LILY BOND: Welcome, everyone, and thank you for joining this webinar entitled the Legal Year in Review: Digital Access Cases. I'm Lily Bond from 3Play Media, and I'll be moderating today.

I'm thrilled to be joined by Paul Grossman, who served for 40 years as a civil rights attorney for the US Department of Education Office for Civil Rights and for 30 years as its chief regional attorney in San Francisco. He is also an adjunct professor of disability law at the University of California, Hastings College of Law, and he has a fabulous presentation prepared for you today. And with that, I'm going to hand it off to Paul.

PAUL GROSSMAN: Good afternoon on the East Coast. Good morning on the West Coast. And to my friends in Wisconsin where I went to law school, I hope you're enjoying the primary circus that's going on in Wisconsin right now.

So I thank you very much for the introduction. And I'm not going to take much more time to tell you about myself except to share with you that, because I was with OCR for 40 years, I was there at the very beginning of the alternate media movement or the developments in the law around alternate media, and later online access, as OCR San Francisco was really the pioneer on this issue when it decided to work with the California Community College system, all 100 campuses, to see to it that students who were blind were getting alternate media in the form of Braille. And Brailling was really the first area that we took on because the system had many blind students who were, quite logically, unhappy with the fact that they could not read the materials that were assigned in class because it took so long to get Braille material or they never got Braille material.

Just to let you know that I have published a book for people who are in higher education in this area, and the link is shown there. I also need to tell you that although I am a lawyer, I'm not your lawyer. And if there's any difference of opinion between me and your attorney, your attorney is correct and I am incorrect.

So we have over 1,000 people online taking this class today, which is very nice. And I'm sure a few of you are online because you're intellectually curious individuals. But most of you are online because you believe that listening to this webinar will in some way help you with your practice, with your profession, or perhaps, if you're a student, help you to achieve equal educational opportunity.

But imagine if this presentation, which is becoming more and more the way all Americans learn, was not available to you because you are one of the 48 million or so deaf or hard of hearing individuals in America, or one of the 7 million or so individuals who are blind or low vision. Just before the passage of the ADA, Louis Harris, who was a very famous pollster then, ran a poll on the condition of individuals with disabilities in America. And among the most shocking things that came out of that poll was the degree to which individuals with disabilities, particularly individuals with sensory impairments-- deaf and hard of hearing, blind or low-vision persons-- were segregated from society, could not participate in it.

And the fear is that as we move into the digital age, we're faced with a two-edged sword because in some cases, of course, technology can make the world more accessible to individuals with sensory impairments. But in some cases, it can prove to raise new barriers and resegregate our society. And that's why this issue is being so heavily litigated by individuals who fear that they're going to end up on the wrong side of the digital divide.

So today, I'm going to start very, very briefly with what I call roots, which is just to give you a quick, quick overview of the law in this area. And maybe we will do a whole nother presentation at another time when we really sit and look at the regulations and the statutes and so forth, but that's not the purpose of today's presentation. The purpose of today's presentation is to see the battles that are going on right now in the single hottest issue in disability law, which is access by persons with sensory impairments to the virtual world to information that is conveyed by EIT, Electronic Information Technology.

So let's go very quickly to the roots. And there are other laws that I'm not mentioning on this page that are relevant and important, but I just want to talk about the most important laws that are at the center of this year's litigation. I apologize. You're going to hear me gulp water every now and then because I have emphysema and I tend to lose my voice.

So the first is Section 504, the Rehabilitation Act of 1973. It applies to all recipients of federal financial assistance. So virtually every post-secondary college and university in America is covered, virtually every hospital system in America is covered, whatever kinds of entities receive federal financial assistance. And what I want you to know about the regulations implementing Section 504, even though they are very old and were clearly written before Congress had any idea what the internet was about, is, like all three of the regulations that we're going to briefly mention this morning, they start with a general nondiscrimination provision.

And it's important to understand that the terms in the first part of each regulation are extremely broad. One might even call them a little vague or amorphous. But the reason is precisely for what's going on now, which is, gee, if we didn't think about whether something was or was not covered, we can put forth general language which eventually some court or someone writing a regulation implementing this law can take and use as a basis to address new things on the cutting edge, such as EIT and the online world.

In addition, the 504 regulations, like all three of the laws that we're looking at today, include what are called disparate impact regulations. And what that means is intent is not a necessary element of establishing a violation. So it may not be your intention to have a website or an online program that discriminates against individuals with sensory impairments. But nonetheless, if that's the impact of what you do, you are responsible for your action.

The regulation also has what are called indirect prohibitions, which means if you contract out some function to another company-- let's say to run your MOOCs, for example-- you're still responsible for what they do. And as old as this regulation is, it does require auxiliary aids as necessary for individuals with sensory impairments to participate in all programs and activities.

And more recently, OCR and the Justice Department issued what's called the Kindle Letter. It only applies to higher education entities, but in effect says when you adopt and implement broadly new technology, you must ensure that it is not a barrier to participation by persons with sensory impairments. Now, there is a limit on this duty. The limit is fundamental alteration or undue burden. And when we look at the cases, we'll get into that issue more.

Title II of the ADA has the same kind of regulatory structure as does 504, so everything above applies below. But in addition, the Title II regulations, being much newer, also include a provision for equal communication and accessible electronic information technology. And also the Kindle Letter applies here. Same defenses apply.

Title III is a little different because it applies to public accommodations. So what is a public accommodation? A movie theater, a grocery store, a travel agency, just about any private entity open to the public.

But there's a great debate about whether if you're a virtual-only entity-- like, for example, Netflix-- the ADA Title III applies to that part of your program. Are those public accommodations, and are those goods and services? So Title III requires auxiliary aids for

persons with sensory impairments when necessary to achieve full enjoyment of goods and services at a public accommodation. The question is, well, what's a public accommodation?

And there's an additional limitation which doesn't come up under the other titles, and that includes that a public accommodation is not required, quote, "to alter its inventory to include accessible or special goods that are designed for or facilitate use by individuals with disabilities, such as Braille versions of books." So if you run a bookstore, you don't have to have a Braille version of every book just to give people full enjoyment of your goods and services. And we're going to get into this issue much more.

So the first issue I want to talk about is deliberate indifference, and this comes up in the case of *Dudley versus Miami University.* So why is the term "deliberate indifference" important? Because to get monetary damages under Section 504 or Title II, you must show deliberate indifference, kind of intent, in order to get those remedies.

So if I wished to sue Miami University and prove that it was inaccessible to individuals with disabilities, but failed to establish deliberate indifference, they would still have to change all their websites and take what's called injunctive relief, but they would not owe me punitive damages. And, of course, punitive damages can be a big incentive for compliance. So when an entity like the National Federation for the Blind sues Miami University, it would like to establish deliberate indifference.

Well, here's what I want you to know about this case. The NFB posited that deliberate indifference was demonstrated by the fact that when the university went and purchased things like its academic software, like Canvas, for example-- and I don't know which one Miami is using, so I'm just using Canvas as an example-- it did not take into account whether or not that software was accessible. So to say it another way, relying on ad hoc solutions after you purchase your software would not be acceptable. And, indeed, it might make you subject to punitive damages.

The Justice Department moved to intervene in this matter and did an investigation and found that Miami used technologies that are inaccessible to individuals with disabilities, including those with learning, hearing, and visual disabilities. Now, mind you, this is not the finding of the court.

And here's what DOJ said-- "Miami University's failure to make its digital- and web-based technologies accessible to individuals with disabilities, or to otherwise take appropriate steps to

ensure effective communication with such individuals, places those individuals at a great disadvantage and deprives them of equal access to Miami University's educational content and services. The denial of educational opportunities is precisely the type of discrimination that Congress sought to end."

Well, I wish I could tell you that there was going to be a quick decision on this principle because then we'd know whether this is, in fact, deliberate indifference. But I have some inside information, and it is that likely, this matter is going to settle. But the content of the settlement agreement will also be very important for us to all see, and I will certainly share that agreement with 3Play as soon as it gets approved or published.

So the next area I want to talk about is compliance reviews by the Office for Civil Rights and by the Department of Justice. So I'm talking about Department of Ed Office for Civil Rights, and we're talking about their jurisdiction over post-secondary educational institutions under Section 504 and Title II of the ADA.

If you are a post-secondary educational institution or, indeed, if you're a municipality, I urge you to go to the OCR Reading Room and get a copy of the letter to the University of Cincinnati, and also a copy of the letter to Youngstown-- excuse me, I'm going to take some water-- to Youngstown State University. And the reason is these letters lay out the model for how the government would be reviewing your EIT, and they're very clear and explicit. They lay out the legal standards, they give examples, they provide insights how inaccessibility affects persons who use adaptive technology.

And I want you to note how comprehensive the review subjects were-- admissions; athletics; library services; health sciences; Blackboard, which is their general academic software; and all of their online distance learning programs. And here's what they found, and I think this is a great challenge to any entity. There was no organized, deliberate way to see to it that when people posted stuff online or on a website or through academic software, that they understood how to make that information accessible.

So I'm going to guess from experience the most common error was faculty and staff posted PDFs on their websites. PDFs are pictures. They may look like a document, but they're a picture of a document. And unless the posting individual knew also to tag that document, the document was actually inaccessible because people who are blind could not use standard adaptive technology to read that document.

So somehow, Miami needs to make all its faculty aware and all its staff aware of how to create accessible information. And, in fact, although they had policies that looked OK on the face, no one was trained on them. No one received notice of them. So having a good policy-- it's a nice first step. But unless you also train on it, unless you also publish it, it's of no value. Same thing for your distance learning program.

So what OCR then did was to look at which pages garnered the most traffic. And I think that's a good example of what you all need to do when you're trying to figure out, OK, well, I can't make every single thing I have on the internet accessible, every single thing I transmit through EIT. Well, where should I look first?

Well, there's an easy answer because your CIO ought to be able to tell you which pages are garnering the most traffic, and that's where you should go first. So here it was admissions, curriculum requirements, the student handbook, the code of conduct, student services, and extracurricular activities. And the school had heretofore only been addressing compatibility issues by responding to complaints, what I would call just-in-time or ad hoc or patching practices.

And what OCR was saying is that's not compliance. Waiting till there's a known problem is not what you need to do to achieve compliance. So OCR entered into a remedial agreement with Cincinnati. And in this remedial agreement, they required them not only to develop good policies, but to distribute them, to train on them, and, most importantly, to hire an EIT accessibility coordinator who would monitor continuously whatever is put online for accessibility and see to it that everybody is trained. And as one more quality control step, they were required to create a complaint system so faculty or students or guests could quickly inform the school, hey, this particular site or this particular page is not accessible, and then to conduct training on it.

So I also want to look at what DOJ did. So DOJ did not file litigation in this matter because it ended up working on a very cooperative basis with edX. So edX has approximately 60 universities and institutional members. They conduct MOOC platforms for many of these. They provide over 450 courses to over 3 million people.

And here's an important thing to know-- most of the courses are free. And sometimes I get asked by clients, well, if it's free, do we still have to make it accessible? Free or charging $1,000 a minute, it makes no difference whatsoever. If you're covered, you're covered.

And I think what's really interesting and important in this settlement agreement is that the measure of compliance, the measure of accessibility, was the Web Content Accessibility Guidelines, WCAG, 2.0 Level AA. So if your CIO says, gee, I get the principle, but where do I look for concrete standards? I think given the settlement between DOJ and edX, WCAG 2.0 AA is where I would go.

So there's a four-year agreement between DOJ and edX. But note that edX agrees that all its materials, whether they're mobile applications or website applications or the learning management system, will all be fully accessible within 18 months. And equally important, they're going to provide guidance to all the course creators so they meet the WCAG standards. And here, too, they're going to appoint an accessibility coordinator to see to it that the agreement with DOJ is fully implemented.

So another interesting issue that comes up for individuals with sensory impairments is when they are employees and their job requires them to interact with EIT. And when it does, what's an undue burden on the employer to make that EIT accessible so that they can remain employed in that position? And this came up in a very interesting circuit court case, *Reyazuddin versus Montgomery County, Maryland*.

So Montgomery County, Maryland, has a 311 customer service center which is for answering non-emergency, but sometimes urgent calls about services in Montgomery County, Maryland. And the county spent $80 million to upgrade and consolidate its 311 system at a customer service center. And Ms. Reyazuddin, who is blind, had worked successfully for Montgomery County for many years.

But when the new system was put in, she could no longer operate the system. So they retained her salary and gave her another job. But in her opinion, the other job was just a make-work position. And she wanted to continue to work in the 311 center, which she found to be a very rewarding position.

So the new system had two modes, one that was accessible and one that was not accessible. But the inaccessible mode had a lot of advantages over the accessible mode. So for example, it could quickly transfer calls to 911. It had scripts for the employees to read if they came up with a particular kind of problem.

So you can see why Montgomery County would argue that it's really imperative that it use the

less accessible, higher interactivity version. And the district court agreed and granted summary judgment for the county. And among other critical things, it concluded that to modify the higher interactive program so Ms. Reyazuddin could use it or to allow Ms. Reyazuddin to use the less robust program would entail, quote, "an undue burden."

And I have to be honest and say, given the importance of the higher interactive system and the amount of money that Montgomery County alleged it would take to make the higher interactive system accessible, I was not surprised at the district court's decision. Nonetheless, the Fourth Circuit reviewed this matter and concluded that summary judgment for the county was, in fact, not appropriate. It was premature, and the real problem for the circuit court was they didn't like how the district court had concluded that it was an undue burden.

So off the bat, the district court found very relevant the fact that Montgomery County had only set aside $15,500 for reasonable accommodations for its employees. And no matter whose information you use, it was going to cost much more than that to make the more robust system accessible to Ms. Reyazuddin. But the Fourth Circuit said, we don't care how much money is budgeted for accommodations. What we want to know is what's the county's overall budget, which was $3.73 billion, and how much of the operating budget per year was going to be spent on the 311 services?

The court also faulted the district court for the fact that four other cities had already figured out and gone to the expense of making the more robust form of software accessible, and that the figures that the county provided for the cost of making the 311 system accessible seemed to be quite inflated because, for example, they were based on hiring an outside contractor to do work that could have been done by an inside contractor. And whosever estimate of cost was correct, that issue was appropriate for a jury trial and not for summary judgment motion by the district court.

So this matter did go to a jury. And the jury said, yes, Ms. Reyazuddin is an individual with a disability-- no surprise there. The county had notice of her disability-- no surprise there. But importantly, with reasonable accommodation, she could perform the essential functions of her position and that Montgomery County had failed to accommodate her. And most importantly, it would not have been an undue burden to accommodate Ms. Reyazuddin.

So it's not that there is no such thing as undue burden. But at least when you're a large entity with a big budget like Montgomery County, it's going to take a lot to show that it is an undue

burden to make your software accessible, even when that software pertains to non-emergency but urgent services.

Something I'm sure is near and dear to the heart of our sponsor today-- captioning. So the Department of Justice and the National Association for the Deaf sued Harvard University and MIT over the fact that many of their online services were not captioned for deaf persons. And they alleged that it was a violation of Title III and Section 504. And note, I told you Title III includes a duty to effectively communicate, provide an equal opportunity to enjoy programs and services, and they claimed that this requirement was violated through not captioning.

And here's the important thing to know-- the Title III regulations that would require or not require captioning that would pertain to the virtual world, the online world, they probably aren't going to be issued till 2018-- the next administration, whoever it is. Nonetheless, DOJ argued that's not a reason to forestall proceeding with providing captioning services.

Remember that I told you, at the start of each regulation, there is broad introductory language which could be used as a general principle to address unanticipated things in the future, and that's exactly what the Justice Department was arguing here. You don't need to wait for regulations. This duty is virtually self-evident.

So Harvard moved to dismiss. It moved to dismiss on two grounds. First of all, DOJ has not issued the regulations. Not a surprising argument to make-- indeed, kind of a logical argument to make. And Harvard went on to say, and if you look at the existing terms of the ADA and 504, you will see nowhere language that says you must provide captioning for online programming. And by the way, that's true.

Nonetheless, the magistrate under both Section 504 and Title III found a duty to caption all the online services of these two institutions. Turning to the general language and to Supreme Court precedent, the magistrate noted that Section 504 requires meaningful access to all programs or activities. And then the judge went on to note it's true that the regulations and the law do not require captioning of online materials explicitly, but neither do they specifically exclude this duty.

And because they do not exclude this duty, you can go back to the original broader language to look at what the duty is. Equally important, both the Department of Education and the Justice Department have been very clear in their "Dear Colleague" letters, in their question and answer materials, in the positions they take in briefs, the positions they take in statements

of interest, which is kind of like a junior brief, that this duty exists.

Similarly, under Title III, you can look at the general language. And from the general language, from the position that DOJ has been taking, once again, you can infer reasonably a duty. And the court went on, then, to address this [INAUDIBLE], the regulations have not yet been issued question, and noted we don't even know if DOJ will ever issue these regulations. But we have people right now who need access to these materials.

And, in fact, the Justice Department has been taking the position that the duty to caption exists for over 10 years. And it would be good to have regulations because it would reflect the expertise of the Justice Department. But if we really need the expertise of the Justice Department, we can call upon the Justice Department to file an amicus brief, a statement of interest, or we can even call on them to provide technical assistance.

What we do here in this case will not foreclose the Justice Department from taking even a different position later. This is just binding on Harvard. It's not binding on the rest of the United States. And if Justice needs to take a different position, it's free to do so.

And finally, there's no point in dismissing this case at this point because we haven't yet heard Harvard on the question of fundamental alteration or undue burden, and we need to hear them on that issue. If we issue a motion for summary judgment, we won't be able to do it.

So I want to share with you a personal observation that I share with my clients after looking at these cases, and this is what I think is the state of the law with regard to captioning at this point. If you have brick-and-mortar classes and you're going to likely use a video only once or twice, and you know who's enrolled in that class, and you have a good disabled student services office and they can quickly caption materials if a deaf or hard of hearing student enrolls, I don't think you need to caption every video in advance. But you cannot rely on just-in-time if you, in fact, can get access to that information and solve that problem quickly.

Similarly, if you have a closed online class with limited class size, and once again, students can go to disabled student services, you can do just-in-time. There, too, I think you don't have to caption in advance.

But if you have an open online setting, a MOOC, something that's going to go out to the public-- I don't care whether it's fee or free-- the minute you lose that ability to quickly and effectively caption as soon as you know there's a need, you must caption. So for those big

online courses, my strong recommendation is caption everything before you post it. Similarly, if you're going to use a film or video repeatedly in the class-- so it's not a one-time or a two-time thing-- there, too, I think you need to caption in advance.

So on the horizon, a big question is going to be, as I told you at the outset, what is a public accommodation? And what I want you to know is there's three positions in the courts on this. One is that something that is virtual-only is not a public accommodation. And that's because if you go to Title II and read the list of what are public accommodations, it doesn't mention anything in the virtual world. And that's because it's outdated.

The second position, the position of the Ninth Circuit covering me here in California, is that anything you do online that has a nexus to the brick-and-mortar world is still covered. So in a very famous case, *National Federation of the Blind versus Target,* they said, well, if you can order prescription drugs online, if you can register for the bridal service online, if you can send your photos to be picked up at a brick-and-mortar store online, at least that part of your online services must be covered.

And finally, there's the position taken in *National Association of the Deaf versus Netflix* that even a purely online service can be a public accommodation. And in *NAD versus Netflix*, essentially what the judge did is went back to the purpose of the ADA, the broader introductory language in the ADA, and said the virtual world is covered. And we've seen this come up in a number of other cases.

And I want to just bring your attention to one recent Title III settlement. Because even though it only came up in a district court, I think it's a decision that's well worth reading for its comprehensive overview of the question that I've just discussed with you. Hey, Paul, I'm kind of interested in this issue. I have a client who wants to know the answer to this issue. I think the Scribd decision is a really well-written decision and a place to look at.

So Scribd is a California-based digital library that operates a reading [? subscription ?] service on its website. And at the time it was sued, many of its pages were actually just pictures. So people who were blind could not use their adaptive technology to gain access.

And here's what the court said here. And again, this is just a district court, but I think it's very eloquent. And I'm going to see if I can collapse this so I can see this screen a little better. I'm having a hard time reading my own screen here.

"The Internet is central to every aspect of the 'economic and social mainstream of American life.' In such a society, 'excluding businesses that sell services through the Internet from the ADA would--'" I'm sorry, what's the word here? Undercut, I'm going to guess, or ruin, "'the purpose of the ADA and would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to the general public.'"

So the court is really saying you have to take Congress's intent forward into the current context and recognize that the internet is now such a ubiquitous way for us to engage in commerce in America or gain information in America that it can't be excluded. Now, as a lawyer, I got to say there's two other positions. But this decision is so well-written, it's very helpful for seeing what they all are. And I urge you to look at them. And I guess that is my final slide, and I'm going to turn the floor back to you.

LILY BOND: Thank you, Paul-- great presentation. There are a lot of questions coming in. Just as I compile the first questions, I wanted to mention to everyone that Oregon State University is producing a national study on closed captioning in higher education. And they're looking for people to participate, both in a study of institutional solutions for captioning, as well as facilitators for a student survey about caption use.

So the link--

PAUL GROSSMAN: And Lily, I just want to add to that that if your institution is a member of AHEAD, I believe AHEAD will be urging you to participate in this survey.

LILY BOND: Yes, AHEAD is sending out this information, as well. And they're just looking for as many institutions of higher education as possible. So if you are interested, the link to express your interest is on the screen and will also be chatted to you.

So Paul, the first question here is, do you anticipate that learning technology products will be viewed as a place of public accommodation, thereby creating ADA liability for manufacturers and vendors?

PAUL GROSSMAN: So I don't know if the manufacturer will ever be required to produce its product in an accessible form. But I don't think that answers the real question. Because I think that every college and university in America will be required to use accessible technology, and they will bring so much market pressure that the product producers will have no choice.

And indeed, I think this is going on right now. Product producers that weren't particularly interested in, didn't particularly care about access, are now, for want of a better word, coming to heel because they understand that it's going to become harder and harder to sell inaccessible products. So indirectly, if not directly, I think this issue will become effectively addressed.

LILY BOND: Thank you, Paul. Another question here-- in courses in which videos from YouTube or Teacher Channel are used, are the automatic captions and transcripts considered adequate? They often contain errors.

PAUL GROSSMAN: So I'm not the final word on this. But when I have heard the Justice Department, for example, talk about this, I believe they are not acceptable. They are not enough.

Now, one of the interesting questions is, however, if you have a professor who is not registering anybody for class, is not going through something organized like a MOOC, but just sort of out of the generosity of their heart is posting something on YouTube, is the university responsible for that? In other words, is the YouTube posting a program or activity of the university?

And I think that's actually an unsettled issue of law over which we may yet see either some Justice Department guidance or Department of Ed guidance, or it will be litigated. And, in fact, from my perspective, that's really what's going on right now. It's kind of like almost everybody, I think, has decided, yes, I have a duty to make my EIT accessible.

The question will be what's the extent of that duty. And will it be just courses that students register for? Will it be that and MOOCs? Will it be whatever we put up on the internet, no matter how we put it up or no matter who puts it up? And I don't think we know the answer to that question.

LILY BOND: Thanks, Paul. That also answers several other questions related to instructor videos and linking to videos in class.

PAUL GROSSMAN: Excuse me. Excuse me. With regard to linking videos to class, if you have students with sensory impairments in that class, that video must be captioned and the captioning must be accurate enough that the student will have an equal educational opportunity.

LILY BOND: Thank you for that clarification. A kind of similar question here-- why is YouTube not required

to caption all of their videos if Netflix must and we know that inaccurate captions are not OK? Is that considered an undue burden?

PAUL GROSSMAN: So Netflix is conveying a product, right? A good and service of Netflix is the movie. YouTube is not conveying a product. Now, I'm not saying the law will never reach YouTube. But at this point, I think there is a pretty clear distinction between YouTube and a company like Netflix. But the law is changing so quickly, I won't be shocked if a year from now, somebody sues YouTube.

LILY BOND: Thank you. Another question here-- I heard that faculty were specifically called out as responsible for creating accessible content in a recent settlement. Is this true? And if so, which settlement?

PAUL GROSSMAN: I'm not sure I can answer that question. But when you say faculty are called out, I am aware of settlements where the school agrees that it will hold faculty responsible for-- I don't know what the word is-- preventing or not undertaking what is necessary-- I guess that's the right way to say it-- to make material accessible.

So there was a settlement between-- I'm sorry, it was at the University of California-- Disability Rights Advocates, DRA, and the University of California at Berkeley. And in this settlement, the University of California said that it would advise all faculty members that they must submit their syllabi six weeks in advance, six weeks before the start of each semester, so that the disabled students services office would have the opportunity to in a timely and prompt fashion convert inaccessible material to an accessible format. And that agreement did provide that if a faculty member was really recalcitrant about this duty, engaged in a pattern of not providing syllabi on time and in advance, of not cooperating so that alternate media could be produced, the university could sanction that individual for, in effect, interfering with the university's ability to make their materials accessible.

So that may be the settlement that the individual is referring to. And that settlement, by the way, is posted online. I think you can get it through the DRA website, and that's www.DRAlegal-- one word-- .org. And actually, the DRA website is worth reading for all kinds of things. But the most useful website is ADA.gov, which is run by the Justice Department.

LILY BOND: Thank you, Paul. Another question here that a few people have been asking-- is a transcript of a video sufficient to meet the legal requirements, or must the video be captioned?

PAUL GROSSMAN: I believe that the position of OCR and DOJ is that it must be captioned, but I'm going to admit that that's beyond my area of expertise. And I think I would put that question to someone like Gaeir Dietrich at the California Community College System High Tech Center because I think she has more practical experience on that issue.

LILY BOND: Thank you, Paul. Another question here that has been asked a few times-- what is your opinion on audio description of video? It seems critical to me, but it's expensive and challenging.

PAUL GROSSMAN: I get why that's an important question. I do not feel qualified to answer it. And actually, I think I would ask Gaeir Dietrich that question, as well. And, of course, you could ask the Justice Department this question or OCR this question.

Both OCR and DOJ do not charge for technical assistance. And at least in the case of OCR, where I worked for many years, we always took questions like this from the public, and we were very happy to either provide an answer or refer the person to someplace where they could get an answer. Don't feel like you're turning yourself into the police just because you want some good technical assistance. It's our responsibility to provide it.

LILY BOND: That's great advice. Thank you. Another question is, what if a video is published online by a university, but it's not related to a class-- for example, a campus event that gets published to a YouTube channel?

PAUL GROSSMAN: Any program or activity of the university must be accessible. So if it's a program or activity of the university, which it sounds like it is, I think it would have to be captioned.

LILY BOND: Thank you. Another question here is, what is considered a reasonable amount of time to provide captioning after a student in a small class makes the request?

PAUL GROSSMAN: I don't know the answer to that question. I have supported institutions where students asked for accommodations in the middle of the semester. And because the accommodation was not easy to implement on a snap of the fingers, I gave those institutions three weeks. And the reason I gave them three weeks is because the only court decision that I ever saw on this issue gave a law school three weeks after a student asked that his law books be converted to Braille in the middle of the semester. So one person's answer is three weeks.

LILY BOND: Thank you, Paul. And just for clarification, someone in the audience is saying that WCAG requires that videos be captioned so that they're synchronized with the media, whereas a

transcript will not suffice for video content. So whoever was asking that before, those are the WCAG standards.

PAUL GROSSMAN: That's very helpful. Thank you.

LILY BOND: Someone else is asking-- actually, a couple of people have asked similar questions. Would online-only schools or purely virtual classes be subject to these accessibility laws?

PAUL GROSSMAN: As long as they're subject to 504, which they very, very likely are, the answer is yes. The extent of their duty under Title III is a less clear question because, as I've explained, there is debate about whether a virtual-only entity is a public accommodation. But at least under 504, I think they're going to have the duty.

LILY BOND: Thank you. Another question here is a colleague was taking some of the videos from YouTube, captioning it, and saving it in their site and citing the source. One news channel complained to the college that that was a violation of their video. Do you think that they have any rights to complain that we captioned it? So this seems like a copyright law versus captioning law.

PAUL GROSSMAN: Yes, it is a copyright question. So I'm not a copyright expert, but a similar issue has been litigated. It's the *HathiTrust* cases, so you might google the *HathiTrust* cases. I believe it was *NFB, National Federation of the Blind, versus HathiTrust.*

And what the *HathiTrust* decisions suggested was that altering a material to make it accessible to a deaf or a blind individual was an exception to the copyright requirement. And as long as the material was only provided to people who needed it in that format, there was not a problem.

I think this is a kind of issue where if I were you, I'd be talking to my house counsel. But I would certainly bring to my house counsel's attention the *HathiTrust* decision, which I think is pretty protective of converting materials so that they're accessible to individuals with disabilities.

LILY BOND: Thank you, Paul. It looks like we have time for one more question, and I apologize to all of the unanswered questions. As a final point, someone is asking, if in a course in an LMS or online program students are submitting video assignments which will be peer-reviewed by their fellow students, do those videos have to be captioned?

PAUL GROSSMAN: So this is a course where students have registered. You know who's in the class. If you know that one of the individuals in the class has a sensory impairment, you must take the steps necessary to make those videos accessible. But obviously-- well, I don't want to say obviously-- in my opinion, as I am advising my clients, you don't have to just caption those videos for the heck of it. Because you know who's in the class, you can do it on a just-in-time basis.

Now, you got to be prepared to do it on a just-in-time basis. But if you have an individual in that class who's deaf or blind, you're going to have to make the materials accessible.

LILY BOND: Great. Thank you so much, Paul. That was just a really enlightening presentation, and people have been very grateful for your expertise. So thank you for joining us today.

PAUL GROSSMAN: Thank you, everyone. And thank you to you, as well.

LILY BOND: I hope everyone has a great rest of the day.