

# What Lawyers Need to Know: A Primer on Digital Accessibility Terms and Today's Legal Landscape

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By Vivian Cullipher

## **An Overview for Legal Teams on ADA, Section 508 Issues Affecting Websites and Other Digital Assets**

This July will mark 28 years since President George H.W. Bush signed the Americans with Disabilities Act (ADA) into law. According to the Computer History Museum, five months after the ADA was enacted, Tim Berners-Lee prototyped the “WorldWideWeb” featuring a server, HTML, URLs, and the first browser.<sup>1</sup>

These two momentous events have changed the course of how society functions on a day-to-day basis, leveling many a playing field by providing easier, more expedient access to public accommodations, government services, and information.

While they've existed in parallel, the ADA and the web have now collided.

The ADA, created to prohibit discrimination against individuals with disabilities, was framed before the internet became a household word. But times have certainly changed:

- As of December 2017, 54% of the world and 95% of the United States population now uses the web to access services and information on the internet.
- “Google” is listed as a verb in esteemed dictionaries—and has been since at least 2006.<sup>2</sup>
- Retailers are closing brick and mortar shops and moving online.
- Grocery shopping, banking, education, entertainment, renewing one's driver license, filing taxes, and other activities are possible with little more than a smartphone and an internet connection.

Digital access has expanded beyond desktop web access to mobile applications, wearable technologies, service kiosks, internet-connected household and industrial appliances, and more.

But if a person with disabilities can't access online services the way the rest of society does, that lack of access and opportunity must be addressed.

And it is. Largely in court.

Business owners, legal teams, web and communications teams, and developers are experiencing a wave of legal actions and civil rights complaints. These actions—and the resulting court decisions—are stretching society's

understanding of what constitutes online discrimination and how the ADA and related laws apply to an increasingly digital world.

Whether or not you've been contacted about the accessibility of your firm's or your client's website, it's important to quickly understand key terms and decisions related to online accessibility. Below is an introduction to what digital accessibility is all about, followed by a primer of key words and phrases, including laws, standards, and court cases.

## What Is Digital Accessibility?

Accessibility includes the art and science of making digital assets and resources perceivable to people who

- are blind or have low vision and are users of assistive technology,
- are part of the Deaf community or are hard of hearing,
- have mobility impairments, or
- have cognitive challenges.

The measure of accessibility refers to how well digital materials, as well as their delivery, measure against internationally recognized accessibility standards and applicable federal laws, regulations, and guidance from regulatory agencies (including the Department of Justice (DOJ), Department of Education (DOE), and the DOE's Office for Civil Rights (OCR)). These materials may include digital content such as websites; software and mobile applications; elearning and learning management systems (LMSs); digital files such as documents, PDFs, presentations, spreadsheets, calculators, and transaction platforms; and other digital media, including video and audio assets. Digital content also includes the tools used to find, create, and manipulate digital content.

In addition, those practiced in digital accessibility evaluation and execution widely abide by the following definition of accessibility, and it has been used in resolution agreements:

*"Accessible" means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology. (Resolution Agreement South Carolina Technical College System OCR Compliance Review No. 11-11-6002).<sup>3</sup>*

## Laws and Standards

Laws and standards regarding access to electronic information and communications continue to evolve as online activity becomes more prevalent, technologies advance, and the world becomes more digitally integrated.

- **Accessibility for Ontarians with Disabilities Act (AODA)** – The Government of Ontario, Canada, enacted the AODA in 2005 to improve accessibility standards for Ontarians with physical and mental disabilities. Compliance deadline dates depend on the size of the institution and the sector in which it operates. One of the AODA standards is the “Information and Communication Standard.” This standard lays out requirements for accessible formats and communication supports for persons with disabilities. Most recently, on June 20, 2018, Canada proposed its first piece of *national* legislation for improving access for people with disabilities, the Accessible Canada Act.<sup>4</sup>
- **Americans with Disabilities Act (ADA)** – Modeled after the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. Mandates include the establishment of text telephones (TTY (TeleTYpewriter) or TDD (Telecommunications Device for the Deaf))/ telephone relay services often used by individuals with hearing or speech impairments.<sup>5</sup> A 2016 Final Rule related to communications accessibility requires movie houses to provide auxiliary aids to access captioning and audio description.<sup>6</sup>

Websites have been a little complicated: The DOJ had considered revising Title II to address state and local government services offered to the public via the web, and even went so far as to seek public input via a 2016 Supplemental Advance Notice of Proposed Rulemaking. For organizations considered public accommodations, Title III applies, but there is no directly stated requirement for digital accessibility in Title III, either. This has led to conflicting outcomes among different courts, with decisions based on interpretations of whether or not an online environment constitutes a place of public accommodation.

Many businesses and accessibility advocates expected the Department of Justice to clarify ADA's online accessibility requirements through Title II and III rulemaking. However, in December 2017, the DOJ withdrew its notice of proposed rulemaking for both, stating that it was “evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate.”<sup>7</sup>

- **ADA Title II (State and Local Governments)** – Title II, Subtitle A, protects individuals with disabilities from discrimination by state and local government entities and extends protections established by Section 504 of the Rehabilitation Act. Title II's anti-discrimination mandates apply to all services, programs, and activities provided to the public by state and local governments, except public transportation services.
- **ADA Title III (Public Accommodations and Commercial Facilities)** – The ADA sets standards for construction of accessible facilities. Under Title III, no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. Public accommodations include most places of lodging (such as inns and hotels), recreation, transportation, education, and dining, along with stores, care providers, and places of public displays.
- **California Unruh Civil Rights Act** — Among other things, this California legislation outlaws discrimination based on disability.<sup>8</sup> It has played a pivotal role in affirming inaccessible websites as discriminatory under the ADA's definition of public accommodations.

In a 2016 California State Court case, *Davis v. BMI/BND Travelware*, a California Superior Court granted the blind plaintiff's motion for a summary judgment finding that the defendant, which operates Colorado Bag'n Baggage, violated the ADA and the California Unruh Civil Rights Act. The judgment ordered statutory damages for violation of the Unruh Act in the amount of \$4,000 plus legal fees. In addition, the plaintiff was granted injunctive relief ordering the defendant to either take the steps necessary to make the website readily accessible by visually impaired individuals or terminate the website.<sup>9</sup>

Most recently (May 2018), the Superior Court of California in Los Angeles held that the Whisper Lounge restaurant violated California's Unruh Act by having a website that could not be used by a blind person using a screen reader. The ruling specifies that the restaurant, as a place of public accommodation, is to make its website comply with the requirements of Web Content Accessibility Guidelines (WCAG) 2.0, Level AA.<sup>10</sup>

- **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701)**<sup>11</sup> – Section 504 is American legislation that guarantees certain rights to people with disabilities. It was one of the first U.S. federal civil rights laws offering protection for people with disabilities. It set precedents for subsequent legislation, including the Virginians with Disabilities Act in 1985 and the ADA.
- **Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d)**<sup>12</sup> – In 1998, the U.S. Congress amended the Rehabilitation Act to require federal agencies to make their electronic and information technology accessible to people with disabilities. Section 508, which is both a law and a standard, was to help eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. Section 508 applies to all federal agencies when they develop, procure, maintain, or use electronic and information technology.

In 2017, the United States Access Board "refreshed" Section 508 as part of updating 20-year-old information and communication technology (ICT) standards and guidelines. The Access Board also updated the Telecommunications Act Accessibility Guidelines within Section 255 of the Communications Act of 1934 as part of that effort. Together, the updates to these Acts can be found in the 2 Federal Register, Volume 82, No. 11, Page 5790.<sup>13</sup> One of the outcomes of the Section 508 Refresh was the move from gauging accessibility based on a rigid set of static rules to measuring accessibility compliance against the more principle-based WCAG 2.0 Level AA standard.<sup>14</sup>

- **Web Content Accessibility Guidelines (WCAG)**<sup>15</sup> – The Web Content Accessibility Guidelines are part of a series of guidelines published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), the main international standards organization for the internet. WCAG specifies how to make content accessible, primarily for people with disabilities—but also for all user agents, including devices such as mobile phones. WCAG 2.0 was published in December 2008 and is the most currently cited web accessibility standard in resolution agreements and legal settlements. WCAG 2.0 also became an ISO standard, ISO/IEC 40500:2012, in October 2012.<sup>16</sup>

On June 5, 2018, WCAG 2.1 was published, providing updated guidance for touchscreens and mobile devices, color contrast and layout recommendations for web content and controls, and additional recommendations to support those with cognitive, language, and learning disabilities.<sup>17</sup>

- **WCAG Conformance** – The W3C, publishers of the WCAG, divides conformance into three levels: Level A provides the minimum requirements needed for a page to be considered accessible. Level AA is currently the recommended WCAG 2.0 conformance level in most situations; and various aspects of Level AAA can provide additional accessibility to users and may help future proof a website. However, full AAA conformance is often out of reach since all Level AAA success criterion must be met in order to be considered Level AAA compliant.<sup>18</sup>
- **World Wide Web Consortium (W3C)** – The W3C is the main international standards organization for the internet. A collaborative community consisting of member organizations, full-time staff, and the public, it develops technical specifications and guidelines that standardize website technologies. W3C technologies include HTML, CSS, XML, and PNG languages and formats. It also publishes the Web Content Accessibility Guidelines.<sup>19</sup>

## Federal Governance and Enforcement Bodies

In the U.S., there are two primary federal enforcers of accessibility law. However, many states also have their own accessibility laws, often based on the ADA or Section 508 and therefore, enforcement bodies at the state level.

- **Department of Education (DOE) Office for Civil Rights (OCR)**<sup>20</sup> – The OCR enforces ADA Title II and Section 504 civil rights laws in schools and other organizations. OCR policy interprets these laws to include website accessibility.<sup>21</sup>

From 2015–2017, the OCR received a deluge of complaints about school website accessibility, many from one filer.<sup>22</sup> In early March 2018, the OCR modified its Complaint Policy Manual (CPM) and the way that it handled civil rights complaints. Among other things, its updated procedures include the ability to dismiss a complaint if it is "...a continuation of a pattern of complaints previously filed with OCR by an individual or group against multiple recipients or a complaint(s) is filed for the first time against multiple recipients that, viewed as a whole, places an unreasonable burden on OCR's resources."<sup>23</sup>

In response to these changes and the resulting dismissal of hundreds of civil rights complaints, several advocacy groups—the National Federation of the Blind, the Council of Parent Attorneys and Advocates, and the National Association for the Advancement of Colored People (NAACP) filed a suit in May 2018 against the DOE.<sup>24</sup>

- **Department of Justice (DOJ)** – The U.S. Department of Justice has ruled or weighed in on many web accessibility-related cases, including the 2016 complaint against the University of California, Berkeley. In that instance, the Department informed Berkeley administration that large segments of the university's free, publicly available online content was inaccessible to individuals with disabilities. In its letter, the DOJ stated that these courses violated the ADA.<sup>25</sup>

But that wasn't the first time the DOJ had taken a position on the matter. In 2015, the DOJ entered into a settlement agreement with EdX Inc, requiring EdX to remedy ADA violations by making the EdX website, mobile applications, and online learning management system conform to WCAG.<sup>26</sup> The Justice Department also entered into a consent decree with tax preparer H&R Block in 2014.<sup>27</sup> However, the DOJ has refrained from clarifying the ADA's requirements for electronic information accessibility through any specific regulation.

In December 2017, the DOJ officially withdrew its Advance Notice of Proposed Rulemaking for Title III for public accommodations, as well as Title II website accessibility rulemaking regarding state and local government websites, continuing to leave decision making on whether or not electronic information must be made accessible up to the courts on a case-by-case basis (though many government organizations are governed by Sections 504 or 508, the OCR, or state legislation).

## Technologies and Tools

While digital accessibility can span a plethora of technologies, the terms below are some of the most recurring when discussing accessibility for websites and digital assets operated and published by government and industry.

- **Accessibility Statement** – Many organizations post an accessibility statement on their websites to indicate their commitment to provide access and conform to accessibility standards. Such statements typically describe the measures that have been taken to ensure online accessibility, but can also include any accommodations or accessibility measures implemented or available at their physical locations or as part of their services. There is also usually contact information to request assistance or to report any aspect of the website or service that may be inaccessible to the user.
- **Alt Text** – An abbreviation for “alternative text,” alt text is a brief description of content, such as an image, that may not otherwise be evident to a visitor who cannot see the content clearly. Alt text is provided behind the scenes via code and is relayed by a screen reader.
- **Audio Descriptions** – Also referred to as video description or descriptive narration, audio descriptions have traditionally been used to narrate the goings on of live theater and other art productions for visually impaired individuals. As video has become more prevalent, particularly online, audio descriptions are increasingly being used in broadcast and online media to describe relevant elements that are provided only visually by default.<sup>28</sup>
- **Automated Accessibility Checkers** – There are many automated tools that will review a web presence for syntactical accuracy. They work by reviewing the code and searching for profiles that indicate missing accessibility structures or known coding methods that produce inaccessible experiences.

While using accessibility checkers can be extremely helpful to an organization trying to determine or maintain accessibility for its digital materials, using automated tools is not a failsafe method for three main reasons: 1) The presence of failures does not necessarily mean the website is inaccessible. Failures can range from annoyance to hard failures. 2) Errors will vary from tool to tool. Each automated checking tool strives to catch all errors, but the quality of each tool varies. 3) In general, automated testing tools are believed to pick up only 30% of accessibility failures.<sup>29</sup>

It is very possible to have a site that passes the automated tests yet is completely unusable by assistive technology.<sup>30</sup>

- **Assistive Technology (AT)** – “Assistive Technology” is an umbrella term that includes assistive, adaptive, and rehabilitative devices for people with disabilities. It also includes the process used in selecting, locating, and using them. Assistive technology promotes greater independence by enabling people to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with, the technology needed to accomplish such tasks. Assistive technologies include screen readers, screen magnifiers, augmented reality glasses, auxiliary devices to access audio descriptions or closed captions, hearing aids, specialized keyboards and controllers, wheelchairs, and much more.<sup>31</sup>
- **Closed Captions** – Text displayed on a screen, video, or other visual display that relays and is synchronized to spoken dialogue, sometimes enhanced with descriptions of additional sounds. In contrast to “open captions,” closed captions can be turned on and off.
- **Electronic Information Technology (EIT)** – One of the many terms used to describe information technology (IT) or information and communications technology (ICT—commonly used worldwide) or electronic information resources (EIR—used in some state governments).
- **Government Product/Services Accessibility Templates (GPATs)** – A GPAT is a simple tool to assist federal contracting and procurement officials in fulfilling the market research requirements associated with the Section 508 standards. The GPAT is intended as a form to be included with government solicitations. It provides the full list of technical provisions and indicates which ones are required or maybe required by the government to ensure the deliverable is accessible. The government is required to identify Section 508 requirements, not the vendor. When included with the solicitation, the GPAT becomes a mandatory requirement as a part of the vendor proposal to indicate how their proposed solution addresses the applicable Section 508 requirements.
- **Information and Communications Technologies (ICT)** – In the context of Section 508, “the term ‘information and communication technology’ (ICT) is used...to broadly encompass electronic and information technology covered by Section 508, as well as telecommunications products, interconnected Voice over Internet Protocol (VoIP) products, and Customer Premises Equipment (CPE) covered by Section 255. Examples of ICT include computers, information kiosks and transaction machines, telecommunications equipment, multifunction office machines, software, Web sites, and electronic documents.”<sup>32</sup> The term is also used internationally apart from Section 508.
- **JAWS (Job Access With Speech)** – Is a computer screen reader program for Microsoft Windows that allows blind and visually impaired users to read the screen either with a text-to-speech output or by a refreshable Braille display.
- **Manual Testing** – The only way to know if a web product is accessible is to have a knowledgeable company or individual test the site manually.<sup>33</sup> Virtually no web products are free from an automated test failure. However, that does not mean the site is not perceivable and usable by a person using assistive technology. For AT users, the bottom line is whether they can independently access, perceive, and operate the site without the aid of a sighted user and in the same manner and timeframe as a sighted user.<sup>34</sup>
- **NonVisual Desktop Access (NVDA)** – NVDA is a free, open source, portable screen reader for Microsoft Windows.

- **Open Captions** – Text displayed on a screen, video, or other visual display that relays and is synchronized to spoken dialogue, sometimes enhanced with descriptions of additional sounds. In contrast to “closed captions,” open captions cannot be turned on and off, as they are part of the video itself, and not a separate layer on the video feed. This is useful for providing captions for media that do not have closed caption capabilities, such as some social media channels.
- **Open Source Technologies** (including WordPress and Drupal for websites, Moodle, Sakai, and Canva for learning management systems) – In general, open source code is any source code released to the public where the copyright holder provides the rights to study, change, and distribute the software to anyone and for any purpose, but retains the license. Starting with an open source solution provides substantial savings in development time and product acquisition costs, as long as the organization’s usage is consistent with the license. However, it is not readily apparent what accessibility obligations the organization has.<sup>35</sup>
- **PDF ISO Standards** – ISO 32000, published December 2008, and ISO 14289-1:2014 (PDF/UA), published July 2012 and updated in 2014, define technical accessibility requirements for Portable Document Format (PDF).<sup>36</sup>
- **Screen Reader** – A computer program that reads text aloud. Screen readers may be native to a device (e.g., TalkBack on Android smartphones, VoiceOver on iOS devices, or Narrator on Windows operating system devices), or may be installed separately (NVDA or JAWS).
- **TalkBack** – Is an accessibility service that helps vision-impaired users interact with their devices. It uses spoken word, vibration, and other audible feedback to let the user know what is on the screen, what the user is touching on the screen, and what the user can do with it. Recently, Google updated and repackaged TalkBack into a more robust “**Android Accessibility Suite.**” This Suite includes a more feature-rich TalkBack, along with Switch Access, which works with switch assistive technology, and Select to Speak, which lets users select onscreen text to be read aloud.
- **Transcripts** – A written version of spoken dialogue. Unlike captions, transcripts are not synchronized in real time with audio. However, a transcript may include time stamp notifications and identify each speaker if multiple speakers are involved.
- **VoiceOver** – Is a screen reader built into Apple Inc.’s OS X, iOS, tvOS, watchOS, and iPod operating systems. By using VoiceOver, the user can access their Macintosh or iOS device based on spoken descriptions and, in the case of the Mac, the keyboard. The feature is designed to increase accessibility for blind and low-vision users, as well as for users with dyslexia.
- **Voluntary Product Accessibility Template® (VPAT®)** – A VPAT is a form describing how a proposed computer hardware product, software, or online service enables usability by people with limited capacities to see or hear, or who have mobility and cognitive challenges. The accessibility issues that VPATs address come from Section 508. Creators of the VPAT, the Information Technology Industry Council, updated the VPAT to version 2.0 in response to the Section 508 Refresh, with a subsequent minor update to 2.1.<sup>37</sup>
- **HTML5** – HTML5 is the most recent and widely recognized markup language for structuring and presenting web-based content. Published in October 2014, the HTML5 specification extends the previous HTML4 specifications.<sup>38</sup>

- **Web Accessibility Initiative – Accessible Rich Internet Applications (WAI-ARIA) 1.0** – WAI-ARIA is an additional specification that has been integrated into HTML5, providing a language to create rich, interactive web experiences primarily for people who use assistive devices and technologies such as a screen reader.<sup>39</sup> WAI-ARIA seeks to fill in the missing technical accessibility gaps in HTML5 by providing markup and guidance for a variety of situations such as dynamically updating screen content. Like HTML5, ARIA is not cited directly in litigation. It is just one additional technique that may be used to create accessible digital experiences.

## Landmark Legal Cases and Timeline

- **2000, Bank of America California and Florida Agreement** – Bank of America became the first bank to commit to make changes to its website, along with its ATMs, as part of an accessibility agreement. The settlement was negotiated by Lainey Feingold and Linda Dardarian on behalf of the California Council of the Blind and individual blind advocates.<sup>40</sup>
- **2006, National Federation of the Blind v. Target Corp** – Often considered the pivotal class action lawsuit for web accessibility cases, this case was removed from the California Superior Court to the Federal District Court, certified as a class, and withstood Target's motions to dismiss (Target had argued that the ADA was intended to apply only to physical accommodations). The matter was settled by the parties agreeing on changes to the website and Target policies, and the payment by Target of the plaintiffs' court-determined litigation costs and fees, as well as providing a \$6-million-dollar fund for California plaintiffs.<sup>41</sup>
- **2012, National Association of the Deaf v. Netflix** – This was the first case in the country in which a court held that the ADA indeed applied to website-only businesses. In this case, Netflix had failed to provide closed captioning on some streaming content, preventing those in the deaf and hard of hearing community from enjoying its offerings.<sup>42</sup> Netflix originally argued that the ADA only applied to physical spaces, and that it could not be forced to provide closed captioning because it did not own copyrights to the material in its programming. In the end, both parties entered into a Consent Decree in which Netflix agreed to caption all of its videos.<sup>43</sup>
- **2016, Davis v. BMI/BND Travelware (Bag and Baggage)** – In this California State Court case, a California Superior Court granted the blind plaintiff's motion for a summary judgment finding that the defendant, which operates Colorado Bag'n Baggage, violated the ADA and the California Unruh Civil Rights Act. The judgment ordered statutory damages for violation of the Unruh Act in the amount of \$4,000 plus legal fees. In addition, the plaintiff was granted injunctive relief ordering the defendant to either take the steps necessary to make the website readily accessible by visually impaired individuals or terminate the website. This is, to our knowledge, the first case in the country to definitively rule that a retailer was in violation of the ADA for maintaining a website that was not accessible for the visually impaired.<sup>44</sup>
- **2016, Department of Justice and the University of California at Berkeley** – In a move that affected more than 20,000 online videos offered for free to the public, Berkeley opted to pull inaccessible content from the web rather than make it accessible to people who are deaf, hard of hearing, deafblind, or blind, as ordered by the DOJ. The university cited expenses.<sup>45</sup> Scholars and others objected to Berkeley's decision.<sup>46</sup>

- **2017, Farmer et al v. Sweetgreen, Inc.** – While most accessibility cases tackled websites and web pages, 2017 started seeing litigation against mobile applications. This case, filed in the U.S. District Court for the Southern District of New York, involved two blind individuals who experienced barriers to placing orders via the restaurant's online portal and mobile app. The final settlement involved, in part, remediating the portal and app to comply with WCAG Level A and Level AA success criterion and providing accessibility training to relevant staff for two years.<sup>47</sup>
- **2017, Robles v. Domino's Pizza LLC** – Here, the court dismissed an online accessibility lawsuit saying that accessibility requirements for public accommodations are not yet clearly specified, running against the grain of previous decisions. That outcome is being appealed.<sup>48</sup>
- **2017, Gil v. Winn-Dixie** – Fresh on the heels of the Robles decision, the United States District Court for the Southern District of Florida reinforced ADA website applicability in a first-of-its-kind non-jury trial. The court's decision stated that the Winn-Dixie grocery store chain violated the ADA because it was inaccessible to visually impaired individuals, including the plaintiff, who use screen reader software, noting that the website was heavily integrated with physical store locations, operating as a gateway to them. It also emphasized WCAG 2.0, Level AA as the standard for website accessibility.<sup>49</sup>
- **2018, Stanley, et al. v. BarBri, Inc.** – Blind law students won their 2016 lawsuit against BarBri, the host of the country's largest bar exam preparation course. Blind law students won their 2016 lawsuit against the course provider, alleging that Dallas-based BarBri failed to provide equal and timely access to digital resources and other course materials, and failed to take corrective action after being notified of a lack of access to those materials. Materials included online chat rooms, online and mobile resources, and digital platforms for assessing progress. As part of the court-enforced decree, BarBri agreed, in part, to improve accessibility for core digital products using WCAG as the standard, as well as to implement accessibility training.<sup>50</sup>
- **2018, Cheryl Thurston v. Midvale Corporation, et al.** – In May 2018, the Superior Court of California in Los Angeles ruled in favor of the plaintiff, requiring the defendant, operators of the Whisper Lounge, a restaurant, to bring the restaurant's website into compliance with WCAG 2.0 AA. Not only did the court agree that the defendant had violated the ADA (and therefore the state's Unruh Civil Rights Act), but it also ruled that the website was considered a public accommodation because of its connection to its physical location. It also ruled that providing an alternate means of contact (phone number and email address) was insufficient in providing information in a timely matter and "did not protect the independence of the visually impaired."<sup>51</sup>

## Conclusion

Following a record number of web accessibility lawsuits in 2017, the pressure on businesses and other organizations to adhere to accessibility standards, specifically WCAG 2.0, continues to grow. Based on demographics alone, the need for accessible digital information certainly will.

For instance, according to the National Eye Institute (NEI), 4.2 million Americans ages 40 and older are visually impaired. Of that number, three million have low vision. By 2030, when the last baby boomers turn 65, the NEI projects that the number of visually impaired Americans will increase to 7.2 million, with around 5 million of those having low vision.<sup>52</sup>

Technology has ushered in a new era of perpetually accessed services, 24-hour purchasing, always-available information and entertainment, opportunities to work from home, and much more. The majority of the U.S. population accesses these readily, enjoying their convenience. Having these options available online provides those in the disability community—who often have barriers to transportation and privacy—with new opportunities for greater independence.

The inventor of the World Wide Web, Tim Berners-Lee, has said, "The power of the Web is in its universality. Access by everyone regardless of disability is an essential aspect."<sup>53</sup> And, like never before, digital services provide previously unforeseen options to address the findings that the U.S. Congress presented within the ADA itself:<sup>54</sup>

*The Congress finds that*

*(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;*

*(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;*

*(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;*

*(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;*

*(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;*

*(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;*

*(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and*

*(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.*

For now, it will be up to the courts to guide the collision of the web and anti-discrimination laws. As they do, government and businesses will continue to pursue technological innovation and accessibility compliance as they understand it and desire.

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## About Microassist

Since 1988, Microassist has partnered with organizations to better educate employees, constituents, and clients through traditional classroom training, innovative elearning, mission-critical applications, and ever-changing technology, all while emphasizing online usability and accessibility. Visit us at [microassist.com/accessibility](https://microassist.com/accessibility) for information on accessibility services for your organization. You may also contact us at 512-794-8440 or [accessibility@microassist.com](mailto:accessibility@microassist.com).

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## Endnotes

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