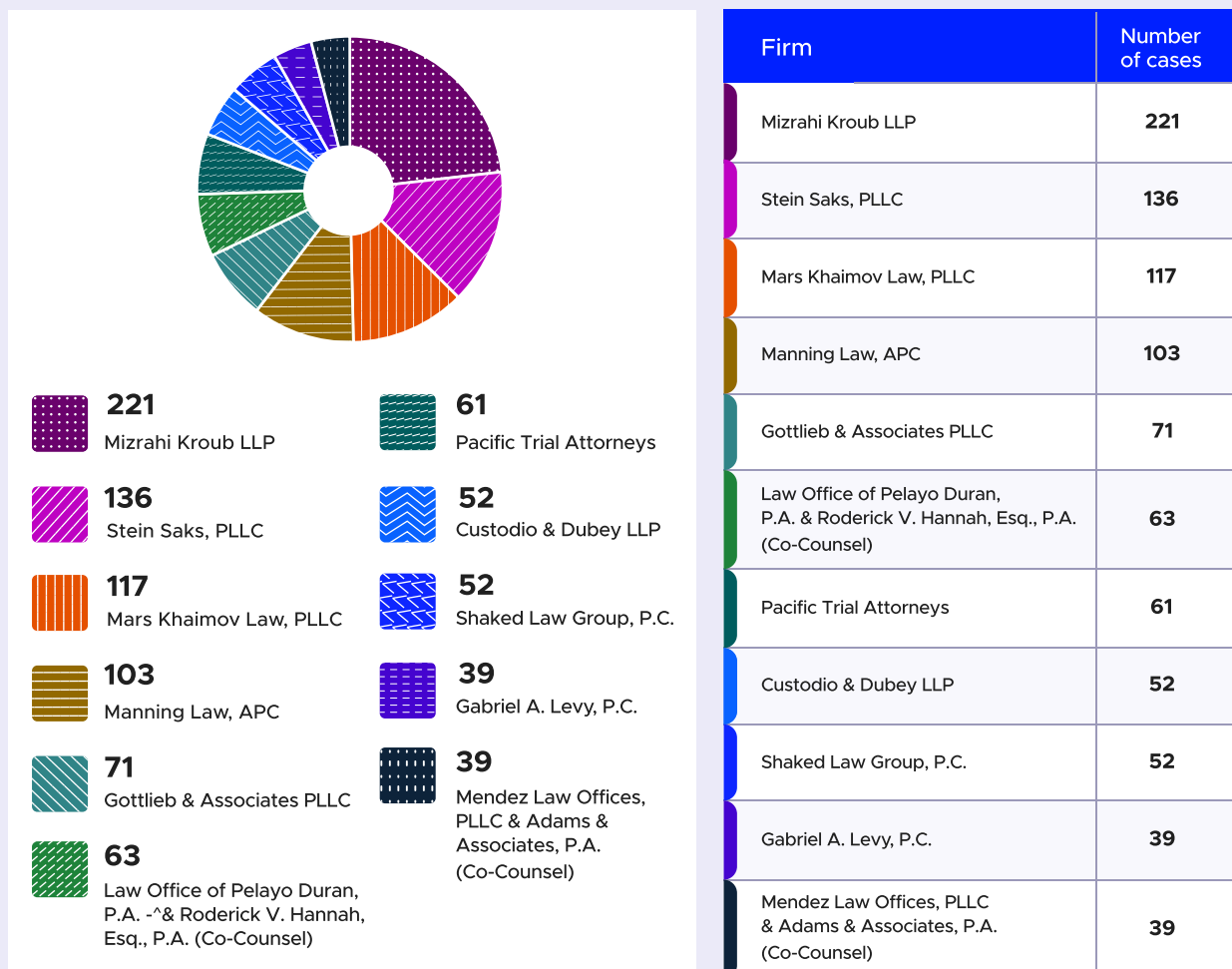
Given the frequency of litigation in both New York and California, organizations that serve consumers in these states are at particularly high risk of being targeted by digital accessibility lawsuits — and this risk will only heighten if Q1's upwards trend continues.

Select firms initiate a large volume of lawsuits

A significant majority of all lawsuits filed in Q1 2024 were initiated by a relatively small cohort of law firms representing plaintiffs. In fact, nearly 60% (648) of the more than 1,100 lawsuits we tracked were filed by just five firms.

It's clear that, for certain firms, digital accessibility litigation is now an area of specialty, or even an exclusive focus — and these firms have the resources to initiate hundreds of lawsuits in just a few months.

Most active law firms by digital accessibility case volume, Q1 2024



Focusing on verticals strengthens plaintiffs' positions in web accessibility lawsuits

Historically, lawsuits for inaccessible websites have targeted organizations in verticals within certain industries, such as e-commerce and financial services. This focus strategically addresses standing — a legal term that refers to a plaintiff's constitutional right to sue because they have been personally harmed. For instance, encountering inaccessible college websites while researching higher education creates a clear injury, as it hinders equal access to research educational opportunities, if the plaintiff can demonstrate an intention to attend college.

Use of this strategy by plaintiffs' law firms is evident from our court docket research. Our findings indicate continued targeting of verticals, making it clear that no industry is immune from legal action. Organizations of all sizes and types must include users with disabilities or risk facing a lawsuit.

Let's explore some of the industries that attracted legal action in Q1 2024.



Big box retailers

Given the history of frequent digital accessibility legal action targeting retailers, it may not come as a surprise that many big box stores faced lawsuits in Q1.

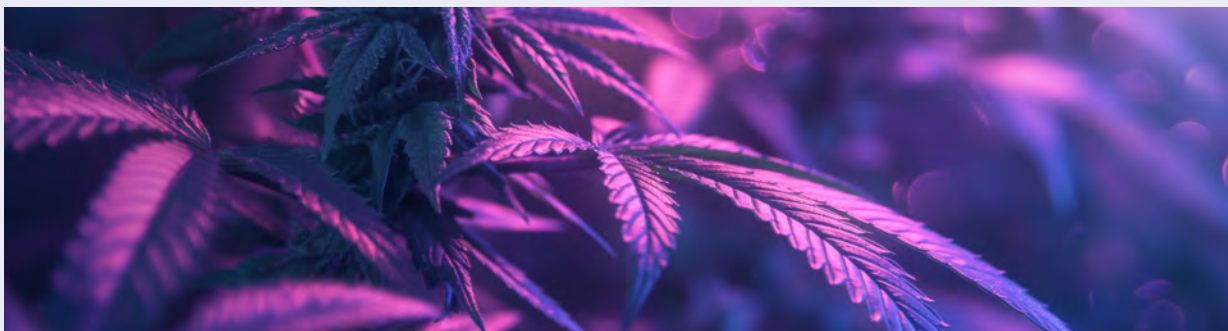
Much of this activity was driven by Thronset Michenfelder LLC, a Minnesota-based law firm, which filed complaints against a wide range of bulk goods retailers. The continued wave of digital accessibility lawsuits targeting retail companies highlights that many organizations still face challenges in achieving and maintaining compliance. Despite high-profile cases making headlines, these issues remain prevalent in the industry.



Higher education

Digital technology now plays an instrumental role in education. Schools that fail to consider students' online accessibility needs are being held accountable.

Over the first quarter of 2024, a total of 18 complaints were filed against higher education institutions by New York-based law firm Gottlieb & Associates. Notably, the organizations targeted included small, religiously affiliated and liberal arts colleges. The targeting of these niche educational institutions further emphasizes that providing accessible learning experiences is a legal imperative for every school — not only large universities involved in high-profile lawsuits.



California cannabis businesses

As the legal cannabis industry has grown, so has the risk of digital accessibility litigation for companies in the space.

Throughout Q1, the plaintiffs' firm Manning Law filed web accessibility lawsuits against 13 cannabis-related businesses operating in southern California. This development clearly indicates that no industry is too niche to be involved in accessibility-related litigation. And, this may also point to a need for greater awareness of users' accessibility needs within the emerging legal cannabis market.



Pet supply shops

In February 2024, New York-based firm Mars Khaimov Law, PLLC filed multiple lawsuits alleging that accessibility barriers on the websites of several pet supply stores violated the ADA. Like the legal action observed in the cannabis industry, this litigation illuminates the fact that organizations offering a highly specific product category, or catering to a distinct subset of consumers, are hardly exempt from digital accessibility laws.



Sports team apparel stores

Another niche industry targeted by litigation, retailers offering sports team apparel faced several legal complaints in March 2024.

These cases were initiated by Mizrahi Kroub, a law firm based in New York, and involved the official team stores of professional sports teams, as well as several unofficial online sellers.

Notably, not all of these retailers were based in New York — however, because they serve customers in the state, they could still be held accountable in New York state courts. These circumstances were hardly unique to this set of lawsuits. It highlights the need for organizations to be mindful of digital accessibility laws in their customers' jurisdictions as well as their own.

Notable developments in the legal landscape



Outside of lawsuits targeting specific industries, our team explored case law trends and events that underpin the ongoing need for awareness of legal digital accessibility risks to businesses across all industries.

In the following section, we've summarized two developments surrounding ADA testers and courts' attitudes toward "settlement mills," which are firms that pursue a large number of digital accessibility cases seeking quick settlements, rather than prioritizing individual clients' needs.

Courts remain divided on whether testers have standing to file lawsuits

Several Q1 court cases focused on whether testers, individuals who test the accessibility of many organizations' websites, without intending to use their product or service, have standing to file lawsuits based on accessibility barriers they identify. While some testers may perceive this work as a form of activism, others work with "settlement mills" pursuing monetary rewards over meaningful change.

To date, however, courts have failed to reach a consensus on testers' standing. Under Article III of the U.S. Constitution, litigants must possess standing for a federal court to hear a case. Standing requirements include an "injury in fact." The debate surrounds whether a website tester has been injured sufficiently to have standing to bring a lawsuit before a federal court.

After the U.S. Supreme Court in *Acheson Hotels, LLC v. Laufer* declined to rule on the issue in 2023, Q1 cases were marked by different opinions. A judge in the U.S. District Court for Puerto Rico ruled that a plaintiff, alleged to be a tester, had standing, while judges in the Southern District of New York and the Northern District of Texas granted motions to dismiss the action in website tester cases. These decisions align with precedent set by the courts of appeals in each district court's respective circuit.

Meanwhile, there is no definitive ruling on the issue of testers' standing in the Third Circuit, which has jurisdiction over federal cases in New Jersey, Pennsylvania, and Delaware. And although judges in the Western District of Pennsylvania have issued opinions dismissing testers' complaints, they have allowed plaintiffs to refile amended complaints.

In the absence of a nationwide consensus on ADA tester standing, these types of lawsuits will continue to develop and grow in count. In the meantime, ADA testers could face increased scrutiny in jurisdictions that have called their standing into question.

Notable Q1 2024 court decisions on ADA tester cases

Dismissed	Allowed to continue
<ul style="list-style-type: none"> ▶ <i>Bowman v. SWBC Real Estate Services, LLC</i>, 3:23-CV-00970-X, 2024 WL 1123035 (N.D. Tx., March 14, 2024) ▶ <i>Martin v. Second Story Promotions, Inc.</i>, 1:22-cv-10438 (MKV), 2024 WL 775140 (S.D.N.Y., February 26, 2024) ▶ <i>Mullen v. DSW Inns, LLC</i>, 23-520 2024 WL 1095718 (W.D. Pa., March 13, 2024) ▶ <i>Mullen v. DSW Inns, LLC</i>, 2:23-cv-01277, 2024 WL 936322 (W.D. Pa., March 5, 2024) 	<ul style="list-style-type: none"> ▶ <i>Betancourt Colon v. Costa Bahia Hotel and Convention Center</i>, 23-1026 (ADC), 2024 WL 1016109 (D. Puerto Rico, March 8, 2024)



New York attorney known for pursuing large number of digital accessibility settlements reprimanded

In an example of courts' increased scrutiny of "settlement mills," a New York attorney known for filing a high volume of digital accessibility lawsuits was disciplined for missing deadlines and failing to comply with court orders.

In February, U.S. District Court Judge Jesse M. Furman reprimanded attorney Noor Abu-Saab, whom the judge said "filed more lawsuits in this District than any other lawyer" but struggled to maintain the caseload. Abu-Saab, whose difficulties had led to sanctions and the dismissal of cases, was ordered to complete additional hours of legal education, and referred to the Chief Judge of the Southern District of New York and the Court's Committee on Grievances.

This saga highlights that taking on many cases in pursuit of expedited settlements is not always sustainable for plaintiffs' law firms. And judges are becoming aware of the pitfalls of this approach. While the number of lawsuits filed by "settlement mills" may not change soon, organizations facing these lawsuits should no longer assume judges will immediately side with the plaintiff.



Conclusion

The highly active and volatile legal landscape surrounding digital accessibility shows no signs of slowing down.

At both the federal and state level, plaintiffs are taking legal action against organizations that neglect to prioritize the needs of people with disabilities, strategically targeting verticals to ensure legal standing. The U.S. Supreme Court's inaction on ADA testers in late 2023 also does nothing to remedy this trend.

Given these circumstances, it's more imperative than ever that organizations ensure the accessibility of their digital experiences. Achieving conformance with Web Content Accessibility Guidelines (WCAG) and implementing sustainable accessibility practices is the best way for organizations to mitigate legal risk, enhance user experience, and build a reputation for inclusivity.

Methodology and sourcing

Our Legal Intelligence Group is comprised of legal professionals focused on delivering the most valuable and credible industry insights and news in the digital accessibility legal landscape.

Our research and data are gathered by our team of attorneys licensed in New York or California. We reference the most up-to-date digital databases covering federal and state courts along with documentation on digital accessibility cases filed in New York and California state courts.

Our attorneys specialize in digital accessibility case law and compliance, with an in-depth understanding of the court systems and proceedings. As former litigators of civil law cases nationwide, our researchers have directly represented organizations in digital accessibility cases. We leverage manual data collection and technology to provide aggregated insights that shed light on the latest advancements in digital accessibility law.

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