

3Play Webinars | Web Accessibility Lawsuit Trends in 2022

KELLY MAHONEY: Welcome, everyone. Thank you very much for joining us today for the presentation Web Accessibility Lawsuit Trends in 2022. My name is Kelly Mahoney. I'm the content and partner marketing specialist at 3Play Media, and I'll be moderating today. Just a quick note on my physical appearance. I'm a young, white woman with long, brown hair wearing a gray T-shirt today.

So today, I'm happy to welcome Jason Taylor, the chief innovation strategist and advisor to the UsableNet CEO with more than 20 years of experience in usability and accessibility. Jason is a global technology leader for multichannel customer engagement, actively advising leading companies on how to extend their brands across multiple channels for all users.

He has been an active member of the accessibility and usability communities since 2001, which started with leading partnerships between UsableNet, Macromedia, which is now Adobe, and the Nielsen Norman Group. We're thrilled to have Jason here today with a wonderful presentation prepared for you all. So with that, Jason, welcome, and please take it away.

JASON TAYLOR: Hi. Thanks, Kelly, and thanks, everybody, for spending a little bit of time with us today. Hopefully I'll give you some insights that you can take away and action. Just a quick history, a quick sort of context of the data that you're going to listen to and some of the things that you're going to hear from me and where that comes from. UsableNet, which is a company that basically helps hundreds and hundreds of companies make sure that their websites and apps are accessible to people with disabilities, we provide a whole range of services and technology to help different types of teams achieve that as quickly as possible.

As part of that, we try to track as much as possible the legal landscape, which is one aspect of this particular industry. And in that activity, what we're trying to do is understand the general trends, what we're seeing in lawsuits. That allows us to help inform our community and our clients on how to prioritize efforts to ensure accessibility but at the same time reduce and avoid lawsuits.

What I'm going to try to do today is focus on three key areas. Kelly, if you could move just to the agenda slide. I'm going to cover the top trends. I'm going to cover what we see as common elements within side lawsuits. And then I'm going to hopefully try to give you some action items to go away for yourself and your teams to prioritize based on that information.

Quickly on where does this data come from and what is the ADA, let's make sure that we are giving you a deep dive into the sort of methodology to create these numbers. Quick pause. So pretty much every lawsuit that we track is filed under the Americans with Disabilities Act, either at a federal level or at a state level. What we actually do is if-- people are probably aware that the Americans Disabilities Act has been around for 30 years. To give it some context, when it first was produced or first put it into legislation, there was no such thing as websites and apps.

Most of us are probably familiar with the Americans Disabilities Act as something that affects physical spaces, so in terms of things like handicapped parking spaces, ramps for wheelchairs into restaurants. And originally, the ADA 30 years ago was essentially about creating access to places of public accommodation. That's something that you would hear if you listen to a lawyer a lot. In layman terms, that means places that provide services or businesses to general public.

They need to make sure that people with disabilities, and back 30 years ago was primarily focused on the physical disability, accessing that building, accessing that restaurant, accessing that bank, accessing that store, to basically do what other people can do. What happened 20 years ago was that a lot of the internet basically exploded and became part of our lives.

20 years ago, it became an important part of everything that we were doing, started to become an important way of accessing services online. And a lot of disability advocacy groups, such as the Federation for the Blind, really focused on websites and apps and argued that actually if it's a shop online, it's the same as a shop physically.

It needs to provide access. And essentially that was what took 20 years. The Department of Justice has essentially, for 20 years, supported that premise that these are important places of public accommodation. They are digital, and they need to be made accessible.

And that essentially allows websites and apps to be sued under the ADA. I'm not going to give you a legal lesson on this particular webinar. But just to be clear, these are essentially lawsuits that are brought under the ADA.

What we do as an organization, because essentially we're helping our clients in the digital space, is that we actually track all ADA lawsuits filed federally and state. That's around 12,000 to 13,000 a year. We actually read every one of those lawsuits and find out if the subject matter is a physical property or a digital property, such as a website, an app. If it's digital, we then track those cases to see what trends we can see in those cases that are useful for our community and our clients to understand.

At this point, that means when we've done our work, essentially we're looking at around about 100 lawsuits a week. And that's projected to be almost 4 and 1/2 thousand lawsuits by the end of 2022. And that's doubled in the last three years. There's probably a number of reasons for that. But to just give you a perspective here and to give you context, again, 4 and 1/2 thousand lawsuits sounds lots. And it is lots.

But it's brought primarily by a very simple-- a very tight set of plaintiffs and plaintiff firms. So to put that in perspective, 75% or 80% of those lawsuits are brought by 10 plaintiff firms. That will give you an idea that plaintiff firms on a regular basis are sort of putting together and suing 10 to 20 companies every month.

So you got to look at this more as a sort of a business in terms of what are they looking for, how do they put that lawsuit together, and how do they actually-- what are they trying to achieve with those lawsuits. And again, knowing what's in those lawsuits and those trends allows us to help clients prioritize what type of efforts they should be taking on what types of digital properties to make sure that they're reducing their risk of these lawsuits and at the same time making sure that they're providing a good, accessible experience for people.

Kelly, you can move it to my next slide. So a couple of things that I'm going to cover on this particular slide is there's a chart on this slide that talks about the most common places for website cases to take place. It's a slide that basically covers the first six months of 2022. It basically indicates that the primary three main states where these cases take place is in California, New York, and Florida. There's a couple of trends there that I think are important to understand.

But in general, what that means is that in California and New York, the courts are more willing to hear cases brought against websites and apps than in other states. And that's really what it means. It means that most of the plaintiff firms that are operating are operating in New York and California. If you are operating a business that does business in California, or New York, or Florida, you can be sued in New York, California, and Florida.

So essentially, it doesn't mean that if you're headquartered outside of California, New York, and Florida, you're safe. It means basically if you're an online business and you're doing work, doing things in California, New York, and Florida, you're more likely to be sued. California is popular because they've got a strong state-level ADA-related legal claim that they can do under-- it's called Unruh. And they also have the federal. New York is very popular at a federal level.

Florida has actually went down recently because of some cases but back up again. And we'll talk about that a little bit. But essentially, the thing that you should understand is that you're most likely to get sued in New York, California, and Florida for doing business in those states. And it doesn't matter that you're not in those states. It matters that you're doing business in those states and you're providing customers service in those states.

Kelly, if you can move to the next slide. So let's think about industry breakdown as well as a trend. And I'll explain why these industry breakdowns exist. Again, I've got a slide in front of you that basically communicates three main points. One is it shows out of those 4 and 1/2 thousand cases, 79% of those cases are inside of e-commerce.

But there's actually cases across all sorts of different industries. And e-commerce is very broad. E-commerce doesn't just mean retail like a closed manufacturer. It could mean ticket sales of a stadium. It could mean sale of wine at wineries.

So it's not about very classic retail but e-commerce in general, so the providing of product and services online that people buy. And actually, the third point is industry e-commerce outside of e-commerce. Food services, health, travel, hospitality, and finance are very popular. There's a few reasons for this.

One is, as I would go back to that point that I made before, 4 and 1/2 thousand lawsuits, 10 plaintiff firms. They sort of need a process that works, that generates a lot of potential lawsuits. So e-commerce has hundreds of thousands of targets. It's easy to find a list of companies that sell certain things online, so let's say, furniture online, or kitchenware online, or groceries online, and then provide that to their plaintiff, who would go and review those sites. And we'll talk about what's in that sort of lawsuit.

But essentially, you need to start with a list. They need to start of a list. They want to target companies that they think they're going to find lots of problems with. And e-commerce typically has complexity on their websites and apps. So it's more than likely that they'll find something that's wrong that they can put into a lawsuit.

It's also easier to tell a tester that maybe, hey, I want you to go to these 20 e-commerce sites, and I want you to do the same thing. I want you to try to sign up for their deals of the day. I want you to try to search for a product, add it to cart, and proceed. So we see the sort of predictable use cases that they can send a list of 100 sites to and pick the 20 that come back with the most amount of problems. So e-commerce is one very easy to visit, easy to find lists, volumes there.

Normally the site is complicated. The site also changes a lot. So the more changes, the more likely someone forgets to do something, the easier and more likely they are to find problems that they can report in a lawsuit. And then finally, e-commerce is aware, in general. Let's say, retailers are aware, in general, of the concept of the ADA.

Many of these-- and we're talking a little bit about those trends-- many of these actually do have a physical location. So in terms of selling things, but they also have a physical location. So they've addressed ADA at the physical level. They're not surprised when they get a lawsuit at the digital level. And that's an important point.

Again, this is a sort of industry of lawyers that want to sue a company that's going to respond and then engage and then decide how to proceed with regard to a legal case. So essentially, e-commerce is up there. And I think those reasons hopefully make sense to you in terms of why we're seeing e-commerce as such a big percentage of the industry breakdown.

And, Kelly, could you move to the next one? So over the years, we've seen the company size change. This is a slide that, again, delivers three main points. One is to indicate that current trends in 2022 are seeing lots and lots of more medium to small businesses targeted as opposed to bigger companies targeted. And that's primarily with 27% of lawsuits aimed at companies with revenue over \$25 million and 73% of lawsuits aimed at companies with less than \$25 million.

This is essentially probably to do with, again, the volume. They're running out of bigger guys to sue. Bigger companies have been sued over the last four or five years and are taking excessively it more seriously. So there's less problems on their website to report in lawsuits.

The other thing is, again, we tend to find that plaintiff firms target companies that they think will basically admit they haven't done much, won't try and fight the lawsuit, and will try and settle, meaning that the plaintiff firm gets their legal fees. And essentially, the mid-tier, smaller e-commerce, or smaller company that's moving fast, doesn't have many resources, maybe most of the time doesn't even build their own website, buys their website, doesn't have the energy or the sort of knowledge of knowing what has it done, what has it not done. Maybe it didn't really do much on accessibility.

So it doesn't have a lot of defense for its own lawyers to defend them. So they're good targets for lawsuits. So again, we're seeing that sort of mid-level, \$25 million down company being sued a lot, maybe because of volume but also because plaintiffs are looking for easy wins and not really looking for big fights. And they want to basically argue that they've spent x amount of time, and there's no defense, and you should settle this lawsuit with us.

So let's look at what's in a typical lawsuit and why is it easy for a plaintiff to sort of lose-- to win these cases. And when I say win, out of the 4 and 1/2 thousand lawsuits this year, we would expect 99% of those to settle in favor of the plaintiff. What we mean by settle, we mean that the company agrees that actually they haven't done enough, or they don't want to spend the money to defend themselves, and actually will pay the plaintiff lawyers' fees and fix the website or app. That's essentially what happens in a typical settlement.

So how do plaintiffs sort of target people? What are they doing in terms of preparation to create a lawsuit? And again, thinking about that idea that 80% are filed by the top 10 plaintiff firms, again, these all look very similar. People talk about cookie-cutter lawsuits. Some of them are really cookie-cutter.

But they become more and more-- sort of a little bit more sophisticated about what they include in that lawsuit. But they claim the same thing. Typically, the plaintiff in the case will be a visually impaired person who uses a screen reader, typically a blind person but could be someone who's-- someone that needs to use a screen reader for their everyday use.

That's the plaintiff. That's the person that comes and says, the website and the app doesn't work for me. It's filed basically around different types of inability to complete tasks on a website. So typically, there will be at least one reference to the person who uses a screen reader not being out to complete a purchase, for example. And there may even be screenshots of where they couldn't complete a purchase on an app or they couldn't complete a purchase on a website.

Another area of disability is hearing impaired with videos on captions. So some lawsuits are just saying, you've got a video, and there is no caption. You are preventing me, as a deaf person, consuming the content, and I bring a lawsuit under ADA, which is very simple and an easy argument to start with. There's normally connected to that-- hey, I've got a user. They couldn't do x or y-- a list of technical items that the plaintiff firm has found by scanning the website.

Now, giving you an analogy, if you don't understand the technical aspects of web accessibility, if you go back to the idea of a physical space and you need to make that work for someone who's in a wheelchair, you would have technical specifications about that building, about how wide the doors need to be, where the light switches need to be so if I'm in a wheelchair, I can reach them. Those technical specifications in the world of digital are typically set by the W3C, which is the World Wide Consortium, under a set of guidelines called Web Content Accessibility Guidelines.

They are essentially those sort of technical specifications in the same way for a website and an app. Unfortunately, websites and apps change a lot more than physical properties. And they're a lot more complicated than physical properties. So again, it's quite easy to create a list of things that have been easily forgotten or weren't given attention to when the website was built or the app was built. That's typically done by scanning the website or app with a test in software that just gives them a list.

So a typical website lawsuit says, I'm blind. I couldn't do this. Maybe a couple of screenshots of where I couldn't proceed to check out a product. It will also cite a list of items which fail a WCAG scan of technical specifications. They may not have caused the issue of the original user, but it's almost like putting-- in a lawsuit, you want to stack on more reasons why I'm suing you. And they may also reference the fact that there's a lack of a web accessibility statement on your website.

The reason why they're stating that is that they think that shows that you are discriminating against the disability community. And the ADA is a discriminatory act. It's not an act where you can get damages. So really, what the lawsuit says is, I'm a blind user. I couldn't use your website.

Here's a lot of information about what we think you've done wrong. We don't think you've taken web accessibility seriously. We want you to remedy the website. We're taking you to court. And the plaintiff firm would then quickly reach out to the defendant and say, well, we'll actually-- we'll settle and let you fix the site, but you got to pay all my fees.

So the reason why most lawsuits settle is the defendant lawyers know that it's going to cost x to defend, going to court. The plaintiff firms know that. They offer to settle for x less a little bit and to settle and say that we'll let you fix your website and your app. And essentially, that's why 4 and 1/2 thousand cases will settle very quickly. Because once the maths is done, essentially the advantage is to get rid of the plaintiff and focus on fixing the website and the app.

One thing to be very clear about how some of this trend works, 20% of the lawsuits this year are companies that got sued previously. Now you could argue, well, if they've already got sued and they've already settled to fix, why could they get sued again?

Because under the ADA, you're only settling with one individual. You're not settling with the wider community. So essentially, if you settle and you say, I'm going to-- I'm going to fix the site in the next two years, if someone else comes along in that two years and can create a case, they have a case to bring against the website before it's fixed.

So how do you best attack and get yourself in a better place? One, how do you make sure that you're creating a better accessible experience but at the same time reducing your risk? What we try to do is get people to-- companies to immediately think about what is the high-visibility content that they have out there and think about how plaintiff firms are working to try to decide whether you're the website or the app that they're going to sue.

So what we do is we're using this sort of information that we know about how these lawsuits are brought together to give you a quick roadmap to immediately improve your website. So as I said, there's basically sort of two components of a typical website. And you could argue maybe three components. So the first thing is, hey, I've got a blind client, plaintiff, that couldn't use your website.

So one of the first things that we talk about is that you should do the same thing. You should hire someone from the disability community that uses a screen reader on a daily basis and tell you whether they can complete the tasks that you expect every user to be able to complete.

So to go about that, one of the things that we allow you to do is we actually coordinate and have a team of blind users that you can hire. But you can also get people from in your own community, whether that's people who work for your company, family and friends of people who work for your company. Or you can go out to some of the local disability communities in your area and get them to help you and pay a lot less fee in doing so.

So think about that from a lawsuit perspective. You might also want to look at what's your inventory. So you should inventory your digital experiences based on the most public-facing content. What's the website easiest to visit by a plaintiff firm? What is the functionality that's easiest to visit from a plaintiff firm?

Primarily, that's going to be some of your marketing sites. It's going to be your public e-commerce sites, your publicly-facing content, websites and apps which are easily available to the public. You might also want to look at things like PDFs and video. Again, I told you video's sort of a target, an easy target if it doesn't have captions.

So inventory. We have all of these websites and all of these apps. Which are the most popular? Which are the most likely in that sort of industry space, e-commerce, food, retail, finance, banking, places where people go and do stuff every day? Prioritize that list. Get users from the disability community to tell you whether they can or cannot use your product.

Because that's going to help you in two ways. One is if there's actually-- they have a great experience, that's something that you can use in any defense with regard to a lawsuit. But also if they have problems, that's going to help motivate teams. When teams see that individuals have problems, typically teams are technical, and they want to solve that problem.

On the technical front, I talked about running a scan. We have a technology on our website that you can use for free where you can just put in your website, and you can test, and you can come back with a list of issues. That's the type of issues that get listed in lawsuits. They're not hard to fix. They're mostly very simple things to fix.

So running your website through one of these sort of testing software and getting your team or your vendor who built the website to fix them, that's going to put you in a far better place. So you've cleaned up the website from a testing perspective, an easy testing perspective. You've made sure that you've done some testing with people who use screen readers to confirm that they can do the things you expect everybody to do. Yeah? And then you've got some items that you can bring to your internal team to start remedying.

And those are, for me, the priorities that you want to focus on. You want to focus on what those two things uncover. You need to be working with either your vendor or your own team to work through those. There might be some that the web-- the marketing team need to take care of, like captions on video.

There might be some where the web team needs to take more care of, which is problems with regard to buying product. But you've got to sort of take those, prioritize them, separate them out across the teams, and have someone organize that work and bring it back together. So that would be the sort of first let's go after the low hanging fruit component.

And then some areas that we think you should start thinking about from a mid- to long-term is create some type of statement about that you are taking accessibility seriously, that you make it easy for people to report problems. And if you do make it easy for people to report problems, make sure you've got a way for your own internal team to escalate their problems and manage those problems internally to get them remedied, not just make it easy to someone send an email with a problem and then never respond to that problem.

The reason why we say it's good to create and start thinking about a statement about what you're doing with accessibility is that will bring in stakeholders from different teams. You're not going to put a statement on your website about what you're doing with accessibility without buy-in from other teams and senior management and making sure that you have those conversations around, well, what happens when we get these reports back? Who's going to be responsible for them? Do we have the resources for it? Do we have the money for it? Do we have the time for it? How are we going to handle those things?

It starts a set of questions internally that you need to answer before you're going to be successful. If you just go out there and create a whole report of what's wrong, but you've not discussed with any departments about how you're going to fix it, who's going to be responsible, who's going to track it, who's going to pay for it, who's going to own it, you won't be successful. So it's important to basically make sure that that statement starts happening internally to get people to buy in.

We believe in continuing to do user testing on every release, essentially making sure that if you do a new release and you've done some testing with users with screen readers or different disability groups, keep doing that. The other thing is most websites out there, you didn't build. Your team isn't building. And one of the things I would focus on very fast is making sure that your vendors are aware that you feel that they're responsible for making sure that your website, your app is usable by everybody.

So making sure that you've got things like web accessibility and ADA clauses in contracts, making sure that you've got a way to check that, that they actually done it. They didn't just check a box and say, yeah, don't worry. It's accessible. You've got a way to sort of verify that, that the vendors are delivering that to you. Because under the law, they're not responsible.

Even if under contract they were meant to do it, you can sue them. But the plaintiff will never sue them. The plaintiff will sue you. It's your website. It's your store. You've got to make sure that it's accessible, even if you're getting someone else to do it for you.

And then there's a whole range. And we've got one that you can download. Start a accessibility checklist, a list which goes through making sure that you sort of-- you're methodically going through this process and involving the right people and checking off important milestones. And we have some free content in supporting this webinar for that. And I think, Kelly, that's me done talking.

KELLY
MAHONEY: It sounds great. I'm going to go ahead and stop screen sharing. We have received some questions. So give me just a moment to get my screens in order here. And we'll dive right into that.

Why don't we start off with something that's pretty relevant at the moment. There was a new bill proposed called the Websites and Software Applications Accessibility Act in the Senate and the House of Representatives. Can you give us sort of an overview of this bill and your thoughts on the impact it might have?

JASON TAYLOR: Yeah. So this is the newest bill. There has been other bills proposed in the last two or three years. All bills are trying to actually clarify what you need to do. One of the biggest reasons why these lawsuits exist is, as I said to you, the ADA that they're using was written 30 years ago. There is no specifications around websites in the ADA, unlike, which I talked about, there's a physical specification in the ADA for how big a door needs to be, door opening needs to be, and where the light switch needs to be.

So it's very hard for businesses right now to argue they've done enough. They've done what the ADA requires them to do. So that's one of the biggest reasons why these lawsuits exist. Because for me to argue that point is going to cost me a lot of money to get to a point to be able to argue in front of a judge that I did enough. And essentially, that means that the plaintiff firm says, hey, I know it's going to cost you \$20,000, \$30,000 to defend this. I'll settle for \$20,000.

Essentially that's the reason why these bills are being proposed because business wants certainty. Business wants, hey, I'm happy to do this, but it's not clear right now I've done it enough. So that's why these bills are sort of being presented. And past bills have not been successful because they haven't had the support. They've had a lot of support with business but not a lot of support from the disability community.

Because the disability community feels like actually the current ADA covers websites and apps. They're not willing to admit it doesn't cover websites and apps. They're very adamant that they believe that these are places of public accommodation, they're extremely important for everybody to have access to, and the ADA applies. So the only difference about this bill, which came out last week, is it's actually supported very strongly by all of the major disability groups, which could give it a lot more opportunity to be supported.

Because the last bills have been shot down by those disability groups. And most senators and House of Representatives don't really want to vote for a bill that's meant to help a community that's against that bill. So this bill is basically being put together in collaboration with those disability groups and has probably more potential to become law. And the idea is that would give some type of clarity of what you need to do, how much time you have to do it, do you have to do it if you're a smaller company or not, these types of things which are already in the original ADA under a physical space.

KELLY MAHONEY: Thank you. That was a very comprehensive overview. We have also gotten a lot of questions relating to specific industries and lawsuits within those industries.

So to start off, someone asks, why do some industries receive more lawsuits than other? And then could you maybe give us an example of where in this realm companies focused on technology or nonprofit organizations may fall?

JASON TAYLOR: OK. Yeah. I mean, there's two reasons. There's two reasons why certain industries are targeted. One, I think, is a legal reason. So the DOJ and the ADA, when it first wrote its opinions around web accessibility and places of accommodation, there is a list of types of places in the ADA, so in the physical space. Stores are listed. Banks are listed. Insurance agencies are listed. Places where people used to go to do things.

So any of those industries are-- it's easy to make a case in front of a judge to say, hey, the ADA includes these types of industries. The second thing is the industries that have physical spaces. Because, again, they make a case that this digital experience, wherever it's book a meeting or buy something, can pick it up in store, is linked. And they call it in the legal world "nexus." It means there's a nexus. There's a physical property connected to the digital experience.

And they have better luck inside arguing in front of judges. And I did talk about in my presentation a little bit about this is a volume business. Where there's lots of volume is e-commerce. There's probably a half a million e-commerce sites out there, selling all sorts of different things. So this is a volume business.

You need to start with volume. You need an easy way to visit those and create a process that says, hey, we do the same test on every site. We come up with a list based on that test. We put that into a lawsuit. That's why places like e-commerce, restaurant stores, or food online, and banking, and these types of places are most popular because they have the volume.

I would say some of the cases recently has indicated it's going to be harder and harder to sue just online experiences and potentially those types of businesses which are not listed under the ADA. So if you wanted to go to the most recent DOJ guidance on web accessibility-- I think they did it six months ago-- there's a list of industries there. More than likely, these lawsuits will focus on those industries. So if you're not in that list, and things like nonprofit are not in that list, you're probably quite safe. You're not going to get a lawsuit.

That's probably not the reason why you should be motivated to make sure that your website's accessible. The reason why you want to be accessible is to be open to all. You could argue most nonprofits are frequented by people that need more accessibility help than others, the older generation, the people with different types of disabilities. So the percentage of your user base that would appreciate you making sure your website's easy to use with different types of assistive technology is going to be more beneficial or more important than actually if you're sort of-- maybe if you're a surfwear site that's just selling surfwear, as an example.

KELLY MAHONEY: Thank you. And sort of in an effort to be aware of the risks that are possible, do you know if there's much data or anywhere that people can look for information post-settlement to find out what these accessibility problems were or possibly the remediation that was done to solve these problems? Is something like that published?

JASON TAYLOR: Well, every lawsuit that we read is publicly available. So you can actually read exactly what's in a lawsuit. And as I said, there's sort of 10 major plaintiffs. They all list it differently. There's also, if you go to the DOJ, which has been an active player on the plaintiff side for 20 years, you can go and list all of the settlements that every company has made with the DOJ. That's only around about 150 to 200.

Most of those were done before this sort of like super spark of lawsuits. There's a reason for that. But those settlements are very much like the same settlements that are done today. So if you go to the DOJ and you look for web accessibility DOJ settlements, you'll find settlements with Bank of America, H&R Block, different types of universities. And essentially, they say that they will make their websites compliant or conforming with the WCAG, typically some AA standard.

And they will continue to monitor the site. They will hire an external expert to help them verify that what they've done is right. So typically, the settlements involve hiring an expert, doing some type of audit against the WCAG, remediation, and then ongoing monitoring. It's easy to say remediation. But that's the biggest part.

It might not be the biggest part if you're a content-only site, like a marketing site. That work would be quite easy to do. But if you're a transactional site, if you're a bank, you're an e-commerce site, the remediation part is the biggest part. It's the most costly part. You might have to redesign certain things.

You may have to involve UX and design. You have to change the code. This is not static pages. This is a dynamic environment. So you need to take that type of thing seriously.

And I can list four things. Remediation is one of them. But remediation is probably 80% or 90% of the cost or time when it comes to a typical website or app.

KELLY MAHONEY: Right. And so sort of thinking about remediation versus settlement when it comes to lawsuits like this, how often do you see companies actually engage in structured negotiation in order to collaboratively resolve these issues and address accessibility moving forward versus actively litigating or settling?

JASON TAYLOR: I think it's more likely that you'll find a bigger brand getting into that sort of settlement but also when the plaintiff is not one of the top 10 plaintiff firms. So out of these 4 and 1/2 thousand lawsuits, there are some genuine lawsuits brought by a disability community still that say, hey, actually look. One recently was the ADP, which is the employment payment system. So when you get paid, you get paid by a payroll company.

One of the biggest one is ADP. They got sued by the blind community-- I think it was the National Federation of the Blind-- because the National Federation of Blind was a client and couldn't use the online system to pay its members. That's a type of thing that won't go to court. That's a type of environment, because both sides really want remediation. They really want remediation. When both sides really want to remediate, ADP is like, we didn't realize you had such problems.

And the plaintiff's like, yeah, I've got real problems. Because there's no damages involved, they want to find a solution. That's the type of thing that goes to a negotiated settlement. Because both sides want to find-- is focused on remediation. Most of the plaintiff law firms just want their fees.

And they want you to sign a contract to say you'll settle, and we'll give you two years to do it. In that case, they're not interested in spending more time. They don't want to spend time in a negotiated settlement. They want to sue you. They want to tell you it's going to cost you \$30,000 to defend, \$20,000 to settle, settle, and move to the next company.

KELLY MAHONEY: Great. Thank you. We received a question going back to when you were talking about how-- organizations using third-party vendors. The third-party vendor is often not the one that is on the hook for any accessibility issues. And somebody provided an example. Specifically in higher education, a lot of organizations rely on things like learning management systems.

And they express the desire for legal entities like the Office for Civil Rights to hold those private companies accountable to develop software that is accessible for public institutions. Do you have any thoughts on this sort of culpability, who should be held responsible for a lack of accessibility?

JASON TAYLOR: Yeah. Well, I've always advocated. And I'm talking to some of the people who are inputting into the bill that we talked about that is currently said. One of the things I wanted to emphasize is 90% of websites today are built on a platform such as Wix, or Foursquare, or anything but a self-build site that you start from scratch. And the vast majority of people are buying websites for \$1,000 a year or even \$100 a year. And they just want a website.

They didn't even know that there was such a thing as-- about web accessibility. If you could transfer the responsibility onto companies which are providing digital experiences to make sure that they are delivering accessible experiences, that would improve the most amount of sites the quickest. Same thing in the educational space, if the digital learning systems were responsible. The problem with regard to accessibility is it's not black and white, meaning a lot of that content is being produced quickly by teams and added to a website.

The original website could have been absolutely perfect, could have been delivered beautifully, fully accessible. But because people want to customize and add things and have lots of flexibility, that activity, which is actually the client doing it, or even lecturers doing it, or teachers doing it, could add inaccessible content to something that was accessible. And then the gray area is who's responsible for that. And that's why a lot of the times it breaks down.

Because the conversation isn't, I built this office, and this office isn't going to change. And I'm responsible for the office and making sure that it follows a set of rules. I'm building a far more flexible environment where you can change where the windows are and the light switches are. And I don't have control over that because you wanted that control.

KELLY MAHONEY: Great. Thank you. We've also received a few questions related to virtual reality slash how accessibility laws apply. So someone asks, do you happen to know if ADA compliance guidelines apply to immersive emerging tech like the Metaverse and similar platforms?

And another person asks, there are suits now related to VR or augmented reality spaces. So do we have the technology to make these spaces accessible? And how do you think that compliance guidelines will extend to this sort of technology?

JASON TAYLOR: Yeah. I would say that I think every environment, technical environment, can be made accessible. It's about standards. It's about building through standards and making sure that the hardware and the software follow the same standards.

So the main reason why a website-- you know, I'll give you an example. A website has a set of standards that it has to follow. A browser, like Chrome, has a set of standards that it has to follow, and a screen reader has a set of standards that it has to follow. And if all three of them follow the standards, then the website works with the screen reader because they all follow standards, which basically are aimed at making all three of them work together.

Because someone who's got a screen reader uses Chrome and a website, just like us. Right? So if all three of them are following the same standards, then you create an accessible environment. Those standards need to exist in the VR world with regard to the physical devices being used and the software being produced and anything in between. I don't believe that those standards have been documented, but they are possible.

So again, it's going to take while. It took a while for the W3C to generate the Web Accessibility Guidelines and how browsers should work with accessibility and how screen readers should work with web content. And it will take time for VR to catch up. But in general, totally doable.

On the legal side, if an argument can be made that the space that is being provided is a space of public accommodation, then they can be sued under the ADA, meaning essentially that's the case to be made. But this is a space that's being provided. And I believe that it should be available to everybody. And if it's that important of a space, it should be made for everybody.

Something like social media and stuff like that is that important that it should be made for everybody. And there's a case to be made against someone who prevents it. Who's responsible preventing it could be a different answer. Whether it's the platform, it's the hardware manufacturer, or it's the content producer, there's multiple people involved in delivering the overall immersive experience.

KELLY MAHONEY: Right. So to give us sort of a forecast, given everything that you've laid out for us, looking into 2023, do you see the number of lawsuits continuing to increase? Do you see it being more than in previous years? Or how do you think it might fluctuate as companies continue to prioritize accessibility?

JASON TAYLOR: Well, without any new bill, the inevitability will be more lawsuits because plaintiffs are winning. That means they're making money. There's more plaintiffs joining this from the physical space. So there always used to be what we call drive-by plaintiffs that used to drive by parking lots and make sure that there's a disabled parking space. And if not, sue a company without even going into the restaurant.

Those types of companies see that as an opportunity in this space. So there's more companies joining this space. And plaintiffs are winning. So those two things, most likely lawsuits would go up. People are taking accessibility more seriously. So there is a lot more activity going on.

So you could argue that the number of potential targets are going down if everyone starting to make their websites and apps more accessible. The problem is the numbers are on the plaintiff's side, which is-- there's 4 and 1/2 thousand lawsuits. Let's say there's 20,000 lawsuits in the last five years. There's 2.5 million businesses in the United States with a website. So 2.5 million over 20,000, they've not finished yet.

I mean, there's plenty of people out there who have never even heard of web accessibility before. And the first time they hear about it is when they get a lawsuit. So I don't see it without a bill. Will a bill happen in 2023? It's always unlikely, but bills take fast in this particular space, this particular time. I don't know many laws that get passed in the United States that quickly.

But potentially, if a bill started to look like it would get passed, then you might see a flurry of more lawsuits to try to get them in within a certain time frame, as opposed to if the lawsuit-- if the bill looks like it's not going to get passed. My gut feel is that a bill will take more than one year to put together. So 2023, I think will be more of the same. But 2024 may see potential.

It depends on the administration. This administration is very-- they want to get involved. The DOJ want to get involved now. If the administration goes back again like it was four years ago, the DOJ have been told to keep out of these types of things. So it would be less likely that a bill would pass if the administration changed in 2024.

**KELLY
MAHONEY:**

Thank you. We've got a few people interested in the actionable steps that you presented. So in trying to incentivize ongoing auditing and organize user testing groups, do you have any recommendations on how companies can get buy-in from executive teams to free up budget in order to do accessibility testing to the extent that it's necessary?

JASON TAYLOR: Well, I typically would always start with the most high impact, is to try to find people in your, quote unquote, "community" that are assistive users and set up a couple of Zoom calls where they're using your site and they're showing the types of difficulties that they may have on your website. Taking that piece of video content, which might show a customer or might show how a customer's experience is quite poor, will probably one of the fastest ways for you to generate content that would get attention from senior people.

Because once people start to realize that certain users can't use the website for what it wants, that means that they are losing business. They are open themselves up for legal conveyance. And socially-aware companies understand that everybody should be able to use their website. I don't think you'll find a company that would say, no, we don't mind a certain number of people can't use our website.

That, in this social environment is not acceptable. So I would start with something as simple as showing that there are problems with regard to all the experience that's currently having on a website or an app through just setting up a Zoom call and doing a recording and starting to use that as sort of an internal way of bringing awareness that this needs to be addressed.

KELLY Thank you. So we're reaching the end here, but we've got time for a few more questions. We have someone
MAHONEY: asking, how much are you seeing some of the more recent lawsuits cite WCAG 2.1 rather than 2.0 as the accessibility standard that should be met? Is that something that is happening now?

JASON TAYLOR: Yeah. I'd say 80% now say 2.1, just because it's easy to update the templates that they're using. So if you're a plaintiff firm, and you're like, I want to make this look as bad as possible so I've got a negotiation position, I'm going to say that you're failing 2.1 AA, as opposed to 2.0 AA. The fact is that the items that they list in the lawsuit would not necessarily be items which are now part of 2.1.

The same items-- they're listing the same items, which are essentially mostly 2.0-related. But they're going to list it as this is the prevailing standard, and this is what we-- this is what you should be doing. Because it's just another level of complexity for the defendant to say, oh, we are 2.1, as opposed to 2.0. There's another level of complexity to do that. So 80% of lawsuits today use 2.1.

KELLY Great. Thank you. Let's see. We've got-- I'll do two more. That seems like a good number. Someone asks, is it
MAHONEY: becoming more or less common for companies to resolve these accessibility issues before it gets to the lawsuit stage? Or is a lot of the remediation still motivated by legal action?

JASON TAYLOR: I would say that there's definitely a close by contact motivation, meaning we have a lot of companies who come to us who saw that their closest competitor or their reference companies in their industry have been sued. So they want to get ahead of it. It's still motivated by a lawsuit, but they haven't got one yet. They'd say.

So they want to do it before lawsuits. So lawsuits are having a positive impact on accessibility but through a limited group of companies which are feeling the pain. So in one way, disability advocates are quite happy that there's lots of lawsuits.

But in a business sense, there's a small number of businesses that are paying an extra price for the other businesses which are being affected. But the vast majority of companies who come to us for help either have got a lawsuit, being hit with a demand letter, or know someone of. There are some companies which come with a philosophy that they want to be inclusive and it's part of their overall diversification efforts.

And this is a key piece, especially if they're a startup or a newly funded company, which have sort of like maybe fresh company directives, where they're like, OK, this is the type of company we want to be. They hire technical people. Part of those technical people know about accessibility and add that to the sort of company commitment. And then those types of companies come to us because they want to do the socially correct thing.

KELLY Great. Thank you. And then a great last question coming from Lindsay. Is there any website or resource where
MAHONEY: people can get alerts on these legislation or these lawsuits? Please also take this opportunity to share any of your recommended resources from UsableNet with us as well.

JASON TAYLOR: Yeah. We actually have-- so we produce a report every six months. But we also produce an update every month. There's a link on our website, which, Kelly, you can probably provide after the case, which is a monthly update on these lawsuits, where they are, what's taking place. So that's a resource that you can delve into.

The other thing is that there's a couple of law firms, Seyfarth, for example. S-E-Y-F-A-R-T-H. Seyfarth. Do a lot of reporting on this type of thing. So there are very active defense law firms. So there's a couple of law firms that also do a lot of blogging, latest lawsuits, information on the bill.

I'll try and make sure, Kelly, you've got a couple of another examples of what our class is. We track the top 10 plaintiff firms and the top 10 defense firms. And most of those defense firms have sort of blogs on a regular basis.

KELLY Great. Well, thank you very much, Jason. And thank you to everyone who joined us today. Thank you, again,
MAHONEY: Jason. I hope everyone has a great day.

JASON TAYLOR: Thank you, guys. Appreciate it.