

SOFIA LEIVA: Well, welcome everyone, and thank you so much for joining us today for the presentation trends in online accessibility. I'm Sofia Leiva from 3Play Media, and I'll be presenting and moderating today. And I'm joined by Kevin McDaniel and Reeve Segal from accessibility.com. And with that, I'll hand it off to Kevin who has a wonderful presentation prepared for you all.

Thank you, Sofia and welcome everyone. We appreciate your time and attendance to learn more about the digital trends in accessibility and what today's legal environment looks like and the strategies to ensure effective communication with your customers, your citizens, and your community and various populations. We just want to go through-- first, we want to talk a little bit about what is accessible online technology.

What are we talking about when we talk about accessible online technology? How is it usable? How is it accessible to various types of the technology, and how is it accessible to assistive technology? And we'll talk a little bit about what assistive technology is, how it's accessed, a little bit of the history of assistive technology, because it really is important to understand what it represents and how it works into the entire equation of what accessible technology is and how it's accessed.

And then we'll talk a little bit about the legal trends and digital accessibility. We'll talk about what is accessibility in video and what are the trends in accessibility in video. And throughout the presentation if you have questions, as Sofia said, please feel free to raise your hand, throw the question in chat.

We're very happy to elaborate and zoom in on any of the topics we bring up. We know we have a really great audience here, and there can be a lot of questions when it comes to accessibility. So we're very happy to zoom in as needed.

So first, before we get into what is accessible technology, I think it's just really important for us to look at who we're talking about. It's estimated-- and this is one of the more conservative estimates-- that 15% of the world population lives with some form of disability. One of the more recent estimates that I read-- I read a study in 2019 that talked about the accessibility maturity market and where it was going in the next five to seven years. And that 15%, according to that study, represented about a billion people on the planet that live with some type of disability.

In the United States, that number is closer to 26% of the US population, which comes to about 61 million Americans living with some type of disability. And you'll see here on the slide where we have the second piece of text there, it talks about approximately 87.2% of all households have a computer, and that's really important. It's an important number, because of those 61 million Americans, what that number means is that around 40 million Americans living with a disability still access the internet through a computer. That means that your programs and services, any content you publish, any services you offer, any forms, web applications, videos, those are being accessed by 40 million people with disabilities through a computer who rely on some type of assistive technology or the accessibility of your website to access your content.

Of that 26%, I just think it's really important to point out just some of the statistics of that number so folks really understand who we're talking about. 13%, according to the CDC, at least, 13-- CDC in 2021, excuse me-- 13.7% of the population have a serious mobility disability. 10.8% have a cognitive disability, or at least have trouble concentrating, remembering, making decisions, and this is a really important number to understand. And we'll get into a little bit more on why in a bit.

6.8% have difficulty running errands alone. 5.9% of the population have a form of deafness or a serious difficulty hearing. And 4.6% are members of the blindness community or have serious difficulty seeing. And we actually have an interview going up at [accessibility.com](https://www.accessibility.com) with the founder of NV Access, a company that created NVDA, a program called NVDA which helps users who have visual disabilities access the internet.

And they had estimated that some 200,000 members-- Oh, I have a question here. 5.9%. The question here is, what is the representation of the deaf community? And according to the CDC this year, 5.9% of the US population have deafness or serious difficulty hearing. So that was to that question. I apologize, everyone, if I have to repeat that. And now, so to that end, since we had a question about the statistics, I'll just finish out here. 3.7% have difficulty dressing or bathing. And then, 2 in 5 adults over 65 actually reported to have a disability.

And it's really important. The reason I wanted to point those statistics out is that the disability population, the disability community, is the one protected class that any one of us can be a part of at any time. If we live long enough, all of us will ultimately become a part of this population. So it's really important to understand what this community looks like and how they access the internet.

Back to the 10.8% of cognitive, I think that it's really important to understand that it's not just people who have visual disabilities or persons who are deaf. I apologize. There's a question here. OK. It's not just members of the deaf community or blindness community who require assistive technology or use assistive technology. When we talk about accessibility, we're talking about all persons with disabilities, and really, all people.

I was a teacher at the police academy in Florida years ago. And one of the things that we teach police officers is not to use complicated jargon, not to key their mics and to talk about things that people don't understand, using codes like 10-84, 10-4, 10-40, because it frightens the public, because they don't understand that jargon. Well, imagine if you're a person with a learning disability or intellectual disability trying to access the internet or access web technology that has things that cannot be understood. And you've got to try to figure those things out.

So when we talk about accessibility, we're not just talking about people who are members of the blindness community or members who are deaf. We're talking about a very large community that also includes people who don't have disabilities. That accessibility piece is really important, because it's about being usable. So with that, next. Sofia, do you mind, next slide here?

So when we talk about accessible technology, what are we talking about? A lot of people think that online accessibility, again, is just for the blindness community. But it's actually a usability issue that affects everyone. People with vision disabilities, hearing disabilities, mobility, and cognitive disabilities all benefit from accessible websites and technology. And the definition here, content, and I'll read it for our captioner. What is accessible online technology? By definition, it's content that is designed and developed so it's usable for everyone, regardless of their abilities or the type of technology used to access that information.

And the best way I can explain that is to consider if you've ever visited a website where you're faced with gated content. And what I mean by that is you visit a website, and the first thing that populates your screen is a flashing ad or a pop-up you can't get rid of. Even without the accessibility challenges that are associated with that type of feature, how difficult is that technology for you to use even if you're not a user of assistive technology? When you visit a site like that, we're often really not likely to return to the site. At least I'm not.

But now imagine if you rely on assistive technology, and you can't get past that content. And if you go a little further and imagine that every website has that content, where the gated content populates your browser and it can't be removed. You can't remove it. You can't accept it. You can't reject it. You can't find the X to mark the spot to close the content. That's an inaccessible feature on an inaccessible website. And it's an incredibly unusable piece of content.

So imagine now if you can't find those buttons, those who don't have a choice in how they access that content or the content they need to access, ultimately as more of that content is used, it can become discrimination, because the barrier exists. And it prevents users from accessing parts of the site that are critical to the services provided by that organization, services that state and local governments provide, education, higher education members provide, corporations provide. When you provide programs and services that can only be accessed on the site, but you provide inaccessible content to access the site, you are effectively discriminating on people who can't navigate that content.

So just to zoom in on that a little bit more, imagine, to go even further, imagine you're trying to access a healthcare application on your phone, telehealth portal in a mobile application. And the interface starts with a pop-up. You try to get past that. You get past the gated content by hitting reject or X. But all of the buttons are invisible. And no matter how much you try to close the window, you can't. But it makes the services behind that content inaccessible to you. That's, again, ultimately what it's like trying to access an inaccessible website.

So if you're using assistive technology or you can't navigate the content in that site, it's the definition of what is not accessible. The only difference is that folks who do not use assistive technology or can find a way to get past that, you may be able to ride that gated content with a mouse, with a touch screen. But many users with disabilities, with learning disabilities, intellectual disabilities, users of assistive technology won't be able to navigate past that content, because that technology prevents them from doing it. It's by definition an inaccessible website. So that's what we mean by accessible content, creating content that can be used by everyone, can be accessed by everyone, regardless of their abilities or the type of technology they use.

So it's also really important to understand what assistive technology is from a much broader perspective. A lot of folks think that assistive technology, again, is just for folks who may be members of the blindness community. They may use things like screen reading applications that I mentioned earlier, the example of NV Access or JAWS reading applications. But assistive technology can really be anything.

Screen magnification software-- when you access a website in your mobile browser and you zoom in to read content, that's an assistive technology feature. If you are someone who has limited mobility, and you need to access content using speech to text features, because you can't use a mouse or zoom in on a touch screen, also assistive technology.

Hardware can be considered assistive technology-- wayfinding technology like tactile strips, hearing aids, adaptive controls. When you visit a building, and you see they have automatic door openers, those were developed to help citizens with disabilities access the facility. And so essentially it's assistive technology. But assistive technology can be anything. Glasses, mobility devices. And they've been around for a long time. Your television remote is assistive technology.

Imagine if your TV didn't work with your remote anymore. You buy a new TV, or you buy a new remote. But imagine no matter how many times you buy a new remote or you reprogram the remote, over time, the remote just no longer works with the TV, or vice versa. I don't know if everyone on the call can remember a time where we had to get up and change the channels physically. I remember it. But you could go even further with that example and say, what if over time, each time you got up to change the channel, you were only able to change the channel up or down? Over time you lost functionality. And eventually, you get to a point where the television has two options, on or off, and it's on the same channel.

That's what it's like to use assistive technology that doesn't work with the internet. So it's just really important to understand what assistive technology is. It can be anything that helps you use a technology or service or access a program, or service, or facility. And the goal here is to develop technology and develop services and content that are accessible to all types of assistive technology. And of course, that starts with a good understanding of your community and the people who use your technology.

So the next question is, how do we ensure our technology works with assistive technology so it's understandable and usable for people with disabilities? And I have some facts here on the slide for everyone. But I do just want to help everyone understand if you're not-- I know a lot of folks may be familiar with the standards, the Web Content Accessibility Guidelines, but just so I don't skip past it too quickly, I think it's important to understand what those standards are.

The internet needs standards. Your browser, the browser you're accessing this through, even Zoom's browser, it's updated regularly. And why? Why is it updated? It's updated for security reasons. It's updated so it works properly with new operating systems. It's updated so it works with mobile and can render different types of code configurations. It's updated so it can populate the newest type of web content.

But all of those things are streamlined processes. They start with good code, consistent code, and good practices and standards that exist, so that as these browsers and as new technology are updated, it's updated across the board and works seamlessly across multiple devices. The World Wide Web Consortium manages most of these efforts. Any new languages, new specifications or updates like HTML5, they all have to be developed to a standard.

And the idea here is that if that standard is adhered to, if developers write their code to that standard, it's much more likely to be usable and accessible to all technologies it was intended for. So as new browsers access a website coded in HTML5 or PHP, if it's built to the specification, it should interpret the code properly. And it's the same thing with assistive technology. The standards exist so that all of those technologies, browsers, assistive technologies, can work harmoniously. And that includes things like screen readers, speech to text, and so on.

So that same body, the World Wide Web Consortium, through the Web Accessibility Initiative, which the acronym is WAI, developed a set of guidelines. Started with WCAG 1.0 years and years ago, and then later 2.0, and now the latest and greatest is 2.1. And what those standards basically do is prescribe a set of rules and techniques and criteria that developers can use to ensure that their websites and their content will be accessible to the largest audience possible.

And I felt like it was needed to explain those guidelines, because in my experience-- and I've been doing this for a long time now-- web developers see a set of standards. Coordinators, professionals, executives, leadership, they see standards. They see that it's when you print it off, it's 400 or 500 pages, and it looks scary. But essentially, these are just specifications that need to be built into your development process.

And so the Web Content Guidelines, latest and greatest, 2.1. What you need to take away from it is that these have been adopted by the federal government. From a legal perspective, these are the takeaways. They have been adopted by the federal government. States like Florida, California, New York, and Colorado just recently passed legislation that was pretty comprehensive in its adoption of those standards.

And it's important just to mention that they are adopted, because there are a lot of legal challenges that come up. The federal government, of course, has adopted them. If you're a federal department or agency, you will already probably have a lot of familiarity with this. But states and local governments are under different requirements, and so are Title III entities under the ADA. But nonetheless, these standards exist. And they are the standards we should look to.

In regards to captions, it's really important to understand what your caption requirements are. If you are a federal government, you have to adhere to these standards. If you're a state or local government or a Title III entity, you should adhere to these standards, not because it's necessarily the law, but there's plenty of case law. And I'm sure Reeve's going to speak to that. There's really no other standard to reach.

I was part of a federal deposition in a case where we argued against the standards for whatever crazy reason. And we were spared, fortunately. The judge allowed us to settle outside of mediation. And his explanation was, if you're not going to adhere to these standards, then show me the standards that you will adhere to to accomplish the same objective. So for all intents and purposes, these are the standards.

But the AA requirements require captions for pre-recorded content. For live content, there is a little bit of a higher standard. But there's certainly a precedent there to always ensure you have those captions in place. And then, of course, the 21st Century Communications Act and Video Accessibility Act requires that all video originating from TV be closed captioned.

So if you're in higher education or a school board-- and part of those cases as well-- and you're broadcasting your meetings live to parents, to other school board members, to students, and it's through a television or through a television channel, you're required to have captions. It doesn't necessarily always translate to the internet. But again, there are still standards that exist in the form of the Web Content Accessibility Guidelines.

So that sums up the standards piece. And there was a question there. I don't know. I guess we can give that-- wait till Reeve, because I think he's going to touch on that. With that said, Reeve, do you want to talk about the key takeaways and where we are in web accessibility and our Title III requirements?

REEVE SEGAL: Yes. It sounds good. Thanks, Kevin. I'm Reeve Segal. I oversee the legal database at accessibility.com. I'm going to talk to you today about the legal landscape for website accessibility lawsuits. We'll start with some background on the history of website accessibility lawsuits, which they have been coined or described as surf-by lawsuits, which is a play on surfing the web. And then, we'll get into some of the recent data and trends for these types of lawsuits.

Website accessibility lawsuits, for the most part, are rooted in allegations of violations of Title III of the Americans with Disabilities Act. However, when the ADA was enacted in 1990, it wasn't written with websites or even the internet in mind. I don't think AOL had even really started at that point. So it wasn't written with really the internet as even something in their background of their mind.

But as you know, Title III of the ADA requires that business owners maintain a physical environment that's accessible for everyone. So that means that guests with disabilities who visit the property have to be provided with accommodations that eliminate potential barriers to goods and services. So obviously, buildings and offices that were constructed after Title III must be built in compliance with these regulations.

But with the advent of Title III led very quickly to what was coined as drive-by lawsuits, where law firms would hire persons with disabilities to drive by and enter certain restaurants, hotels, and other businesses to see if there were any pursuable violations. So in the late '90s and 2000s, the legal system got hit with a lot of these physical ADA type lawsuits. But more recently, with the internet and technology, the interpretation of Title III has been expanded now to cover websites.

So individuals who rely on assistive technology, like Kevin was talking about, to connect to the internet, such as screen readers or hearing related tools, they have to also have access to goods and services through these tools. So as a result, we've seen a lot of these surf-by types of lawsuits where people with either visual or hearing impaired, they get hired by law firms and then send demands, or they immediately file suit against websites for these ADA violations.

And as we're going to talk about shortly, these cases are being filed almost every single day against a different business. So Congress recently attempted to try and quell the number of cases by introducing the Online Accessibility Act, HR 8478, on October 1, 2020. So the House of Representatives was trying to establish website accessibility standards for websites and mobile apps.

And the authors of the bill, they recognized that you can't fully comply. It's difficult to hit every single compliance standard, and it's quite costly. But they were hoping to try to at least lessen the onslaught of these lawsuits. So they had tried to propose a mandatory administrative process that would give the owner of the website 90 days to fix any issues. So if you got a notice that your website wasn't in compliance, they would at least give you 90 days to fix it. Whereas, right now, there isn't a standard. Anyone can just immediately file a lawsuit against you or just send a demand.

Then, if the owner then failed to fix it within 90 days, then there would be an administrative complaint filed with the Department of Justice within another 90 days. And then, the Department of Justice would have 180 days to try to complete an investigation. And then, only at that point could a civil enforcement action be filed against the website or the mobile app in US district courts. So it was really at least trying to set up some barriers and guidelines and give website owners and developers time to fix their website.

But that would have definitely slowed down these websites surf-by lawsuits. However, it didn't pass in the recent congressional session. It may be reintroduced, but most disability rights activists are not really for this, because it does limit some of the rights under the ADA. So for today, that means we're still stuck with these surf-by website lawsuits. It's a little bit like the Wild West with them.

So this is our 2020 Website Accessibility Lawsuit Recap. So we have at [accessibility.com](https://www.accessibility.com) our own proprietary system where we have access to almost all the courts, federal and state, around the country. And we on a daily basis are going through and reviewing every complaint that's filed and putting together statistics for our database. And you could see here that in 2020, it was 2,058 lawsuits that were filed for just website accessibility. So it looks like more than 2,000 is the right answer.

And consumer goods was the industry that was targeted the most, which seems to be a pattern that started late last year, and then it's continuing. We've got New York seems to be the state that has more than half of the lawsuits filed nationwide. These are all federal lawsuits, but they're coming out of-- for the most part federal, because they're based in Title III, which is a federal law. But they're mainly coming out of New York federal courts. We also have a lot in California, which we'll get to.

And what's interesting is nearly 20% of all the website accessibility lawsuits are filed by six plaintiffs. So if you think about it, when I was first introduced to this subject, I thought a lot of these lawsuits were happening organically. A blind or deaf person, maybe they try to go onto [bestbuy.com](https://www.bestbuy.com), and they run into an issue. And it happens naturally. And so you would think, then, with thousands of lawsuits, you probably have thousands of different plaintiffs. But as I'll talk about a little bit more later, these lawsuits are really focused on, filed by just a handful of plaintiffs are taking up a lot of the cases.

So what's happening is it sounds like these law firms are really the ones pushing this. They're hiring plaintiffs and using the same ones over and over again to target different companies. So it's not really organic in the sense that someone's actually just trying to use the internet to buy something, and they run into this problem. It's more like they're being hired by the law firm and then specifically going-- they maybe get a list. OK, you're going to go look at these companies today. You're going to go look at these websites. And then, they're just filing suit based on that. So it's almost a little bit of a business. And that's why I think they were trying to-- Congress slowed down some of these lawsuits, because again, the end, the intent is the right thing. They want access for everyone. But the means that people are going about it, I would say, is not 100% natural.

And then, we're estimating that about 265,000 demand letters were sent in 2020. A loose rule of thumb is probably around 1% of cases where a demand letter is sent actually end up in suit. So there's no way to actually tell how many demand letters were sent, because we only have access to once something's filed as a lawsuit. But it's only a fraction of cases end up being filed in the country based on demand letters, because anyone can fire off a demand letter. But it's really going to a whole another level to actually file suit. So yeah. There were quite a few demand letters sent. But we're really basing that on how many website lawsuits were filed. So we can jump to the next slide.

And this is the view from our website. So if go to [accessibility.com](https://www.accessibility.com), you can get access to our 2020 report, put in your email address, and we can send you these. We're also doing them on a monthly basis, which we'll jump to next. But this was our year end summary from 2020 with the key takeaways. And we can jump to the next one. So in part of our annual report, you could see that this is the breakdown of the industries.

So consumer goods was number three in 2019, and it moved up to number one in 2020. Apparel was the most hit industry for website accessibility lawsuits in 2019, but it moved down to number two. And food products was new to the top five, and entertainment fell out of the top five. And you'll see when we get into the monthly statistics, it does look like consumer goods and apparel are still being the most pursued websites.

And yes, you see a question here about higher education. It's definitely a significant industry. And we do see it sometimes hitting the top five. But I think it's just likely based on the sheer number of companies and businesses versus the number of schools. And I think maybe these lawyers are thinking the targets with the biggest pockets sometimes are these big companies. Whereas, maybe in theory, it's harder to get a payment or settlement out of a school or a public entity. But you're definitely right that we do see schools and educations coming into the top five from time to time. So let's see, jump to the next one.

So here, we're looking at the states. And some of these trends are starting to shift. But you can see that the top five states from 2020, and actually 2019, were the same. New York is really the top state for filing these lawsuits. Again, they're done mainly through federal courts, but it's the federal courts in New York. And then, we've got California second. Florida's third. Pennsylvania's fourth.

There's a real drop off between New York and California and then a significant drop between Florida, Pennsylvania, and Illinois. You could basically add up California and all the other states, and they don't even hit New York, at least in 2020. You will see when we look at some of the data from more recent months that California actually did pass New York this past month. So that was an interesting trend, but it's really California and New York are the big ones. Florida is in a tier by itself. And then, there's everyone else.

And then, this is what I was referencing earlier. If you look at which plaintiffs are filing the lawsuits, nearly 20% of all websites' lawsuits were filed by six plaintiffs. And all the top plaintiffs come out of New York and New Jersey for the most part. And so this Shael Cruz herself individually filed 94 lawsuits against various defendants in 2020. And then, you can see significant numbers for other people.

Let me see. What does it say here? What is it about the states that make filings so easy or common? Yeah. I think that a lot of it comes down to, obviously, California and New York have some of the higher populations. But there's also certain laws in New York and California, state wise, that make it much easier to file suit there. In California, there's something called the Unruh Act. In New York, there's the New York Human Rights Act. And these acts give plaintiffs money, like let's say \$4,000 in California per incident where there's a violation.

And also, a lot of these lawsuits, most of them, they get attorney's fees, the law firm. So that's what I think they're really going after. So these law firms can file these lawsuits, and they'll get all their attorney's fees paid by the defendant. So that's why we get a lot of settlements early on, because it can really add up. But I think that the laws that are set up in New York and California make it the easiest, the most plaintiff friendly. And I think that's what Congress was trying to limit in their last session, but they weren't able to do that.

So right now, really, is the Wild West where anyone can file suit. They don't even have to send a demand. You could just, today, if you wanted to file a lawsuit against any of these companies, you could. So yeah. You can see a lot of this is concentrated on certain plaintiffs. So again, it's not this organic natural process, because you would think it would only be one or two plaintiffs for each case. But instead, we're seeing a real concentration. So it's definitely set up by these law firms to go after certain companies. I guess we can jump to the next one.

And then yeah. Here is the law firms. So in 2020, you had nearly 50% of all the lawsuits were filed by just five firms. So Stein Saks out of New Jersey was number one. Obviously, they're headquartered in New Jersey, but they're doing a lot of New York cases. Then, you've got Cohen & Mizrahi out of New York. And then, Pacific Trial Attorneys is the lead firm in California. And then, you've got two other New York firms. And this Mars law firm is really one of the more up and coming ones that seem to be filing a lot of lawsuits. So again, you're getting the tri-state area and California, where the law firms are congregating.

Let's see. And then, so now this is our monthly takeaway. So that was our yearly. So every month at accessibility.com, at the end of the month, we're producing these website accessibility recaps. So again, if you go to accessibility.com, you can sign up for them. So for example, this is what our takeaways were from July. You can see we had 176 lawsuits were filed in July. Again, we've got consumer discretionary, which are consumer goods, consumer services, food, and beverage were the most targeted.

And again, we see six plaintiffs are doing 41% of the lawsuits. So again, it's that concentration of small number of plaintiffs hitting the most number of lawsuits. This time, Manning out of California, a law firm, they were actually number one with 29 lawsuits. And 47%, so basically half of the lawsuits were filed in New York. And California was second at 45%. So really, it's just California and New York were running away with it. Then, you can see the 52% of the litigated websites were using a third party accessibility overlay tool. So we can jump to the next slide.

And yeah. So now, this is our August recap. So we get them in pretty quickly. When September is done, we'll probably, in very early August, you'll get our September report. But you can see in August, there was a slight dip down to 149. Again, consumer, discretionary, consumer staples. We were talking about the consumer goods there, and software. They were the most targeted. Seven plaintiffs, again, hitting 44% of the cases.

Pacific Trial, so this is what I was talking about, California again moving up in their lawsuit numbers. And for the first time in I think almost two years, California had the most lawsuits filed. So they actually passed California for the-- I mean New York for the first time. And yeah. And we can get into some more of the details. The next slide. So this is if you sign up for our monthly reports, you'll see this breakdown.

Again, this is the top five categories. You can see apparel dropped a little bit from where it usually is. It was fifth. And we've got these consumer discretionary and staples, and then software coming in third, and then consumer service is fourth. California had 81 lawsuits, so 54%. Then, you can really see after New York and California that there's a huge drop. We're talking about just a handful of cases filed in Pennsylvania, Florida, and then Indiana had two. So it's really, again, California and New York. And that trend really keeps going where they're running away with this.

Let's see. And then, this is the plaintiffs. And it's interesting, we even will break down, give you the plaintiff's name and then show you who they filed suit against. So you could see that we had 17 lawsuits filed by this plaintiff Licea, Lecia-- or Luis Licea. And you can see they're pretty big named companies. We got Dropbox, Allianz Life Insurance. You could see they had another life insurance complaint, another insurance company there.

And so we wonder-- there's no real answer to this, but we think what happens is most likely the law firms give them a list every month, hey, go to these websites and see if you can find anything wrong. And they hit them categorically, like we saw there some insurance companies getting hit. And then, obviously software companies.

And if we go to the next slide, you'll see-- we'll go back one more. Yeah. We see these are the other plaintiffs that filed suit. Again, you could see all pretty large name companies. And yeah. It's hard to tell that we do keep track of which industries are hit. But it's not as if, oh, it's Christmas time. So we're seeing a lot of people go against consumer goods websites or Amazon.

And it's hard to tell from the patterns. It's not, again, organic where there's different plaintiffs every month filing these things. It does really seem like it's probably the law firms going down some kind of list. We're not sure where they get it from, but maybe they're just checking the next one off and seeing who's got the biggest pockets. But you can always see the breakdown of who's being sued.

And yeah. Let's see the next one. And then, again, here's a breakdown of the law firms. So you can see California and Pacific Trials, they were number one. Gottlieb in New York, they had 20 lawsuits. And it goes down. And again, we just have New York and California, again, running away with it. And yeah. So that was the legal portion. And obviously, if anyone has any questions at the end, we will definitely answer that.

SOFIA LEIVA: Great. Thank you so much, Reeve.

REEVE SEGAL: Thank you.

SOFIA LEIVA: Now, I'm going to briefly talk about video accessibility, looking at the laws, trends, and what it is. In the last couple of years, and particularly the last year and a half, we've seen a huge increase in the amount of video that companies are producing and that people are consuming. Particularly because of the pandemic, it forced us to find different ways to connect with our customers and users.

In fact, in a study by HubSpot, they found that 91% of marketers say that the pandemic has made video more important to their brand than ever before. And we're really seeing an uptick of the amount of video that people are consuming. Adweek said that 78% of people are watching videos online every week, and they're using devices such as their phones, iPads, computers, TVs, and sometimes simultaneously. 82% of the world's internet traffic is predicted to take up by video by 2022, which is a large portion and, therefore, really important for us to pay attention and make sure that we are making our videos accessible.

What we're also seeing is that more people with disabilities are accessing video than ever before as well as going online. And that makes sense because we're becoming a more interconnected digital society. And, therefore, as corporations and as content creators, we need to make sure that we're making this content accessible. A study by level access found that 71% of people with disabilities leave a website immediately if it's not accessible.

And another study, by return on disability, they found that over \$1,000,000,000,000 of disposable annual income is missed from people with disabilities when we don't make our content accessible. And this not only makes the brand look bad, because they're alienating a large portion of the population, but also, we're missing out on profits and on being able to share our products with a really integral part of the population.

What we are seeing here on the video side is that more organizations are prioritizing captioning. In a study that we did this year on the habits of captioning, we found that 87% of organizations are captioning their content, whether it's all of their content or some of their content. Organizations are starting to create captioning policies. They're starting to centralize their captioning and also increase their budgets for captioning. Particularly last year, when the pandemic first came upon us, many organizations started to look at solutions for captioning, because they needed to make their content accessible and also make sure that they can engage their audience and reap the benefits of captioning.

Most videos by themselves are obviously not accessible. And therefore, we need to do more than just create the video. Many of us know closed captions, because we see them on a lot of videos now. But in order for video to be accessible, you need to not only provide captions for your pre-recorded videos but also for your live videos. Transcripts are also really important, particularly for audio-only content like podcasts.

Audio description is another important element of video accessibility. Audio description, for those of you who don't know, is a accommodation for blind or low vision individuals that narrates the important visual elements in a video. I like to think of it like a radio host narrating a baseball game over the radio. It's very descriptive. You can close your eyes and know exactly what is going on on the screen.

And then, the last important element of accessible video is having an accessible video player. And Kevin talked a little bit about what makes online content accessible. In terms of video players, you want one that is screen reader and keyboard accessible and also supports closed captions and audio description. And what you realize is many video players themselves aren't accessible, especially popular ones like YouTube where you can't add audio description yet. So as content creators, we need to be mindful of that and work to provide equivalent alternatives.

Since this is a legal presentation, I did want to highlight the important video accessibility laws here in the United States. The Rehabilitation Act of 1973 is the first major accessibility law that I'll talk about today. Section 504 and Section 508 relate to video accessibility. 504 is an anti-discriminatory law that requires equal access for individuals with disabilities. And 508 requires federal communication and information technology to be made accessible.

We talked a lot about the Americans with Disabilities Act, or the ADA. This one, we look at Title II and Title III when talking about video accessibility. Title II applies to public entities, and Title III applies to places of public accommodation like doctor's offices, or libraries, or hotels.

In the context of video, because the ADA was originally intended for physical locations, it's now being widely applied, as we talked about earlier in this presentation, to digital only content. Netflix is actually one of the first streamers to be sued for lack of accessibility in 2011. And this lawsuit really set a precedent for other streamers to be sued for not providing captions or audio description and setting a trend that it's something that we should be doing proactively.

We talked a little bit about the CVAA. This one essentially requires you to add captions to anything that previously appeared on television. And it also phases in audio description requirements. It also requires captions for video clips and trailers that are posted online. And then, the FCC pertains to the broadcast industry and provides caption quality requirements for broadcast television.

We went over the Web Content Accessibility Guidelines, or WCAG. I'll just reiterate here how they apply to video. At a basic level, we want to make sure that we're providing transcripts for audio only content, captions for pre-recorded video, and audio or text alternative for audio description. Level AA, which is usually the one that most organizations try to meet and reference in laws requires captions for live video, such as a webinar like this, and audio description for pre-recorded video. And level AAA at the highest level of accessibility requires a sign language track for extended audio description and live transcript for audio only content.

I want to briefly talk about the importance of caption quality. You'll hear the industry standard is usually a 99% accuracy rate. And what this means is that there's a 1% chance of error. So if we think about a 10 minute file of 1,500 words, this allows a leniency for 15 errors total. And this level of accuracy is only achievable through human intervention. So if you are using automatic captions, you should be mindful to go back and edit your transcripts and make sure that there's no spelling or grammar errors, because this can affect the accessibility comprehension of your content.

And on this graph, I just have a screenshot of a clip from JetBlue where they were using automatic captions. And it reads, "Hello, my name is Joanna Geraghty and I'm Jeff blues President and Chief Operating Officer." So it's pretty funny that their brand name is misspelled. But as a viewer, this can be really confusing and frustrating, because you're obviously watching a JetBlue video, not a Jeff blues. So now, I'll hand it back to Kevin to briefly talk about a really exciting event accessibility.com is hosting in the coming weeks.

KEVIN
MCDANIEL: Thank you, Sofia. And as we talked about, our legal database can be accessed on accessibility.com. But I would encourage-- and we'll get to these. There's a lot of great questions here in the Q&A and in the chat. So we'll get to those in just a second. I'm actually excited about a few of these questions. But I would encourage everyone here to visit accessibility.com and take a look and register for AccessibilityPlus. This is free to attend at this point.

We have some really incredible speakers that are going to be joining us, including Judith Hillman, who some of you may recognize from Netflix's-- or the Netflix-- Netflix-- excuse me-- Netflix original *Crip Camp*, as well as Caroline Casey, the inventor of NV Access, and the former federal Office of Federal Contract Compliance, Craig Leen. Just really some real all-star speakers, including Meg O'Connell with Disability Inclusion. And so I would encourage you all to visit accessibility.com. Register while it's still no cost.

Again, really great speakers there. They're going to talk about accessibility management, assistive technology, reasonable accommodations, and employment processes. And again, we still have limited free space available. We've increased our capacity just recently just to be able to accommodate more free seating. But that space is limited, and I can't stress that enough. We had to pay to increase our capacity. So I would encourage everyone to go register now while we still can accommodate the free spaces. So with that, and, again, accessibility.com. It's on our home page, if you'd like to register.

With that, there are a couple of questions here. There's one question-- I'm going to go in order, but there's one question I'm going to get to here that talked about the accessibility overlays. And the reason I'm jumping to that one first is because while you were talking about it, Reeve, I actually wanted to jump in right then and explain to everyone what an overlay was. You see a lot of these accessibility overlays when you visit websites.

The overlays are essentially-- well, it's an overlay. It's a line of code essentially that provides some functionality, some accessible functionality. And the question here was, I noticed that the website overlays that companies are using do not prevent a lawsuit. I would let Reeve comment to the legal piece of this. But I would just use a good example of this that I can only speak to from my own experience.

Back in Florida, in my last life, we were sued for not providing effective communication through our 9-1-1 functionality. And essentially, the lawsuit came down to this. Persons who were deaf can use something called the relay service. And all states have a version of this relay service, which provides free interpretation from the deaf user to the recipient.

But in the case of 9-1-1, this is an emergency situation where the ADA is pretty clear that they do not want third party services to be the service that a person with a disability has to rely on to communicate, because what happens if there's an emergency and that relay service is down, and they don't have the same structure or functionality that a 9-1-1 service should have? So what the ADA actually says pretty clearly in their technical guidance materials as well as what ultimately came down in our lawsuit was that 9-1-1 and any emergency service should have the ability to accommodate any type of effective communication or any type of communication call without the reliance on a third party.

And most municipalities and law enforcement agencies at this point have had to do this already. They've had to implement, or develop, or procure and implement a text to 9-1-1 feature that doesn't rely on that third party service. And it's the same concept in this question, the overlays. When you rely on an overlay, you're essentially relying on another service to ensure that your content is accessible. But what happens when that overlay doesn't work, or there's a problem or a technical issue?

And then, again, those overlays are only surface-- they're barely surface deep. They're skin deep, because they don't resolve all of the accessibility issues that you may have. They can improve contrast. God, love them. They're great. They do improve accessibility. But they can improve contrast, and they can provide zooming capabilities. But they don't resolve the structural issues that make content inaccessible.

So I would advise that overlays are not relied upon as the primary means for accessibility because, again, the spirit of the ADA and the core concept here is that your services and programs are accessible in the first place. And that, to me, and you tell me if I'm wrong, Reeve. That, to me, would be why I would assume the overlays are being basically discarded in these lawsuits as irrelevant. I mean, Reeve, do you have any feedback on that?

REEVE SEGAL: Yeah. Unfortunately, with our legal system in general, anybody could file a lawsuit at any time. Technically, even if your website was perfectly accessible, you could still be sued. It just depends on sometimes these businesses do a cost benefit and say, oh, let's just settle. It's cheaper than fighting this thing all the way through. But a lot of times, what happens with the overlays is maybe they reach a-- and everything that you said is correct, Kevin.

But maybe sometimes, the overlays help with certain standards but not some of the higher standards, maybe WCAG 2.0, but now it doesn't meet 2.1. Or a lot of times with the laws, it's very difficult to hit every standard. So they always find some kind of loophole or way to get in. Maybe an overlay could prevent-- it's like a burglar, if your alarm system-- oh, well, they have an alarm system. So maybe I won't try and break in the house. But if they really want to, they'll still go forward with it. So there's always some kind of loophole or angle that they can at least get a complaint filed. So yeah. It's difficult to fully stop it. It does seem like it prevents some, but not all.

KEVIN So the next question here is-- and I'm going to try to go in order now on who they have time stamps. I'm going to start at the top. What impact has the pandemic had on lawsuit trends? Reeve, do you want to answer that up?

REEVE SEGAL: Yeah, definitely. We saw in the beginning of 2019, everything was very much on the rise. '20, for website accessibility lawsuits. Then, we did notice right around March, obviously, the second half of March, a big dip. We'd usually get hundreds a month, at least minimum of 100 plus. And then, we were seeing in March, April, May, definitely a slowdown in 2020. But then, it did really ramp back up, and we're now back up to the full levels that we saw in 2019. So yeah. Definitely had a little bit of an impact, but certainly hasn't slowed things down now.

KEVIN And then, the next one is, are these lawsuits just trying to get a payoff? Or are they actually trying to make the websites more accessible? And Reeve, I'll let you-- you've already spoke to that, that the majority of these are coming from a handful of litigants. But I would argue that there is some advocacy here. There's a lot of activism in this process. There's certainly-- and this is just me speaking from the disability community perspective. And I know Reeve will have probably a different perspective.

But I would say that there is some activism here. But it's not always done maliciously. I think that there is certainly an effort here. The ADA is enforced by the Department of Justice and affected citizens. And so I think that there is an effort here to make the websites more accessible. But I'm not sure if that's always the case necessarily with these plaintiffs. Do you want to comment on that, Reeve?

REEVE SEGAL: Yeah. It's such a delicate dance, because obviously, they're in an arena where they are trying to do good. It's a very helpful and good topic, accessibility and trying to help people. But at the end of the day, if they weren't making money from it, would they still be doing it? They're not exactly taking these pro bono. And they're also using loopholes that show that part of it is that they get their attorneys' fees paid.

So it's, again, they can always say that, oh, we're coming from a good place. But at the end of the day, money is a factor. I'd say, OK, if they do this for free and they don't ask for attorneys' fees back, let's see if the numbers stay the same. But again, it is still doing good, but it's also getting a lot of companies nervous, because they feel like they could be the next target.

KEVIN And the next question here is, is state higher education considered Title II or Title III? Reeve, do you-- I mean, I can answer if you'd like. But you may be better--

REEVE SEGAL: Yeah. Well, my understanding, I guess, Title II applies to the states and local governments. Whereas, Title III, talking more about private sector. So I would guess if it's a state higher educational school, it would most likely fall into Title II. But there's probably some way to even slide it into Title III. But I don't know if, Kevin, you more about that or not.

KEVIN Yeah. I've always-- To me, it depends on the funding ultimately. But Title II would be the category I would put them in. And I would go further too to say that with Title II, recipients of federal dollars, there is some coverage there from the federal side. But also, Title II is enforced by the Department of Justice but also by the Department of Labor if you're in higher education. And the Department of Labor has shown-- I've worked on some Department of Labor lawsuits as well as a project manager. I'm not an attorney. And they have not shied away from these standards either.

And in fact, I had to work as a SME on a lawsuit for a higher education organization in Florida. And the issue was captions, actually, coincidentally. The school board had board meetings where caption was not provided. And ultimately, the complaint was brought by an affected citizen. And the Department of Labor ended up weighing in on it. Ultimately, the end result was that they had to adhere to the WCAG 2.0 standards. So they can still be enforced by affected citizens, but there's some federal funding coverage in there. And there's also the Department of Labor's enforcement authority-- or mandate, I would say, that's involved.

Next question-- is there an overlay for video to automatically test for color contrast or legibility? For video to automatically test for color contrast legibility, I'm not aware of an overlay tool that can test video for color contrast. The overlays that exist are essentially code sniffing technologies that are comparing the codes that make up those colors and then modifying them as needed. But I'm not aware of an overlay tool that tests video automatically at this time. Next question here is, have there been lawsuits related to poor quality audio description, complaints against using an AI robot voice rather than a human voice? Are you aware of any of those, Reeve?

REEVE SEGAL: I haven't seen those yet. Mainly, it's saying that the site doesn't have any voice accessibility options. But it wouldn't surprise me that if all of a sudden websites now start doing the robot, let's say, AI voice, and then there's complaints with that, that all of a sudden people do want a better quality voice. That hasn't been the major topic. It's been mainly do they have it or don't they have it. But trust me, I think the plaintiffs' attorneys will find another angle. So those could be coming down the pipeline, but I haven't seen too many of them.

KEVIN
MCDANIEL: OK. Yeah. I haven't seen any of those either. There is a comment here. And then I want to switch to the chat, because there was quite a few other things in the chat. Just to comment, once your site has had a lawsuit and the brand has failed to comply with the set agreement, those involved could file with the court to have the website shut down, resulting in dollar lawsuits until the website is compliant. Yeah.

And if you're a Title II agency, it's not even about the money. I'll tell you. I've been involved in the Department of Justice lawsuits. Ultimately, it does cost a lot of money to resolve these issues. But the issue that comes up when you're involved in a settlement agreement between the Department of Justice, or the Department of Labor, or the EEOC is just the timelines that are required.

And I encourage everyone, after you visit [accessibility.com](https://www.accessibility.com), to go to [ada.gov](https://www.ada.gov) and to look through Project Civic Access' documents. And what you'll find is that once the Department of Justice is involved, or the Department of Labor, you no longer have this voluntary compliance piece that allows you to be flexible and implement these standards in a way that fits your company culture. You're given very specific guidelines and timelines that are very difficult to achieve.

For example, where if you meet this voluntary compliance requirement, where someone complains, or files a complaint against you, or alerts you that an accommodation is needed, where you can create your own mandate within your organization to implement these standards at a time that works for your organization, when you've reached one of these settlement agreements, these timelines are incredible. I saw some settlement agreements where you had 12 months to implement WCAG 2.1.

And if anyone here is on the calls and technology, you know that 70% of digital transformations fail ultimately. And a 12 month timeline to implement standards that are foreign to development teams and design teams, it just makes it very, very, very difficult. The cost is the cost. But the cost becomes so much more when you're on this very abbreviated, abridged timeline. So it's really important to try to adopt these standards and adopt processes that are more accessible in the first place, rather than waiting for one of these settlement agreements.

And then, I'll just open up this chat. OK. OK. Let me go backwards. There was a question in here that I did want to get to. And Sofia, you might be able to answer this better. What about an ad that is streamed on Hulu, for example? Does it require closed captions? So I can answer it. But Sof, do you have-- in your experience, I know you work with those companies.

SOFIA LEIVA: Yeah. All I would know is that under the CVAA, if the ad had appeared on television, then you would be required to caption it when posted online. But Kevin or Reeve, since you are more like the attorneys, please feel free to clarify.

KEVIN Reeve's the attorney. Reeve, I can give the ADA answer.

MCDANIEL:

REEVE SEGAL: I know. That works. I haven't really run into this specific issue that often.

KEVIN Yeah. I would say that you can make the argument, if you're still here with us, Amber, that anything that you post on the internet needs to be made accessible and could require closed captions. The CVAA speaks specifically to content that was originally on television. The WCAG standards speak to guidelines. These are guidelines to make your content accessible.

MCDANIEL:

But there's three different things happening here. The CVAA is a very specific, you must do this if your content came from here. The WCAG guidelines are intended as guidelines. They are a vehicle to get to a result. And like I mentioned earlier in the presentation, when I've had a judge say to me, you don't have to use these guidelines, but you still have to get to the same result. So choose your guidelines. Write your own guidelines. It doesn't matter.

And the spirit of the ADA is that your programs and services need to be accessible to people with disabilities. So if you're posting an advertisement or a television program on Hulu that isn't accessible to a person with a disability, whether they request an accommodation officially or it's just inaccessible to a large part of the population, of course, the case could be made that your content is inaccessible, and it's discriminatory. So I would argue, whether it's an ad or whether it's a program or a YouTube video, if you don't make the effort to make it accessible, then I think that you're definitely at risk for litigation. I don't know. Reeve, do you agree? Tell me if I'm wrong here.

[INTERPOSING VOICES]

REEVE SEGAL: No. I definitely agree.

KEVIN
MCDANIEL:

That would be my answer for that. I'm surprised higher education isn't a significant industry. I do think it is a significant industry, Shereen. I just think that the Department of Labor has a better handle on that, and there's a different process for managing those complaints. So in my opinion, you're just less likely to see these type of drive-by lawsuits in higher education because of the processes associated with Title II entities and the Department of Labor's enforcement processes.

What about the staff-- You answered that question, Ken-- excuse me-- Reeve. Can you resist the WCAG AAA requirements for video? You can resist them, of course. And AAA, I have not seen AAA enforced in a court. Not to say it hasn't been. But AAA is the gold standard. But anyone who requests an accommodation, of course, the organization should give primary consideration to the person requesting the accommodation.

So for example, I had a situation where we had a person who requested an audio description because of the background conversation that was happening in a debate in a city council meeting. And we-- I'm saying we. I was part of the organization. But the common request was denied. And ultimately, when the complaint was filed, we did have to provide the audio description, which would technically meet the AAA requirement. So the standard guidelines are there to provide you a way to get to the result.

But ultimately, you need to work closely with your community to identify what they need and process these accommodations on a case by case basis, because if you can't provide them the accommodation, or you will not provide them the accommodation in the way they request it, then it's on you to provide-- you should first give them primary consideration. But if you can't, then the next objective is to provide-- in a way-- to provide-- you should provide that communication in a way that's just as effective. So you can, of course, resist those AAA requirements. But ultimately, the case that I think always be made that you still have to provide that service if you're pressed, if it's requested.

What happens if your email is not a .com to be orig-- I'm not sure about that. Overlays are garbage, yes. We have some great partners who do more than just overlays. But I would say that they should not be the primary tool you use to ensure your website's accessible. What level of accessibility is required for PDF documents? That's PDF/UA. PDF/UA, though, is not necessarily required to make a document accessible.

The idea of making a PDF document accessible is just to ensure that all the core functions of the PDF and the information is understandable and perceivable. So you can Google PDF/UA, which I believe UA is the universal set of designs for accessibility, I think is the acronym for it. But ultimately, the objective here is to make sure that the content within the PDF is as accessible as it is for someone who does not require access through assistive technology.

And then, we have one more here in the Q&A. What are the major differences between AAA and, I would assume, AA? And what does actually need to be compliant, pertaining to websites? That's a gigantic question. But I would say that the AAA, if I had to sum it up for this particular question, for this call, would be one, the difference between providing live and pre-recorded audio descriptions and captions and providing things like sign language interpreters live.

And I think that the Department of Justice has already really come to their own conclusion on that. It really can be an undue burden to assume that you can provide an interpreter. One of the AAA requirements is that you provide sign language interpreters for every video, live or pre-recorded, I can't remember which one it is. That's just not practical. The cost of providing interpreters range between \$75 and \$110 per interpreter per hour.

And the best practice for the National Association of the Deaf now-- they're the ones who write the rules for RID certification-- is that interpreters should be rotated every 20 minutes. No interpreters should be interpreting more than two hours by themselves. And so essentially, you end up having to pay for two interpreters in two hour blocks at a time, which is, at \$100 an interpreter, is \$400 for every time an interpreter is needed. So I just don't think that the AAA requirements, like that one, for example, are always practical, even for larger organizations like city governments with large budgets.

I think that the case can be made that it's an undue burden to require that that cost be absorbed into the total production cost to produce videos. Think about how many videos are produced-- police officers charged with outreach shooting Facebook Live videos, emergency operations having to shoot videos 24 hours a day during emergencies. It's just not practical. The cost is so exorbitant. It's not effective.

So I would say that AAA is something that shows the organization's commitment to accessibility, but not necessarily something that you always should aspire to, because it's not always going to be practical. They're more of a set of guidelines to help you get to the best result for your particular community. A follow-up on the captions. I understood they were captions. They were baked in and couldn't be turned off. Is there another name for that? Sofia, do you want to answer that?

SOFIA LEIVA: Yeah. That would be when you encode the captions into the video. And so then, you wouldn't be able to turn them off or on. And usually, you see them on social media videos, where you can't upload a separate caption file.

KEVIN
MCDANIEL: OK. And then, one other here from Holly. Think you should be clear. If you do live video on your websites, then maybe consider AAA standards then? Yeah, absolutely. I would go as far as you can possibly go. The objective here is to make your content as accessible as it can be to the maximum extent feasible. And AAA certainly is a great way to reach more audiences.

I'm certain that-- or Holly, I hope I didn't come off the wrong way. I'm not arguing with that at all. As an aspirational goal, I think that AAA is the standard we should all try to reach. No doubt about it. I was just speaking from more of a tactical perspective, more of a project management perspective, trying to implement these standards within an organization. That's all I meant. I definitely think AAA is the way to go if you can afford to do it.

And I think that's-- Sofia or Reeve, do you guys want to add anything to those? Those were a lot of great questions.

SOFIA LEIVA: Yeah. No. This was really great. Thank you so much for taking the time to answer everyone's questions. And thank you, everyone, for joining us today. And thank you, again, to Kevin and Reeve. This was really awesome, very informative. And I know that our audience got a lot out of it. So I hope everyone has a wonderful rest of their day.

REEVE SEGAL: Thank you so much. Thanks for having us.

KEVIN Thanks, Reeve. Thank you, everyone.

MCDANIEL:

REEVE SEGAL: Thank you.