

2023 Digital Accessibility Legal Update Part One

[00:00:00.05] JENA WALLACE: Thank you, everyone, for joining us for our 2023 Digital Accessibility Legal Update, presented by Lainey Feingold. Today's presentation is part 1 of two. We're focusing on United States digital accessibility law and policy today. My name is Jena. I'm on the marketing team here at 3Play, and I'll be moderating today's session.

[00:00:21.63] Just a quick self-description, I'm a white woman in my second with wavy light brown hair and green cat eye glasses. And with that, I'd like to welcome Lainey Feingold. Lainey is a disability rights lawyer, author, and international speaker. Thanks for joining us today, Lainey, and I will pass it off to you.

[00:00:40.33] LAINEY FEINGOLD: Thank you. Thank you, Jena. Hello, everyone. Good night, good evening, good morning, where you are. Thanks for being part of this. I do have a slide deck, which I'm going to pull up and share. And there you go. So I assume someone will tell me if it's not showing nicely. Yeah.

[00:01:02.63] So thank you, 3Play Media, for this annual Digital Accessibility Legal Update, part 1. There was so much to share last year that I asked 3Play, oh, could we do this in two parts? And they generously said yes. And there's still so much to share. On the title slide, I have my website, which is LFLegal.com.

[00:01:24.08] I do a lot of writing about digital accessibility. I do a lot of writing about the digital accessibility legal space. I do a lot of writing about collaborative problem-solving, what I call structured negotiation, which is how I have practiced for 25 years in the accessibility space. Everything on my website is under Creative Commons, which means you're invited to share it, take it, use it to advance accessibility for noncommercial purposes, so I invite you to do that.

[00:01:54.30] I'm still on Twitter just a little bit @LFLegal. I'm also on Mastodon Social @LFLegal. And I'm on LinkedIn. I try to write about digital accessibility legal happenings. And throughout today's presentation, there is a links list that I prepared for 3Play and for this talk, and that will be-- links will be put into the chat when it comes up in the presentation, and they'll also be available afterwards. So if we went a deep dive into everything, we'd be here for four hours. So this is an overview dive, an overview, and the links will give you more information about many of the things I'll be talking about.

[00:02:38.71] Also on the title slide, with two asterisks on each side, no legal advice-- so nothing I say here is legal advice. Last thing in the background, there are dolphins jumping. Dolphins are on some of my slides. In part 2, we're going to talk more about dolphins, but today, I'll just say that dolphins are my reminder, both to myself and to you all, that you don't have to be a shark to use the law. You don't have to be a shark to advocate for accessibility. You don't have to be a shark to use the fact that digital accessibility is a civil right of disabled people that we are all working towards.

[00:03:18.77] I am a white woman. My salient visual feature is my gray hair, which I point out to say I've been in the space, like I said, since 1995, when I started working collaboratively on

accessibility in the financial sector with talking ATMs and bank websites, along with blind community and my co-counsel and my colleagues. So I do have a lot of experience in the space. I also know a lot of people. And so many people contributed to my ability to do this talk that for the first time, at the end I have a thank you list. So I will share with you that at that time.

[00:03:57.87] So let's dive in. Today's roadmap, first we're going to talk about what is digital accessibility. I saw the list of over 700 people signed up for this legal update, which not only makes me happy that 700 people are interested in the digital accessibility legal space, but the roles of all of you shows a deep understanding that digital accessibility is something that impacts all of us. I mean, there were people from libraries and higher ed and UX and web development and management. There was someone who was in charge of captioning on a TV show.

[00:04:39.97] I mean, just very gratifying to see all the roles. And everything you're doing in your roles is digital accessibility. But first thing on the roadmap is to talk about some big picture ideas of digital accessibility, because the work is hard. The work is hard. And whatever your little piece of it is, I think it's so important to know the value of your piece and also to know the big picture. So we'll just spend a little time on what is digital accessibility from a big picture.

[00:05:09.28] We're going to talk about the US legal landscape, both the current laws and regulations, what's on the horizon, which is why my image for the roadmap is a highway, a cross-country United States highway with a great horizon in the background, two-lane highway with beautiful clouds and mountains in the background. So we're going to talk about what's on the horizon, which is a lot. We're going to talk about implementation, some of my favorite things happening to implement laws in the US, as well as some of my least favorite things. And we'll take a sneak peek at part 2, which is happening next Thursday at the same time.

[00:05:41.52] So let's get started. What is digital accessibility? To me, digital accessibility is disability inclusion in all things tech and the intentional practices that make inclusion happen. Digital accessibility is so much, like we just said, all your roles. I think to spread the value and joy and importance of digital accessibility, we kind of need a short thing. So this is my short thing. I invite you to share your short versions of how you explain what we're talking about here.

[00:06:18.69] Disability inclusion is the engine of-- digital accessibility is the engine of disability inclusion. That's another way to say disability inclusion in all things tech. And it's the intentional practices that make inclusion happen. On the intentional practice piece, I was reminded of a quote that I read from Derek Featherstone, who's in accessibility at Salesforce. He said, "Early intentional acts of inclusion help you prevent future unintentional acts of exclusion." Early intentional acts of inclusion help us prevent future acts of exclusion.

[00:06:59.77] So everything you're doing and all the roles of all 600 of you who signed, 600-plus, 700-plus signed up for this, that's the intentional practices that make this happen. So I also think of digital accessibility as a door and a bridge. This is a very locked-up door image, paint peeling. It's been locked forever with two locks. And the next image is an open door with the sun shining through. And without accessibility, the doors of today's society are closed, are locked up tight for people with disabilities. So whatever your role is, the work you're doing here, the law can help you be a door opener.

[00:07:40.29] Also a bridge-- this is a picture of the Golden Gate Bridge, which I can see from outside my window here in Berkeley, California. I like to think of this digital accessibility as a bridge because on one side are people with disabilities. On the other side are the technology and the content of today's world all over the world. And accessibility is a bridge that connects it. So in whatever your role is, you are also part of the big picture bridge building. And hopefully the law can help you, as we're going to share it today, be a bridge builder.

[00:08:16.05] Accessibility barriers are stairs. This is a picture of the Capitol Crawl, which was an activist action leading up to the Americans with Disabilities Act, where people who use wheelchairs and other mobility devices left them at the bottom of the Capitol to crawl up to emphasize that stairs keep people from participation, from inclusion, from communication.

[00:08:40.78] In this image, we see a Black woman crawling up backwards on her butt. We see a white man crawling up forward on hands and knees, a photographer at the top. What we're doing here, working on digital accessibility, we're building ramps in the digital world. So just like this image shows the stairs keeping people from participation without accessibility, so too the work we do in digital accessibility, the law can help you be a ramp builder.

[00:09:10.57] Digital accessibility also, privacy and security for disabled people-- if you're working on something designed to be independently used and it's not accessible, then privacy and security is broken for disabled people. Digital accessibility is essential to diversity, equity, and inclusion, to environmental, social, and governance principles. Digital accessibility is an ethics issue because it's about fairness and autonomy and privacy. And digital accessibility is a civil right of people with disabilities.

[00:09:45.74] So civil rights are baked into laws. This is why I have a picture. Those of you who know me, have heard me speak before or read some of my writings, I'm a big believer in metaphors and good quotes that we can use to share with the wider world. Civil rights are so important. They're the reason that a captioning vendor like 3Play Media has a lawyer like me presenting this webinar. It's the reason why accessibility is a legal issue-- because it's civil rights.

[00:10:17.47] And if there's one takeaway here-- if you have to leave now and you can never hear anything else I say-- if we can stop thinking of the law as a burden, a cost, a time sink, a checklist, and we can start remembering that the law is in this space because accessibility is a civil right of disabled people, we will go a long way. So civil rights are baked into laws, but the cookie dough in the picture is still raw because we need implementation of those laws. But the cookie dough is still delicious even without the implementation with the baked-in civil rights.

[00:10:55.73] So this is a quote that I love. It says, "The legal framework gives us permission to dream what is possible." The legal framework gives us permission to dream what is possible, which I heard from Lizzie Kiama, who's from Kenya, a disability activist, digital accessibility person in Kenya. And I heard it at the Microsoft Ability Summit in 2021. And I love this because we have a strong framework in the United States, a very strong framework.

[00:11:28.87] I won't give any exceptions there. I'll just say, yes, we have a strong framework that gives us not just the ability to, not just a permission to dream about an inclusive world where

people are not excluded because they can't see or they can't hear, or they have cognitive disabilities, or they are neurodiverse, or they don't have a mouse-- they can't use a mouse. We have that framework that leads us to action, not just the ability to dream.

[00:11:57.77] So let's talk about the US framework. First part is existing federal laws. The image here is a picture of the United States Federal Circuit court system, the United States federal court system. The federal laws we're talking about apply across the country. They're implemented in lawsuits and cases by the place where people are, and that's divided across the country into 12 circuits, plus one-- really, 13 circuits.

[00:12:30.04] Sometimes people get-- after this is over, next week you'll hear about a new case. And people get very concerned one way or the other. Oh, in California, there was a federal case that said this, but in this state, there's a federal case that said that. The important thing to know is when you hear about cases, they came out of a particular circuit. But your content and your technology is not being offered just most likely in one part of the United States.

[00:12:58.87] So it's important to know that the big picture is that, as we'll see in the implementation, accessibility is getting stronger and stronger all the time. The laws we have, the Americans with Disabilities Act, already has laws and regulations requiring digital accessibility. Already has. And the two main ideas of the ADA-- no discrimination and effective communication with disabled people. It is not possible to effectively communicate digital content without accessibility. And the lack of accessibility is discrimination because people are left out. That is already in the ADA, part of the very strong-- the largest part of the framework in the United States.

[00:13:45.88] Section 504 and 508-- again, these are just federal laws that touch on digital accessibility, that are part of our framework already. Section 504 says the federal government can't spend money if the money's going to be used to exclude people. So if you get money-- if you're a college, if you're a health care program-- if you're getting federal funds, you have to make sure that your programs and services are available to everyone, and that includes accessibility.

[00:14:15.58] Section 508 is the federal procurement statute and the federal hiring statute that specifically talks about making sure technology and content needed to do jobs, provide federal services, are accessible. There's a separate law for airlines that say airline websites and kiosks have to be accessible. It's called the Air Carriers Access Act.

[00:14:38.60] There's a law called the False Claims Act, which is just what it says-- if you are selling something to the government-- federal and some states have these laws as well. If you are selling something and you claim it's accessible, and it is not accessible, you may be in violation of the federal False Claims Act because you're making a false claim to the government. So in the implementation part, we'll talk about a very exciting case in that using that law.

[00:15:08.36] The Affordable Care Act, Section 1557, is about if you're getting government money and you're part of the Affordable Care Act, technology has to be accessible-- very important for health care. The CVAA is the Communication and Video Accessibility Act, which

is about communication systems. It's been important in gaming accessibility captioning, audio description. These are all part of the framework that, like Lizzie Kiama says, gives us not just the possibility of dreaming in the United States of an inclusive world, but in actually making it happen.

[00:15:47.39] So what about the WCAG, the Web Content Accessibility Guidelines? The Web Content Accessibility Guidelines are not specifically written into the Americans with Disabilities Act. But the Web Content Accessibility Guidelines, which are global standards for web and mobile accessibility, give you the tools to avoid discrimination, give you the tools to effectively communicate by building accessible websites.

[00:16:18.16] And the Department of Justice uses the Web Content Accessibility Guidelines when they're enforcing the ADA. Private parties, all the settlements I've worked on in structured negotiations, uses the Web Content Accessibility Guidelines as a standard. So no, they are not written into the ADA. Yes, they are a key part of enforcing the ADA in the digital accessibility space. Right now, the WCAG is at version 2.2. That came out in the last three months. I don't know what happened to the fall. It's all a blur.

[00:16:51.67] But I know in the last three month-- I'm pretty sure three months, the WCAG 2.2 came out. The law is slow. I don't expect to see court decisions or Justice Department actions talking about 2.2 in the next month. But eventually, it will roll in. Section 504-- sorry, Section 508 already has, unlike the ADA, does have WCAG written into Section 508 requirements. They're at WCAG 2.0.

[00:17:24.14] So WCAG, extremely important-- I wanted to put it right up here in the federal framework because I know some people are confused. Well, we don't have a specific regulation. We don't have to follow it. No. No. We don't have a specific regulation, but the WCAG is already part of making sure that we don't have violations of these other laws.

[00:17:45.86] OK. So that's the federal framework. In the US, we also have states, as most of you know, and this is a colored map of the states of the United States, all in different colors because all the laws in states can differ. I'm just going to give you a sampling here. There's links to most of these in the links list that 3Play will pop in. It's slide 10. And hopefully, the links and the slide numbers I gave match up.

[00:18:12.77] Many states have antidiscrimination laws-- California, New York, New York City plus plus, for example. New York City, the title is actually "US Framework, existing state and local laws." So as a disabled person, you should know what your rights are in the place you live. As a company, private sector, university, whatever, you should know what the requirements are in the place you're offering your technology and content.

[00:18:41.48] So many states have antidiscrimination laws. Many states have a 504 equivalent that says, you know what? We're a state. If we're going to fund you, you can't exclude disabled people, which means you need to have accessibility. There's many states have procurement laws like 508. I want to give a shout out to Maryland-- this will be in the links list-- who has, as far as I know, the first K-12 procurement law for accessible schools technology. So thank you for that.

[00:19:12.80] In Maine, it has the only law that I'm aware of that hints at not using an overlay. If you're not familiar with overlays, I invite you to look at overlayfactsheet.com. We don't have time in this presentation to dive into that, although we'll talk about it in a minute under my least favorite things about the space.

[00:19:33.28] But Maine has a digital accessibility usability policy for technology that's developed, procured, or provided in Maine. And one of the things it says is the expectations are that accessibility and usability for all current and potential users will be considered, and that accessibility will be addressed natively without relying on third party products to improve accessibility that could potentially interfere with an inclusive user experience. So that's the only one I'm aware of that has something like that hinting at a quick fix Band-Aid approach offered by overlays does not meet the requirements.

[00:20:16.28] State agencies in Colorado, Massachusetts, and California PUC has good work on needing to be accessible when there are power shutoffs, which impact in a very serious health and safety way certain people with disabilities-- people who use ventilators, for example. So Massachusetts, Colorado have strong laws and strong initiatives to make sure state purchases and state agencies are doing things accessible.

[00:20:43.61] And Kansas has a backlash bill, which is trying to limit lawsuits around digital accessibility. I call it a backlash bill because even though I do agree that there is a problem with some types of accessibility lawsuits-- we'll talk about that in a minute-- lawsuits are a very important enforcement mechanism for the ADA. And to have a bill that limits lawsuit in a way that is unfair to disabled people is problematic for enforcement.

[00:21:12.68] So that is some of the US framework. I think now is a good time to say that I welcome all of you sending me information about your states. You know, I do these legal aid updates. I try to keep up with it. I don't have any staff. I don't even have a subscription to a digital law library. I get it through the help and kindness of friends, strangers, and colleagues. So tell me about your state, if you think it's-- this is just a sample. If your state has things I should know about, please tell me.

[00:21:47.49] Law means legal remedies. So I have a tea bag here because tea is a remedy for a cold. There's lots of remedies that come from these laws. So here are some of the remedies. They don't apply to all the laws that we just talked about in the framework. If you end up on the wrong side of a legal action, you have to fix barriers. You may have to fix barriers, fix systems. You may end up with court oversight, Department of Justice penalty.

[00:22:17.27] You may have to pay the disabled person or persons who brought the action. You may have to pay the disabled person's lawyers. And you may have to pay your own organization's lawyers. So what I say is be proactive. Use the law, knowing the law. Be proactive. Don't wait for a legal knock on the door. Instead, fix the barriers, and then all those other things don't flow. So it's important to be aware of what the remedies are.

[00:22:44.12] That is-- where are we on the roadmap? We're further down the road. What is digital accessibility? What's the US landscape, current laws? Let's talk about what's on the

horizon. So there are a couple proposed accessibility laws to talk about. There are links in the link list to dive further.

[00:23:00.41] One is the Website and Software Applications Law, which is federal. It was introduced in Congress last year. It was reintroduced recently. It reiterates some of what the ADA already requires about accessibility. It talks about the importance of regulations. It talks about holding people accountable, not just who are currently covered by ADA, but also developers and people involved in creating technology.

[00:23:32.19] Again, this slide is proposed. These have not been passed. They are not the laws now. They're pending. We need to be aware of them. But we can't wait. We can't wait, because the current legal framework is already strong.

[00:23:48.03] The Communication, Video and Technology Accessibility Act, the CVTA, is to strengthen the CVAA and strengthen, expand more audio description, other things. Again, there's a link in the link list. There's a California bill pending, AB 1757, which many people nationally have inquired about. This law was up for passage last year. It did not pass. It's up again. I think the session ends in June of next year.

[00:24:20.76] It's a bill that focuses on-- I had a little line already for it. But just generally, to modify the requirements for filing a lawsuit-- try to incentivize accessibility compliance. I have a link. You can follow along. Many changes will come to that bill, if it ever pass. Again, this is proposed, so proposed matters. I think it's important that we're aware of it, just to say the proposed laws are going to be part of the framework. Or even if they are not part of the framework, the framework is already strong.

[00:24:59.41] Possible accessibility regulations-- a lot of things are pending. All I could do right now is just run through the list and invite you to investigate more on your own. There is the pending web and mobile accessibility regulations by the Department of Justice for state and local governments. The ADA already requires state and local governments to have accessible websites and mobile apps, as we'll talk about in a minute. This is a way of specifically incorporating WCAG into the regulations.

[00:25:31.63] Self-service transaction terminals, which I've always called kiosks-- pending regulations. I put a picture here of a woman on a trunk in the rain with an umbrella, looking down the train track, waiting for the train to come. Because both of these things-- web and mobile and kiosk-- they have been pending off and on for a long time. I was involved in accessibility efforts back in 2010 around these. The links will give you the history of it, tell you what's on the horizon.

[00:26:01.32] But we have been waiting for a long time and still, because of the power of the current framework and the power of disabled people and disability community organizations, this is already required in the United States. So yes, we hope for regulations, especially for those of you who are in situations where you're always having to butt heads with people who hold the purse strings, who say, well, it's not really required yet, and let's wait and see what happens, and it's too much money or it's too much time. We have to not wait.

[00:26:34.67] So health care-- health and Human Services is doing a 504 update. There's a press release on that. There's a great quote from Sam Bagenstos, who's a head lawyer over there, who said, "Freedom from disability-based discrimination is a civil right. And in Health and Human Services programs, it can be a matter of life or death." Already there are strong-- in the existing framework applies to health care. We'll talk in implementation, is it actually happening?

[00:27:08.55] These regulations haven't really been updated, as Sam goes on to say here, since the original ones in 1977. That is happening. The notice of proposed rulemaking is out. I try to keep track of this stuff on my website and do updates for it. So if it's not on there now, if it's not in the links list, then it will be soon. The Affordable Care Act has an update pending. They have regulations from 2020. They want to make them stronger.

[00:27:36.57] All the regulation efforts are to make them stronger, to make them more specific, so there's not so much conversation about should we, shouldn't we. ADA already requires it. The other laws require it. Let's have regulations that reflect what's already required, and be more specific and strengthen, but let's not wait.

[00:27:57.02] Federal Communications Commission has a rulemaking process underway on video conferencing, already required-- accessible video conferencing, like the Zoom platform we're on now. The FCC wants to make it more specific and have some details around that. Department of Education promises new regulations. And there's going to be electric vehicle charging station regulations. So again, my main message is, don't wait. Yes, we want the regulations. No, we can't wait for them.

[00:28:28.87] So beyond regulations, fortunately, the federal government can do more than issue regulations, and they offer a really lot of good guidance on many of these issues. And so the image I have here is a telehealth image. It's a Black medical professional taking notes and talking to a patient on the screen who actually looks pretty sick-- also a Black patient.

[00:28:51.31] Just to note, because this came up on LinkedIn recently, when I do the descriptions of my pictures, I always include race. Because in a society like the United States, if we don't include race, the default tends to be white. So I want to be clear that the images I choose are intended to be diverse images, and I want to share that for anyone who can't actually see the images.

[00:29:13.57] So a few things to share beyond regulations-- the Department of-- oops. OK, there we go, first one. Department of Justice and Health and Human Service Telehealth Guidance from July of 2022-- really important, tons of good resources in there, all in the link list. If you're anything to do with health care, you've got to read this-- a lot of good specifics about what the law already requires.

[00:29:38.83] The DOJ and the Equal Employment Opportunity Commission has done a great guidance in May of '22 on AI hiring tools. If you're using AI hiring tools or you're a disabled person impacted by the use of AI hiring tools, this is also a don't-miss article. And then there's a Dear Colleague letter from the Department of Education and Department of Justice from this past July. Again, these aren't regulations, but they're a way of the federal agencies telling the

public, this is what is already required to avoid discrimination and effectively communicate. So I invite you to check those out.

[00:30:18.02] That's the current law and what's on the horizon. Now let's talk about implementation. Implementation-- first thing is without implementation, cookie batter is still raw. So implementation is critical. And how do we implement current laws? Just a quick-- I chose for a picture of this, a young Black student speaking in sign language, using sign language, because the first enforcers-- how are these laws implemented? They're implemented by disabled people trying to enforce their rights, seeking their rights every single day.

[00:30:57.07] So if you run an organization and you're listening to this, and you get customer feedback that says, "I couldn't see this, I couldn't hear this, I couldn't find this," dive deeper and find out if it's accessibility. Don't think of customer complaints around accessibility as complaints. Think of them as opportunities to make sure your organization is respecting, protecting, and enforcing the civil rights of people with disabilities.

[00:31:24.73] So people with disabilities-- frontline enforcers-- government agencies can enforce. Lawsuits can enforce. And the collaborative process of structured negotiation that I and many others in the disability rights world practice can enforce the framework and take the framework from dream to action in practice.

[00:31:45.29] OK, so here are some of my favorite implementation actions. I've got the fireworks going to hopefully give a feel for this is all good and I'm excited about it. So the Department of Justice Digital Accessibility Actions, I think, are really important. I put the picture here that says "Don't wait!" exclamation point, like I said before. And the DOJ's actions are showing us that they are not waiting. And so we as entities covered by the ADA cannot wait.

[00:32:16.84] Just too to bring to your attention-- again, there's resources on this in the links list - Oklahoma had a medical app-- sorry, a mobile app that was like a way to use your app as an ID. And it got you benefits, or had a lot of advantages. It wasn't accessible. Department of Justice announced in the last couple of weeks that they had done an action against Oklahoma to make that mobile app accessible to disabled people.

[00:32:47.92] So don't wait. If you're a state or local government listening to this, don't wait for a knock on the door, or a state or local government agency, don't wait for the Justice Department to knock on the door. Because they knocked on the door of Oklahoma, and Oklahoma has to fix it. And there's many of those other remedies. DOJ also recently announced actions against four counties in Texas for having voting websites and absentee ballot systems that didn't include people with disabilities. So Department of Justice is enforcing the ADA, not waiting for regulations.

[00:33:23.91] California parks case-- this has been on my favorites list for a long time. The image is a woman holding, like a deck of cards, like a hand of cards, \$100 bills up in flames. Because this is a case since 2019 that was challenging the fact that California Parks Department purchased a website for its whole system, all of California, and the website was not accessible. And this is an example of the law I mentioned earlier of a case under the False Claims Act.

[00:34:00.04] The developer made a claim and said it was accessible, and in fact, it wasn't accessible. And so there was a lawsuit against the contractor, the web developer, the subcontractor, to reclaim that money for the state of California and for the whistleblower who made the-- brought the case. So the case is pending. I knew I've reported in the last couple of months that it's about to settle. I talked to the lawyer, Tim Elder from the TRE Legal law office, and he said that in fact, the case has settled. And we can expect a press release and a press announcement very soon, maybe this week.

[00:34:39.92] But Tim said I can share with you, one, that the case has settled, and two, a couple of points about the settlement. So I'm glad to be able to do that. It's very hard to be a disability rights lawyer and prosecute a really novel case like this over a four-year period. So my congratulations to Tim and Relman Colfax-- sorry if I have the name wrong-- who's the co-counsel on that.

[00:35:05.81] And Tim said this. He said the case is settled. The defendants are paying over \$2 million in damages back to the state and to the individual whistleblower. And they're going to fix-- they have to fix under the settlement-- a whole list of issues that was identified in an audit by the expert Sina Bahram, who many of you know. Sina, if you're here, hello-- a very well-respected expert.

[00:35:35.08] So this is another example. Do you want to be proactive or reactive? Hire a good expert. Hire a good consultant to help you if you don't have the internal expertise. So this case was settled for money for the fix. And there'll be more information out when they issue the press release about the settlement. And I will write about it after that time, so really glad to report on this kind of ethical implementation.

[00:36:00.19] Also, Tim said that they're very interested in talking to other people, other whistleblowers, confidentially about situations where a claim has been made to a government agency that was false. I do want to say, I don't usually-- this is not an advertisement for Tim Elder's law firm. I just think it's really important. People have heard me talk about unethical lawyers in this space. There are many ethical lawyers in the space, including the lawyers who did this case and continue to do the cases. So I wanted to mention that.

[00:36:33.48] OK, education-- there's a lot of good enforcement action going on. The Los Angeles Community College District paid \$240,000 this year to two students who were denied accessible learning platforms and learning systems. The City University of New York in this year, 2023, settled with the US Attorney's Office in New York. The Department of Justice is in Washington, DC. And like I always say, it's not a building, it's people.

[00:37:01.44] There are US attorneys throughout the country, 94 in 94 federal court districts, that have the right to enforce federal laws, including the Americans with Disabilities Act. So in the links list, you'll see the press release about both of these things. I've written about the LA Community College District case. There's-- for those of you in education, and I know many of you are, many of these settlements I take as a roadmap for how to do accessibility within your institutions in a comprehensive way.

[00:37:33.17] So LACCD, CUNY, Harvard, and MIT had big settlements. Now Harvard has a wonderful, strong accessibility team and an accessibility program. Their settlements with the Department of Justice give you a roadmap, especially on captions, the Harvard and MIT captions. UC Berkeley earlier, University of Miami, Ohio, all these things are written about on my website. And I can give another link I'll put on for the second day of how to find more about these cases. But you can use it as a roadmap to be proactive, again, not to be reactive.

[00:38:10.60] Employment-- there are cases going on to enforce the ADA. There was a settlement with ADP that they filed the lawsuit and then pivoted to structured negotiation, which I'm always so happy to hear. Just because a lawsuit is filed doesn't mean there has to be fighting about workplace software that blind people couldn't use. There's a case pending against Workday about their system. Workday, I know, just like ADP, have really strong and good accessibility teams. Sometimes things go wrong.

[00:38:39.04] Please don't think just because there's a lawsuit against a company it's a bad company. I see too much on social media, oh, this company got sued. They're a bad company-- not necessarily. The FBI had an employment case of a federal employee who couldn't do their work because there wasn't accessibility. So a lot is happening in the employment space.

[00:38:57.64] Kiosks-- there's a picture of the Quest kiosk here. There have been two-- there are two cases about kiosks. One is against Quest. One is against Labcorp. The American Council of the Blind and a lawyer in DC named Matt Handley is handling those cases. I have a kiosk tracker on my website. The link should be in the link list. I've been keeping it up since 2013, and any time I hear about a legal action around kiosks, I put it in there.

[00:39:28.50] So you'll find both the Quest Diagnostic, where they had a big victory recently, as well as the Labcorp case in the tracker. And that's another example. Thank goodness, not just disabled people aren't waiting for regulations, but industry is not waiting. There is absolutely no excuse not to have an accessible kiosk, because you can hire consultants and you can buy accessible kiosks. So I invite you to look at that for enforcement.

[00:39:53.24] In voting, in addition to what the Justice Department did in Texas, there's a lot of private sector effort around accessible voting. The National Federation of the Blind has done a lot of these cases, ACB has been involved in the cases. Most recently, in 2023, it was against Indiana. Of all things that should be proactive, everyone has a right to vote. Talk about civil rights. So these cases deal with voting information, accessible voting machines, accessible ballots.

[00:40:20.43] There's the first and only, as far as I know, case around captioning in the VR, virtual reality, space, called Panarra versus HTC Corporation about VR captioning. I've written about that in my website. It's a library of VR programs that was, as a result of a successful lawsuit, required to offer captioning. So you can read about that.

[00:40:46.38] Again, enforcement-- there's nothing in ADA that talks about virtual reality, but it doesn't matter because excluding people who need captions from the virtual reality space is exclusion. There's no bridge. The law requires the bridge.

[00:41:03.24] Podcast accessibility-- there's been a long-running case by the National Association of the Deaf on captioning. The case is against SiriusXM. I'm following it. It's still in litigation.

[00:41:16.67] What are some of my least favorite parts of the US legal landscape? Instead of happy-looking fireworks, this is a tornado. These are some of my least favorite parts. One is the numbers. In one month in September of 2023, there were 327 digital cases filed, 56 against companies already sued, 58 against companies using an overlay. I have the source here as UsableNet. They put out monthly reports and annual reports on the number of lawsuits. Seyfarth Shaw's Title III blog also does numbers.

[00:41:54.65] We could do a whole conversation. I wish we could. I wish we had time to talk about the numbers. Once I did a talk and someone did a little video afterward and said, well, Lainey Feingold doesn't like a lot of lawsuits. But I do because it raises awareness. I'm aware of that. The problem I have with so many lawsuits is there's a lot of attention on what's filed, but there's not a lot of attention on what the results are. And that makes me think, was this a real civil rights case or was this case a shakedown? Or was this case a quick in and out?

[00:42:24.90] Because I know, working in structured negotiation with companies that I have great relationships with and working in good faith, and working with disabled people all over the country, we need to share what the results of these cases are. And when I see results, then I think, OK, some number of those cases are ethical cases. When I see no results, when I see a class action filed against a high-profile media star or deep pocket and never hear what becomes of it, that's when I worry.

[00:42:55.86] So I don't really like the numbers game. I share them because-- and we'll talk next time in session 2 about not talking about the law with fear. I'm almost hesitant to share them because they invoke fear, and we don't get the kind of change in civil rights enforcement we need with fear. On the other hand, I would be remiss, and it wouldn't be a fair legal update, not to tell you that in 2022, there are 4,000 digital cases filed, 600 against defendants already sued, more than 600 against companies using an overlay, 97% against websites-- again, from UsableNet.

[00:43:35.00] Overlays and SLAPP suits.

[00:43:36.52] ["IMPERIAL MARCH" PLAYING]

[00:43:37.22] Here's the "Imperial March" and a picture of Darth Vader, because really, that's what I think of these two things. Overlays, as I've already mentioned, not unrelated to the number of lawsuits because the lawsuits invoke fear. People are looking for a quick fix. People are well meaning. They're bombarded with advertising. They go with an overlay. So please look at overlayfactsheet.com. If your organization is using an overlay, please consider not using an overlay, which is related to SLAPP.

[00:44:16.31] SLAPP stands for Strategic Lawsuit Against Public Participation. There have been three cases I'm aware of by overlay companies against advocates who advocate for not using

overlays as a quick fix. One of those cases-- I think I have two-- yes, I put two links in the link list. These are the ones I sent today.

[00:44:45.58] One is against Adrian Roselli, who's a global advocate on digital accessibility who got sued by an overlay company for his opinions. The other is by a different overlay company in France. This is a global issue and a global problem, so something I don't like in my not like list of what's happening in the legal space.

[00:45:05.42] US Supreme Court has a case as a link. The reason I don't like this case, which is pending-- and I've written about it, and you can read more about it. It's in the Supreme Court, and it has to do-- it risks legitimate use of testers for all sorts of cases. And testers have been an important part of civil rights enforcement since the 1960s, when the Black community used testers to determine whether there was discrimination-- to find, to uproot discrimination in the housing market.

[00:45:39.99] So there's a case pending in the Supreme Court. The Supreme Court may decide it's moot. It's not active anymore. But I don't like it for that reason, for the risk of threatening legitimate testing cases.

[00:45:56.85] So what is digital accessibility? What's the landscape? We talked about the current laws. We talked about what's on the horizon. We need to know, but we can't wait. We talked about implementation, my favorites and least favorites. Sneak peek of part 2, which is next week, the 7th, which is already December somehow, at 11:00 Pacific. We're going to talk about global, accessibility is global.

[00:46:22.36] I had the privilege this year, really-- it was a lot of work, but also a privilege-- of updating my Global Accessibility Law and Policy page, with the help of over 30 people from around the world who sent me information. So I appreciate that, and we're going to talk about that. We're going to talk about, I put here, "Staying Ahead of the Law is Sweet." The cookies are baked because that's what that's all about, and these are yummy cookies with lots of ingredients to show that there's lots of ways to stay ahead of the law and lots of roles all of you are doing to stay ahead of the law.

[00:46:57.94] And next week we're going to also talk about, when you're talking about the law--

[00:47:03.26] ["JAWS" THEME PLAYING]

[00:47:04.11] --don't be a shark. So I have the theme song from Jaws playing and the shark jumping out. Be a dolphin instead. And I hope today I've given you some tools to understand the breadth and the scope of the legal landscape here. I see there's 58 things in the chat, seven in the Q&A. So I'm going-- oh, before I do, before I turn it over, really quick.

[00:47:30.43] I put the title of this slide that my know depends on my know who. And I could not do this talk without so many people who gave me information. I write to everybody I know beforehand. I get the information. I have a lot of people listed here, and I think what we'll do is

I'll just say the names. And we'll put all this content up on the 3Play page of this talk so you know who they are and how to find them.

[00:47:57.67] But Zainab Alkebsi, the American Council of the Blind; Tim Elder, who I've mentioned; Matt Handley; Melissa Kasnitz; Andrew Rozynsky, who does the VR captioning work; Michelle Uzeta, who's helped me on the Supreme Court case; Jessie Weber from Brown Goldstein and Levy. Eve Hill, Paul Grossman, Autumn Elliott, Kris Nelson, and the lawyers of the Disability Rights Bar Association, without whom not when it comes to my ability to do these talks.

[00:48:25.96] So I got the closing slide with all my contact information, a picture of my book, where I share many of the stories of the work I've done. Back to you, 3Play.

[00:48:36.76] JENA WALLACE: Thank you, Lainey. That was awesome, and there was a lot of great information there. And as you mentioned, the chat's been blowing up. The questions have been rolling in. Before we get started with some questions, we just want to let everyone know today that we will be saving some time during part 2 for questions we don't get to. So please feel free to keep them coming. Even if we don't get to them today, we do plan to address it next week.

[00:49:04.09] As Lainey mentioned, next week's session will cover global law and policy and will offer strategies for staying ahead of the legal curve. If you registered for today's session, then you are automatically registered for part 2, so you don't need to register again. We will email all the information to you and you're all good to go.

[00:49:24.25] So first question, kind of a quick one. "I've attended your sessions before, and you drop quite a few quotable statements. Do we have permission to quote you, Lainey?"

[00:49:36.98] LAINEY FEINGOLD: Yeah. Like I said, everything on my website is Creative Commons, and I guess everything out of my mouth is Creative Commons, too. So yes, this is public. Everything I've said here will actually be in the transcript posted on the 3Play site. And hopefully, if you put something out and say Lainey Feingold said that, I invite someone to say, well, she heard it from this person. I try to give attributions whenever I know them. So yes, thank you for sharing anything you want to share about this presentation.

[00:50:03.75] JENA WALLACE: Awesome. So we have a question from a Canadian in the audience about how does the Democratic or Republican government now, and potential for change in 2025, impact the likelihood of any of these better regulations actually coming through?

[00:50:26.61] LAINEY FEINGOLD: That's a very good question. You can read about my fears that in 2016, when Trump was elected-- and sure enough, they stopped all regulation and all forward progress on regulation. I can't even imagine Trump 2.0. If it happened, I would say none of this will happen. Nothing on the horizon will happen, which is why-- part of the reason it's so important for all of us to remember that the current framework is so strong.

[00:51:06.52] I think some of the-- I think the Biden administration has been wonderful on so many things. They have a accessibility page on his campaign before he even got elected and an executive order about accessibility. And there are wonderful people running the organizations in the Biden administration. Those people will all go at the high level. So hopefully, we can get some of this stuff done before the election. Yeah, good question.

[00:51:36.16] JENA WALLACE: Yeah, definitely. Another question about, is there a central resource to keep up with all the cases that are currently active and/or being settled?

[00:51:50.65] LAINEY FEINGOLD: To this, I'd say no, which is why I have to do so much work to collect what I can. And I hope I've said this already, that this is just a sampling. You know, obviously, there were 4,000 cases, as I said. I don't like to talk the specifics about those 4,000 cases because they tarnish the reputations of some people and companies who I know have accessibility commitments, and they get sued because they're a deep pocket. That's what I believe. Not to say that there aren't some problems on websites, but they're problems that could be addressed by strong accessibility teams.

[00:52:26.71] So yeah, I think you have to-- Seyfarth Shaw, which is a firm that represents companies in a very ethical way, and have done a lot of structured negotiations with me, that's a good place. the ADA Title III blog that they have, my website. If you follow the vendors, a lot of the vendors-- I mean, 3Play does a good job writing about things that impact captioning and audio description. So you should definitely be on the 3Play list, if you aren't already for being on here. But yeah, that would be good, a central source, but no.

[00:53:05.65] JENA WALLACE: Yeah, for sure. Just a shameless 3Play plug, but as one of the people who does a lot of the writing on these laws, I definitely am using Lainey and all of her sources for a lot of that information so we are accurate and aligned with what Lainey is also posting about and talking about. So yes, please do get on our list. Let's see here. We have a question around WCAG, and isn't WCAG 2.0 still part of the law for 508 and the refresh?

[00:53:41.90] LAINEY FEINGOLD: Yes. I thought I said that. Thank you for highlighting it if I didn't say it. Yes. Yes. That's all I can say. I did ask around yesterday, is there any effort to update the 508 to get more current with 2.1 or 2.2, and I wasn't able to uncover anything. I have a few more people I could ask who might know more, and I'll share that next week if I find out anything.

[00:54:07.87] JENA WALLACE: Great. OK, we-- I think this will probably be our last question for the day because we're running out of time. But "how do you feel accessibility companies are doing to make their clients' websites compliant? Is there room in this space for new companies to improve upon what's been out there so far?"

[00:54:37.66] LAINEY FEINGOLD: OK, first of all, I want to say, there is a survey, in case people are dropping off. You have a survey for this session, so I invite you all to complete it. I hope there's room for new companies. I don't want to say better, worse, whatever. I want to say, I hope there's room for the next generation. I hope there's room for good ideas. What I don't hope

for is more companies-- when the overlay problem came up, and thank you, whoever asked the question, what is an overlay, and it was answered in the chat.

[00:55:09.62] When that first started happening, they were one or two companies. And now not only are there companies-- literally yesterday got an email from some advertising thing, like, "I know you have a website and you have accessibility problems. I have this great new tool for you!" And it was an overlay company I'd never heard of before. So what we don't need is more people coming into this space thinking accessibility is a hot issue. I can use AI to solve the problem. What we do need is creative minds and ethical minds doing everything we can to help accessibility be what it's supposed to be-- the engine of disability inclusion.

[00:55:46.15] JENA WALLACE: Well, I think there's no better way to end our session than with that, another quotable moment from Lainey. Thank you so much, Lainey, for putting together today's awesome presentation. And thank you to everyone who is joining us today and asking wonderful questions, for supporting Lainey, supporting 3Play. Thanks so much again, everyone, and I hope you have a great rest of your day.