

LILY BOND: Welcome, everyone. And thank you for joining this webinar entitled The Digital Accessibility Landscape-- What Your Organization Needs to Know in 2019.

I'm Lily Bond. I'm the director of marketing at 3Play Media. and today I will be co-presenting with Tim Springer, who is the CEO of Level Access, which provides digital accessibility, software, training, and consulting solutions to more than 1,000 organizations. And we're really excited to be co-presenting this. And we will be partnering with Level Access for a series of three webinars which we hope everyone will join us for.

Today, we will be covering a lot of things. Tim is going to cover trends in digital accessibility, digital accessibility standards and laws, procurement drivers for digital accessibility, and then I'll jump in with how accessibility laws apply to video, trends in video accessibility, the state of video captioning, and then we'll finish up with some digital accessibility solutions you can begin implementing today.

And so with that, I'm going to send it off to Tim.

TIM SPRINGER: Sounds great, thanks. So as Lily was saying, we'll start off-- talk a little bit about big picture trends on digital accessibility, and then dig in on just kind of what's happening in the legal environment and where we see laws at, and where we see laws going. Then we'll talk a little bit about procurement drivers, but probably go through that really quickly.

So we'll go ahead. The first biggest picture trend we see is this idea of a graying glow. And basically what we're seeing is two really big trends happening at the same time. One trend is that on average, people are living longer. And so life expectancy is going up. And it's actually going up across all of the different cohorts of ages. So life expectancy at birth is longer. But actually as you're getting older, your net life expectancy continues to expand.

And so that's happening. People are having longer life expectancy. At the same time, the birth rate is falling. And so people are having fewer children per couple. And essentially, the combination of those two things means, on average, what you have is a population that's getting older, and by and large that population at the same time is using technology at a more and more in-depth basis.

So 5, 10 years ago, you saw adoption of smartphones in the population over 65 being very limited. You saw adoption of high speed internet being very limited. You saw social networking

use being very limited, et cetera. Now you actually see that about 50/50-- 2/3 of that population has smartphones. Sorry, 42% have smartphones. You'll see now 67% has access to internet.

Point there is the population's getting older on average, and that older population is now using technology at higher incidence rates than we've ever seen before. What's interesting is this is actually also happening a lot sooner than you would expect. So you can see a lot of these statistics sort of extrapolate out to 2050. They say, hey, in 30 years you're actually going to see the population that looks like this.

But in developed world countries-- particularly here in the US-- we actually see the population starting to shift already. So by 2030-- 10 years from now, essentially, already 20% of the US population will be over 65 at that point, and it will keep growing from there. So we see population as a whole getting older. And we see that older population using technology. Lily, go to the next slide.

The point there is that there is almost a perfect correlation between age and disability prevalence. And essentially what that means is as you get older, the likelihood that you have a disability drastically increases. And you see a big spike and a big take off as you start to get over 65. But you even see pretty significant incidence rates between 55 and 64.

And so we have a population on average that is getting older. You have that older population using technology, and you have the incidence rates of disability increasing as we age. And so ultimately, we would tell you from the biggest picture macro perspective, accessibility requirements are going to continue to grow. Because ultimately, that's where the demographics are going. That's where the population is growing.

And as the population of people with disabilities grows and it grows as part of the population, you'll see more and more demand for accessibility, both from a consumer perspective, but then also from a legal and regulatory environment.

If we go to the next slide, we'll also talk about omni-channel commerce. So one trend we see is population is getting older on average. People are living longer. People are having fewer babies. Technology penetration happens. That's correlated within this disability incidence rates increasing.

In addition, what we start to see is that commerce is spanning multiple different channels. So

e-commerce has continued to grow. And e-commerce was about 10% of all retail you saw in 2019. That was up a full point on a year over year basis. There's a couple of estimates out there. I think worldwide, e-marketers started to hit about 14%. But it is a material and significant part of retail.

What's more interesting, though, is we actually see a lot of online brands starting to go backwards into offline spaces. We see a lot of brands that are born online like Warby Parker, develop online, and then go back and have physical stores. In addition, we see classic retailers developing sort of what we call omni-channel strategies-- so strategies for selling and engaging their customers that are multi-device, that integrate a physical world experience, that are multi-modal, or occurring across various different modes of interaction.

And the reason that's particularly important from the perspective of accessibility is one of the core concepts of accessibility-- we'll talk about this a little bit when talk about the legal and enforcement environment-- but one of the core concepts of accessibility is this idea of a nexus between a physical place and digital assets or resources that allow you to use that physical place.

And so the idea is nothing more complicated than I have a store, and to use that store effectively I need to have access to the mobile app for that store, because the mobile app provides me discounts. It allows me to browse inventory. It allows me to reserve things for purchase-- a lot of the physical store experiences related to digital experience.

And as those things have become more and more entwined for large picture macroeconomic reasons, because that's a more effective way to engage today's consumer, that ties them together from a digital accessibility perspective. And so the expectation is we will also see over time more and more digital accessibility lawsuits and enforcement actions targeting digital spaces across mobile apps, across web apps, across various different types of digital engagement. Because ultimately, those all tie back into the use or enjoyment of a physical place.

What's interesting is we would have told you this was a trend about a year ago. We said, we think at some point in the future, plaintiffs, attorneys will start to look at this. Maybe we'll eventually see some demand letters, which are sort of a precursor to litigation in the digital accessibility space targeting mobile apps. That actually started happening in the last year, and so we've actually seen this. So now we're actually seeing this trend start to play out.

The next trend we see is this idea of prices being driven more aggressively online than offline. And so there's some really interesting data that's over here on the right hand side. And it's basically-- Adobe does a digital economy project. And this slide was actually called out initially in Mary Meeker's internet trends presentation, which is a really interesting presentation if you ever have a chance to check it out.

And basically the analysis they did is they looked at prices on an inflation-adjusted basis in offline or physical stores. They looked at prices on an inflation-adjusted basis in online e-tailers or retailers-- e-commerce stores. And basically, what they found is that the online prices dropped faster over a four-year period than the offline prices did. On a real basis or an inflation-adjusted basis, the offline prices dropped about 1%, online dropped at 3%.

And so what's interesting from that is it starts to be the case that access to online shopping-- and particularly e-commerce-- starts to become an economic advantage. So it's not just a convenience advantage, which is material and significant, it's actually economically advantageous for you as a member of the public to have access to e-commerce. And as kind of a mental exercise, what we would have you think about is think about when Airbnb comes in a market.

And prior to Airbnb, there was pretty much a set supply of hotel rooms. There wasn't a lot of variance in it. You could build new hotel rooms-- took awhile to spin up, fermenting, et cetera. So over time the market for hotel rooms would adjust, but it couldn't adjust very quickly. And the prices of that market would then be relatively set based on supply.

So if Airbnb becomes into a market, does it ultimately drive down hotel room prices? Does it make hotel rooms cheaper in that market? And if a member of the population can't access Airbnb, are they then economically disadvantaged? You can kind of do the same mental exercise with the price of Uber relative to taxi prices and driving down taxi prices-- or at least stabilizing them over a period of time.

And so what we would tell you is it's not just that access to e-commerce is something that we think as a civil right is important. We're actually starting to see it be an economic advantage. And that's kind of an additional driver for why we think digital accessibility is so important.

Shifting away from some of the details on that, we also see some kind of interesting things about just how the nature of work is shifting. And particularly, more and more work is going

into a freelancing model. And it's kind of an interesting study. It's called the nature of work study.

And basically, this study goes out and looks at all these different ways that people are engaging. And it was done by Upwork in 2018. Edelman Research did it. Basically, what it looked at is it said, hey, look, we in America are spending about a billion hours a week freelancing.

And in addition to that just raw growth of the number of people freelancing, what you really see is the number of people finding that work online shifting drastically towards the positive. So in 2014, you found 42% of people that were freelancing, finding projects online. By 2018, that had grown to 64%. We expect that will continue to increase.

So the idea is work itself is shifting more and more towards a gig economy. And those gig economy jobs are more and more inter-mediated, or being made available, by online platform. And that leads you back to this question we asked earlier is-- sort of a question we would generally have for you-- is accessible technology-- is this now a fundamental economic advantage? Is access to accessibility now something that you have to have just for your core economics to work in this day and age?

And we would argue probably that is the case. And more and more we see as the freelance economy grows, access to the freelance economy becomes more critical for people to move forward economically and really learn and earn at the same time.

And so if you think about the nature of work shifting, one other interesting component of that is thriving in that economy has a different educational model than thriving in the old economy. So kind of the old economy economic model would be, you go to school. You train for two years or four years, whatever it is. You graduate with a degree. You got into the economy. You find a job. You work at a place-- a small number of career shifts, small number of gig shifts, et cetera.

That's really not how we see people accessing economic opportunities these days, but then also growing and evolving their skill set over time. Really, what we see is we see a lot of the gig economy overlapping with online courses, online training-- be that through YouTube channels and video programming, be that through online, bit-sized courses or sort of micro courses that are out there.

And if you talk to both full-time employees as well as gig employees, more and more they see training as the path to the advancement-- but training not being full, formal, multi-year degrees. Training being a quick boot camp on a particular skill, taking online courses to access that, and really kind of putting together their own training experience to allow them to grow and adapt to skills.

Now, what's interesting is you can actually see some data on that in the number of education channel subscribers. This is also kind of a neat slide we take from Internet Trends Report 2018. It basically looked at the growth of YouTube channels associated with ASAP, science, crash course, Ted Ed, Smarter Every Day, and Khan Academy. It compared 2013 where they were at with 2018. And you see massive growth in the number of subscribers during that period as more and more people are accessing education opportunities online.

And you'll see that ties very clearly to the data that Lily will run you through later on. Which is that access to particularly online video, captioning and audio description associated with that has really transcended anything related to entertainment, and really now is just a core part of our educational experience. And that is a core part of our economic experience in today's economy.

So those are kind of the big trends against which everything else plays against. With that said, particularly here in the US, a lot of things that we see in digital accessibility are being driven by standards and laws that are enforced as it relates to digital accessibility. And I'll talk principally about kind of broad digital accessibility requirements. Lily will give you a more detailed overview on laws that relate to video accessibility. And those are kind of a subset, or a specialized case of just kind of the general digital accessibility laws.

So I'll start out with the Americans with Disabilities Act. And the Americans with Disabilities Act has seen significant growth in the number of lawsuits related to digital accessibility over the last five years. Last year-- there's a pretty widely cited statistic that comes from ADA's Title 3 blog, which is a blog that's maintained by Seyfarth Shaw-- some of the leading attorneys in the space.

And basically, they went out and they tracked all these lawsuits related to digital accessibility, tagged them, and basically wanted to see on an annual basis, how many are actually filed in federal court alone? Doesn't include state enforcement, items, et cetera.

And so last year alone, they saw about 2,300 of these digital accessibility cases filed. We

would tell you this year, there's on track to be about 3,400 at the low end. We have about 3,800 at the high end as kind of a good trading range-- so significant growth in the number of cases.

We're still at a point, though, where you have different judges ruling in different ways on different cases. There's not a ton of precedents on how this works. The cases and the rulings that we get are principally fact-based-- so have to do with the specifics of the case. In the vast majority-- vast majority, 99.9% of these cases settle. It's very rare that the cases will be appealed.

With that said, a couple of appeals have started to come out in the 9th and 11th circuit. So we're starting to see some clarity around how this law is going to be interpreted. And then what's really interesting is right now, there is actually a Supreme Court petition on file in the case of *Domino's v. Robles*.

And so the back story on this is essentially this gentleman, Guillermo Robles, sued Domino's. And I'm going to over-summarize here, but basically said, hey, look, I need access to your mobile application and your website so that I can order pizzas. And Domino's argued that isn't what the ADA applies to, and that ultimately the ADA is specific physical locations. It doesn't cover digital locations.

District court agreed with that argument, dismissed the case. Circuit court said, no, we think this is actually covered. Remanded the case back down to the district court, and said, hey, you've got to work on this and settle it. And then Domino's has now actually filed a petition with the Supreme Court to ask the Supreme Court to intervene on, really, the core question of this matter.

And so the way that that petition works is it actually asks the Supreme Court to say whether Title III of the ADA requires a website or mobile application that offers goods and services to the public to satisfy accessibility requirements with respect to individuals with disabilities. Ultimately, does the ADA speak to website or mobile phone applications?

That is in process right now. We expect the Supreme Court will make a decision on that probably sometime in September and then it'll go forward from there. We actually just put together a blog post on this. It is fascinating to see how the Supreme Court makes decisions on this. But the odds of this actually being heard by the Supreme Court are very, very low.

The Supreme Court hears about 1% of the cases that they are actually petitioned to hear. Half of those cases are pro se plaintiffs or plaintiffs that represent themselves. They kind of knock those out, makes it about 2% of the cases. And then the cases tend to have very specific requirements, which are really that there are significant conflicting rulings coming out of the circuit courts and it's creating problems.

We don't view that as necessarily the case here. So we think the likelihood that this actually goes before the Supreme Court is relatively low. The countervailing side is this has generated a ton of interest, particularly from the business community, who is interested in limiting the scope of the ADA as it's applied-- certainly limiting the scope of these lawsuits that are happening out there.

So there's a lot of interest. So we'll keep you posted. We'll let you know as that happens. Again right now, we think it probably won't get heard. But if it does get heard, we may actually get a very hard answer on digital accessibility and its application under the ADA.

With that said, right now the status of things hasn't changed. And even if we get a Supreme Court ruling, it'll be a while before it comes out. So for the foreseeable future, we expect you will continue to see significant increases in ADA digital accessibility litigation.

And so just to give you some numbers on that, we had a 210% year over year increase in 2017, 177% in 2018, and we expect to see about 50% to 60% growth this year in the number of lawsuits to about 3,400 being filed. Those are also just lawsuits that are filed. That is overall a small percentage of the number of actions that are taken where a lot of these are settled before they actually get to the point of lawsuits.

So we expect you're going to continue to see significant growth. The reason we expect that is twofold. One is there is no regulation on how the aviation work as it applies to digital accessibility properties. And we expect that's going to continue to be the case. The current administration has stated it's unlikely we're going to issue regulations. We're going to take them at face value on that at their primary representation.

So we don't think regulation is going to happen, which would allow the number of lawsuits potentially to go down because we'd have a really clear standard. So in the absence of that clear standard, the way that this is getting resolved is, in fact, litigation. So litigation is the primary means of driving digital accessibility in the marketplace.

So that's one component. The second component is the number of law firms that are actually filing these suits is still relatively small. And so the idea there is you could think of these lawsuits as having a supply. And the supply is governed by the number of active plaintiffs counsels that are out there filing lawsuits. And we don't think that number is going to be used up anytime soon. And basically, the data pretty strongly indicates that conclusion, as well.

And so if you think, OK, that's your theory. We've seen a pretty massive growth in lawsuits from 2014, when we had 19 filed, to last year when we had just under 2,300 filed. This year, we have 3,400 filed. You can pretty much keep compounding that forward when you start to have thousands and thousands of lawsuits being filed on an annual basis.

So with that said, we also did do the actual math on looking at the number of plaintiffs firms that are out there that are actually filing. And so the way that we did this is we looked at all of the firms that filed lawsuits in the second half of 2018. We compared it to all the firms that filed lawsuits in the first half of 2018.

These are all the firms in our database. Our database does not cover everything. It covers about 40% of the lawsuits that are out there, but that's enough to probably be represented. And so essentially, we looked at how many lawsuits were filed by the top 20 firms. We took out the number one firm because it was kind of an outlier. We basically took the rest and said, look, on average, those firms went from filing 28 lawsuits per firm in the second half of 2018 to 40 in the first half of 2019. So assume a pretty active firm can file about 40 lawsuits every six months.

And we actually tracked, in addition to the top 20, 53 other firms. So 73 firms were active in filing lawsuits in the first half of 2019. And basically, the mental exercise was, well, if you take the 53 firms that aren't as active as filing as the top 20 and they were to catch up with the top 20, you would have a capacity overall of about 6,000 lawsuits a year.

Our takeaway is this is not a trend you're going to see going away anytime soon, because the number of firms that have the ability to actually file these lawsuits will continue to grow. In addition to looking at how the lawsuits were filed, we also looked at who is a target of these lawsuits and tried to figure out what industries were actually most, for lack of a better term, susceptible to digital accessibility litigation.

And essentially what we saw when we looked at that is we looked at 60 industries, narrowed it down to the top 20 industries, and then of that the top 10 or so are where the vast majority of

lawsuits were filed. And essentially, what you see is the vast majority of lawsuits were filed in industries that focus on end consumers and have some out-size or significant digital footprint. And they're kind of the firms you would expect-- hotels, retailers, consumer product manufacturers, consumer services, restaurants, food and beverages, transportation, real estate, banking, and a little bit of hospitals and health care providers.

So they tend to be firms that basically directly serve consumers through a physical place of business. And so what we would tell you is if you're in an industry that fits that profile, there's probably a pretty significant amount of risk associated with your industry. And if you haven't looked at this, it's definitely something you want to look at.

Outside of that, a couple other takeaways on just sort of digital accessibility, litigation, and what we've seen. One thing to just be aware of is at this point, multiple lawsuits and multiple demand letters against a single organization in a single year are common. So this used to be an exceptional thing. It isn't the case anymore.

The winner in just the database that we have that, again, tracks only a subset of the market had five lawsuits filed in the last 12 months. And those are actual lawsuits, not just the number of demand letters that come in. We would tell you, broadly speaking, if you've had a lawsuit, you probably have about a 30% chance across the entire swath of the market of having another one filed this year. And there is a very clear correlation between the size of the brand, the size of the organization, and the risk associated with that.

The bigger brands, it's almost a virtual certainty at this point you're going to face multiple lawsuits on an annual basis on this. In addition, we saw the lawsuits tend to target specific brands and specific digital properties. They don't necessarily target specific legal entities as concisely.

So if you have an organization that operates five different brands, you would have times the risk of an organization of the same size that operates a single brand as a general sort of rule of thumb, with some exceptions in there. In addition, we saw multiple property entities often being targeted many times in a year, as well.

So if you operate a mobile application and three websites, each of those things is sort of an individual, sever-able area of risk. A couple of the cool rulings. One is expertise does matter in this. So we actually had some clarification from a court down in Florida on what actually made a good technical expert. And the short version is you want a technical expert that is, in fact,

versed in digital accessibility, that understands that, that understands the ADA and the intersection of that. That would be a firm like Level Access, although there are other firms out there in the market that do that.

And the last one which is kind of interesting is we've started to see some litigation around Title I of the ADA. Title I of the ADA has to do with employment. Mostly what we've talked about so far is Title III, which has to do with public accommodations. And so you may see some more litigation coming under that.

It'll be interesting to see what happens over time-- but just some early cases starting to be filed in that. We're starting to get some settlements associated with that-- haven't gotten a lot of rulings.

So I'll wrap up on one other area of enforcement that we saw a lot of in the past, which is the US Department of Education Office of Civil Rights complaints. There is a lot of difficulty in getting data out of the OCR. There's also some backstory in terms of how the OCR changed some of the ways that they processed information.

Essentially what happened is the OCR had a big drop in the number of complaints about a year ago, when they changed some of the rules they had associated with how they process complaints. So the OCR kind of took all these complaints they had in the database that were filed by an activist, cleared them out.

That rule change was overturned by a federal court that said hey, you can't actually do that. You do, in fact, have to look at all these complaints. And so we started to see that case database then be rebuilt over time. And we've seen more and more complaints coming in there.

With that said, the OCR office at the Department of Ed is relatively small. They haven't been doing a lot of enforcement. We haven't actually seen any new resolution agreements that have come out that actually reference the WCAG. WCAG is Web Content Accessibility Guidelines. It's kind of a standard catch-all term associated with digital accessibility.

So we are seeing the number of complaints into the OCR rise, and that being publicly available data. We have not seen more resolution agreements being posted by the OCR, which either means there is less enforcement or they're just not posting those agreements online. It's still opaque, but we do have a fact of investigation data is increasing. And so we would tell you

kind of proceed with caution here.

There's not as much enforcement as we've seen in some prior administrations, but there is definitely still some forward movement on enforcement. We won't talk too much about procurement drivers for digital accessibility. I'll just give you one shout out. A bunch of the data that's in here is actually from a survey that we did. It was a survey on the state of digital accessibility in 2019. We developed it in partnership with this organization-- G3ict.

Went out and surveyed 5,500 digital accessibility professionals, and did that, and then sliced that data by industries, and roles, and organization sizes. Just gives you a lot of good data on the state of the digital accessibility industry and sort of what we see as state of the art out there and what the industry has reported back. If you combine that with kind of the state of captioning-- a bunch of good data that 3Play has, as well as some stuff Lily will run you through in a second-- gives you kind of a good overview of where the industry is at.

And if you have any questions on that, feel free to ask us. We'll also send out slides. So you're welcome to browse through it. And with that, I'll turn things over to Lily to talk a little bit more about digital accessibility in video.

LILY BOND:

Thanks so much, Tim. I am going to jump into a kind of a deep dive on video in relation to a lot of the things Tim has been speaking about. 3Play has done a lot of research into trends and the state of video accessibility, similar to what Level Access has done at a broader level with digital accessibility.

So I'm not going to do too much with the legal information. But just as a basic level of understanding, video is very specifically implicated by three accessibility laws. The first being the Americans with Disabilities Act, or ADA, which Tim has covered a lot. So we do see traction with video accessibility under Title II and Title III of the ADA.

We also see video accessibility as a very specific requirement under Section 508 of the Rehabilitation Act, which was just refreshed recently. And Section 504, which is a very broad anti-discrimination law has been applied to video accessibility as well. One accessibility law that I want to mention that's very specific to video is the 21st Century Video Accessibility Act, which covers online video that previously appeared on television.

So that one specifically requires that captions must be on any online video that was captioned when it's on television. WCAG 2.0-- the Web Content Accessibility Guidelines-- these

requirements are now written directly into Section 508 as a law. And WCAG has great guidelines for what you should be doing for video. So when it comes to video, Level A, which is the most attainable level of accessibility, requires closed captioning transcription for audio-only content and text descriptions of visual information.

Level AA, which is referenced in most lawsuits, requires audio description and live captioning. And then level AAA, which is usually the most difficult to achieve and is not directly referenced by much legal requirement, requires extended audio description, a sign language track, and live transcription for audio.

So I did want to mention that amongst all of the lawsuits that have been happening in the space, we have seen several lawsuits related specifically to video or that require video accessibility in the settlements or agreements. So this happens across industries. We're really seeing the trends all over the place.

In streaming media, we see on several lawsuits against streaming media giants like Netflix, Hulu, and Amazon-- both for captioning and for audio description. The *National Association of the Deaf v. Netflix* was really a landmark lawsuit in video accessibility. And it was the first time that the ADA had been applied to an online-only business.

In higher education, we see a lot of trends against big universities like Harvard and MIT, UC Berkeley, but others like Miami University of Ohio. And then in enterprise, we're seeing, again, tons and tons of ADA lawsuits, many of which have kind of a blanket requirement for WCAG AA requirements when they settle or reach an agreement.

So to jump into some trends we're seeing in video accessibility beyond lawsuits, I wanted to talk a little bit about video. So there are just some astonishing stats on how online video is being used. So more video is uploaded to the web in one month than TV has created in three decades. And it's estimated by 2022 that 82% of the world's internet traffic will be video. And there will be one million minutes of video crossing the internet by second by 2025.

So what does that mean for accessibility? Well, there are a lot of people in the population that are impacted by inaccessible video. So there are 48 million Americans who are deaf or hard of hearing, which is 20% of the US population. And 24 million Americans are blind or low vision, which is 10% of the population. So with so much video, if you are not making it accessible through captions and audio description, you're excluding a large percentage of the population.

And another interesting stat here is that 71% of people with disabilities leave a website immediately if it's not accessible. So by not making the digital experience accessible right off the bat, you're just instantly losing people who could be great consumers of your products.

Some other trends-- we're really seeing an increased usage of captioning for the benefit of all users. So Facebook did an interesting study on how captions improved or impacted the viewing experience of videos on Facebook. And they saw a 12% increase in view time.

They received feedback that 41% of videos were incomprehensible without sound or captions, and that 80% of Facebook viewers reacted negatively to videos playing automatically without sound or captions. This is something that I experience a lot. I commute on the subway to work. And I don't like to wear headphones, because I like to be aware of where I am, when I'm getting off.

So I'll scroll through Facebook, and I'll come across a video. And if there are no captions on it, then I'll just scroll past because there's absolutely no way for me to access that content in a public setting. But if there are captions on your video, it kind of grasps your attention in a different way, and you're able to experience what these brands and these companies are hoping that you will be able to watch in any setting. It really does benefit the broader population.

So we're seeing-- kind of beyond social media video-- we're seeing this trend in higher education that captioning is really more of a universal design principle. That it really benefits all learners and should not just be seen as a pure accommodation.

So in a study with Oregon State University on the impact of captioning on students, we found that 98.6% of students find captions helpful for learning. 75% of students use captions as a learning need. And the number one reason students used captions for learning was to help them focus.

So another research study-- the data from Oregon State University was really fascinating, and we wanted to find ways to dive deeper into the impact of captioning and video accessibility on learning. We're partnering with the University of South Florida St. Petersburg on a new research study with some more quantitative data on how specifically video accessibility improves learning experience. So these are just some very preliminary results.

We will be publishing the full study when it's released this fall. But their very early results show

a 3% increase in grades for students who used closed captions and an 8% overall increase in grades for students who used interactive transcripts.

And an interactive transcript is a full transcript of the video that plays along and highlights every word as it's spoken. And you can search within that transcript and jump to different points in the video. And in the two classes with the most participation, they actually saw a 15% to 16% increase in grades for students who had used interactive transcripts.

So this is really exciting preliminary data. And you know, the research participants were students who did not identify as having a hearing disability. So this is really showing the impact that video accessibility tools can have across the whole student body.

And I've been talking a lot about captions, but I wanted to mention audio description, which is another requirement for video accessibility. Audio description is an accommodation for blind users, and it narrates the relevant visual information in the video. So beyond accessibility, there are a lot of reasons why audio description is important.

It gives you flexibility to view videos in eyes-free environment, which sounds a little strange. But we've actually heard about people using Netflix videos with audio description as audiobooks when they're driving. It helps students and children and all people with autism better understand emotional and social cues, because it will point out those emotions that might not be readily recognizable to someone with autism.

And it also helps with language development and for auditory learners, and helps you kind of point out visuals that are in plain sight but that you fail to recognize.

So I mentioned that we conducted a state of captioning report. We do this annually, and we collected just some interesting trends in how organizations are using captioning along with some operational considerations like budget and policies.

So I wanted to share some of these trends just to see how other organizations are handling captioning and video accessibility. So we recently released this report. It's available for free on our website. And we can include a link to this as well as Level Access' state of digital accessibility in the recording email.

This survey went out to thousands of people. We ended up getting 1,009 professionals in video accessibility to complete this study across a wide range of industries, roles, and organizations sizes. We found some really interesting trends. So most participants saw their

needs for captioning either staying the same or increasing over the next year. This has been a consistent finding over the past several years.

58% of respondents said that they caption most or all of their content. So that number is really showing that more than half of the respondents are captioning a large percentage of their video. And 38% have a centralized process for captioning at their organization.

We also saw a big trend of people starting to caption social media video more. So this, as I talked about a little bit earlier, we're seeing social media video as a huge need for video accessibility because it so often auto plays without sound and it becomes inaccessible to the entire population.

So 78% of respondents said that they caption social media video to make it accessible. 70% are captioning YouTube videos, and 26% are captioning Facebook videos. We also wanted to dive into the legal understanding for video accessibility and captioning, because it is becoming a huge trend. And it is a big driver for why so many people are captioning.

So we found that 66% are very or fairly confident that they understand what it means to be compliant with captioning laws. However, only 39% have a clear policy for captioning compliance. So there's a little bit of a disconnect between people who kind of understand what it means to be compliant and people who really have a policy to make that happen.

And then a little bit more surprising is that 50% of respondents either believe or are unsure about whether automatic captions fulfill their legal requirements for captioning. So all accessibility laws have this concept of creating an equal experience. And actually, the lawsuit of the National Association of the deaf versus Harvard and MIT specifically references that the captions shown on videos were unintelligible.

And so that was using YouTube's automatic captioning. So the fact that people aren't sure about automatic captions is a little concerning, given the fact that they are typically somewhere between 70% to 80% accurate, and certainly would not create that equal experience. And just in the larger concept of the legal understanding, having 66% say that they feel confident in what it means, but 50% say that they're not sure about whether automatic captions fulfill it means that there's a little bit of a disconnect between what people are doing and what people understand to be true.

Speaking of automatic captions, we do have some good information here. 36% said that they

don't use automatic captions at all, which was a huge increase from 2018 where less than 1% said that they don't use automatic captions at all. Meanwhile, 37% start with automatic captions and edit them, which is a great way to have kind of a cost effective solution for captioning. And 58% use captions for educational or training video.

So again, if you're in an educational environment, automatic captions wouldn't generally comply with the legal requirements for video. We also wanted to learn more about the biggest barriers to captioning. So this has been the biggest barrier for years-- budget. 36% said that budget was their biggest barrier, and 35% said that resource time was the biggest barrier, and 29% of people said that their captioning budget was zero dollars.

So this is often where we see the need for starting to use automatic captions and editing them. It's a great way to kind of start implementing video accessibility without any budget, without any resources. So it's definitely concerning to see a growing need and without the growing budget to go along with it.

The biggest drivers for captioning-- 28% of legal compliance was their biggest motivator. 22% said that they caption for user engagement, and 22% said that they caption to enhance learning. So while legal compliance is still the main driver for captioning, we are seeing an increased impact on user engagement and learning enhancement as a big motivator for people captioning.

So some of the takeaways from this research-- we see a decreased overall usage of and reliance on automatic captions. We see people with greater confidence in their legal requirements. And many noted kind of an increased visibility of accessibility lawsuits. And while respondents were more aware of their legal responsibility, they caption for a number of other reasons and benefits. And then, of course, an increase in the amount of video being produced without any increase in the size of budgets.

So I think with that, we will start to take questions. I know there have been a lot coming in. But if anyone has them, please feel free to continue typing. And, Tim, I will just start to ask some of these questions so we can get going. We'll get to as many as we can.

Tim, this one is for you. What do you think the impact will be if the Domino's decision is reversed?

TIM SPRINGER: So one, I would tell you it's unlikely that it probably will be reversed. I'm a little bit outside of my

depth, just because I'm not a Supreme Court watcher. But smarter people than me that have analyzed it think you'd probably get a narrow ruling rather than a broad ruling.

But let's just kind of case that out. If you get a narrow ruling, it probably limits it doesn't restrict the scope of digital accessibility. You probably have fewer lawsuits that are filed, and the overall growth in those lawsuits is lessened. And then the lawsuits probably just get a little more targeted.

So that's kind of a narrow ruling. A broad ruling that basically says, hey, this doesn't apply, would potentially remove the issue from the federal arena, and then would drop it into individual states. And then you would see enforcement of that then move into the states. And so as an example, you can still enforce a lot of this stuff under California law. You could potentially enforce it under some of the other states that are out there. And so we think that's the likely path forward if you've got a really broad ruling and roll back sort of all of the application of the ADA digital assets-- the issues with, maybe, the states.

Outside of that, you still see federal laws that aren't ADA laws still apply. So federal funding under Section 504 of the Rehabilitation Act, particularly Medicare, Medicaid, and then CMS guidelines for health care providers, that's still covered. 508 is still covered at the federal expenditure level. There's a bunch of other federal laws-- 1557, ACAA, et cetera-- where this is covered. So you would still see some federal laws that cover it, but certainly the number of lawsuits would drastically drop.

If you got a broad ruling, you'd probably start to see state level enforcement. You would potentially see more international enforcement, but we think that'd probably uncorrelated with that mostly. That's more a function of time.

LILY BOND:

Great. Thanks, Tim. Someone is asking, where can I find the legal requirement for audio description for video? And is it required for live? So audio description requirements are written directly into Section 508 of the Rehabilitation Act in the refreshed version that was released earlier this year.

So specifically, the Section 508 requirements reference WCAG, or the Web Content Accessibility Guidelines, and you can find all of the specific requirements for video, I believe, under 1.2 of WCAG.

But for audio description, it only applies to pre-recorded video. And there are no real

regulations for live audio description, which is much more difficult. I do know that sometimes that is required more under the ADA for live theater experiences. But I haven't seen it applied to live streaming video at all.

And there are also some audio description requirements under the CBAA, but that's more for broadcast video. We would be happy to follow up with those specific requirements if you have further questions.

OK, Tim, this one is for you. Do you have any data on education-related complaints, such as those at federally funded universities?

TIM SPRINGER: We do have a good bit of data on education-related complaints. We don't have it in here. If you follow up via email, we can send you over. We also have a slide we can send you from our general accessibility trends. Basically the raw numbers we've got is so far in 2019-- so what we do is we look at the Department of Ed's office of civil rights database. And that includes an exposure of all of the cases that they're investigating. And then we also look at what resolution agreements they post.

At the end of last year, you had about 3,200 cases in the database. And then we actually just pulled that data in July, and you had about 4,020 or so in the database. So we're seeing an increase in that database. We haven't sliced that out, necessarily, by public or private institute. That is an activity you could do.

Also, the reporting from that is not so great. So prior administration, there was basically a summary that was posted by the Department of Education to Congress and sort of reported how that database works in the OCR activities.

Current administration just hasn't done that report yet. Maybe it won't do it at all too-- not sure where that'll come in. So it's just kind of opaque. But at least the raw complaints, I can tell you, are increasing and they're growing pretty rapidly. And then that case handling rule was overturned, as well.

So you'll see advocates continue to use, I think the OCR mechanism for enforcement of those complaints. I would say that we have seen some increase of lawsuits under the ADA against education organizations. We have not seen nearly as many as other physical providers, particularly those sort of for-profit providers. But you may see a trend to that, as well.

LILY BOND: Great. Thanks, Tim. So there are several questions about kind of the state of automatic

captions, and specifically, YouTube's automatic captions and how Google has worked to improve auto captions. So I'll speak to that briefly.

So yes, every speech recognition vendor is always looking to improve the accuracy of their automatic captions. And all of them will improve slightly over time. We actually do an annual study of all of the major speech recognition vendors. We're about to publish kind of a state of speech recognition showing data on all of these different vendors.

And while there is some improvement, over time, really, automatic captions-- there are a lot of reasons why they are still very, very far from creating an equal experience. They still end up being really, at best, up to 90% accurate. And it's so dependent on the audio quality, on how many speakers there are, if there are accents, the complexity of the video.

And for something like YouTube where you're not able to train the speech recognition on specific terminology that's specific to your content, you really don't see as many of the benefits that can raise the accuracy level. And then there are just some limitations in terms of being able to differentiate between different speakers, having any real punctuation added, sound effects, speaker identification.

There are a lot of limitations to speech recognition that won't be solved for some time. So our recommendation is generally that if you want to use speech recognition, it may have even gotten better to the point where you are able to spend less time editing it. But we would say that you would still have to edit it to create an equal experience.

Tim, someone is asking basically about the scope of the ADA, I believe. So basically, they're saying they're a quasi-government entity-- technically a convention and visitors bureau. They don't sell anything, that they promote attractions-- basically things to see and do, places to stay. Is that the type of thing that would be covered under a lawsuit? Or because there's no sale aspect, would it not be covered by the accessibility laws?

TIM SPRINGER: I mean, ultimately, the real answer is that's a great question for your attorney. My general experience is that the closer it's tied to the physical location, the more likely there is to be enforcement. But it depends where you physically are, where a lawsuit would be brought, the size and scope and risk associated with a business, as well. Just how many users does it have? Those are sort of all things that play into it.

So I wouldn't tell you you are in a high risk sort of category just looking at where the lawsuits

were filed, but I wouldn't tell you you're in a low risk category. As to whether the law applies, that I couldn't necessarily opine on.

But those would be the factors that most people would stick into it as sort of, where are you at? What's the industry? Relatively, you're probably in a lower risk industry. But again, because you have to do with the physical enjoyment of places, that's where it gets a little muddy. So it's not a great answer, but an answer, and factors to think about.

LILY BOND:

Someone else is asking-- what is the requirement for transcripts for videos? We tell faculty that captions are required in order to meet equal experience and transcripts are strongly recommended for best practice. Is this correct? Yes, that's great.

Captions are required for any time-synchronized video. And transcripts are always recommended as a best practice. Closed captions would be the legal requirement there. Tim, someone is asking, do you know if there is a time limit to fix your site if you get a notice to sue?

TIM SPRINGER:

Again, it varies. It depends. As a matter of regulation and statute, none that I know. So there aren't any regulatory rulings that speak to that at all. As far as my understanding of the statute, there's nothing in the law that covers that.

It tends to be in my experience more the negotiation with the counterparty in that, and then whether or not someone really wants to pursue a lawsuit based on the fact that you have a plan in place to fix it, or that you're in process.

Typically, when we work with organizations, this would come down to kind of how you want to frame your legal defense. So it's very much a coordination between us says a technical expert and your attorney. But when we broadly work with organizations, one of the things we look at and think about is if we can show that the production experience is accessible, if we can show that there's a clear route for issues in the production experience that aren't accessible to get support for those experience an alternative path to having access to that stuff.

And then there's a clear plan that's published of how we're going to address it-- just from kind of an overarching litigation strategy perspective, that tends to be a good story.

And we do tend to see clients go back with pretty strong responses on that when they're responding to counter parties. So there's no black and white regulatory standard that we're

looking at or sort judging on. It's more you look at the overall set of circumstances associated with it. And we say, yeah, there may be some issues. But we're fixing them. We're fixing them on a concise timeline.

And while we're fixing those issues, we have a really clear, reasonable path to providing support, such that people can get around those issues. That's a fairly strong legal position to be in, from our experience.

LILY BOND:

Great, thanks, Tim. So at this point, we're reaching the end of the hour. Thank you, everyone, for all of your great questions. And thank you so much, Tim, for your great presentation, and for joining me today.