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THE CURRENT DIGITAL
ACCESSIBILITY LAWSUIT
LANDSCAPE: 2023 EDITION

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Introduction

Unsurprisingly, 2022 was an even larger year for web accessibility lawsuits with a 75% increase in digital accessibility lawsuits in the last two years. With the rapid migration of employees and educators to a thrown-together online workspace came flaws in app, website, and online content accessibility. As companies were moving online, their main focus was not making their content accessible according to ADA and WCAG standards.

Unfortunately, this abundant disregard for accessibility has severe effects on a neurodiverse audience that relies on captions, transcripts, audio description, screen reader compatibility, alternative text, and more to fully experience online content.

This resource summarizes the current accessibility lawsuit landscape, as well as dives into some of the most ground-breaking historical lawsuits for the entertainment, eCommerce, education industries, and more.

THIS EBOOK COVERS:

- The Americans with Disabilities Act & WCAG Overviews
- Major Trends in 2022 Digital Accessibility Lawsuits
- Website Accessibility Lawsuits in 2022
- The Entertainment Industry: Monumental Lawsuits
- Higher Education Accessibility Lawsuits
- and more...



The Americans with Disabilities Act (ADA)

In 1990, the Americans with Disabilities Act (ADA), was signed into law by President George H.W. Bush. The ADA, the most comprehensive of the nation's disability laws, prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation.

The ADA requires most business and facilities to provide reasonable access and accommodation for all disabled customers, clients, and members of the public. The ADA applies to almost all businesses that are open to the public, regardless of size.

There are five titles to the ADA:

TITLE I Employment

TITLE II Public Entities & Transportation

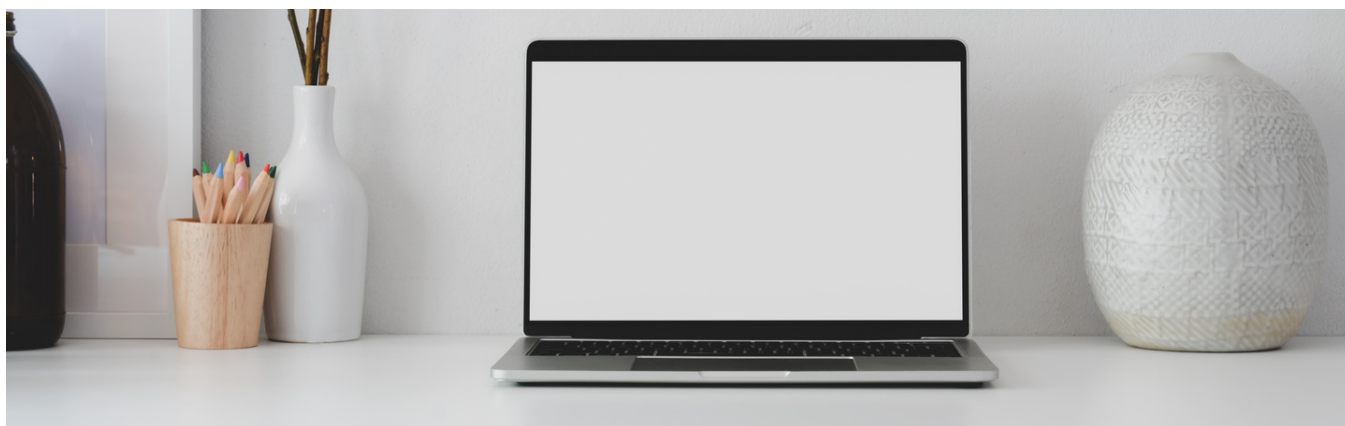
TITLE III Public Accommodations

TITLE IV Telecommunications

TITLE V Miscellaneous Provisions

IN SEPTEMBER 1996:

The U.S. Department of Justice issued an opinion stating that Titles II and III require both state and local governments and the business sector to provide effective communication whenever they communicate through the internet.





The World Wide Web Consortium (W3C) & WCAG 2.2

The World Wide Web Consortium (W3C) is an international group with the aim of developing strategies, standards, and resources to make the Web accessible to people with disabilities through their Web Accessibility Initiative (WAI).

Their previous work includes the implementation of WCAG 2.2, the current web accessibility standard. Over the years, the group updates and expands on existing standards as the internet and technology evolve, including the most recent WCAG 3.0 standards.

WCAG 2.2

While W3C is currently working on developing and implementing new guidelines (WCAG 3.0), the WCAG 2.2 standards are the primary guidelines online content was evaluated against in 2022.

WCAG 2.2 was formally published into law on November 30th, 2020, and is the current web accessibility standard. It is the final revision of the WCAG 2 Series, soon to be updated to the WCAG 3.0 Series in 2023. For an in-depth overview of the WCAG 2.2 standards, click [here](#).

In the United States, WCAG 2.2 is the standard that universities and businesses are held to when investigated by the Department of Justice for violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

[NEW] WCAG 3.0 Guidelines

The World Wide Web Consortium (W3C) has slated the publication of the new WCAG 3.0 standards at some point during the 2023 calendar year. Though it is important to prepare for these new guidelines, WCAG 2.2 governs web accessibility today.

[View the proposed guidelines in full here.](#)



Major Trends in 2022 Digital Accessibility Lawsuits

Each year, UsableNet produces a full year report on ADA digital accessibility lawsuits that serves as key insights into the lawsuit landscape. Below are the summarized insights and trends from 2022.

1 E-Commerce and Food Service Companies

In 2022, e-commerce and food service companies' chances of being alleged in an ADA digital accessibility lawsuit increased significantly over other industries. This is evidenced by the many cases against websites that belonged to these companies including HelloFresh and Kohls.

2. Website accessibility claims were a prominent issue

Website accessibility issues were cited in lawsuits prominently. In 2021, over 400 companies that utilized an accessibility overlay or widget received lawsuits. Last year, however, businesses using accessibility widgets and overlays received more than 300 lawsuits.

3. The Department of Justice under President Joe Biden has made accessibility enforcement a priority.

The DOJ had settled enforcement actions with Hy-Vee Supermarket Chain and Rite Aid Corporation. These lawsuits revolved around the accessibility of their online COVID-19 vaccine portals. What's more, the DOJ also settled a lawsuit with the Champaign-Urbana Mass Transit District about the accessibility of its public transportation mobile apps and website.

4. WCAG was cited frequently.

A typical claim in 2022 cited the Web Content Accessibility Guidelines (WCAG) as an area of failure for the alleged company. Commonly, a lawsuit would include a list of issues relating to the WCAG standards, highlighting areas where the alleged company has failed to provide adequate access for all individuals.

5. There were over 80 lawsuits every week in 2022

By the end of the year, the total number of accessibility-related lawsuits reached 4455. This is a substantial 75% increase over the last two years.



Website Lawsuits in 2022

2022 saw a significant increase in overall lawsuits that alleged the inaccessibility of the websites of different companies. Here are some of these lawsuits alleged against well-known brands and companies.

VERGARA V. KOHL'S, INC.

In January 2022, Pedro Vergara was unable to shop or complete any purchases on Kohls.com because of his visual impairment. The Kohls website was alleged to be inaccessible and incompatible with assistive technologies. Within the lawsuit, it is alleged that the Kohl's website had inaccessible buttons and links that were mislabeled or not labeled whatsoever. These included buttons that were necessary to make a purchase on the website including the search button, item prices, product details, and the shopping cart icon.

BROWN V. GROCERY DELIVERY E-SERVICES USA, INC. (HELLOFRESH)

With the popularity of meal-planning services, HelloFresh is a large and influential player in this market. Thus, to see a digital accessibility lawsuit filed against them can have serious consequences when it comes to brand reputation and stability. The plaintiff, Lamar Brown, has alleged that the HelloFresh website is unable to provide an accessible digital shopping service for those that use screen reading software.

Brown claims that the company has violated the ADA, New York State Civil Rights Law, and the New York State Human Rights Law. The lawsuit states, "The access barriers make it impossible for blind and visually impaired users to even complete a transaction on the website."

DAWKINS V. MRS. FIELDS FAMOUS BRANDS, LLC

In May of 2022, Elbert Dawkins filed a suit alleging that the Mrs. Fields website was inaccessible to him. Dawkins uses a screen reader to use and navigate websites due to his blindness. However, he was unable to identify and purchase products because the website was not "designed to be compatible" with his screen reader tool and software.

The Entertainment Industry: Monumental Lawsuits

NATIONAL ASSOCIATION OF THE DEAF (NAD) V. NETFLIX

The quickly developing digital world sparked controversy about what is considered a place of public accommodation. In 2012, the second big case came about in the First Circuit and this one was against Netflix.

In essence, the National Association of the Deaf complained that not all Netflix shows are captioned properly, making it discriminatory against deaf viewers. The court used the ADA to determine that a place of public accommodation is any place of exhibition and entertainment, where sales are made, or if you're a rental establishment. This includes Netflix, making the National Association of the Deaf successful in their lawsuit.

This case established that any kind of website that's a commercial website is gonna be a place of public accommodation.

NATIONAL ASSOCIATION OF THE DEAF (NAD) V. HULU

In 2016, the National Association of the Deaf (NAD) put legal pressure on Hulu to develop a formal closed captioning policy for their streaming web video that includes Hulu originals. They reached a settlement where Hulu agreed to the FCC's standards for caption quality as well as adding closed captions for all full-length English or Spanish videos by September 2017.





NATIONAL ASSOCIATION OF THE DEAF (NAD) V. AMAZON

In 2015, the NAD struck a deal with Amazon to make sure that Amazon's full library of TV shows and films (consisting of over 190,000 titles) would get closed captioned. While Amazon Prime Video was already fully captioned, this lawsuit went after their archive of Instant Video that wasn't yet captioned.

The result of the lawsuit was that Amazon must comply with FCC caption quality standards for accuracy, placement, timing, and completeness for all current and future video offerings.

ADDITIONAL ENTERTAINMENT LAWSUITS:

As more information becomes available, the below information will be updated.

- [SANCHEZ V. DISCOVERY COMMUNICATIONS, LLC](#)
- [MARTINEZ V. BUZZFEED, INC.](#)
- [LICEA V. NBC UNIVERSALE MEDIA, LLC](#)
- [TENZER-FUCHS V. DISNEY DTC, LLC](#)
- [ROMERO V. WORLD WRESTLING ENTERTAINMENT, INC.](#)
- [MONEGRO V. SLING TV LLC](#)
- [MARTINEZ V. FANDANGO MEDIA, LLC](#)



Higher Education Digital Accessibility Lawsuits

DOJ V. UC BERKELEY (2016)

In 2016, the DOJ submitted a letter to UC Berkeley that its free, online content was not accessible to those with hearing, visual, or manual disabilities. The Department of Justice found Berkeley's online content to be in violation of the ADA, which prohibits discrimination against individuals with disabilities by public entities.

HARVARD AND MIT (2015)

In 2015, MIT and Harvard University were sued by the National Association of the Deaf (NAD) for discriminating against the deaf and hard of hearing by "failing to caption the vast and varied array of online content they make available to the general public". The US District Court in Massachusetts found that both universities were violating Title III of the ADA and Section 504 of the Rehabilitation Act.

DUDLEY V. MIAMI UNIVERSITY OF OHIO (2015)

In 2014, Aleeha Dudley, a blind student, filed a complaint against the university alleging that Miami University and Former President Dr. C. Hodge excluded from participation and benefits of Miami's services, programs, and activities. The courts ruled in favor of Dudley and compensation was provided. Additionally, Miami University had to make monumental changes.

NATIONAL FEDERATION OF THE BLIND V. PENN STATE

The NFB filed a complaint against Pennsylvania State University for discriminating against blind students and faculty. They cited that Penn State failed to make technology based services and websites accessible, including library and departmental websites, CMSs, and more.

Penn State remedied the situation by focusing on WCAG standards.

OTHER MAJOR HIGHER EDUCATION LAWSUIT

The following lawsuits have been filed in 2021 and 2020 due to institutions' failure to make their online content accessible. These will be updated as more information becomes available.

- [HEDGES V. UNIVERSITY OF DENVER](#)
- [MATZURA V. LOUISIANA COLLEGE](#)
- [HEDGES V. BIOLA UNIVERSITY, INC.](#)
- [CHU V. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA](#)
- [GOMEZ V. UNIVERSITY OF PHOENIX, INC](#)
- [HEDGES V. VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA](#)
- [HEDGES V. SAINT FRANCIS UNIVERSITY](#)

Summary

As the number of digital accessibility lawsuits continues to grow year over year, it's important to understand the underlying systemic issues relating to online accessibility. Failure to provide accessible resources, such as captions, transcripts, alternative text, screen reader capability, and audio description not only costs organizations a lot of money, but also leaves out a neurodiverse audience.

American accessibility guidelines and standards are developed for a reason, to provide equal access for everyone and prevent discrimination based on disability. Understanding these guidelines, such as WCAG 2.2 and the ADA, is the first step to ensuring your online content is accessible to all.

For additional educational resources, take a look at another one of our accessibility-focused resources:

YOU MAY ALSO BE INTERESTED IN...



[WCAG 3.0 Website Accessibility Guidelines](#)

Website accessibility requirements can be convoluted and hard to understand. Thankfully, these WCAG 3.0 guidelines provide an overview for all digital creators.

We have outlined the main components of the WCAG 3.0 standards, making it easy to quickly recognize what accessibility changes you need to make.

[DOWNLOAD HERE](#)



Resources

- [The Americans with Disabilities Act \(ADA\) Highlights and Overview](#)
- [ADA, Title III Regulations](#)
- [The Web Content Accessibility Guidelines \(WCAG 2.0\)](#)
- [Human Versus Machine Transcription: Selecting the Right Product](#)
- [Section 508 Compliance Overview](#)
- [Summary of 508 Compliance PDF](#)
- [Section 508 ICT Refresh](#)
- [IDEA overview and history](#)
- [Equal Access: Design of Distance Education Learning Program](#)
- [FCC Consumer Guide - Captioning of Internet Programming](#)
- [2020 - 2021 State & Federal Accessibility Guidelines eBook](#)
- [Grants & Funding 2021 - 2022 eBook](#)
- [WCAG 2.1 For Video Accessibility Overview](#)
- [WCAG 3.0 Accessibility Guidelines: Everything You Need to Know](#)





The 99% Captioning Compliance Checklist

Print and use this checklist to ensure that your captioning program is in compliance.

- ☐ Matches the spoken words in the dialogue in their original language to the fullest extent possible and include full lyrics when provided on the audio track.
- ☐ Contains all words in spoken order.
- ☐ Uses proper spelling, homophones, tense, punctuation, capitalization, and the proper representation of numbers.
- ☐ Does not rewrite or paraphrase dialogue.
- ☐ Does not use synonyms to replace actual dialogue.
- ☐ Represents speaker tone of voice where necessary to understand the dialogue.
- ☐ Uses slang and grammatical errors as part of the dialogue where necessary to properly represent the dialog.
- ☐ Indicates utterances and false starts where necessary to accurately mirror the hearing-person's experience.
- ☐ Includes nonverbal information that is not observable, such as who is speaking, multiple speakers, music sound tags, sound effects, audience reaction, and background noise.
- ☐ Coincides with the corresponding dialogue as closely as possible. Paces and synchronizes at a speed that is legible by the viewer
- ☐ Occurs from beginning to end of the program without interruption, to the fullest extent possible. (This is required for "fully accessible" status.)
- ☐ Re-editing of content requires re-editing of captions.
- ☐ Has a font size appropriate for legibility.
- ☐ Placement and size provides for easy readability for both the caption content and screen content.

THANK YOU

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