

REBECCA KLEIN: Hi, everyone. We are so excited to have you here today for the 2021 digital accessibility legal update with disability rights lawyer Lainey Feingold. My name is Rebecca from 3Play Media, and I'll be moderating today. And with that, I'll hand it off to Lainey, who has a wonderful presentation prepared for you all.

LAINY FEINGOLD: Thank you, Rebecca. Hello, everyone. I am very glad to be back with 3Play Media to do the digital accessibility legal update for today. I have the word "update" emphasized in the slides. I'll talk about that in a second.

So on the title side, I have my name, Lainey Feingold. I have my website, which is LFLegal.com. And I really invite you to check it out. We have about 50 minutes together today, but the website has about 25 years worth of content around digital accessibility and structured negotiation.

My Twitter handle is @LFLegal. I have that on the title slide. Twitter, for those of you not involved, is a wonderful place for digital accessibility information and community. And I have learned so much from Twitter, so I invite you to be on Twitter, follow accessibility. My Twitter is @LFLegal.

I'm also on LinkedIn, where I post issues around digital accessibility. I found out yesterday as I was putting the title slide together that I'm the only Lainey Feingold in LinkedIn. So I don't even have to give you a link, but I should spell my name for you. It's L-A-I-N-E-Y, last name Feingold, F-E-I-N-G-O-L-D.

So I have to start with disclaimers. I am a disability rights lawyer. The reason "update" was highlighted in the title slide-- the word "update--" is because this is an update. I can't talk about every case. I can't even talk about every case that's happened this year in 2021. So I know that some of you in this audience are brand new to digital accessibility. I want to say welcome. I know others of you have been in it for a long time and consider yourselves an elder, like me.

My visual description for today is I'm a white woman. My probably most salient visual element is my graying, turning to white hair. I can no longer say salt and pepper. And I share that as a visual description. My pronouns are she and her. To say that I have been in the space since 1995, and going on 27 years this year. So I'm really happy to share what we can fit into 50 minutes about what's happening in the legal space.

But there is no legal advice in this presentation. If you are a person who has gotten a lawsuit, has gotten a demand letter, is a person with a disability who feels they've been discriminated against, you have to find a lawyer. Don't rely on anything in this presentation. Although, of course, I try to be as accurate as possible.

One resource for going beyond what I share today is I do have a Legal Update tab on my website at the high level menu. So you can go there. And I've been doing updates on the website-- I have some of my own cases going back to 1995. But I've been doing these summary updates since the early, maybe like 2013. I used to twice a year put all the cases into one update and you can find those.

But recently, if something big happens in the space I'll write about it for the website. I do have a mailing list, and you can get onto that through the Contact page. But mostly if you want to really stay on top of it, everything that I learn that's important in the legal space, I do put on Twitter and sometimes on LinkedIn.

So what are we going to do today? I have a nice scene of a fall landscape-- sorry for those of you in snow-- with a path, because this is our path for today. We're going to talk, about why is law even in digital accessibility? What laws are applicable? How are these laws being implemented? What to beware of in the legal space-- and sadly, there are many things to beware of-- how to avoid lawsuits, and how to talk about the law.

And when you're done-- when I'm done today, I hope you will feel that you can put the law into your pocket, which is why I put a pocket here. Because I believe that the law is for all of us and that the law can advance digital accessibility when spoken of right and used in an ethical manner. So that's what I'm going to try to do today-- give you this roadmap, give you what I can fit into this time, and hopefully you, too, can put the law into your pocket.

So why law? Why is a disability rights lawyer talking about digital accessibility? And the answer is really simple. Digital accessibility is a civil right of disabled people. If somebody has to leave after six minutes, you know the most important thing. Digital accessibility is a civil right of disabled people.

I have this slide illustrated with an image, a photograph taken by Tom Olin, and it is of the Capitol Crawl, which was a disability community action prior to the passage of the Americans with Disabilities Act in 1990.

If you're not familiar with it, I really encourage you to look up Capitol Crawl. And it was an action where people who use wheelchairs and other mobility devices got out of their devices and crawled up the Capitol steps to demonstrate the importance of getting the Americans with Disabilities Act passed.

And in this image, you see two people crawling up. One is a Black woman crawling up backwards and she's wearing a t-shirt that says Adapt, which is an organization that was involved in this action. The other is a white woman crawling up forward and there's someone taking a picture from the top.

The reason I like to use this image is for two reasons. One is digital accessibility is about-- digital accessibility is about people. And too often, when you're talking about the legal space, you're talking about requirements, and checklists, and lawyers. And I am a lawyer, but how many of you have been in situations where you've had to say, well, my legal department doesn't want this, or my legal department says this? So it's really important to remember at the outset of any conversation about law and digital accessibility that it's about people with disabilities.

And the other reason I like this image is because today, 31 years after the ADA, digital barriers are the steps that are keeping disabled people from full participation. So accessibility is a civil right of disabled people. We say that because accessibility is about inclusion, participation, communication, employment, privacy and independence, security.

This is, I think, one of the most important-- this is another, OK, if you have to leave now after eight minutes, you could say, oh yeah. Digital accessibility is really a civil right, because it's about privacy, independence, and security. Because the digital world is designed for independent use. And if you have a barrier and a person with a disability has to ask for outside help, privacy is broken. Security is broken. Independence is broken.

So these are some of the reasons why we say digital accessibility is a civil right. And what is the opposite of civil rights? Exclusion. All these things-- inclusion, participation, communication-- versus exclusion.

And I have an image here. You'll see this image in another place in this presentation. This is what I call the digital accessibility cookie. And some of you may have heard me talk about this before. I've written about it. I have a whole presentation just on the cookie. The reason it's here is because one idea of the cookie, which in this image are delicious-looking cookies that were actually baked for a talk that I did in New Zealand. And they have a ton of ingredients-- coconut, and flour, and butter. Some ingredients you see, some ingredients you don't, if you're seeing the screen-- coconut, nuts, M&Ms.

One of the reasons for the cookie analogy is that it takes a lot of roles, a lot of jobs, a lot of people to get accessibility right. And I put it on this slide about civil rights because if you are in this virtual room, if you are taking an hour out of your day to hear about digital accessibility and the law, you are a civil rights champion. You are a person who can do your part to enforce the civil rights of disabled people to be part of the digital world.

So big picture on accessibility-- it's a difference between this closed door, which is a very closed-up, locked door with a chain lock, and a key, and paint peeling, never can get in-- versus this door, which has a light shining in.

Not everybody who's listening to this talk today has the ability to open the door yourselves. I really want to acknowledge that, because whatever your role, you can do what your role allows. But whatever it is, if you're working, if you're pushing, if you're advocating for accessibility, you are advocating for civil rights.

So this is a picture of an unbaked apple pie, because civil rights is a nice idea. Participation, inclusion-- it's good. It's a good value. But it needs to be baked into laws. Without it, it's still good. The unbaked apples in this close-up look yummy, and they're probably coated with sugar or honey. But until the pie is baked, we're not going to eat it, unless we snitch while we're baking. But basically, we're not going to eat it. And same with civil rights. They have to be baked into laws.

And I want to just do a quick overview of some of the laws affecting digital accessibility. Again, this is not legal advice. I'm not going to talk about which law applies to which type of organization. But I want to just give you the feel that the foundation in the law is very strong to support digital accessibility.

So first off, the Americans with Disabilities Act. I have up here five dates. 1990 was when the Americans with Disabilities Act was passed. And from the very beginning, it recognized that if people, organizations, schools, private sector, public sector-- when you're communicating, you have to communicate effectively so people with disabilities aren't left out.

And the only way to effectively communicate digital content, digital tools is to make it accessible. So ever since 1990, the idea that embraces digital accessibility has been part of the ADA.

In 1996, I just don't really like to read things, but I just love this. In 1996, the Department of Justice, Deval Patrick, wrote to Senator Tom Harkin. And he said the following in this letter, which is online. You can find it, or if anyone really needs it, write me and I'll email it to you. In the ADA, they use the technical term "auxiliary aids and services" to talk about what organizations need to do to effectively communicate and not discriminate.

And so the letter to Tom Harkin says, "Auxiliary aids include taped text--" '96-- "Braille materials, large print, and other methods for making visually-delivered material available to people with visual impairments. Covered entities under the ADA are required to provide effective communication--" this is the part I love-- "regardless of whether they generally communicate through print media, audio media, or computerized media, such as the internet." I love that. And that's 1996.

In 2000 on the timeline, significant, was the very first web accessibility agreement in the United States. I helped negotiate that with Bank America. We used a process called structured negotiation. Those of you who aren't familiar with it, it's a collaborative way of resolving legal claims, as well as problem-solving, communicating advocacy that avoids a lawsuit. It's how I've practiced law since 1995.

And in 2000, we had the very first web accessibility agreement. Also in 2000, the Department of Justice filed a brief in a court, and one of the headings was, "A commercial business providing services solely over the internet is subject to the ADA's prohibition against discrimination on the basis of disability." It wasn't a digital accessibility case. It was a case about discrimination in an online gambling forum of some sort, that a person with a disability filed the lawsuit about. But still, this is back to 2000.

2008, we had the Target case that recognized for the first time in a court in a big way that websites connected to physical places have to be accessible. In 2012, we had the Netflix case that said Netflix has to provide captioning, even though it doesn't have a physical place. And in 2021, we have everything we're going to talk about today.

So the ADA is a very strong foundation that embraces the lofty ideals of civil rights that are the basis of digital accessibility. But there's way more than the ADA, in terms of the legal foundation. I've put a picture here of a whole bunch of books kind of in a pile, which is kind of on the eldering theme, that when I started in law and in digital accessibility, we were looking at books like this.

But today, you can go to the internet and find information on all the laws that impact digital accessibility, including Section 504 and 508, which are United States laws that, at its core, are about, if the federal government is going to do something, if the federal government is going to spend money, people with disabilities should not be left out. Should not be left out.

We have a special law for airlines, who aren't covered by the ADA, called the Air Carriers Access Act. That has a special-- not special. That has a requirement for web accessibility. The Communications and Video Accessibility Act-- 21st-Century Communications Video Accessibility Act has requirements about digital. Section 1557 of the Affordable Care Act talks about accessibility for health care-related issues.

There's a law that says, if you're selling to the federal government, or the state government in many states, you have to tell the truth. Ethics is a big part of accessibility. We'll talk about that in a minute. And so if you make a false claim and you say something is accessible when it isn't, that's another source of legal foundation for digital accessibility.

In addition to the federal laws in the United States, many states have laws that are anti-discrimination laws just like the ADA that are state-funded laws, meaning if the state is going to fund something, can't leave out disabled people in the state, similar to 504. State procurement laws-- similar to 508, if the state's going to buy something. So this all is creating a very strong foundation for the law embodying the civil rights ideas.

So beyond the United States-- which I have a globe with a focus outside of the United States-- we don't have time, nor do I know the details of digital accessibility laws around the globe. But I want to give you four resources for those of you who are interested in this beyond the US.

One is on my website, LFLegal.com. I do have a global digital accessibility law article that I've been updating since, I think, 2014, '15 with the help of the incredible digital accessibility community around the globe. And to find that on my website, it's in Most Visited, which you can find on the home page. Or you can search Japan, or Israel, or any number of countries, and you can go right to it.

At the top of my post, I list three other resources, because it's very hard to keep up. I will be the first to tell you that my article, try as I might to keep it up, is not and should not be relied on as the most current source of international laws.

But the Web Accessibility Initiative of the World Wide Web Consortium-- the w3.org/wai-- they keep a global policy list. The G3ICT, which is a great nonprofit, they keep a global list. And Disability:IN, which I do some work for as a consultant, also keeps a global list. So I once did this presentation with someone else and they said, well, you should mention all these things, because if we all look at all of them, we're going to get a fuller picture.

And for those of you listening, if you have anything to contribute to my global page, I really invite you to do so. You'll see that I give credit and gratitude every time somebody sends me an international update.

So possible legal remedies. There are all these laws. There's all this foundation supporting accessibility, embodying civil rights. So what can happen if you get involved with one of these laws?

The very first, most important thing is the laws can require a fix of the problem, of the barriers. And here's where I have an image of the option to be proactive or reactive, because the most important thing to avoid a lawsuit or to avoid a demand letter, or even to avoid a kinder, gentler structured negotiation invitation to negotiate, which is the way I practice law and how I describe it in my book, is to fix the problem. Is to fix the problem.

If you are proactive in fixing the problem, you are more likely to be able to avoid all the other possible legal remedies, which include the following. Paying money to people who are harmed. Paying the disabled person's attorney's fees in addition to your own. Having to report your progress to someone outside your company, like a lawyer or the government or the person who sued you.

Government fines, government oversight-- these are all possible legal remedies that can be avoided if you can be proactive and fix the problem. So again, we don't have time to parse out each law and what remedies are under each law. But these are all potential remedies if you end up in a legal situation around digital accessibility.

So we have the unbaked apple pie as a metaphor for civil rights have to be baked into actual laws. And we again have the same yummy picture of the unbaked apples in the pie as a metaphor that laws have to be implemented. There's the civil rights ideas incorporated into laws, and we have the implementation of laws.

So there's four ways that laws are implemented in the United States. And the first is often forgotten, which is that every day, every day, disabled people are advocating for their civil rights to participate in the digital world without lawyers.

Many of you are working for large organizations or small. Hopefully you have an accessibility statement on your website. People are emailing or phoning with accessibility issues. That's civil rights enforcement. That's ADA enforcement. But even if you don't have an accessibility statement, if you have a customer service line, if you have a Twitter account that people can tweet to, people are saying things that are about accessibility, and maybe not tagging it as such.

You can get a claim. I couldn't hear this video, or I couldn't find the button, or I couldn't figure out how to get to this part of your website, or I couldn't fill in the field for my birthday. It was too complicated for me. Those are all accessibility issues and disabled people, in asking for that help-- many times pleading, begging for that help-- are enforcing their civil rights.

And as I write in my book, disabled people, like people without disabilities, they don't want to be in a legal process either. They just want to go do what they need to do in their job or in their banking or wherever it may be, and go on with their business. So enforcement by disabled people-- I think it's really important to think of claims or complaints or feedback in that way as civil rights enforcement.

There's government agency activity in the US. We'll talk about that. Primarily it's the Department of Justice in the US. There's individual lawsuits. And there's structured negotiation, which is the practice I have. I put a picture of my book here. It's called *Structured Negotiation, A Winning Alternative to Lawsuits*.

And you'll see we'll talk about some recent structured negotiation. But also just as a way-- here in the US, we are so bombarded with the numbers of lawsuits and the numbers of demand letters. And I've written about the ethics of this. And if we have time, we can talk a little bit about that later. Let's not confuse how people may be misusing or abusing the law with what the law is really about. And in my book, I tell stories of blind people and large organizations that we work with and a way to use the law in a way that's ethical in really advancing accessibility.

So let's talk about some recent legal actions in the digital accessibility space. Again, this is the implementation. We have the civil rights idea. We have the laws that the civil rights are baked into. And we have the implementation that is doing the hard work of making the promise of the law a reality.

So I have this divided by sector. And I just want to say at the outset that I am not covering every legal development in every sector. One, there's not enough time. And two, pretty much every sector is seeing some form of legal action. So let's start with health care, because as we try to come out of COVID and the pandemic, health care, of course, has taken a heightened position.

So implementation-- it's so great to have the US Department of Justice back in business enforcing civil rights. So some recent things. There have been five settlements that the US attorney in New York, which is part of the Department of Justice in the United States-- settlements on public websites that COVID vaccination and health information be accessible.

The Department of Justice also recently did a settlement with Rite Aid and a settlement with Hy-Vee for their vaccination portals to make sure that people with disabilities-- again, civil rights, not excluded-- can participate in something as crucial as accurate, up-to-date vaccination information so we can all get vaccinated.

So I have a resource on my website for those of you interested in this piece of enforcement. The website, again, is [Iflegal.com/2021/10/doj-digital](https://iflegal.com/2021/10/doj-digital). And in that article, I am going to keep it up to date any time anything new happens in the Department of Justice.

It's actually already been updated recently with this Hy-Vee and Rite Aid settlements, which weren't there in October when I first put it out. So I expect more from the Department of Justice, and this is one place you can keep up with that.

More in health care. Talking prescription labels. I have an image here from the CVS website that says, "Hi! It's your prescription talking. Spoken Rx tells you which prescription you're holding and how to take it. All you need is a smart-tagged prescription and our app. Call your CVS Pharmacy to sign up."

This is something that the American Council of the Blind, along with myself and Linda Dardarian, have worked on for many years. CVS has been a wonderful partner in structured negotiation and collaboration. They're one of several pharmacies that worked in structured negotiation to bring talking labels to blind people. Talk about civil rights, and health and safety, and being able to read what is on your prescription bottle.

So that is something I think is really important, and is also a reminder that digital accessibility is way more than web. It's way more than mobile. It's the promise of using what's available digitally in a way that's inclusive of everyone.

So talking prescription labels. There's a case pending against the University of North Carolina health care system that deals with all sorts-- those of you in the health care space, you know how much information-- medical records, people are discharged from the hospital. What are they supposed to do when they get discharged? There's just enormous numbers-- I've done whole talks just for health care industry on all the ways in which health care information can be inaccessible.

And again, back to civil rights, back to privacy, your own health. How can we give people with disabilities the information so they don't need to break security and confidentiality and privacy? So that has been pending for a while. The National Federation of the Blind has that case.

This is a very important new development with Quest. Quest is a lab where you can go in and get your blood drawn. And there is a lawsuit pending about their kiosks. About their kiosks, because when you enter one of these labs-- and many of you in the audience have this in your own sectors. When you enter the lab, you're supposed to sign in, register, whatever, with the kiosk, and the kiosks weren't built with accessibility.

I think I have here a little something about that case. This is a case being brought by the American Council of the Blind and some others, being handled by Matt Hanley, who's a civil rights lawyer in Washington, DC. And I asked Matt-- I said, Matt, give me a couple of sentences about this important case, because I've really been following it. But there's been a couple of court orders recently. If any of you are in the space and need those, I'm going to have them up on my website, but they're not there yet.

So there's been two court orders out of this Quest case. And one is Quest tried to get the case thrown out, but the judge said, no, the case has to stay in, that you can bring a lawsuit about kiosks under the Americans with Disabilities Act. And second, the judge said, this should be a class action. So talk about being proactive or reactive. There's a lot of resources for making kiosks accessible. This company didn't do it.

And the judge said that "This is a civil rights action against a party--" Quest-- "--charted with unlawful class-based discrimination based on the use of a specific auxiliary aid and service--" that is, the way to effectively communicate. "It's a prime candidate for certification."

So I have a resource here that I keep on my website about kiosks. And I will update it with this Quest information, which is new. But it goes back to 2018. Therefore, the URL is llegal.com/2018/01/kiosks18. I would have named it differently, had I realized I was going to be continuously updating it with kiosk information.

So in there you can find structured negotiation and lawsuits about kiosk accessibility and also equally important resources for making your kiosks accessible. So that's in health care.

Let's switch to higher ed. Again, we're talking about implementation of laws. Just again two updates. University of Illinois Chicago, just recently announced in the last month a structured negotiation result with Equip For Equality, which is the NDRN protection and advocacy organization in Illinois. They do a wonderful job. And they brought the University of Illinois Chicago, and a blind person together to work on digital accessibility at the University.

And I think I also have-- yeah. They put out a press release. And in structured negotiation, I have a chapter on media, because too often, when an organization-- higher ed or whatever-- does something wrong, the first instinct is, let's put out a press release. Let's put out a tweet and slam them for what's wrong. In structured negotiation, it's not the best way to attract someone to negotiate with you by publicly shaming them.

Not to say it doesn't have its purpose in a lawsuit environment. But in a negotiation environment, it's always better to save the press, the media to the end when you can have something positive to say.

And I love the press release that University of Illinois Chicago, put out with Equip For Equality in November, just last month, that starts with, "Today, the University of Illinois Chicago, announces the outcome of a year-long collaborative process aimed at improving digital accessibility for UIC employees, students, and community members who are blind or have low vision."

And then there's a great quote from their chancellor about how they're committed to full inclusion and participation. So I haven't put this up on my website yet, but now you know, and you can search for that press release.

Duke University has a long-standing case regarding various digital aspects of higher ed that are not accessible. And that has been pending for a while. I really want to refer you to this resource, which I made a short link, bit.ly/HigherEdLaw, with the H, the E, and the L-- sorry-- in capital letters.

This is a resource maintained by Laura Carlson at the University of Minnesota, where she does a wonderful job in gathering all the higher ed digital accessibility cases going back many years. So I encourage you to take a look at that if higher ed is your space.

Civil rights professional exams. OK, so now we're going to do a few more sectors where the civil rights ideas baked into laws are being implemented. So in professional exams and courses, there's a lawsuit going on by Tim Elder, trelegal.com, another disability rights lawyer doing ethical work in the space-- suing the California Insurance Licensing Exam, as well as the private entity that is responsible for that, because blind people can't independently take the exam.

And there's been a lot of cases by the deaf community on continuing legal education. Again, all these things are now digital because of COVID. And the deaf community has been doing cases around accessibility-- primarily captions, also sign language interpreters-- for continuing legal education credits.

And some of these are just resolved without any sort of complaint. Some of them turn into lawsuits. Some of them turn into structured negotiation. But if you're in that space, it's really important to remember, again, accessibility is about people. The law is trying to protect the civil rights of people. What people are taking your courses and your exams? And can everyone do so independently?

OK, employees and applicants, which of course is crucial to the employment of disabled people. The most exciting thing for me in this space is the Cloud payroll system lawsuit that was against ADP that disability rights advocates filed. And I'm very happy to report what the bullets say, starting at the bottom, that this case was settled just last October, this past October.

And I have the settlement agreement here. I just recently learned it was settled. Hasn't really been announced, but it is in the court documents. And I will be writing about that. And ADP, again, all these big picture ideas come to play, because what could be something that you want to be private other than your pay stub? Or some of the issues-- the pay screen, the statements, your employee clock-out. These are all issues addressed in the settlement that will be made accessible during the settlement.

Another thing I like about this case is that it started as a lawsuit, but the parties pivoted to structured negotiation to collaborate within the lawsuit environment to get this done with minimal cost. And it says right up at the top that-- they filed the lawsuit in September of 2020. In January, ADP and the plaintiffs entered into a structured negotiation agreement to provide a framework that has resulted in this agreement.

So my hat is off to ADP for realizing that if you do get into a legal environment, it doesn't have to be fighting. It doesn't have to be denying that there's a problem. The case covers web and mobile, and I'm hoping it's going to be a model for employment software and tools and the need for accessible procurement. So there's that.

There's also been some legal action around accessibility for deaf employees. I have an image of two Black men talking in sign language with each other. One is smiling very broadly. There's two cases. One is the EEOC filed an action against Walmart for not providing a sign language interpreter at a job interview.

And there's a case against the Society for Human Resource Management that's currently pending, was filed this year, called *Ruffa-- R-U-F-F-A-- versus the Society for Human Resource Management* about professional education materials brought by HR professionals. Every stage of work needs accessibility built in. So that's something I'll be following and hopefully writing about.

There's been some cases on remote work and system. There was a case where Amazon agreed to make sure its remote customer service jobs are accessible. There's a pending public sector case brought by a blind person that works for the FBI around accessibility of-- around accessibility of the workplace tools that they need.

So I expect we're going to see more on employment, in part because of the pandemic and more remote work. But also in part because we have to admit accessibility is having a moment. I can't really digress because there's so much content I want to share, but I do want to have that on record, that accessibility is having a moment. More and more companies are committing to it. More and more people are realizing the importance of this as a civil right.

So citizenship. There's a lot of voting cases. The American Council of the Blind, National Federation of the Blind, Brown Goldstein & Levy and other lawyers are doing wonderful work in making sure that voting is accessible. And if you're listening to this from the public sector, what happens in the voting cases is relevant. And again, the civil right of participation in government, privacy, security.

There's also been a lot of captioning cases. This is an image I put up here, but it says "Budget, Virtual Town Hall Meeting. Have Your Say" at this town hall meeting. Again, without thinking of all the people involved, including deaf people, who had to file an action against Broward County. The ADA is not enforced and the civil rights aren't implemented.

Entertainment and community. When I first started in this space, I worked on talking ATMs and financial accessibility of websites. Like I said, I did the first, with others, Bank America web accessibility agreement. We did pedestrian safety, we did health care, all these things in structured negotiation.

And in the mid-2000s-- 2005, '06, maybe-- blind baseball fans came to me and said, well, do you think we can use structured negotiation to get Major League Baseball to make its website and mobile apps accessible? And at the time, I naively and wrongly thought, whoa. That's not as important as finance and health care.

But Major League Baseball became a wonderful partner. They are a leader in digital accessibility. We did the first mobile accessibility agreement with them in the country in around 2008. And I learned from that that civil rights is everything. Participation is everywhere.

So that trend continues with great audio description cases. Audio description is also having a moment. HBO, Netflix, and others have committed to doing audio description. There's some lawsuits. There's some structured negotiation, because all these are different tools to bake the apple pie to enforce the civil rights.

If you haven't seen the ACB Audio Description Awards, I recommend them to you because they're online and it was in the past month. And it was very exciting to see that audio description is having its moment.

Captioning podcasts and more. There was a podcast case that podcasts needed to be captioned. One of the ethical problems I see with some of these lawsuits is that they're filed with a big splash, class action against Gimlet Media, which is owned by Spotify, and then they settle, which this case did, and I don't know what the settlement said. I don't know what the requirements are. So there was a case. It is important to have podcasts captioned, because obviously not everybody can hear what's on the podcast.

There's been a great recent settlement with Planet Fitness. There's a press release out. That was done in structured negotiation by other lawyers to have the digital components of exercise equipment accessible. TV captioning. There was the Federal Communications Commission did its first action since 2012 and put a \$3.5 million fine on Pluto TV for not following the captioning rules of the CVAA.

So retail and food. *Domino's* and *Winn-Dixie*-- I've written a lot about both these cases on my website. I invite you to, if you're not familiar with what the cases mean and how they fit into the big process-- excuse me, the big picture-- I invite you to look at that. I will give you the update, that *Winn-Dixie*, which was a very narrowly drawn, bad case for digital accessibility-- it's still there.

But the parties are trying to see if the court will reconsider. And there are other cases in that same Federal Circuit which are allowing ADA web cases to go forward. So as you'll read, if you read what I wrote, it's very narrowly drawn and is not something I'm worried about.

The *Domino's* case, I did find in preparing for this talk-- hopefully I have it right here-- that the *Domino's* case, after it went to the Supreme Court, it went back to the district court. And there was an order and there were arguments, and the court said, yes, this case can still go forward.

But I recently learned this, that on November 17, Neely's, which is a reporting service, said, "More than four months after a California federal judge ordered Domino's Pizza to make its website fully accessible, the pizza chain and a blind man who sued it for violations of the ADA announced on November 5 that they had reached a settlement in the five-year-old lawsuit."

Settlement isn't public yet, but hopefully that will be the end of the *Domino's* case and we won't have to do a big trial on whether a telephone is equivalent to an accessible website, which I have said for many years, it is not.

Two other quick cases. The *eyebobs* case, I invite you to look up online. That's important because it was a case-- eyebobs an online glasses, eyewear company. And they were using an overlay, accessiBe, and that didn't protect them from this lawsuit.

I really-- kind of out of time to talk about eyebobs, but Sherry Bernhaver has written a very good piece about why the settlement matters. Carl Groves did the declaration. So I'll just point that one out to you.

And the Pressed Juicery I just put up here because that was kind of a random case that didn't get much attention, but it settled as a class action-- all those different elements that are remedies-- settled as a class action. There was some amount of money for the person who brought the case. There were objections to the case by other disabled people who didn't think it went far enough. And then the company had to pay even more money, besides paying attorney's fees. So again, there's a lot of things that can happen if you aren't proactive with your accessibility.

So two other things. My two most recent cases-- one with Patreon, one with Discord on their mobile and their websites being accessible. I put that here today because they reference WCAG 2.1 AA, which is a standard that the courts and the settlements are using. But also, these cases both reference the Authoring Tools Accessibility Guidelines, which is another W3C guideline that doesn't get as much attention, designed so that tools that allow disabled people to be creators, to be authors, are also accessible.

So those two settlements, as well as all the settlements that I've worked on that are public, which is most of them, are on my website in the Settlements tab at LF Legal.

I saved for last my favorite case-- well, one of my favorite. I love the *ADP* case, too-- the \$66 million website case. And I've written about that on my website. It's a case against California Parks System that procured a website that wasn't accessible, paid \$66 million for it. Now it's caught up in a lawsuit brought by Tim Elder's law firm, TRE Legal, and another lawyer, Michael Allen.

And it's all about, you can't say something's accessible, sell it to the federal government, and have it not be accessible. I illustrate this with burning \$100 bills because that's how it feels to me. The status is that there's a court hearing in January and that they have added, as a defendant, the subcontractor on the project, which is US eDirect. So that is really an important case to watch.

Here are my beware-- big capital letter, BEWARE. Beware the overlay. If you are not familiar with the problem with web accessibility overlays, it's important to read these two resources. The OverlayFactSheet.com, which many of you are familiar with, no doubt, and a new one that Carl Groves just put out this week, the OverlayFalseClaims--not.gov. The OverlayFalseClaims.com.

And these are invaluable resources. I've written a couple articles that are in the FAQ and statements from accessibility media. A one line of code overlay will not solve your legal problems and will hurt disabled people who are trying to use your site. So beware the overlay. I've done a whole talk on that. That's all I can say about it right now, but big X over the overlay. Beware the overlay.

Beware of focus on web only. The lawsuits are still pretty much at web, like we've talked about. In last two years, they're more on mobile. Kiosks are coming to be a thing. But where is industry? Industry is way beyond web, mobile, and kiosks. We're talking about augmented reality and extended reality and virtual reality. And I have an image here of a robot, which is really just a bunch of plastic with a iPad there.

The law goes slow and technology goes fast. We need to know the law, but we can't let it bog us down as, oh well, the law's about this. And one thing I didn't do in this talk, other people do it as well or better than I-- is all the ins and outs of what the legal cases say, and who has standing, and which circuit in the United States says this, and what district court.

And if you're in the midst of a lawsuit, that stuff matters. But to put the law in your pocket, what we're trying to do today, it doesn't matter so much, because the foundation is there. And if we get too bogged down in the law, we're going to forget that technology is moving fast and it all needs to be accessible.

So I have two resources. One is the great xraccess.org, which is an organization working to ensure disability inclusion in extended reality. And the w3.org also as a resource at w3.org/TR/xaur. So I invite you to do that.

Another, beware of the silos. Your organization can't do accessibility right if it's siloed into just the IT, just compliance, just design. So beware of the silos.

Beware of the numbers. I'm sorry to disappoint those of you who wanted a whole talk on the numbers. There are a lot of numbers-- how many lawsuits, how many letters. It's important to know. But again, I don't like getting bogged down in the numbers, because the honest truth is there a certain type of lawyer that has seized on our field to bring a bunch of lawsuits and send a bunch of demand letters that oftentimes are not based on a true desire to increase inclusion of disabled people in the digital world.

But that's the world we have. We're not going to distract from our commitment for ethical enforcement of these civil rights laws just because some lawyers are not using the law in a way that I consider to be ethical. So if you do want the numbers, a way to find the numbers is the UsableNet Report. That's a consultancy. They do a report twice a year. And Seyfarth also does a report in their ADR Title III.

I see there's like 45 in the chat and seven questions, so I'm going to just go another couple, three minutes, and then we'll do the questions that we can. I'm going to ask 3Play to save the chat, and to the extent that you want answers to the questions, I will try to answer them. Yeah.

OK, so who gets sued in all those numbers? Companies that use overlays, developers who deliver inaccessible products, experts with bad advice. It's all pieces on all these things. Site and app owners. The truth is, even if you are trying, even if you are trying, sometimes you get the lawsuit. Certainly anyone with low-hanging fruit barriers, like make sure your home page is right as you're working on everything else. Make sure your registration page. Look at your most-used user journeys. Fix those as you're working on everything else.

My next beware-- oops. The shark. I don't like the numbers because I don't like fear. This is why we had the dolphin at the beginning. And fear is not a good motivator. Written a lot about this. I encourage you to look at that. Think about how you use fear in your own life. In your own life, does it encourage you to do what needs to be done, or does it inhibit you and constrict you?

And really, the same should be true about law. We should be thinking about digital accessibility law as inclusion, as something that is core and ethical. And thinking about fear doesn't do that.

How do you avoid lawsuits? The accessibility cookie. The other image for the accessibility cookie are all the elements that go into a good accessibility program. And all we can do here is list them. But hiring disabled people, job number one. Transparency, having an accessibility statement. A testing program, recognizing that there needs to be manual testing, as well as automated testing, as well as usability testing with disabled people.

Training, ethics, design, development, procurement, collaboration. All these things, that you can start now and be proactive about, can help you from being reactive to avoid getting a lawsuit.

So how should we talk about the law? We should talk about the law in my view as a civil right. I have an image here from a great resource called Disabled and Here, which has, these are four-- I think there's three or four. I have the Zoom column blocking a little bit of my picture. But four Black women, some with disabilities, sitting in an office environment.

I do have a resource on my website on how to find images that are inclusive, because accessibility is all about inclusion. And I want to make sure my images are inclusive. So you can look up stock photos if you want more resources, like Disabled and Here, which is where I got this picture.

Talk about accessibility as a civil right, as privacy and security, as part of diversity inclusion and belonging because disability is cross-cutting. So it's not just disabled people need to be at the table, but every other category of people at the table, also include disabled people. Independence, good for business. And yes, it is true that it is the law.

But in my view, in the cookie, the law is a salt, which is why I have this really pretty picture of pink and white salt granules, salt crystals, because it should be beautiful. But you can't have too much salt. It's going to wreck the cookie. Because we accessibility is delicious, I couldn't end without a picture of the blueberry muffins, because you cannot put the muffins-- you cannot put the blueberries in the muffin once they're baked. I have a post on my website for that, too. Accessibility is delicious.

And that's what I got, leaving six minutes. I have "stay in touch" here. Please reach out to me. My email address is here, LF@LFLegal.com. I do speak, like you're hearing me today, LFLegal.com/speaking. I have a mailing list, LFLegal.com/contact. And most importantly, I'm on Twitter [@LFLegal](https://twitter.com/LFLegal). And I welcome you to check out my book, which I have a picture up here.

So Rebecca, back to you. Sorry I didn't leave more time, but did the best I could.

**REBECCA
KLEIN:**

Thank you, Lainey. So we've had a lot of questions come in, but I encourage everyone to keep asking and we'll try to get to as many as possible.

So the first question is, has there been any legal work regarding telemedicine platforms? For example, Doxy is not accessible.

LAINEY Can you say that word before "platform" again?

FEINGOLD:

REBECCA Yeah, telemedicine.

KLEIN:

LAINEY Oh, telemedicine. You know, telemedicine is really important. I know there's been some work with Epic. I know there's people working on accessibility, but I don't have off the top of my head any actual cases, either lawsuits or structured negotiation. But I should know that. And so you can either write me offline or I'll put it on my big to-do list in the sky to write something on my website focused on these health care cases.

FEINGOLD:

I did see one question about accessibility statements. I do have an article on my website, again, something I constantly update, on accessibility statements. And it has tons of links to accessibility statements, as well as resources. The W3C WAI has an accessibility statement generator. So there's a lot out there, and you can find a lot of it on my website.

REBECCA OK. And the second question is, are there any cases focused on digital accessibility for public transit or other Title II agencies?

KLEIN:

LAINEY I was involved in a structured negotiation with Disability Rights Texas with the Houston Transit Authority about their website. I know there's been a lot of great work recently about actual-- like in New York, the Metro stations, making them accessible to wheelchair users. I don't know if those covered digital.

FEINGOLD:

But transit, one of the very earliest digital accessibility cases was with MARTA, maybe Memphis area. And I think it's on an old update on my website somewhere where the schedule for the transit agency had to be accessible. It was very early. I'm sure it was like 2001. So I think transit is solidly within Title II for having to be accessible.

REBECCA OK. And then do mobile apps have the same legal requirements as websites?

KLEIN:

LAINEY Do mobile apps have the same legal requirements?

FEINGOLD:

REBECCA Yeah.

KLEIN:

LAINEY I would say the answer to that is yes. All the cases I've worked on, we do both web and mobile. And like I said, the very first one was 2008 with Major League Baseball. One of the reasons I like to give over the history is because there's new people coming into the space all the time. Many of you may be those new people. And the history matters, because there's no longer excuses. Oh, this is new. We don't know how to do it.

FEINGOLD:

And the court cases are starting to be filed and decided on for both web and mobile. And also, the WCAG is currently at WCAG 2.1 and the standard-- it's A, AA, and AAA. AA is the primary standard of best practice. And the courts are recognizing that. And there's soon going to be a 2.2, and so there's going to be more help in, how do you make sure that mobile is accessible?

But Apple and Android have had Accessibility Guidelines for their developers for years, many of which we write into our agreements, because part of structured negotiation is helping companies get it right, not just hammering on the head for getting it wrong.

REBECCA

All right. So I think that that's all we have time for today. Yes, I'm sorry. Thank you, everyone, for joining us, and thank you, Lainey, for an incredible presentation.

KLEIN:

LAINY

Thank you. Thank you all.

FEINGOLD: