

3Play Webinars | Web Accessibility Lawsuit Trends in 2020

JACLYN LEDUC: So hello, everyone. Thank you so much for joining today's webinar entitled Web Accessibility Lawsuit Trends in 2020. I'm Jaclyn Leduc from 3Play Media, and I'll be moderating today. I'm joined by Jason Taylor, who is the Chief Innovation Officer at UsableNet. So thank you, Jason, for being here. And with that, I'll hand it off to Jason, who has a wonderful presentation prepared.

JASON TAYLOR: Thank you, Jaclyn. Hi, everybody-- appreciate you spending some time with us today. Hopefully we're going to give you some insights around how digital accessibility lawsuits are shaping the industry around digital experiences.

My name is Jason Taylor. I work for UsableNet. I've actually been in usability and accessibility for over 20 years. I started in the early years work with UsableNet 20 years ago, and creating partnerships with companies such as Macromedia, which is now Adobe, for things like Dreamweaver, and working with usability companies such as the Nielsen and Norman Group.

And essentially, over that time I've built up a knowledge of accessibility and usability. And in recent years, I've taken over the oversight of our collection of lawsuit information that we do on behalf of our clients. I'm going to take you through a quick agenda if we can bring up the agenda slide.

What I want to do is really give you sort of what's behind the numbers. So for all you that aren't aware, we produce an annual report. And I'll be pulling main numbers from that report, essentially, that tracks all of the lawsuits that are aimed against digital properties under the ADA. I'm going to try to get behind that and give you an idea of what's behind those numbers and what's driving those numbers.

I'm going to start with a very high-level number and also our methodology of how we collect that data so you understand where that data comes from that we use in the report and I will use today. I'm also just going to throw in very quickly early on so you feel very current, what a typical week looks like. So I actually pulled the lawsuits for last week across the United States in this particular space, and I'll give you just a sort of snapshot of what is currently happening on a weekly basis in the United States in the space.

We'll talk about how the COVID-19 impacted web accessibility and app accessibility in general, and how that also affected lawsuits and people's approach towards lawsuits. We'll talk about what are the most common aspects that you'll find in a lawsuit. More, I want to give you an idea of how a lawsuit is actually generated-- so what actually happens at a plaintiff law firm and a plaintiff to generate the content that then goes into a lawsuit?

I'll talk about the overall factors I think are driving the increase in digital accessibility lawsuits. And then we'll talk about best practices that you could implement today that would help you do two major things. One is increase the accessibility of your digital experiences so more people can use it, and secondly, reduce the risk of lawsuits, which are essentially something you can do hand in hand.

So if we start with just a little bit of background on UsableNet, if we can go to the next slide-- I just want to give you a context of where my knowledge comes from, what our company does. Our company helps hundreds and hundreds of companies make sure that their websites and their native apps are usable by everybody, regardless of ability.

That typically operates in us helping our clients understand where they are with regard to accessibility of their websites and their apps, how to help them get to a good place, and then providing services that keep them in a good place. We primarily work with larger organizations in the retail, airline, and travel educational space.

We specialize in websites which have functionality, rather than just content sites-- so what maybe old school people would call web applications as opposed to web content. But in that process, we work with a whole range of companies across the United States. And the work that we do to monitor and track the lawsuits I'm going to be talking about today is really about understanding how we can help our customers mitigate risk, and at the same time making sure that their websites and apps are accessible to all. So that's sort of the driving factor-- the reason why we collect this--

JACLYN LEDUC: Jason, it sounds like we might have lost you on audio. Just a moment, everyone. Thank you for your patience. We are just having some technical issues. And please just hold for a few moments while we just figure this out.

JASON TAYLOR: Hi, Jaclyn. I should be back now. Can you hear me?

JACLYN LEDUC: Yes, we can hear you now. Let me just check with attendees. Attendees, can you raise your hand if you can hear Jason? Yes, it looks like we're all set now.

JASON TAYLOR: Actually, could you tell me where the audio dropped?

JACLYN LEDUC: Yes. You were just talking about what UsableNet does. And I think you were moving into the next slide.

JASON TAYLOR: OK, perfect. So if we bring up the next slide, which is really going to talk about the big numbers of 2020 in the lawsuit space. So I think it's important for you to understand methodology-- where do we get this information around lawsuits which are aimed at digital properties? And when I say, digital properties, I mean that the subject of the lawsuit is either a website, an app, or a video. That's what I class digital.

What's interesting about the ADA is that lawsuits are obviously filed under the ADA for many reasons-- historically, mostly around physical access-- so a building or a restaurant not providing proper parking space or wheelchair access. So actually last year, there was 10,000-plus ADA lawsuits across all the federal regions-- so in the New York federal court, the Florida federal court, the California federal court.

So the work that we do is we actually download every single one of those cases-- every one of the 10,000 cases. We read the docket to see whether the subject of the docket is a digital property. So all of the data that you see when we report is of the lawsuits which actually make a website, an app, or a video the subject of the claim-- or the other, for example, 7,000 we put to the other side because they're physical or not related to the actual website itself.

And in recent years, there's two numbers that we track. So one is federally filed claims under the ADA and state court claims filed with reference to a violation of the ADA as the basis of the claim. So in both California and in New York, there's state-level laws that allow someone to claim, under, for example, in California, under the Unruh-- claim under that state law a claim that's based on the fact that a website or an app fails under the ADA. So they attach the ADA to the state claim.

We'll talk about why that's interesting in California and New York. But in general, it's really important that you understand that we are reporting not on all ADA lawsuits, only lawsuits which have the subject as a digital property. So we read all those dockets, we make sure that we are only tracking the actual cases which are related to websites, apps, or videos-- so the actual digital property is the subject of the claim.

So these are big numbers, and I'll get into a little bit where they come from. But in terms of from a historical point of view, last year we saw a 20% increase. We're now talking about 3,500 cases a year that are aimed at websites, apps, or video. If I go to one more slide, I just want to bring it to more of a palatable number last week.

So this is last week. This is the actual numbers of last week. After reading all of the ADA claims, these are the numbers for last week based on websites, apps, or videos that got basically sued. So 123 is the total last week across all of the states. 101 were filed federally. 22 were filed under state law in California.

18 of the companies sued had previously been sued already, either for the same website or a different digital experience. So a lot of the times, a company may have been sued for a website by one plaintiff, they settle, they don't fix the website, another plaintiff comes along and sues them again. Alternatively, someone may have been sued for a website, and then another plaintiff firm that specializes in lawsuits against native apps sues them for a native app.

That's why you see around seven of those cases last week were directly at mobile apps, six were at video for lacking captions. So you can still see the vast majority of lawsuits are websites. So out of 123, seven were mobile apps, six are videos, so the rest are actually websites. So the rest is 110 websites.

Of the 110 websites, 10 of the websites that got sued already had an accessibility widget or overlay on the website when they got the lawsuit. And I'll get into that in a little more detail. But if you've been following this subject, there are companies out there that promise, for a small amount of money, you put an accessibility widget and overlay on the website and you won't get sued.

That is clearly practically not the case, because actually they don't fix the things that plaintiff's firms look for. So I'll get into how a lawsuit is actually put together a little bit later. But it's important to understand what a plaintiff and a plaintiff firm looking for, how do they look for it, how do they put it into a claim, and then how does that end up giving them the opportunity to make money from that claim? So let's talk a little about the lockdown, because the lockdown put a couple of things into focus.

There was actually a period during the original lockdown in March where, actually, a lot of the cases dropped off because, actually, typically, you need courts to be open to file claims. So clearly, there was a lull or a dip in 2020 in early March and April, particularly because New York is very strong in this particular area of lawsuits. And because New York was affected heavily in terms of restrictions with regard to locking down during a pandemic, that brought the numbers down for March and April to a lower number.

But everything from then has actually increased, and there's probably a number of reasons for that. One is the internet's become more important. So if you're a plaintiff and you are a plaintiff firm, you can stress how important it is that a website and an app is usable by everybody. So they've got an extra emphasis and extra weight to their argument about how important it is.

There's a lot of ADA plaintiff firms out there that focus on ADA claims. The ones which have that were in focus on physical had less to do, because a lot of places were closed. So actually, the digital spaces are open. So the ability for plaintiffs and plaintiff firms to visit many retail stores online, many hotels online is easier than going out in a car, and driving around, and inspecting the physical space.

So really, there's a productivity about this activity. I would say it's a two-edged sword. So one is you're going to find that law firms are productive. If we can bring up the next slide. So this, again, demonstrates what happened during COVID, how did it affect things.

And you can see that my point about the March, April slide-down-- so for people who may be viewing this and they can't see the slide very well, this slide basically depicts the monthly number through 2020 where the average was around 280 before the March and April pandemic, went down to 129 in April when everything was locked down, and then gradually rose back up to in December was a, quote unquote, "bumper month" of about 487 lawsuits.

And if you imagine you take last week-- so I showed you about last week's slide where it's 123 cases in a week-- you don't need to move the slide, Jaclyn. So there's 123 last week, times that by four, you're talking about 500 cases, right? So we're at the 500 cases per month type range right now in the space that we're at. So that gives you an idea of the pace that is being maintained after the COVID effect. If you can move on to the next slide.

So who's being targeted and how is it being brought together? So this is for people to understand that ADA lawsuits-- and you saw the number, 3,500 lawsuits last year-- it is not 3,500 individuals that have struggled with a particular website that they use on a regular basis, tried to contact that website owner, got no response, went out and find a lawyer, and then sued them. That is not what's happening.

What's happening is that a handful of plaintiffs-- so we're talking about 15 to 20 plaintiffs-- and a handful of very active plaintiff firms-- probably around 10 to 15 plaintiff firms-- filed 80% of the lawsuits. That means that those plaintiffs and plaintiff's firms are filing between 5 and 10 lawsuits a month each. So they are generating lawsuits in a way that is a very productive and methodology-based lawsuit.

So one is if you imagine that a lawsuit's typically brought by someone who's blind, who has had problems doing something on a website or an app, they may add to that a set of simple scans of the website against particular standards to show that certain things are missing against those standards. And they'll make reference to the fact that the website doesn't have an accessibility policy. So essentially, this company's not taking accessibility seriously, right?

So the way that gets put together is that a plaintiff would want to focus on things which they can do over and over again quickly, produce a similar type of content for the claim, reproduce the claim 10 times, and fight it in federal court. This is why e-commerce and hospitality are, first, one of the big targets. It's easy for me to go and find 100 e-commerce sites which are very similar, go do the same type of test, produce the results, generate the claim-- same thing for hospitality, food, hotels.

As I said, the primary are against websites, apps are becoming more and more popular, and also now video is sort of a new thing that we're seeing in 2021. Because if you find a video with no caption, that's quite an easy target for you to just add in a lawsuit and say, that's discriminatory. So videos are very important-- very simple to solve, but important to make sure that you're adding captions.

I said brought by a small group of plaintiffs-- this is sort of a production. The plaintiffs are typically blind or visually impaired. They are going to quickly list-- in my honest opinion, they may spend about two hours looking at a website or experiencing a website, documenting issues. The plaintiff probably has a junior lawyer that uses some scanning software to scan stuff to find a list of issues. Add that together with a boilerplate of discrimination or language, and that is the typical claim.

Accessibility is always listed as the primary. But again, remember the ADA is a civil rights act. It's a discriminatory act. But the claim will always probably reference the WCAG, violations of the web accessibility guidelines, as evidence of discrimination. And then, as I said before, big places are New York, California, and Florida.

The reason why California is so popular is because their state law, unlike the federal law, allows for damages to be paid. So I think it's important for people to understand that the ADA does not give damages. So if I sue a company for discrimination under the ADA, the best I can ask for is for you to remedy the problem and pay my legal fees.

So this is the ultimate goal of both the plaintiff-- most plaintiffs are what I would class as aggressive advocates. They want to find websites which have not taken accessibility seriously enough, and they want to have those websites remedied. They have been partnered with plaintiff firms which are very happy to get their legal fees. That's the politest way that I can explain the relationship between the plaintiff firm and the plaintiff.

This is about not wanting to use a website, but wanting to make sure a website is accessible. So lawsuits are not about, I really want to use this website. Most lawsuits are about, I believe that this website should be accessible, it's not, or I can make a claim that it's not. And the plaintiff firms are very clever at creating enough doubt to basically put themselves in a position to ask for the company being sued to settle. If you can move to the next slide.

So why are we seeing such a big rise on and on? So the first thing I put on this list-- and I'll make sure I read this list so people who can't see it understand what I've got on this list-- the first is empathy to do with everybody now is remote. Everybody needs to use online, right? When I say, empathy, I mean even at a judge's level. When a website's sued for not being accessible, judges and lawyers, even defense lawyers, they have a hard time defending the idea that the website or the app should not be accessible, because they deep down know how important it is that websites and apps are accessible to everybody.

So that raises up the challenge that a company has defending themselves. I would say that the vast reason why so many lawsuits exist is because most companies have not prioritized accessibility to a point that when a blind user goes and uses a site for a couple of hours, and someone scans the site with a quick scanner, the website's not done enough to make sure that those first two activities pass.

If they passed, most lawyers and plaintiffs would move on to the next website. So because websites have not prioritized accessibility, they've given themselves up to this opportunity. Plaintiffs would have a hard time bringing lots and lots of claims unless there was lots and lots of issues out there that they could point to. So it's important that people understand it.

It's a two-edged sword. There's plaintiffs and plaintiff firms that are being very aggressive, but there's plenty of opportunity for them to be aggressive in. Websites and apps typically have many issues, because they've not be prioritized, they've not been tested, they've not been used by someone who's blind and verified that they can be used.

So the second component of why this is a lawsuit area that's blown up in the last three years is the DOJ-- this is not new to the DOJ-- the DOJ has always established that the ADA applies to websites for 20 years. They have joined cases for the last 20 years on the plaintiff's side in the numbers of 250 claims against people like Bank of America, H&R Block, making sure that these companies remedy their websites and apps and make sure they're accessible.

In 2017, they were going to help the world by clarifying what accessibility really meant in terms of a standard, how long you could do it, how long you'd have to do it for, how long you'd have to make your stuff accessible, whether if you're a small company apply because you didn't have what size company would be responsible. But in 2017, the administration changed, and the DOJ backed away from any standards inside the ADA to do with digital experiences.

That left the vacuum. So basically, the ADA had established websites and apps subject to the ADA should be WCAG compliant. All of their settlements, 250 of them, said that. Companies got sued, companies paid, companies remediated.

DOJ stepped away from the classification of standards, left a void for the plaintiff firms to walk into. So the plaintiff firms are just using almost the exact same template that the DOJ used to use to sue people. The third reason is this California Unruh law. Again, it's a civil rights law in California that allows you to sue anybody for discrimination in California.

One of its parties says that a violation of the ADA is discriminatory. So people just tag on, a website fails the WCAG, is therefore a failing of the ADA. I'm adding it to the claim. I'm going to use California Unruh. The reason why it's more attractive is actually, unlike the ADA, the individual can get \$4,000 damages. So the plaintiff actually does get some damages, not just the remediation done.

Item number four, defendants mostly settled. Plaintiffs are winning, that's why the numbers are going up. And they're not going up because plaintiffs are losing, they're going up because plaintiffs are winning. Why do they win? There's some nuances. I don't think it's worth really getting into the actual specifics.

But consider this-- when you're sued under the ADA, there is a long period of time that it will take your lawyers to get in front of a judge to say you did enough. That will cost x amount of money. The plaintiff firms know this. The plaintiff firms typically offer to settle for something less than what they know it's going to cost you to go through the process to get in front of the judge.

Unfortunately under the ADA, that process is not quick because of the way that there's no standards. So it costs a lot to defend. Plaintiff firms just offer to settle for less than what it's going to cost you to defend. That's why most companies will actually settle.

Again, issues are easy to find. Here's the good news and here's the bad news-- the bad news is the issues are easy to find and put into a lawsuit. Good news is, if they're easy to find for the plaintiffs, they're easy to find for you. You should easily be able to find the issues that the plaintiffs find, and you should easily be able to fix nearly all of them with a little bit of effort. So that's the good news, right?

Lawsuits are against mobile, video, and web now. So it used to just be websites, but now there's apps, video. So it increases the digital experiences, that increases the number of lawsuits. And the promise of some of the accessible widgets and overlays to say that lawsuits will go away if you put this thing on your website is truly not the case when 250 cases last year out of the 3,500 were against websites that already had invested and put widgets and overlays on their website.

And this is why-- I just want to bring this out, because it's important that not only are companies using widgets and overlays getting lawsuits, the actual widget and overlay is now part of the lawsuit. So if the plaintiff before listed four or five things or four or five areas around its primary claim of inaccessibility, now they're adding the widget as the fifth reason why the website doesn't work equally for everybody.

And this is actually, for those who can't read this, it's very small-- basically, this is an extract from a lawsuit-- typical extract, because, as I said, they're quite cookie-cutter. But basically, they pull out the individual widget. They take a screenshot of the widget on the client's website. And they basically talk about the fact that the experience on the widget that is meant to help shopping, basically is not possible to, when you're using a screen reader, to click away from the widget and to use the widget in a way that is basically promoted as being helpful for people with screen readers.

So the plaintiff using the website with a screen reader basically gets pop-up windows that they can't basically get rid of. That's essentially what people write inside of lawsuits. So widgets and overlays don't stop lawsuits, and they're being added to lawsuits as functions that the website has that works in different ways for different people-- again, discriminatory.

So essentially, it's just adding to the problem not taking away from the problem. You can move on to the next slide. So let's talk about what you can do to achieve two things which I think are primarily very important. One is, how do you make sure your website or app is more accessible quickly.

How do you identify the low-hanging fruit with regard to prioritization that will make sure that you feel that you know what needs to be done to get in a good place quickly? At the same time, how do you combine that with focusing on items which will reduce your legal risk? And when I say, reduce your legal risk, I mainly mean when someone's testing 30 websites, you're not the one with the most amount of issues. You're at the bottom of that list with regard to, actually, the person didn't have any major problems to report, and actually, we did a scan, and there's hardly any issues that we can report in the lawsuit.

That's about reducing risk. They are actually combined. So the good news is you can do a set of activities right now that will get you both a more accessible, more solid feel about where you are in accessibility and reduce your risk. And I go back to, how do websites get put into a lawsuit?

So the first thing that a plaintiff firm is going to do is probably pick out a standard of some sort, right? You'll hear things like the WCAG standards 2.0 AA is most common, 2.1 is the most relevant. As an institution, I would be like, well, we should go for the prevailing standard, which is 2.1. But that's sort of your guidebook.

So deciding which standard you're going to use-- and again, I would recommend 2.1 AA, because, actually, we see that referenced in lots of lawsuits. But to be clear, the lawsuit does not check everything to do 2.1 or 2.0. They check what is easy, and what is easy is in both 2.0 and in 2.1. So when I'm talking about immediate work you can do to reduce your legal risk, one is pick a standard that you're going to use when you test the website, whether it's 2.0 AA or 2.1 AA.

It's not a big difference in this early stage, but it might make more difference later on when you're working with teams. So I would typically get you to think about prevailing standard-- let's aim for the prevailing standard, because that will make the most logical sense for everybody. The first thing you're going to want to do is, again, plaintiff firms go, websites, apps, video, PDF. So inventory-- what is your client facing?

So one thing under the ADA, it's about public accommodation-- so public content. So if you're a bank, be more concerned with your promotional pages and your get a quote for a mortgage, get a mortgage rate-- applications which are open to everybody without a username and password. Once you get into username and password, it's very unlikely that you're going to get many lawsuits in this public domain, because it's not public accommodation-- although you could argue it's accessed by the public, but in the concept of the ADA, it's not seen as public accommodation.

So public-facing websites, apps, PDFs, videos-- document them and decide what are the main features and functions of those sites. So when we talk about a lawsuit, I talk about there's a blind person, typically, and then there's probably a junior person that scans the website for WCAG issues. This is what you should do right now.

You should go hire or find-- depending on how big you are as an organization-- hire someone who is blind and try and do the main user tasks that you'd expect anybody to be able to do on your website and app. And get them to tell you if they can do it, they can do it with some issues, and what those issues are, or if they can't do it, and where they stopped. Where is the block? Where can you not achieve?

That will give you two things. One, it could give you a lot of feel-good factor-- hey, we actually have a website that can be used by people who are blind, because we've got our user who's blind. Just like any other user testing, we've got our user who's blind and can do it. Secondly, it could give you a quite quick roadmap of issues that you may want to address, because they struggled. And actually, if you fixed a few things, it would make it a lot easier for them.

Or it's going to give you something to get some action from maybe funding or resources or senior management to say, look, we just got a blind person, and this is what they couldn't do. We need to address this. We need to go get resources to address this. Same thing for the same top pages and user journeys-- test them for WCAG automated testing, which basically means scan them for all the low-hanging issues, and get your web team to update that as quickly as possible.

So you get a far cleaner report every time that you scan it. That will put you in a place where you have instantly improved stroke understood accessibly and reduced your risk at the same time. So this is what I typically recommend, and it is something that we do for a lot of our clients.

When they first come to us, we quickly do, for example, a mini-audit. We'll take the top two or three user flows, the top pages that are used, the top user flows on the app-- we'll quickly test them with someone who's blind. We'll quickly do a quick technical audit. And in two weeks, we give their dev team, whoever maintains that website, the information they need to really attack the high-priority stroke high-visibility issues.

Then after a short-term, you can sort of start thinking about long-term. And long-term is really, for me, the addressing full accessibility of a website and app to guidelines, integrated into teams, not as a silo. This is where things like an accessibility statement or policy at the beginning is going to help you get people to buy in mid to long-term.

This is why we always talk about an accessibility statement. Even if the statement is, we're doing this-- because actually, you're not legally less represented by saying that you actually know you've got work to do than if you don't have work to do under the ADA-- but more importantly, it will galvanize senior management. You're going to have to make a statement about what you're going to do in accessibility or a policy.

That means senior management needs to get involved. Stakeholders need to understand what their role is. And they're going to have to also find the resources to make that happen. The other thing is if you've got a policy and you've got teams that are then told to do this, they can see that it's important to the company. The policy gives them a motivation that actually, this isn't just a sort of frivolous thing that we're doing or a boring thing that we're doing.

This is part of the company culture. We want to be inclusive. We want to be accessible. This is important work. So in the medium to long-term, you need to build accessibility in like you build security or privacy.

You need policies, you need processes, you need training. You need every team to be thinking about that when they're doing their bit. So when you're actually starting to do a design, they're thinking about the accessibility of it. When devs are doing prototyping, they're not just prototyping something that can be used by one, they prototype for everybody to be able to use.

You add someone who's blind or someone with low vision as your user testing group, as your personas. You integrate this type of user as a persona throughout your design, test, and maintenance phases. So in the early days, it's about, for me, actively looking at a two to three-week project where you really get a handle on what you need to do, you get that blind person in, you do some early testing.

But then it's about establishing policy and procedure, but this just takes care of itself. This is something that we do as part of everything that we do. It's not something that we do at the end. It's not something that's a specialized group. It's something that everyone can understand. It is not rocket science. It's just practical understanding of the implementation of how to do accessibility. Jaclyn, I think we're close to sort of getting into Q&A if that's practical for you.

JACLYN LEDUC: Yeah, looks like it's Q&A time. We had lots of questions come in. So if you are ready to take those questions, I can read them out to you.

JASON TAYLOR: Yeah, absolutely.

JACLYN LEDUC: Great. So one of the earlier questions was, do you publish the week by week lawsuit metrics that you had covered earlier on?

JASON TAYLOR: The answer is, no. We try and do six monthly. We try to predict trends. So we typically want to collect that data over a period of time and look at things like trends in that six-month period. But right now, we do it by biannually, I think is the correct terminology.

JACLYN LEDUC: And do if there is anywhere where people can find similar data for international lawsuits, like in Canada, England, or throughout the world?

JASON TAYLOR: You will probably find very few if no lawsuits outside the United States, as I think people recognize in the United States this is a very unique legal system. And other countries have clear accessibility laws. So Canada has an accessibility law. They've also got laws at the regional level like Ontario.

The UK has laws governing mostly their government websites and federal websites, not private websites. But there isn't this legal structure that exists in other countries where, quote unquote, "claims" can be made quite aggressively in a combination of a plaintiff and a plaintiff firm where, of course, probably the plaintiff is not hiring the plaintiff firm, they're working in, quote unquote, "partnership" to generate these legal claims. So there's no way to search for them, because there are actually no, to my knowledge, any significant international lawsuits.

JACLYN LEDUC: And so in the US, if a company is to get sued, how long, typically, do companies have to remedy the accessibility issues once they are sued?

JASON TAYLOR: Yes. This talks to the idea of how companies get sued multiple times, right? So for example, I'm trying to think who the winner is right now. One of the big luxury brands-- I think it could be Louis Vuitton-- they've been sued seven times in the last two years, right? So you're like, wow, how do they get sued seven times?

There's a couple of reasons why they get sued seven times. This is how lawsuits happen-- someone comes along and they sue LouisVuitton.com. And LouisVuitton.com talks to their web team and says, how much accessibility have we done? And the web team goes, to be honest, we've not done much.

Yeah, there's probably stuff on the website. We should probably settle. So the lawyers go off and they argue with each other about how much the settlement should be. And they agree in the end on a settlement. Part of that settlement typically means that the time to remedy is normally set at two years. So the lawyers come back to the web team and go, great news, we settled. We have two years.

What the lawyers forget to tell the web team is we settled with one individual for two years. It means that if another individual comes and sues tomorrow, they'd have just the same amount right to sue as the first individual. You only settled with the individual for two years, not everybody for two years.

This is why websites are sued multiple times by multiple plaintiffs. Because, actually, some plaintiff firms look to see which firm got sued and settled, because then they can come behind that quite quickly, OK? There are things that your lawyers can do, especially if you're sued in the same state. If you've already settled and created some type of safe harbor at a particular federal court level, there's the potential to stop you getting sued for that website.

But again, most plaintiffs are clever. They only settle on one website, one person. That means that person can also sue the app tomorrow, can also sue any other website owned by Louis Vuitton tomorrow, OK? So that's why I typically say the first thing you should do if you get a demand letter or lawsuit, in the same way that you'll see we have on our report the top 10 plaintiff firms, and we had the top 10 defense attorneys-- call one of the defense firms, or call us. Or you can text us, we'll give you someone that we think knows this space.

Because the plaintiff firms, there's a small number, a well-informed defense attorney knows how that plaintiff is going to work, but also knows how to construct a settlement that gives them the broadest possibility to not get resued-- meaning we want to cover all of our websites and apps in that settlement. We want to create a safe harbor.

We don't want this private. We want this public so if we're ever sued, we can bring out the public side of it to the judge to say, look, we've already agreed under another lawsuit to do this. So in the early days, a lot of people were like, well, let's keep this quiet. Let's not tell anybody. Let's keep this private.

Well, that meant that they can't tell anybody they got sued. So if you get a demand letter, you get a lawsuit, hire a defense lawyer for a couple of hours for them to tell you, OK, we know the playbook of this plaintiff. We know what they're after. We know how a lawsuit should be constructed.

And that's why I always say that you should get outside counsel. Even if you've got the best in-house counsel, they won't know the tricks of the trade of this part of litigation. So consult with a defense lawyer early even when you get a demand letter, because sometimes they'll tell you that demand letter will just disappear. They might tell you, no, that demand letter will turn into a lawsuit. So it will give you an idea of who you're dealing with.

JACLYN LEDUC: Thanks, Jason. And as far as these lawsuits, are they being brought up due to lack of compliance not just for the ADA, but for WCAG 2.0 or WCAG 2.1?

JASON TAYLOR: Well, all lawsuits typically reference violations of WCAG, the W-C-A-G, as evidence that discrimination is happening. OK, so the ADA is a discrimination law. It's a civil rights act. It's a lawsuit that says this company is discriminating against me as a blind person, because they haven't taken accessibility seriously. I've tried to use their website, it doesn't work.

And as evidence, here's a list of violations of the WCAG, which is the common standard of accessibility, to show that this company is discriminating against me. As you can tell by my wording, it's not the same thing, but they use it as evidence of discrimination. Today, nearly every lawsuit that we look at references 2.1 AA as the prevailing standard in the lawsuit.

But the ADA does not reference the WCAG, to be clear. The ADA doesn't reference anything. The DOJ in the past has referenced the WCAG as a good measure of accessibility. But again, it's about creating evidence and claim of discrimination on one side by plaintiffs so the settlement is more forthcoming from the defense side. But in terms of, is the WCAG referenced in every lawsuit? Yes. What version? 2.1 AA.

JACLYN LEDUC: And as far as WCAG compliance goes, what are some of the tools available to help test for compliance?

JASON TAYLOR: I think every serious accessibility company like us, vendors, we have a free version. You go to our website, and you can test as many web pages as you want with our free version. And you'll find similar free versions, popular ones, like WAVE, W-A-V-E, which is from WebAIM, which is an online or an extension.

There is an extension in Chrome itself. If you actually use Chrome, don't have to install anything-- inside of Chrome, you'll find a feature called audit. It gives you four options. One is SEO, one's accessibility. So you can test with Chrome itself. You don't have to download anything. It's built into Chrome.

JACLYN LEDUC: And would you be able to talk about some of the most commonly found accessibility issues on websites that would rank as the worst problems, such as unlabeled form fields, missing alt tags, color contrast, and other things similar to that?

JASON TAYLOR: Yes. So again, if I separate a claim into two distinct areas, the first part of it is typically that a blind person can't achieve a certain user journey, let's say-- buy a product, book a flight. The most common errors in that will be items that basically, we call them keyboard traps.

Essentially when someone's using just the keyboard to navigate through those steps, at some point, their keyboard doesn't go to the next relevant element. It gets stuck, because of, typically, complexity that's happening in the page. So for example, if things like size and color selection, add to cart, add my credit card, all of these things are complex.

Things can be done in that particular type of interface that can block someone from achieving something. And that's typically what will end up in the claim. They couldn't add the thing to cart, they couldn't select the color, they couldn't do this, they couldn't do that. Behind there is quite complex interactions.

So your dev team would have to look at how that's built, how they're handling things like the focus order and everything else with regard to using a keyboard. An easy way to test it if you're not blind, you just try to use your own keyboard, take away the mouse, take away the trackpad, just use your keyboard to navigate your own website and use it. If you can't, you've probably got a problem.

The other thing about that is when things change on the page and they're not declared-- so imagine you're blind. If you've got a website, if you pick something on the website, something changes inside the page, but if you're not told that something changes inside the page, and clearly if I'm blind, I don't know about it. So it's called declaration of change.

So those are the two big what I call user issues-- real user issues. The other things listed on claims, for me, they rank from annoyance to potentially big problems, right? And these are the things you can find automatically. So for example, an alt tag missing off a decorative image technically is a violation of the WCAG.

But I've never heard any of our real blind users who work at our organization worry that much about alt tags, to be clear. Alt tags on images, back in 2000 when it was written, used to be very important because people used to use images for navigation. If there was no alt tag to say, click here for home, well, that image would not be clickable, and you can't go back to the home page, right? Well that's not HTML today. You don't use images for navigation.

So alt tags people talk about a lot, but they're mostly annoyances-- not real barriers. Form fields, of course-- if they're not correct, you don't know where to put your name, your last name, your date of birth. Your form fields can be easily checked, and if they're wrong, they can cause big barriers.

Header orders-- so if you're on a page, I would like to know where header 1, 2, 3 is, meaning how the page is structured. Again, if it's not there, it's annoying for a screen reader user, but maybe not a super barrier, but annoying. And actually, you've not made it useful for the person to use. So the stuff that you find with automatic is a combination of annoyances and can be real barriers.

But the thing you'll find is you get a lot of them. If you've never done accessibility on your site and you test 100 pages, you're going to have 1,000 things to fix. But don't panic, because a lot of times you might find that they're actually repeated on every page. So the navigation, the header and footer-- there's 20 issues on the header and footer on every page. You fix it once, it's fixed on every page, right?

So think about a website made up of components, focus on components, focus on header, footer, navigation, carousels. Components, which is basically how dev work is done, is how UX design is done-- so you shouldn't be thinking about pages. You should be thinking about components. You should be thinking about user flows.

You should be thinking about success criteria for actually using the website as opposed to getting too focused on the smaller stuff. But as I said before, it's a combo, because the small stuff is high visibility, easy to put into a lawsuit, but also easy to find, easy to fix. So focus there.

JACLYN LEDUC: Thanks, Jason. And I think we have time for one more question. So as far as accessibility statements go, do you have any feedback as to what someone who's unfamiliar with an accessibility statement should include in that statement?

JASON TAYLOR: I do believe we have a blog that maybe, Jaclyn, you can send out, as I was saying. But my general guidance on a statement is to talk about what you are doing to support accessibility. Make it easy for them to contact you if there's a problem, OK?

And try and stay away from definitive statements of standards. An accessibility statement can be, we regularly bring in blind users to give us feedback. We regularly test for WCAG. Internally, there's training available for our developers-- things that you're doing, things which are concrete steps to show that you are not, quote unquote, "discriminating." You do not have a discriminatory policy against people with disabilities.

So what are you doing to make sure that your website is accessible? And on that page, indicate that if there's any problem, email us, call us now. If you use email and call, make sure that whoever gets that knows how to handle those calls and those emails, how to escalate, how to communicate that, how to ask questions about what problems they're having, what type of device they're using.

So there needs to be some training on that customer support line or customer support email. It can't just be, hey, sorry you're having a problem, right? You want to make sure that if you are asking people to contact you, you're equipping those people to respond. The reason why I say stay away from standards, standards change.

And also if you say, we've made our WCAG 2.0 AA, well, technically, if you miss one alt tag tomorrow, you're not. And someone can call you out on that. So for me, there's no benefit in saying that you're going to try and achieve a standard. You are going to test and apply the relevant parts of the WCAG-- that's a fine statement, because that's you applying what matters in the WCAG to your website, not a statement of fact in terms of a standard.

JACLYN LEDUC: Thanks so much. And thank you for answering all those questions.