Digital Accessibility And Unlawful Discrimination Checklist (WCAG 2.1 Update)

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Commentary

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The following is an update to a previous checklist, originally published in Mealey's™ Litigation Report: Cyber Tech & E-Commerce on July 18, 2016. We have revised it to reflect changes to website accessibility guidelines, regulation changes, and litigation events.

Common Pitfalls That Expose Website Owners To ADA Equal Access Litigation

With one in five people in the U.S. reporting a disability—and an increased reliance on online information, transactions, and services—web accessibility has rapidly grown as an area of legal focus.[1] In fact, according to the Seyfarth Shaw ADA Title III News & Insights blog, the number of digital accessibility lawsuits filed this year has already exceeded the total filed in all of 2017.[2]

Our original checklist pointed out ten key areas of websites and online content often mentioned within digital accessibility litigation. When organizations failed to consider accessibility within these areas, they often hindered people with disabilities from perceiving, operating, or understanding online information. In effect, they were prevented from experiencing equal access and enjoyment of online information and services when compared to those without disabilities.

A discussion of the items in the checklist below—and checklist updates—requires a basic introduction to the Web Content Accessibility Guidelines, or WCAG.[3]

WCAG was created and is maintained by the World Wide Web Consortium (W3C). This set of guidelines explains how to make web and other digital content more accessible to people with disabilities at three different conformance levels: A (the most basic), AA (the most recommended), and AAA (the most stringent).[4] Each conformance level incorporates the preceding level's success criteria. This set of guidelines is updated iteratively; version 1.0 was released in 1999, version 2.0 in 2008, and 2.1—the latest iteration—in June 2018.

While not specified in the Americans with Disabilities Act, WCAG is an internationally accepted standard for

creating and evaluating accessible online content. In fact, Section 508 of the Rehabilitation Act of 1973 updated their guidelines in 2017 to reference WCAG 2.0 for federal government information and communication technology.[5] WCAG 2.0 is also integrated within many state and national government regulations.[6] And repeatedly, U.S. website accessibility settlements direct businesses and other organizations to conform to WCAG 2.0 Level AA.[7]

The National Law Review notes:

> . . .despite not having been formally adopted by regulators for the vast majority of the private sector, compliance with WCAG 2.0 at Levels A *and* AA has become the de facto baseline for government regulators, courts, advocacy groups, and private plaintiffs when discussing what it means to have an accessible website.[8]

WCAG 2.1 adds 17 success criteria, with none of the existing criteria or guidelines being changed, abrogated, or superseded. The 2.1 update offers clearer guidance for mobile devices, and gives new requirements to support people with low vision and cognitive, language, and learning disabilities.[9]

The popularity of touch-capable devices partially prompted the update, since such devices were not as common when WCAG 2.0 was recommended in 2008.[10] The update also comes at a time when

- an aging Baby Boomer generation is increasingly experiencing vision and hearing loss (along with other age-related changes to mobility and cognitive functions),
- we have a more culturally diverse population,
- there is a strong societal drive toward social justice and inclusion, and
- there is greater awareness of disabilities of all types, including learning and cognitive disabilities.

Legal documents are already referring to WCAG 2.1, though it has not yet been mentioned in any settlement. Having been newly released, it's also not yet part of any legislation of which we are aware. However, this should not be a cause for complacency.

Conformance to WCAG 2.1 Level AA automatically means conformance to WCAG 2.0 Level AA. Furthermore, conformance to WCAG 2.1 helps you prepare for ongoing changes in technology. Finally, the past few years have demonstrated growing legal support for individuals with disabilities who file lawsuits because of a lack of digital accessibility.

For instance, in February 2018, a Massachusetts federal judge rejected a motion by 1-800-FLOWERS.com, a floral and gourmet foods gift retailer and distribution company, to dismiss a lawsuit filed on behalf of three blind individuals. The company alleged that the individuals were trying to strong-arm them into compliance with the WCAG, which are not legally binding. The judge, however, rejected this motion, noting that the plaintiffs made no mention of WCAG compliance; rather, they alleged that the defendant was violating the ADA by "depriving blind individuals the benefits it affords non-disabled individuals."[11]

This judicial focus on providing online equal access to individuals with disabilities, as well as the previously mentioned combination of societal, technological, and legal trends, makes it important to be aware of what organizations should consider when developing websites, applications, and documents—and the elements WCAG 2.1 now addresses.

10 Critical Website Elements To Evaluate For Accessibility

Just as curb cuts, aisle widths, and other physical elements provide equal access in a physical environment, digital accessibility elements empower users with disabilities to independently navigate, perceive, and otherwise interact with content in digital environments. The following ten critical website elements should be carefully evaluated when determining whether digital content is accessible.

The updated list notes several Level AA-related areas newly addressed in WCAG 2.1. These additions are noted with "2.1" in brackets ([2.1]). (For an enumerated listing of all new success criteria, consider the W3C page, "What's New in WCAG 2.1" at www.w3.org/WAI/standards-guidelines/wcag/new-in-21/.)

1. Navigation

Page and site navigation can get complex. However, here are a few key elements of accessible page navigation.

- **Logical, tab-through reading order** – Many people with disabilities navigate websites and digital documents using only a keyboard, often using the tab and arrow keys to move through a page. In a properly structured site, tabbing proceeds in a logical order from the address bar, to menus, across form fields and links, and to other content areas in a predictable, understandable manner. This enables keyboard-only users to move through a page and a site in a logical, intuitive way. NOTE: Users must also have an indicator (such as a highlight or border) that denotes where they are on the page. See **Content on hover or focus**, under "Adaptability," for more information.

- **Customizable character key shortcuts [2.1]** – Character key shortcuts, often used with a keyboard, are also available to those who use speech commands and other technologies. Because of mobility impairments, tremors, speech patterns, or personal preference, the default shortcut may not work for everyone. For that reason, users should be able to simplify, make more complex, or turn off character key shortcuts according to their need or preference.

- **Customizable pointer gestures and cancellation [2.1]** – Some operations, by default, require specific gestures. Consider multi-fingered swiping or pinching to zoom in and out, for instance. Some individuals with limited mobility may need a different way to access the same functions. Developers should ensure that web pages and apps are built using standard markup that allows interaction with a single pointer or button push. The user should also have the ability to abort the function before completion or undo it after completion. This helps minimize unintentional actions from one movement.

- **Landmarks** – A sighted person typically perceives web page sections such as headers, footers, menus, and main content areas through visual cues. Likewise, special indicators, called landmarks, can be added to a site's code that provide the same information to a blind or low-vision screen reader user. While not a WCAG requirement, these landmarks act as navigational cues and allow screen reader users to ascertain a page's layout. For example, a sighted person might visually identify the menu and access it with a mouse. A landmark for a page's navigation menu allows screen reader users to identify the menu aloud and move "focus" to that area as a user navigates a page. ("Focus" indicates the area that will receive input from the user's keyboard or clipboard.[12])

- **Status messages [2.1]** – Moving a user's focus without his or her knowledge can be confusing for anyone, but it is especially disorienting for assistive technology users. For example, imagine a Twitter feed or chat window moving the user's focus to the new message every time there is an update. To solve this, the status message success criterion specifies that there are different types of messages that should be read aloud without moving the user's focus.

2. Content Structure

Like an outline, a well-structured page conveys relationships between different content areas. Many sighted users scan a well-organized page for headings and bulleted lists to get an idea of what content is on a page and what information they want to read first or access quickly. Typically, they look for visual cues such as font size and style to know what information is important and how topics are organized.

While a visual assessment may interpret larger, bolder text to be a heading identifying a block of text, that contextual information isn't always conveyed to assistive technologies. For that to happen, the content type must be identified using proper markup language. Doing so enables screen readers to "scan" by headings and other text styles, conveying the organizational landscape of a page to the screen reader user.

- **Titles** – Each page has a clear title, and no two pages share the same title. A title will appear in the page's "tab" within the browser, above the web address bar.

- **Headings** – Headings proceed in a logical order. Sections containing content are formatted by using "Heading 1" or "H1" style designations (markup) rather than simply changing the visual appearance of the text to bold, larger type, or a different typeface. Secondary sections are formatted likewise, using "Heading 2" or "H2" styles, and so on.

- **Lists** – Bulleted and numbered lists are identified as such.

3. Hyperlinks

Hyperlinks are one of the most fundamental elements of web design and one of the most critical elements to present clearly. Users of assistive devices commonly "scan" for or extract a list of identifiable hyperlinks, rather than read them exclusively within context.

- **Readability** – Hyperlink addresses, sometimes made up of long strings of numbers and symbols, can be arduous to listen to when read aloud. For this reason, hyperlinks should be identified using common language rather than only listing the web address.

- **Clarity** – Screen readers often navigate from link to link, so multiple "click here" or "read more" links on a page, although using common language, do little to inform the user of where he or she will end up if they click the link.

- **Distinctiveness** – When placed within a paragraph or other body of text (as opposed to a menu), links should be clearly and visibly identifiable. This means that they need to clearly contrast with surrounding text and use some attribute other than color (underline, bold or italics, etc.) to distinguish them from non-linking text.

4. Text

Visual impairments can range from various forms of color blindness (affecting 8% of the US male population and .5% of the US female population),[13] near sightedness, contrast issues, or other visual deficiencies to complete loss of vision. Text that is too small, too faint, or otherwise too hard to see prevents users with limited vision from reading the text that is in front of them.

- **Customizable font size** – Users should be able to enlarge or diminish text size. Text should also translate well on various devices (mobile, tablet, desktop).

- **Sufficient color contrast** – Proper color contrast between a text and its background can help alleviate visual challenges by aging eyes, color blindness, and other low-vision conditions. WCAG specifies color contrast ratios for both small and large text. These ratios apply to text on a page and to graphics with text elements. Color contrast analyzers are available to help determine sufficient contrast levels.[14]

- **Color not used exclusively to convey meaning** – If a color is used to convey something meaningful, another option must be provided to convey that same information. Otherwise, someone with color blindness or color contrast challenges may not pick up on the distinction between (for example) highlighted and non-highlighted text, or text that is in a different color (e.g., "the text in red indicates a violation.").[15]

- **Customizable text spacing [2.1]** – The amount of space before and after a line of text or paragraph, as well as the space between letters and words, and font styles can all greatly affect ease of reading effectively. However, individuals have different preferences and needs due to learning disabilities, low vision, lighting conditions, and other factors. For that reason, users should be able to adjust the text on their screen to what works best for them. This includes being able to adjust spacing and enlarge type without losing content or functionality. The onus on changing text spacing as needed rests with the user, but designers and developers need to ensure that text spacing can be changed to WCAG-specified values without compromising the readability of the text.

5. Images

In terms of what a screen reader can interpret when encountering images, graphics are non-text elements and are therefore, unreadable by default. This is true even if the image contains text. For instance, a "Home" button is essentially just an image file of a certain width and height at a certain location. Its relevancy or intention is indistinguishable from a company logo, a photo, a graph, or a decorative border.

- **Alternative text for images** – Alternative text ("alt text") or a long description of images provides equal access to information provided graphically. This can be critical for explanatory images and flow charts, schematics or graphs, maps, menu buttons, and or illustrative presentations like infographics, comic strips, or slide images.[16]

- **Decorative images ignored** – Conversely, non-informative or redundant images need not be conveyed, and in fact, should be skipped out of courtesy.

- **Color not used exclusively to convey meaning** – As with text, if a color is used to convey something meaningful (e.g., "The green location marker indicates the starting point, while the red one marks the finish line."), another option must be provided to convey that same information. Otherwise, someone with color blindness or color contrast challenges may not notice the distinctions.

- **Sufficient non-text contrast [2.1]** – As with text color contrast, text presented as images and icons must have sufficient color contrast so that they can be seen by those with low vision or color blindness. For non-text elements, WCAG 2.1 specifies a contrast ratio of at least 3:1 against adjacent colors. This contrast is best evaluated by using a color contrast analyzer.

6. Forms

Forms, whether online or within documents, incorporate many of the elements above.[17]

- **Navigation** – A user should be able to intuitively and logically tab through the document, generally from input field to input field.

- **Accessible instructions** – All form fields and controls (e.g., checkboxes or drop-down menus) should be clearly labeled, indicating what information or action is appropriate. Many document forms are often "locked" to prevent editing of non-field content. This can mean that instructions related to the form fields are inaccessible to a screen reader, leaving the user to wonder what information is being requested. There are at least two new success criteria that expand on this:

  - **Identify Input Purpose [2.1]** – When the form technology allows, assistive technologies should be able to interpret input fields and determine their purpose. For example, it is possible to label a field as a telephone number that allows desktop and mobile browsers to create an accessible form field for both sighted and assistive technology users. This can work in tandem with a browser's autocomplete functions, making it easier for clearly identified and properly coded form fields to be filled in with the correct information.

  - **Label in Name [2.1]** – Sometimes the label on a visible web object (e.g., "Send Report" on a submit button) doesn't match the name given in the background code (e.g., "submit"). The visible name that corresponds to a form field should be consistent with the label given to it so that assistive technologies can relay the intent of that object to a user.

- **Timing** – Online forms may include a time-out feature (for instance, for security purposes). Some individuals may require more time than has been allotted, and will need to be able to extend their time with the form.

7. Documents And Other Files

Many of the elements of navigation, content structure, hyperlinks, text, images, and forms apply to files that may also be posted online.[18] Common file types are listed below, though this list is not exhaustive. NOTE: Microsoft Office products and Adobe Acrobat Professional have built-in accessibility checkers to help determine and remediate accessibility, though some files may still require manual checking for some elements.

- **Word processing documents (e.g., WordPerfect, Word)** – Word processing documents most closely mimic web pages, but presentations, and spreadsheets should also be logically navigated with proper headings and clear hyperlinks. Form fields should be properly labeled, and images should have alternative text as appropriate.

- **Portable Document Format (PDF)** – Printed text files are often scanned into a PDF file format. In this case, text within a file needs to be verified as actual text, possibly undergoing conversion by optical character recognition (OCR) software. Otherwise, a screen reader may see the content as an image instead of something readable. Documents should also be properly structured and tagged to facilitate navigation throughout the document.[19]

- **Presentations (e.g., PowerPoint, Prezi)** – Presentations often combine elements similar to those used in web pages and word processing documents. Presentations often include multimedia elements such as audio, video, and animations. These are discussed in more depth in the next section.

- **Spreadsheets (e.g., Excel)** – Often containing merged cells, calculations, and graphs, spreadsheets require diligent attention to labeling of table headers and rows. While basic principles apply, the level of effort required to produce an accessible spreadsheet varies with the complexity of the spreadsheet.

8. Multimedia

Alternatives should be provided to provide equal access to those who may not easily perceive one or another facet of multi-media content.[20] Special care may be needed in choosing what multi-media software is used to provide content. This is because compatibility with screen readers and other assistive devices can vary.

- **Video** – For those in the Deaf community or with other hearing loss, captioning and transcripts can provide content, either synchronized with the video delivery or as a separate text file to be read separately. There may also be times when conveying video content by text also means describing sound effects or other audio within the video in addition to relaying the actual text spoken. For visually impaired or blind individuals, an audio description of what is happening on screen may also be helpful or needed.

- **Audio** – A text version of any audio file or alert should be provided.

- **Movement** – Animations, alerts, and other on-screen movement can cause problematic distraction for those with cognitive disabilities. For this reason, a non-animated version or options for pausing or negating the animation should be provided.

9. Adaptability

Accessible design enables any needed personalization. Personalization can affect changes to color schemes, screen contrast, delivery speed, font sizes, how content is presented on a screen, or the ability to interact with user preferences for assistive technologies. Additional considerations may be needed for creating content and environments that translate well and that are operable on different devices, such as among desktops, laptops, tablets, and smartphones. The recommendation of WCAG 2.1 introduces new success criteria for adaptability, not all related directly to content. Standard

coding practices can go a long way in making these options available by default:

- **Orientation [2.1]** – A webpage or app should not be limited to just one display orientation (e.g., exclusively portrait or exclusively landscape). Rather, content should adjust itself appropriately to accommodate the user's chosen orientation. For instance, a user may have their device permanently attached to a wheelchair in a position that works best for him or her; specifying that content only works in one orientation can mean excluding that user from being able to view or use the content easily.

- **Reflow [2.1]** – Content on a webpage, particularly when viewed on smaller screens, should automatically reposition itself in a way that does not compromise information or functionality. It should also not require scrolling both horizontally and vertically to be read. There are cases where this isn't feasible (viewing a large map or graph, for instance). Those are beyond the scope of this guideline.

- **Text spacing [2.1]** – As was mentioned previously, content written in a format that supports certain text style properties must be able to accommodate changes to font size, text and word spacing, and line and paragraph spacing specifications in a way that does not adversely affect readability.

- **Character key shortcuts [2.1]** – As was mentioned previously, key shortcuts must be able to be customized to suit user preferences.

- **Content on hover or focus [2.1]** – There are times when additional information may appear on screen to supplement the information a person is hovering over. Consider onscreen help text, definitions, or endnotes, for instance. An individual may or may not want that information to be visible on screen. They should have the ability to either dismiss the information or retain it intentionally (that is, not have it disappear inadvertently), and have it appear in a way that doesn't interfere with their original activity.

- **Motion actuation [2.1]** – Many mobile devices or apps allow a user to tilt, shake, or otherwise move the device to perform an action. For this

situation, functionality should be supplemented with alternative controls that are available to persons with mobility impairments. Measures to prevent accidental actuation should also be in place. For example, functions that require moving or shaking the device ("Shake to Undo" on iOS devices, for instance) can be turned off to avoid unintentional activation.

10. Policies, Processes, And Maintenance

Once an accessible digital environment, such as a website or mobile app has been released, organizations will need to establish practices that ensure that accessibility in ongoing. Many times, this commitment is articulated in a readily available accessibility statement.[21] Accessibility statements may be required in response to an accessibility settlement.[22]

Accessible Content Provides Equal Access To All

The Americans with Disabilities Act states that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[23]

With technology so heavily integrated into daily living, online environments are increasingly being perceived or interpreted as places of public accommodation. Organizations that do not incorporate accessibility best practices within their websites, documents, and other digital media—whether knowingly or unknowingly—exclude people with disabilities from independently using that organization's products and services. It follows that owners of digital content such as websites, software, mobile apps, or documents, may want to consider evaluating their materials and products and weigh the risks of potential litigation.

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