SOPHIA: Thank you, everyone, for joining us today for the webinar "How to Avoid an E-Commerce Web Accessibility Lawsuit." Today we have Jason Taylor joining us. He's the chief innovation strategist at UsableNet. And with that, I'll hand it off to Jason, who has a wonderful presentation prepared for you.

JASON TAYLOR: Thank you, Sophia. So today, I wanted to basically take you through an agenda. First, it might be worthwhile just giving you an introduction to myself. So my name is Jason Taylor. I've been in the accessibility and usability space for around about 20 years, essentially working with a range of companies and across desktop, mobile, and different types of channels, to ensure inclusive design in those particular spaces. [INAUDIBLE], if you could maybe pull up the next slide.

I actually got into working in the usability and accessibility space early on with UsableNet, about 20 years ago. So we've been around 20 years. Our early partnerships were actually with developer authoring tools, such as Macromedia Dreamweaver, which is now owned by Adobe. And we did a lot of work in the early days trying to connect usability as part of accessibility with the Nielsen and Norman Group.

So just to give you a view of what I'm going to cover today-- hopefully I'll try and keep it as engaged as possible. I'm going to start with some actual data points, so actually top trends, which is in the web and the mobile space, specifically talking about how they are affecting e-commerce companies. I want to give you a little bit of a granular look at what a typical week looks like in an ADA lawsuit world-- the types of companies being sued, what are they being sued for, where are they being sued, so you can get a feel for a typical week.

I'm going to cover why retail sites and apps are top targets in this particular space right now. And also give you a view of what a typical e-commerce lawsuit would look like in the ADA space, so what is actually written to say-- in a particular claim against an e-commerce site or an e-commerce app. And then I'm going to give you some practical elements of what to do next.

Just as a background to UsableNet, the company that I work for, just to give you an idea of who we work with and where our experience comes from-- we've done over about 1,000 engagements. We have offices in New York, Austin, and Italy. We primarily work in the retail,

airline, tech, travel space. What I will typically say is our clients have transactional websites, websites which have log-ins. So we typically work with companies that have a lot of complexity to deal with on their original site. And that also means they have a lot of complexity with regard to supporting people with assistive technology and following guidelines such as the WCAG. Just to give you a logo window, if you go to the next slide, just to give you the type of companies-- again, these reflect what I've talked about. We work primarily with companies with large websites, complexity websites, sites which are doing a lot of transaction.

These are the high-level numbers of the last four years of federal websites. I want to make two comments about this. So the first thing is you're going to see a lot of data here that we collect as a company. What we do is we actually track every single ADA lawsuit. Now, ADA lawsuits can be across everything, physical and digital. So we actually look at every single lawsuit, and we break down and make sure that we're only tracking the ones which are lawsuits against websites and apps. So these numbers are all specifically aimed at digital accessibility lawsuits, not physical ADA lawsuits.

We track those. We look to see how long do they take to settle. We look at the types of companies. We look at where they're filed and what they're being claimed against. So we try to build trends out. The second thing-- I'll make a comment about these big numbers. These are federally-filed ADA law claims. They do not include state-filed ADA law claims, and they don't include demand letters.

Demand letters are typically letters sent out by plaintiffs' lawyers pre a lawsuit to try to scare a client into engagement and some type of legal settlement before they actually start a lawsuit. If you want to give a rough number, if you added demand letters and you added state and local, you might be looking at three times these numbers in terms of how many companies are affected by lawsuits.

Now, how did we get here? The next slide gives you a window about it. This is something that you've not really studied before, and you've probably only just started to hear about it because the number of lawsuits are very large in the last three years. It is an activity that has been going on for 20 years. Companies have been sued under the ADA for their websites and apps since the year 2000.

The big difference between the first 15 years and the last 5 years is most of the lawsuits in the first 15 years were brought by well-known advocacy groups, so American Federation for the

Blind, joined by the Department of Justice, who believed that-- and still believes today-- that the ADA applies to websites as part of the extended area of a public accommodation. So there's 15 years of lawsuits which were what I would class as strong meaning, change the way that the world is working. The world is going digital. That well should be accessible to people with disabilities. The advocacy groups and the DOJ spend a lot of time detailing what they felt was required by companies to make sure that they made their stuff accessible.

What happened in 2017-- that progress of them coming up with a very definitive legal specification in the ADA was suspended. And essentially, the DOJ stepped back from that definition, opening up, really, the plaintiff bar to use the gray area as an opportunity to create lawsuits. So the DOJ spent 15 years establishing that the ADA applies to websites. WCAG 2.0 AA is a standard that websites should follow. Lots and lots of big companies got sued and settled with the DOJ. They're all public settlements you can read yourself.

But essentially, then stopped at defining what every other company should do and how quickly they should do it and at what level they should do it. What they opened up is a void in the legal space to say if your website doesn't comply with WCAG 2.0, if I can find something wrong with your website, as a plaintiff law firm, I can claim that you are discriminating. Because there isn't a clear definition, a lot of companies also didn't put the effort in to do the extra work. So I'd say that there's a two-part story. The first part of the story is the DOJ made it very clear that websites should be accessible.

Part two-- because they didn't define it as a definitive law, companies held back from doing that work, which opened up an opportunity for plaintiff lawyers to find websites and apps which don't do that work. So the majority of lawsuits that are held today are brought up against websites and apps which do have issues. You could argue whether they have amazing issues, really hard issues, but they have issues. And because they have issues, it's very hard for them to defend that position against what the DOJ did. And essentially, 95% of these lawsuits get settled within 60 days. That means the company that got sued admits there's something wrong, and they will make good efforts to try to remedy it and pay the legal fees of the plaintiff that sued them. So that's why we're here with these sort of levels.

The next slide-- actually, thank you for going to the next slide. The next slide gives you an idea of a typical week. The reason I present this as a typical week is for you to understand that this isn't how it used to be when the DOJ joined with advocacy groups like the American Federation of the Blind and, one at a time, identified a company which was providing very

significant digital experience and tried to change that experience. So for example, some of the early days were settlements with Bank of America, H&R Block for tax submissions. So individual companies, individual users finding a problem, getting an advocacy group to get behind them, and getting the DOJ to get behind them.

Today it's more of a cottage industry. How it really works is that there are a set number of very active plaintiff firms. They're called serial plaintiff firms. They will file 10 to 15 lawsuits in one week, and then not file on anything for a couple more weeks, and then file another 10 or 15. What they do is essentially target particular types of industries which will be easy to test, easy to find issues, easy to move those issues into a templated claim, and file all of the claims at the same time.

So what that means is that you start to see trends inside of that. And a typical week will show you a trend. This is actually in the first week of 2020. It's interesting because it changed a little bit in 2020. And I'll show a couple of things which we're seeing now happen every week in 2020. Firstly, large brands are the vast majority of companies that are sued. So 50% of them that were sued were brands with over $100 million in revenue.

The vast majority of those brands get sued multiple times. We'll go into that a little bit more, but it's to do with the fact that they have multiple websites. They have multiple apps. But as importantly, it takes a long time for a website or an app to be made accessible. And in that period, they can be sued by as many people as have issues with that site. So lawsuits are typically an individual suing one site, which means the settlement is only aimed at one individual, not the collective user base.

We're now seeing a big uptick in lawsuits on native apps, mobile apps, primarily because of the *Domino's* case. And if you've read anything, basically, Domino's was maybe the most famous case last year. They tried to get the Supreme Court to hear it. But because the Supreme Court didn't hear it, essentially, the ruling that ADA applies to websites and apps was withheld at the appellate level, essentially meaning websites and apps can be sued for ADA, essentially. That made most of the plaintiff law firms that have sued every website out there look to see whether that website they just sued has an app, and now they're suing the apps of the websites that they sued before. Most of the apps that we're seeing right now being sued are retail, and that actually reflects also the fact that retail is the highest activity.

Now, the important by-state numbers that you see here-- four most active states-- this does

not mean that the company that's sued needs to be in those states. Any company that's operating in these states can be sued. So a retailer that operates in New York can be based in Kansas City, but they can be sued in New York state because their website delivers product in New York state.

New York, Florida, and California and Illinois are the most popular states right now. New York and Florida because the case law helps plaintiffs bring lawsuits to at least the second level, which means that if you want to defend it, you have to spend money. Compare that with settling. It means that settling is cheaper than defending. California has some strong state laws, but actually, unlike federal laws, reward the individual plaintiff who's damaged. So in most of these cases, there's no damages for the actual assistive user or the blind user example, which is the majority of cases that are brought. But in California, there's a small $4,000 damages, so it's popular to sue in California.

In Illinois, which might sound strange, it's primarily because there's one plaintiff law firm that's very active and is based in Illinois and use Illinois courts to file. So essentially, there's some reasons why these exist. And you'll see here that there's notes around the fact that the app cases right now are being brought by one or two major plaintiff's lawyers. But that gives you a typical week in the ADA lawsuit.

Now, why is this important to e-commerce? If you move to the next slide, you'll see that 60% of all ADA website and app lawsuits last year were retail-based. Why retail-based? If we go to the next slide, hopefully I'm going to just also cover this, and the next slide helps me cover this. 21% of the lawsuits got sued multiple times. It means that they got sued for a second time. I brought that subject up before.

Let's talk about why that is the case. So on the next slide, I'll cover that. Why retail, and why multiple times? You might remember me talking about it's an industry. A plaintiff law firm typically has one plaintiff client who might be blind. Typically they're blind. They want to focus on a particular list of websites for that person to go experience.

It's a lot easier for them to give them a list of very similar websites and say, go and test-- for example, find a product, pick a product, put it into cart, buy. That functionality exists on every retail site, and there are thousands of retail sites. So it's quite easy for me to build a process that allows me to send a list of 20 websites for my blind user to test, then to give me a report on each experience on every website. I take the experience, I put it into a template, I sue the

retailer based on that template.

So you can see that, one, it's very easy to go see these sites. It's very easy to test these sites, both on websites and apps, in the same way. So I don't have to spend a lot of time explaining how to test. As a user, I don't have to explain a lot about the problems. The problems are very similar on every site that I report back to the plaintiff law firm.

The second thing is, as I said before, with DOJ settlements, they clearly identify retail and say that retail sites are subject to the ADA, and they should follow WCAG. So it's very easy for a plaintiff law firm to establish a claim against using the DOJ settlements as a template. The third item I talked about-- and it's the reason why this is a subject which is very important to our clients-- the more complex this site is, the harder it is to make sure that you follow and support people with assistive technology

It's not just about a page with images, that you need all tags on and links and forms. There are functionality built in JavaScript that allow products to change, product definitions to change, options to change, delivery options to change. So the complexity is there. It's very easy to make mistakes.

We talk about it at our company, but it's very hard to make a website fully accessible. It is very easy to make a website unaccessible. So just a few mistakes-- in a fast-moving environment, issues can be generated for assisted users. They can be found very easily. They can be put into a claim, and they can be sued.

The fourth element I talked about is the reason why big companies and retailers are being sued, and sued multiple times, is because they've got multiple websites, and they've got multiple apps. The vast majority of these cases are an individual screen media user, normally a blind user, that sues an individual website. The company then probably says, yes, we've got problems. We will settle. We will remedy.

That doesn't prevent the next assistive user to come along tomorrow and sue you for exactly the same site, because you've only settled with one individual user. Typically, that settlement will give you two years to remediate, but again, only for that individual user. Two years is typically probably what a lot of companies hear, and they put it on the backburner, and they don't do the work, again opening themselves up to get a second lawsuit.

The second reason is that they've got other websites and apps. So it's very easy for the same

plaintiffs and the same plaintiff to deliver a lawsuit to the second website or the second app the next day. There's nothing stopping them. So essentially, there's a reason why retailers have targeted multiple sites, apps-- complexity. There's also a history there, meaning the plaintiff firms that are in the ADA digital were in physical ADA world. They're very used to this space.

They typically will pick a retailer that also has physical stores. There's two main reasons for that. One, legally, there's a thing called the Nexus, which basically means that if the website is connected to a physical location-- meaning if you have physical locations, and the website, for example, are for store hours or pickup in-store-- in certain states like New York and Florida, it's very easy to attach that and make a very strong case to the ADA.

Secondly, plaintiff firms are used to working with those companies. They know that the law firm that represents those companies understands ADA. They know that the law firms know what it's going to cost to defend ADA, and they know that those law firms would probably suggest to the client to settle as quickly as possible. And then lastly, because they have money and budget, and the website and apps are a fundamental part of their business, they're going to get traction when they make a claim against those particular websites, because those websites know that they need those operations to be up and running. So that's the reason why we're seeing so much activity in the e-commerce space and some of the behind-the-scenes reasons why e-commerce is so popular.

Now let's look at-- well, what does a claim look like? And I'll go over, again, just the basics of a claim. Again, brought by one user against one website or one mobile app-- I want to make it clear that there are individual web cases today, and digital cases, where it is an individual user that has struggled with access in a particular website or app, has requested help from that company and have not received it, has gone out and found an advocacy group to join with to sue that company because they feel that they're not getting the same access to digital quality of life as others do, and they sue for what I would class as all the right reasons.

The other 95% of the cases are brought in a more business way, and it's the way that I talked about. So one user-- one website-- that one user sues lots of websites. So you'll see in some of our reports that 70% of all cases are brought by 10 plaintiff firms. Behind those 10 plaintiff firms are only 10 users. So actually, when we say that 70% is sued by 10 plaintiff firms, we really mean that 70% of cases are bought by 10 users. That was actually about 80% last year, so it is actually broadening. It means actually, more plaintiff lawyers are getting involved, more individual plaintiffs are getting involved in seeing this as an opportunity.

So I there's a misspelling on the slide. But basically, they're brought by a blind user claiming issues with navigation in the use of a site or an app. So it's very practical, the claim. The claim typically starts with a very practical notion, which is I am a user. I use a specific technology called a screen reader. I have issues with completing successfully tasks that other normal users or regular users do not have issues with, so you are discriminating against me.

It's a very clear and simple definition. That's typically backed up with, maybe with a description of the issue that they have, but there's normally always a list of issues which represent items which can be found quite easily and are missing from the website or app based on popular standards. And the most popular standard is the WCAG, which stands for Web Content Accessibility Guidelines, by the W3 CAG.

So we'll look at what those items are. And you will realize, probably, why it's very hard to defend against these particular types claims when you start looking at the type of issues which are listed in the claim. The last item is that 75% of cases now, in 2020, reference both WCAG 2.1 AA as well as 2.0 AA. And if anyone is aware, basically, the WCAG is a set of guidelines, and it's constantly modifying. So the most current version, 2.1 AA, is actually harder for companies to probably achieve than the 2.0 AA and is now being referenced in claims.

Maybe one important aspect is that the issues listed in the claim are all only relevant to 2.0 AA as opposed to 2.1 AA. There's a technical reason for that. It's a lot easier to find issues related to 2.0 AA. The additional standards added in 2.1 are harder to find. They require more effort. They may require you to use a screen reader, primarily, to find those issues, so it would take longer. So when we're talking about producing multiple lawsuits, they try and keep it as simple and easy to do as possible.

So let's look at what that list looks like when it comes in a claim. So a claim, as I said, is typically made by an individual user who's blind. They claim that they can't access and do things that other people can do on the website or app. They will typically then list a range of items that they have found that are missing from the website or app, and these are referenced against the WCAG guidelines.

So they are a list of what I would class as high visibility. Some could create significant issues for an assistive user. Most of them probably don't create significant issues for assistive users to actually navigate, although they could have had significant issues to do that. But these are typically very easy to find by what you might have heard as automatic testing tools. So

automatic testing tools can scan a site. It's a little bit like a spell checker, right?

It scans the site, finds issues which are missing from the website based on these guidelines. So what you might look, if you're technical at all, is that these are very generic items which are very easy to miss. When you start doing development work, they can be easily forgotten in that development process. And across a website which is a large website or a complicated website, it's easy to establish that you probably have some of these issues, and not all of these have been addressed correctly.

So what happens is a lawsuit is brought. The plaintiff internal team-- so the plaintiff brings a lawsuit. The defendant, so the company, probably cause their lawyer. Their lawyer probably calls the web team and says, we've got a lawsuit, and it lists these things as missing from our website. Are any of these things missing from our website? Most of the web team will probably say, well, some are. Some aren't. But yeah, there are probably these types of things missing from our website. And that's why the first action that most companies do is, well, we don't really defend this without spending lots of money trying to determine what is missing and what's not. We should admit that we haven't done the best possible job. We should settle, and we should ask for time to remediate.

And that's why the vast majority of lawsuits end in a remediation settlement where the company agrees to remediate to a particular standard. Typically people write in WCAG 2.0 AA. They will typically agree to a particular time frame. Again, that's typically two years. And they will pay the fees of the plaintiff firm.

The reason they do that quickly is because the only real money that the plaintiffs can get are fees. So the shorter the time that they take to decide to settle, the smaller the bill. And that's why 95% of lawsuits today still settle within 60 days.

What we technically-- or what we practically hear happens is obviously, the law team or the lawyer team of the company go off and negotiate the settlement. They give notice back to the web team that probably they only talked to once and said, hey, it's good news. We settled. We've got two years.

And probably, somebody people hear two years and think, oh, we've got some time to do this. And then two months later, they get another lawsuit. So it is not possible to avoid lawsuits until you've done the work. And for me, what I try to do is I try to talk to clients about what they

should be doing on a road map short, medium, and long term. And maybe if we go to the next slide, this will hopefully give you the typical conversations I may have with a client.

Let me preempt this. The way that you avoid or prevent getting a lawsuit around digital accessibility is really threefold, and I'll go into these times frames. But philosophy-wise, you should be thinking this. Number one, you should be creating the best experience for people with assistive technology. If you create and you get some people with assistive technology, you get some blind users, and you're confident that those blind users can use your website or your app, and you document it, you are in a great space.

Number two, you should follow the WCAG guidelines as closely as you can. Because obviously, as you saw, lawsuits list ones which you miss. So if there's ways for you to quickly look at a website and see all the obvious stuff and fix them, it's a lot harder for a plaintiff firm to find those obvious things. And then thirdly, you should bring attention to the efforts that you've made, the investment that you've made, and the ongoing effort that you're making.

So if you think about those three things, one is make the site really good to use with assistive technology and know it, meaning work with people who have assistive technology. Secondly, as best you can, follow the WCAG guidelines and fix the stuff that's obvious to find, and thirdly, tell everyone what you're doing, and tell everyone that you're working with people with assistive technologies, and you've documented it, because that is going to put you in a great place when you get negotiating. And that's really the breakdown of the short term-- reduce risk.

We talk about, how does a plaintiff firm go about finding ADA lawsuit opportunities? They create a list. So if you're an e-commerce site, you'll no doubt be on someone's list at some point, right? They look at things that are easy to test, so websites and apps. They test it with a testing tool. They get a blind user to use that site and give some feedback about issues that they had.

So the way that you, short term, reduce risk is do exactly the same yourselves. Go get someone who uses assistive technology. There's a range of places you can go. From an affordable route, you can ask if there's customers, there's staff members, there's relations of staff members. You can go to local community groups. If you've got more resources available, you could recruit from-- there's a whole range of advocacy groups that make people with assistive technology available to you. There's companies like ourselves that have people on

staff that you can hire.

Depending on your budget, you should be finding the people that will give you instant feedback of whether they have problems. You can start to use-- we have a free testing tool that will allow you to quickly start testing every major page on your site, and it will tell you all the obvious things that you've missed. That's exactly the same as the types of tools that are being used by plaintiff lawyers.

And then the third thing is we talk about as soon as you've made the commitment that you're going to make it accessible, start telling the world. Have an accessibility statement. Explain what you're doing to engage people with assistive technology to do testing. You are at no more legal risk if you write that you are in progress than if you don't write you're in progress. But what you will do is that you will raise a flag to plaintiff lawyers that you're ready for them if they come and sue you. You've got documentation. You're working with the right people.

And again, you can't get damages in these cases. They can only get remedy. So the more that you're working towards the remedy, that you've got the remedy in place, the more aggressive you can be in responding to lawsuits and demand letters, because you have your ducks in a row, and your activity is already in place. I talk about short-term reduced legal risk is doing exactly what the plaintiff lawyers are doing and action on that.

Now, that's probably not going to make your site completely accessible. It's going to make your site a lot less risk from a legal lawsuit. What's going to make your site more accessible is the hard work, remediation of sites and apps. It might be that you need to look at this being in stages, that you're working on a new launch in six months. Are you going to make that part of your new launch? Short term, you might look at just addressing, let's say, your most important user flows or the top templates.

Again, accessibility, I would say, is aiming in exactly the same way as your regular website. The most important features for your regular users are the most important features for your assistive users. So focus, prioritize around those user journeys, prioritize around the items which you know may be based on the test that you did or the user that that you do with screen readers, the issues that they have the most.

And long term, a bit like security and privacy, accessibility needs to be added to lifecycle. It needs to be built into your process. So you need to think about, how does accessibility get discussed in the prototype stage, in the design stage? How do we do training for the different

groups-- design, UX, dev, QA. How do we have built-in accessibility check-ins as part of our release management, and how do we have, for example, prioritization and escalation processes around those, and maybe also, how do we have third-party auditing done on an annual basis?

So these are the three stages that all companies have to go through. And there's different levels of effort. I think the first level, which is the reduced legal risk, is actually reasonably low technical level, but requires buy-in. And also, that's why I talk about the importance of accessibility statement and talking about company policy, because if you're an advocate for accessibility, starting to have that conversation about a statement that's going to be put on the website or a statement that's going to be put that on the app would involve high-level people to understand the subject matter, understand the resources that are going to be required to commit to that statement, and then fund that statement.

So a lot of times, accessibility is always put at the end, put as a silo activity. But if you can make it as a part of a policy, as a statement, as part of an inclusive message, it's going to get a higher-level buy-in if you start talking about accessibility statements. It's going to get a higher level of awareness and then, obviously, budgeting for actually doing that work.

So essentially, that brings us to a Q&A. I don't know if you wanted to operate the-- maybe pull out some of the questions that you've got there, Sophia. And I encourage everyone to ask questions. Even if we don't get to the end of them, we normally would follow up in an email directly on anything that we don't get answered. So do we have any questions coming?

SOPHIA: Yes, Jason. We have a couple questions here. And everyone, I encourage you to keep asking your questions via the Q&A tab or the chat window. Let's dive in. Have you done any research or noticed any trends with international e-commerce companies and lawsuits?

JASON TAYLOR: Yes. So last year, we published-- and I think this year is probably the same-- about 11% of the retailers that were sued last year were internationally-based retailers. So again, the ADA is a lawsuit that can be used to file against any company worldwide as long as they do business in the United States and in the state that the case is filed. So most of those international companies were sued in New York, I believe, for basically operating websites and delivery services in New York City.

SOPHIA: Thank you. The next question we have is, what is the most common issue that e-commerce brands are being sued for?

JASON TAYLOR: Well, I think you'll see-- when I showed you the standard, that list wasn't a list of, like, this is a collection of things that people [INAUDIBLE]. That list is pretty much the same list on every single lawsuit. So the list I showed you of, like, maybe 15 typical issues that you can find on a website or app are typically the items that are being listed on every single lawsuit. Why? Mainly because probably the plaintiff firm doesn't actually need to test the website or app to assume that there are these types of issues on a site.

Secondly, by listing quite a big range in a lawsuit, you have the choice of, well, if I defend this, I have to go and defend every single line item that they say I have violated. That's again going to cost money. So they're just trying to generate a whole range of general issues that most websites and apps probably have, and they're pretty much 95% sure that there are some of these issues on the site.

They sometimes back that up with a actual scan of the site with these issues. But in a lot of cases, they don't bother, because they know that these are pretty common issues that can be easily forgotten or easily missed. And they're pretty sure that once the web design team gets asked, are there any of these issues on the site, that web team will probably honestly have to say, yeah, there are some.

SOPHIA: Thank you. The next question we have is, are there exclusions based on the size of the company, such as 15 people or smaller, with accessibility, as with other ADA provisions?

JASON TAYLOR: Yes. So unfortunately, going back to my second slide about the DOJ, in 2017-- they exited the technical provision. So this one here. So in 2017, they got very close to saying we're going to add WCAG 2.0 AA into the ADA as the technical specs. What they didn't do-- and they stopped, which means they also stopped the process of deciding, well, this is for companies 15 people and above. Companies should have two years to achieve this. That's going to be called safe harbor.

They didn't establish any sort of parameters for a company to have a feeling of whether they should or should not do this based on size. So what that means is any size company can be sued, and any size company has been sued. Unfortunately, there are actual stories and real-life cases where small companies have a website where they were probably spending $20 a month for the website, got sued, and had to pay $5,000 to $10,000 in legal fees and actually went out of business.

Now, as I showed you, the majority of cases are made at big companies, the reason being in those scenarios, the plaintiff doesn't get any money anyway if a company goes out of business. So they're only really interested in getting paid, not putting companies out of business. There has been a focus on some of the smaller companies.

And as I said, think about lists. So for example, last year, 100 art galleries in New York City got sued. OK? They're not poor, and they can afford it, so they didn't go out of business. But their websites are not exactly the main reason they exist as a business, right?

I think around 50 wine companies in upstate New York got sued at the same time. So it sort of feels like a list of companies that can afford a lawsuit, that have got retail but also have a website. They're the types of lists that we start seeing. You could argue they're retail because they're actually selling wine, they're retail because they're selling art. They're loosely retail, but they're very specific lists. And that's where we see the sort of pockets of focus outside of what I class as just general retail firms.

SOPHIA: Thank you. The next question we have is, what type of language do you recommend for design/development agencies to put in their SOW or SLAs to help their clients understand that the design development agency will do their best to meet accessibility requirements, such as WCAG, but does not hold them legally responsible for meeting such requirements or guidelines?

JASON TAYLOR: Yeah. Difficult one, and it's going to be one that's going to be a really interesting development subject over the next two years. I actually wrote a blog about how to write accessibility clauses into agency contracts. I also wrote a blog about how to write accessibility statements, so maybe, Sophia, we can put those two blogs in the follow-up email to [INAUDIBLE].

SOPHIA: Of course.

JASON TAYLOR: But just on that subject, yes, I actually believe that if a web-- if a company got sued-- if a company gets sued today, the first people they ring is who they bought the website off of. It's an obvious telephone call. That web agency right now pretty much is running from that telephone call. They didn't have it built into the original scope, so that's probably their initial response. Their initial response is, no, you didn't scope accessibility as part of the project, so we didn't cover it in the original project, so we're not responsible for it.

That's probably the first response. The second response now is probably by the company

saying, OK, that's great. But next year when we renew the contract, we want you to take responsibility to make sure it's accessible.

Now, to that question, I think that question was well worded because they understand that there's some things that the web agency and the app company can do, and there's some things that the company, after delivering, can do to also make the site inaccessible. So the clauses need to be reflective of probably two things. One is that the web agency and the app agency will do their best to adhere to WCAG, will red flag any design decisions or design requests by the client that maybe put that at a compromise, because that's an important aspect of a relationship.

A lot of clients want a certain functionality, but that functionality is very hard to make fully accessible. And it's going to be up to the web design agency or the app design agency to say, look, guys, this is going to put you at risk of being inaccessible. We're telling you this. If you do it, then we're not responsible.

And then thirdly, there needs to be this idea of future responsibility, so identifying the activities that the company will carry on doing-- for example, adding content, adding video, adding things that the web design company has nothing to do with, and be responsible for that content. So it is going to be a very obvious addition to pretty much every contract. There's actually already lawsuits between companies and vendors who said they would deliver accessibility but didn't deliver accessibility, but they just tick the box.

Because this is such a legal space, most companies will look-- the first thing a lawyer will do, a company that gets sued-- how can they deflect cost? And they will look to the vendor, the web agency, and say, well, if there was any mention of accessibility in the original contract, we're going to make you responsible for holding our indemnification. So it's very important to not just let it lie.

It's actually probably important for agencies to be proactive, almost take a stance that-- work with us. We will make sure that we help you make sure that you don't get lawsuits because of the work that we do and they do. And be proactive in advertising that you actually understand accessibility, and you can put the client in a good position for defending against lawsuits.

SOPHIA: Thank you so much, Jason. The next question we have is, do you think the federal government will ever create a law that specifically states online accessibility?

JASON TAYLOR: Yes, I think it will come. I don't think it will come under the current administration because the DOJ has a very specific remit today to be business friendly and not to bring laws which add burden to businesses in general, although not adding clarification to the ADA is essentially making it expensive for some companies, because they're getting sued, over others.

Primarily, though, the way to avoid lawsuits-- and I go back to these are avoidable. They're avoidable if you really take a philosophy with three things. One is make sure that you build an amazing experience for users who have assistive technology and include them in what you're doing. So make sure you've got people on your testing teams or contracted on your testing teams or part of your testing community that are blind who use screen readers, and make sure that you document that activity. And second, follow the WCAG. It is not impossible-- hard, not impossible. It's just extra work.

And then thirdly, tell everyone about it, because the more you write about it, the more you make sure that you've got accessibility statements which are clear, which are bold, the less likely plaintiff firms are going to pick on you, because they want easy wins, not difficult ones.

SOPHIA: Thank you. The next question we have is, how does accessibility affect web books?

JASON TAYLOR: That's an interesting question. It's not an area of my expertise. I think you mean things like e-books and maybe stuff that's on Kindle and stuff like that? I'm assuming that. Maybe what we could do now, Sophia, is just take that as a side item. I've got a colleague that knows that area better than I do, so maybe I can just respond to that individual.

SOPHIA: Yes, for sure. The next question we have is, how is it that one plaintiff can file so many lawsuits against multiple companies?

JASON TAYLOR: It's just the nature of the United States law. Essentially, the plaintiff is establishing that they have had harm because they've been discriminated against by multiple companies. That's basically a very simple-- a simple position. And I do believe that the vast majority of the plaintiffs that are suing, even though they're suing 10, 20 companies at a time, they see this as primarily advocacy and a way to get results.

They are not making a lot of money. Technically, they're not allowed to earn any money as a plaintiff. It may be that they get some consulting fees, but really, none of them are making significant money. The lawyers are making money, but the actual plaintiffs themselves primarily have what they class as digital advocacy in their mind front and center.

They are pleased that they can sue 20 companies, and those 20 companies have to make their site more accessible. They don't feel ashamed by the activity, and I don't think they should do. They have been given the opportunity to do this by companies that have not done a lot of work to make sure their websites are accessible.

There are questionable lawsuits out there against companies where you could feel that the person isn't really trying to use that website. They don't really have a purpose for suing, but they may, in their heart, think, well, it's actually an advocacy activity. They don't earn a lot of money, but they are definitely getting results. We help lots and lots of companies who have either been sued, got demand letters, or have been sued in state court. Most of those companies would not be doing what they're doing on inaccessibility without these lawsuits.

SOPHIA: Thank you. The next question we have is, do you think that accessibility cases will be possible in Europe as well, sooner or later?

JASON TAYLOR: In Europe, there's actually reasonably strong legislation similar to the ADA that's in place already. In a way, there's a route-- for someone who has an issue with a website, there's typically more of a governmental route already exists for me to complain and then work with a government body to bring what is, quote, unquote, "a private action," but not a legal action, to that company and get them to do a better job of doing it. So the escalation process is more defined in Europe.

There also isn't the same legal system that allows people with no money to sue a company that has money in the same way as in America. So in America, the plaintiffs law firms do this for free and obviously make the fee at the end. They take the risk. That is not allowed in Europe. In Europe, if you sue a company, even if you win, you still pay the fees that you use to do the suing in civil court. So the legal system is different there, but also, the way the governments have run legislation is a little bit more what I've classed as organized in terms of if I have an issue with a website, I can go to a government agency. They can battle on my behalf to make sure that website becomes accessible.

SOPHIA: Thank you. The next question we have is, how does this affect someone who creates online trainings?

JASON TAYLOR: Exactly the same in terms of from a technical and philosophy point of view, it's exactly the same. From a legal action point of view, there's less activity. And the main reason for that less

activity is there's more effort in trying to find online courses to be accessible, meaning it's not as easy for me visiting a website and trying to buy a product. And if I can't buy a product, I can claim harm. I couldn't buy the product. It's a very simple claim.

If it's training video, I probably have to register. I have to go onto a course. I have to take the course to show that because the content was inaccessible, I couldn't pass the course. There's my harm. There's a lot more activity involved. It's not cookie cutter. It requires me to do more work. It also requires me to be eligible to take that course for me to sue you, so it's not as open as websites.

So again, we're talking about not true advocacy, but convenient advocacy. So it needs to be convenient for volume. And that's why retail is still the number one. There are 50,000 retail websites out there. They've only just started on retail. Even if they're suing 5,000 a year, they've got 10 years of retail lawsuits to go.

SOPHIA: Thank you. We have a couple more questions. What would you recommend the first step being if you want to get your website accessible?

JASON TAYLOR: Firstly, internally, you need to get buy-in to make this a priority. Otherwise, it will never get done correctly. So that's the first thing. And I talk about sitting down and thinking about an accessibility statement because typically that would involve stakeholders determining, what are we going to do by when? Who's going to be involved? That will generate itself a plan and an awareness and a buy-in. So I think that's the most important thing.

And then secondly, for me, you need to have a doubled action, which is train people that you identify as the most important people to make stuff accessible, which are going to be developers if you're actually building it yourself, or have a serious conversation with your web design agency, because they're the ones that you're paying. So you've got leverage to make sure that they're following WCAG in their activity, so that's the first group.

And then the second group, I would encourage, as I said two or three times-- get yourself a user group that's got disabilities. Again, it can be very affordable. It could be a friend of a friend. It could be a community. You could reach out to customers. You could reach out to local community centers that support people who are blind. It could be a sponsor.

It can be more professional or more organized and expensive. It can be using one of the advocacy groups like the American Federation for the Blind. We have a partnership with them.

They have lots of people that are available for testing. We ourselves have on-staff members who do this as part of our engagements.

But as you go up that scale, obviously, the seriousness and the cost increases. But you can start very affordably if you reach out and you find people who are users of your site and use screen readers.

SOPHIA: Thank you so much. We have time for one more question. Have you seen any improvements in e-commerce brands becoming more accessible now that there have been a number of lawsuits against them?

JASON TAYLOR: Yes. Our clients-- across the industry, these lawsuits are making a difference. I don't agree that they're the best way to have companies come to the table, because essentially, it's a very aggressive way to get companies to take accessibility seriously. But the result is that the vast majority of major retail brands today are either hiring internally accessibility experts or paying for accessibility experts to help them establish an accessibility policy and deliver that policy. I don't think there's a retail company in the top 500 that aren't having a proactive approach to accessibility today.

SOPHIA: Thank you so much, Jason, and thank you, everyone, for joining us today.