

### LILY BOND:

Welcome, everyone. And thank you for joining this webinar entitled "Navigating the Venn Diagram of Video Accessibility Laws." I'm Lily Bond from 3Play Media, and I'll be presenting today. And with that, I'll get started.

A quick agenda for today. I'm going to start by going over some video accessibility trends, as well as an overview of some of the features required for video accessibility. I'll go through the major accessibility laws and some pertinent lawsuits. And then I'll dive into a Venn diagram of how all these laws overlap and cover which laws apply to you. And then, again, I'll save time for Q&A at the end.

So before we get into the laws, I want to talk a little bit about why video accessibility is important and look at some of the trends. So looking at video, more video is uploaded to the web in one month than TV has created in three decades. Video is not going anywhere and, in fact, it's growing exponentially.

It's estimated that 80% of the world's internet traffic will be video by 2019, which is coming up very soon. And 78% of people are watching videos online every week. So the amount of video being produced and published is just astronomical at this point. And we have to make sure that we're complying with all of the laws and making video accessible to people with disabilities like being deaf or hard of hearing, or blind or low-vision.

So then switching gears to looking at the accessibility picture, accessibility should be a concern for every organization. 71% of people with disabilities say that they leave a website immediately if it's not accessible. And 48 million Americans are deaf or hard of hearing, which is 20% of the population. And 24 million Americans are blind or low-vision, which is 10%.

So if you're not making your video accessible, you're missing out on a huge part of the population. And there's, in fact, growing proof that captions help with viewer engagement and make video more engaging to all viewers. And these are some stats from Facebook to show why.

So 12%-- sorry. Facebook did this study where they found that captions increase view time on Facebook videos by 12%. In that survey, they also found that 41% of videos are incomprehensible without sound or captions. And then in another study by Oregon State

University, which covered how and why students use captions for learning, 98.6% of students found captions helpful for learning.

So a couple of ways in which captions help all viewers better understand your content is really well displayed by how Facebook uses video. So Facebook now features AutoPlay on their videos without sound. So if you're scrolling through your news feed, and you come upon a video and there are no captions and no sound, there is no desire to stick around and see what it's about. You can't understand it. You will just scroll right past.

But if you add captions to a video, it compels you to click right into it and stay on that section of your news feed and watch more videos. So that's why Facebook is finding increased views and engagement. And it's a great example of how captions make video accessible to the entire population.

Another trend in video accessibility that we're seeing is something that all of these companies have in common. And feel free to type in some guesses as to what they do have in common. But as many of you may know, they, along with 1,700 other companies, have all been sued or have complaints against them for inaccessible IT or video. So there are these huge numbers of complaints being filed with the Department of Ed and the Department of Justice for inaccessible websites. And it's really a growing issue that companies are really starting to take notice of.

So to shift gears a little bit and talk about what makes a video accessible before we talk about the laws, I wanted to cover really quickly what are captions. So captions are text that has been time synchronized with the media. And they should include things like relevant sound effects and speaker identifications. They're usually denoted with a CC icon, on or off. And they originated as an FCC mandate for broadcast in the 1980s. But of course, they're being used much more broadly across the web and mobile devices.

So on the screen is a clip from *Stranger Things*, which is a very popular TV show right now. And *Stranger Things* is actually a great example of why captioning is really important. In *Stranger Things*, there is an alternate world called the Upside Down, which appears throughout the show. And one of the indicators that a scene from the Upside Down is coming is all auditory. So these are all auditory cues that alert the viewer that something really big and important is about to happen.

And that's why things like sound effects are incredibly important to include in your captions. So without these captions saying "static crackling on radio," "feedback whines," the viewer would have no idea if they have muted the video, or if they are deaf or hard of hearing, they would have no idea that they should expect a really important scene coming up.

The other side of video accessibility is audio description, which narrates the relevant visual information in a video and is an accommodation for blind or low-vision users. For people who have never heard audio description before, it's often compared to a radio announcer narrating the visual information in a baseball game so that people listening through on the radio can understand what's happening in the game.

And I want to give a brief example of what video is like with and without audio description so that everyone gets a feel for how important it is for those who require it as an accommodation. So if everyone can close their eyes, I'm going to play a quick clip without audio description.

[VIDEO PLAYBACK]

[GENTLE MUSIC PLAYING]

- Ha ha ha! Ooh, hello.

[INHALING DEEPLY, EXHALING]

[GASPING]

[LOUD SNEEZE]

[END PLAYBACK]

**LILY BOND:**

--description, a movie trailer like that has very little context for what's happening visually. And it's very, very difficult to understand. So I'm going to play the exact same trailer with audio description, and everyone will be able to notice the difference immediately.

[VIDEO PLAYBACK]

- From the creators of

*Tangled and Wreck-It*

*Ralph*, Disney, a carrot-nosed [INAUDIBLE] snowman shuffles unto a purple flower peeping out of deep snow.

- Ooh, hello.

[INHALES DEEPLY]

- He takes a deep sniff.

[GASPING]

[LOUD SNEEZE]

- His nose lands on the frozen pond. A reindeer looks up and pants like a dog. Seeing the reindeer slip on the ice, the snowman smiles and moves towards him. Though actually, he's running on the spot.

[END PLAYBACK]

**LILY BOND:**

So it's pretty clear when you listen to a movie trailer which has very little spoken word to describe the visuals, it's pretty clear how important audio description is to accommodate blind viewers who have no context for those few words and sound effects that you'd otherwise hear.

So audio description and closed captioning are critical pieces of making a video accessible and are required by many laws, which I'm going to go into right now.

So the first major law-- accessibility law in the US was the Rehabilitation Act of 1973. This has two sections which impact video accessibility. Section 504 is a broad anti-discrimination law that requires equal access for individuals with disabilities. And this applies to federal and federally-funded programs.

Section 508 was introduced much later in 1998 to require federal communications and Information technology to be made accessible. And this applies to federal programs, but is often applied to other programs through state laws and individual organizational policies. So it's important to keep that in mind.

And as of January of this year, this Section 508 Refresh which was introduced in 2017 has phased in. And Section 508 now references web content accessibility guidelines WCAG 2.0.

So closed captioning and audio description requirements are written directly into Section 508 and impact any organization that is covered by that law. The second major accessibility law in the US is the Americans with Disabilities Act. It was implemented in 1990. And it had five sections, two of which impact video accessibility.

Title II applies to public entities. And Title III applies to places of public accommodation, which extends this law to the private sector. So any private organizations that provide a public accommodation would be covered by the Americans with Disabilities Act.

And the context of a place of public accommodation has been tried in many lawsuits in regards to how it impacts internet-only businesses. So when the law was written, it applied specifically to brick-and-mortar organizations. But now it's been tried against online businesses. A couple of examples are *The National Association of the Deaf versus Netflix*, and *The National Association of the Deaf versus Harvard & MIT*. Both of those lawsuits represent violations of Title III of the Americans with Disabilities Act and have extended the requirements to the internet.

So the third major accessibility law in the US is the 21st Century Communications & Video Accessibility Act, or CVAA, which was introduced in 2010. This applies specifically to online video that previously appeared on television. And so in regard to captions, any online video that was on television with captions has to be captioned when it goes online. And that extends to online video clips. So any "straight lift" clips or montage clips of full-length shows must be captioned online.

And in regards to audio description, audio description has requirements under the CVAA that stays in between 2010 and 2020. Currently, the top 60 TV markets are required to describe 50 hours per quarter. The next phase-in is in July of this year when multichannel video distributors must provide 87 and 1/2 hours per quarter.

So I wanted to talk briefly about the Web Content Accessibility Guidelines, or WCAG 2.0. These are the international standards and best practices for web accessibility. And they have requirements for video written in.

This is referenced in Section 508 of the Americans with-- sorry, of the Rehabilitation Act. And these requirements are often referenced in lawsuits. So these requirements extend through litigation and through anyone covered by Section 508.

WCAG endeavors to make content perceivable, operable, understandable, and robust. And it has three levels of compliance. Level A is the most attainable. Level AA most often referenced in lawsuits and legal recommendations. And level AAA is the hardest to achieve, often the most accessible, but rarely referenced in legal requirements.

So as an example, for video-- the level A requirement for video would be a transcript for audio-only content, captions for prerecorded video, and audio or text alternatives for audio description.

Level AA requirements, which are referenced in Section 508, include captions for prerecorded video, captions for live video, and audio description for prerecorded video. And then level AAA requirements for video would include a sign language track, extended audio description, which would pause the video to allow for sufficient description if there is not enough time in the natural pauses of the video, and a live transcript for audio-only video.

I know, I know, there are so many laws. But we're just getting started. So don't get ahead of yourself. You should also make sure that you take note of state laws. So if you are in a state with accessibility policies, those laws and requirements may extend to you.

Organizational policies. So your organization may have an accessibility policy, and you should make sure to be meeting those requirements.

Lawsuits. I've mentioned you want to make sure that you understand the scope of the

lawsuits and whether or not these requirements and consent agreements could apply to you.

Similarly, consent decrees and "Dear Colleague" letters really help define the scope of the law and where you might fit in compared to some of your peers. And as I said, all of these extend the legal requirements, best practices, and the scope of federal regulations. To speak specifically about some lawsuits that impact different types of industries, these are all examples of cases that have extended the requirements of the law.

So for streaming media, some of the cases include *The National Association of the Deaf versus Netflix*. The National Association of the Deaf sued Netflix for failing to provide captions on many of its watch-instantly videos. *The American Council of the Blind versus Netflix*. They entered an agreement to describe a large number of their original movies. *The National Association of the Deaf versus Hulu*. They settled and agreed to caption all of their videos. *The American Council of the Blind versus Hulu*. Similar to the Netflix case, they agreed to add audio description to many videos. The National Association of the Deaf vs. Amazon. They also agreed to caption 100% of their videos.

In higher ed, we've seen a lot of legal action. *The National Association of the Deaf versus Harvard & MIT*, they were sued for failing to caption or for having unintelligible captions on a lot of their online courses. UC Berkeley, Miami University, Penn State, are all other examples of schools that have been sued or have entered into consent decrees in regard to inaccessible video.

And there are a lot of "Dear Colleague" letters that reference specific recommendations from the Department of Education Office for Civil Rights. And I highly recommend that you read those if you're wondering what the legal standpoints on requirements for video accessibility in higher ed are.

In the corporate space we've seen a lot of lawsuits recently. Some of the major ones are Winn-Dixie, FedEx, Target, Hobby Lobby, and Blick Art Materials. These are all lawsuits that reference Title III of the Americans with Disabilities Act. Again, that is places of public accommodation. So these are lawsuits that anyone with public-facing videos should be aware of. They all are referencing WCAG 2.0 standards, even though those

are not written in the Americans with Disabilities Act.

There's no need to panic yet. There is a lot to remember, but I'm going to break it down and start by going through a Venn diagram. So before I show the diagram, there are a few questions that you want to ask yourself to help you determine where you fit in this Venn diagram, if you're unsure.

The first question is, am I any type of government program? Does my state have accessibility laws? Do I provide a service to the public? So that would be in reference to the Americans with Disabilities Act. Am I a public entity? That would be Title II of the Americans with Disabilities Act.

Do I publish video that appeared on TV? That would be the CVAA. And do I produce video for TV? That would be FCC requirements for broadcast video. So here is a brief split-up diagram of different types of organizations as they fit into all of these different laws. And then I will combine them into a Venn diagram.

You will notice that some of these organizations cross over into different categories. That's because more than one law can apply to one type of organization. So under the Rehabilitation Act, we have federal government, K-12 schools, state governments, municipalities, public colleges, private colleges, online learning, and faith organizations, with an asterisk next to several of these that this only applies if they receive federal funding.

The Americans with Disabilities Act, we have streaming media, training videos, public website videos, state government, municipalities, public colleges, private colleges, K-12 schools, and online learning. Under the CVAA we have streaming media, faith organizations, and broadcast TV. Under the FCC, we have faith organizations and broadcast TV. And under state laws we have state government, municipalities, public colleges, private colleges, and K-12 schools.

So now we're going to look at these exact same lists in a Venn diagram. So I am showing the entire Venn diagram here split into FCC, CVAA, ADA, Rehabilitation Act, and State Laws, with overlapping sections. And I'm not going to go into this. I am going to break it down by each overlapping section.

So the first overlap is between the FCC and the CVAA. And the only organization that is



covered by both of these laws is broadcast TV. So broadcast TV is regulated by the FCC. So that's where all of the captioning requirements come in.

However, audio description rules for broadcast TV are covered under the CVAA. The broadcasters should be aware of both. And if they are in the top 50 TV-- sorry, top 60 TV markets, then they need to be aware that the CVAA requires a certain amount of audio description for that content on broadcast TV.

Looking at the FCC, CVAA, and Rehabilitation Act, we have one group that overlaps in here, and that is faith organizations. So faith organizations are, in fact, exempt from the Americans with Disabilities Act. But they were removed from the list of FCC exemptions in 2011.

So any religious broadcasters have to be aware of FCC and CVAA requirements and Rehabilitation Act. So Section 504 of the Rehabilitation Act impacts any organizations receiving federal funding. And Section 504 applies to faith organizations that apply for financial assistance from the US Department of Labor, partner with an existing Department of Labor-supported program, or receive financial assistance such as grants, awards, contracts, or in-kind assistance.

And just a note there, financial assistance includes both monetary funds and non-monetary funds like donation items, services, or free or discounted use of government space or property.

Moving on, the federal government is impacted by the Rehabilitation Act. So all federal government programs, services, entities, and websites have to comply with both Section 504 and Section 508 of the Rehabilitation Act. There is really no way around that. If you are associated with the federal government, you have to comply.

Moving to the overlap between the CVAA and the ADA, Americans with Disabilities Act, we have streaming media. And so streaming media falls often directly under the CVAA as online video that previously appeared on television.

But we've seen more and more that it's being impacted by ADA requirements. Again, a place of public accommodation. The classic example here is the Netflix case. So the National Association of the Deaf sued Netflix for failing to caption much of its online-only streaming content.

And this was really a case of not enough compliance. So Netflix argued that they were complying with the CVAA because they were captioning all content that had appeared on television.

However, they were not captioning their originals. So any Netflix original content was not being captioned because it didn't comply-- or because it wasn't covered under the CVAA. However, it was covered under the ADA. And the court found Netflix in violation and said that, even though they are online only, they provide a public accommodation to their subscribers and viewers, and not captioning their original content was in violation.

Moving on to entities that are covered only by the Americans with Disabilities Act. The ADA applies to public entities and places of public accommodation, remember. So any training content must be made acceptable under Title II of the ADA. FedEx was sued for not providing captions for a lot of their training videos. That's a direct reference here to the ADA. And then public websites that provide a service or product must be accessible. Examples there are Winn-Dixie and Target.

The overlap between the Rehabilitation Act and the Americans with Disabilities Act covers a lot of online learning content. So Section 504 applies to any organizations that are federally-funded or receive federal funding. And the Americans with Disabilities Act applies to places of public accommodation. So here we have examples of *The National Association of the Deaf vs. Harvard & MIT* referenced both Section 504 of the Rehabilitation Act and Title III of the ADA, as did the UC Berkeley case and the Miami case.

And then state laws and Rehabilitation Act and Americans with Disabilities Act. So this covers several different types of organizations. We have private colleges, public colleges, state governments, municipalities, and K-12.

So in regards to colleges first, if any private or public college receives state funding, they have to comply with state laws. If they receive federal funding, they have to comply with the Rehabilitation Act. And they provide a public accommodation, so they're almost always covered by the Americans with Disabilities Act.

Local government is covered by the Americans with Disabilities Act, Title II, and often receives state funding and federal funding. State governments is covered by state laws,

federal funding, so the Rehabilitation Act, and Title II of the ADA directly references state governments. And then K-12 schools are covered directly by the Americans with Disabilities Act, Title II. And Section 504 applies specifically to local educational agencies, systems of vocational education, and other school systems. And they also must comply with state laws. They are a public organization.

So looking at the full diagram, it's not so hard when you break it down if you understand what type of organization you are and how each of these laws might apply to you. So looking at the big picture, you should know which laws might apply to you. Using this Venn diagram is really helpful.

Another key takeaway, just because you comply with one law doesn't mean you comply with all laws. And you can still be litigated against for not complying with a specific law. You need to keep on top of trends. So all of these lawsuits are giving new best practices and expanding the scope of a lot of the regulations.

And then the last suggestion is to shoot high with compliance. If you're not sure if you're covered by any of these laws, it's always safer to be in compliance just in case anyone comes after you, or just if you want to do the right thing and make your content accessible to any viewers who may not be able to consume it otherwise.

And just a reminder that you've got this. This can be very overwhelming content. It's very difficult to understand all of the intricacies of how the laws overlap and intersect. But you should always remember that the more you care about it, the more you'll understand which laws apply to you. And you should never hesitate to talk with your legal counsel to make sure that you're on the same page and that you have a great plan moving forward.

That is all for me. If you would like to get in touch, have any questions about this, feel free to reach out by email. My email is [Lily@3playmedia.com](mailto:Lily@3playmedia.com). And I'm going to take some questions.

So the first question is, can you comply with one law and still be at risk for a lawsuit? Definitely. So the Netflix case is a great example of this. If the laws that apply to you have different requirements, for example, the CVAA only covers a specific type of video content, and the Americans with Disabilities Act is much more broad and, specifically, just covers places of public accommodation. You can comply with one and not be in

enough compliance to avoid a lawsuit, which is exactly what happened with Netflix.

So you always want to make sure that you're, again, shooting high with compliance, taking the-- if you're covered by multiple laws, you want to make sure that you're shooting for the law that has the strictest compliance requirements.

Another question, what about audio-video live teleconferencing? So this is for live video. There are-- if you are a-- Sorry, OK, so Section 508 of the Rehabilitation Act requires WCAG 2.0 level AA compliance, which includes live captioning or transcription for live video.

So if you are covered by Section 508, either because you are a federal program or because your state or organizational laws and policies require Section 508 compliance, then you should be captioning those programs. Also, the Americans with Disabilities Act, if you are a place of public accommodation, and this teleconference is an example of an accommodation that you would make for the public, then you would need to caption that as well.

Another question here. Knowing that audio description is required for prerecorded audio, are you seeing video players that provide the option to toggle audio description on and off, or does an alternative video generally need to be produced?

Great question. A lot of people are becoming more worried about audio description since the Section 508 refresh because it is now referenced directly in the law. There is a slight barrier here with technology, so many players do not provide the option for a secondary audio track, which would allow you to turn audio description on and off. There are a few players that are very accessible. So Able Player and Oz Player both allow for audio description tracks.

The only major video player that provides this functionality right now is Brightcove. Brightcove allows you to add a secondary audio track which you can turn on or off. Kaltura also allows you to add an audio description track. However, it's a little bit more of a technical solution so you would need to make sure you have a developer on hand to help you with that.

And we're seeing more video platforms start to discuss this as the real option because they're getting a lot more requests for it. At 3Play Media, we provide an audio

description plug-in, which is a simple embed that references your video player and allows you to turn audio description on or off. So that's another solution if you're looking to choose a vendor for audio description.

Another question. Is captioning in a single language sufficient when the targeted audience doesn't speak the same language? So in the US, the only requirements for captioning in a specific language are that the FCC requires captioning in English and in Spanish. So for both English and Spanish broadcasting. There are no legal requirements around translation and subtitling. But it is a best practice, and certainly it helps to accommodate viewers who do not understand the language, to provide subtitles in other languages.

Another question here is, do e-learning designers in the corporate or medical organization world get covered under these laws? That's a great question. So e-learning content is covered often by the Americans with Disabilities Act. So if you are a corporate or medical organization providing online learning content to the public, you're a place of public accommodation even though you are online. And that's where you would be covered. So you want to make sure you're looking carefully at the ADA.

Another question here is, what is the level and scope of enforcement with private universities or corporations? Generally, does it take a lawsuit to enact change? That's a great question. We've seen a lot of-- I would say that there have been a lot of lawsuits in both private university and corporate spaces. And it did really take these lawsuits to start to enact change. But now, the scope of web accessibility for these types of organizations really does include video accessibility as a best practice because it's come up so much in lawsuits.

I will say, certainly, that people are wondering whether or not the laws are moving forward as we had hoped they would. The Americans with Disabilities Act was in line to be refreshed. But just because the legal action in the ADA has taken a back seat does not mean that the scope of those legal requirements is not still extending to private universities and corporations. We're still seeing people very concerned about their requirements just because of the scope of lawsuits.

Another question here. Are any organizations trying to satisfy their obligations by crowdsourcing the accommodations? Like Dotsub for captioning. Crowdsourcing is

certainly a great way to try to DIY captions. You can do so on Dotsub, or Amara is another great crowdsourcing tool. If you're looking to cut down costs and you know that you have an audience that would like to contribute, that's certainly a way to get captions. You want to make sure that they're following standards and that the quality is high enough to comply.

Another question here. What strategies would you suggest when you're met with the perception from a supervisor or upper administrator that we don't need to address these issues until we get a complaint?

I would say that sharing the scope of the legal space is very important. There are a number of resources that show how many types of organizations like yours are getting complaints, and that's often an effective way to get people to buy into video accessibility so that they don't end up in the same situation.

There are also a lot of resources on all of the different benefits of video accessibility. So sometimes it's better to approach a buy-in from the standpoint of how it can help all of your viewers, all of your students, and really create more engagement and learning and comprehension.

Another question is, what does the ADA or any of these lawsuits say about caption quality? So unfortunately, there are not real quality requirements written into any law, except for the FCC who has caption quality guidelines. There's no direct reference to an accuracy percentage either. However, the industry standard and best practice is that captions should be at least 99% accurate.

And again, in the *National Association of the Deaf vs. Harvard & MIT*, part of the lawsuit referenced incomprehensible captions. So it's not lost on the legal side of things that captions have to be comprehensible. They have to create an equal accommodation and an equal experience.

Another question here is, where should you go to learn more about the laws and lawsuits? There are a lot of great resources online. We have several white papers that you can download that talk extensively about each of these laws, and an active blog that references any new and upcoming lawsuits.

There are other great resources. Lainey Feingold's website is a great resource for

learning about the impact of lawsuits. And the Seyfarth Shaw blog is also a great resource for anyone who wants to read more about ADA lawsuits specifically.

And then another question, if an organization hires an outside developer to make their website, does the legal onus lie primarily on the organization or the developer? That's a great question. People are often concerned about who is responsible, who will be liable. The direct responsibility lies with the organization, unless you have written into the contract very carefully with any third-party vendor that they must make the deliverables accessible.

And that is all that we have time for today. And thank you so much for joining today.