

Edited by  
Dr. Chris M. Law

# The Digital Accessibility Legal Digest Volumes I & II

Practice Updates, Guidance, and Resources

For practitioners engaged in digital accessibility legal work. A digest from the first and second annual Digital Accessibility Legal Summits, March 2019, Anaheim, CA, and June 2020, Online

Full Court Press



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Legal Digest Volumes I & II:  
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*With love, and sincerest appreciation for helping  
to make this happen, to  
Caroline Coghill Law*



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# Preface

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## Preface to Volume I (2019)

On March 12, 2019, we held the first Digital Accessibility Legal Summit [hereinafter Summit or Legal Summit] in Anaheim, California. This volume is a digest of the materials that were gathered and presented that day.

The Summit came about as the result of a series of fortuitous meetings over a number of years, but the meeting where it seemed to be a realistic prospect was only nine months prior to the event. (I relay the origins of the Summit in more detail in the acknowledgments section). Jack McElaney and I both came to the conclusion that it would be very useful to have an event dedicated just to the topic of legal issues with regards to digital accessibility. And after many, many phone calls in the late summer and early fall of 2018, we had assembled a lineup of legal and accessibility experts willing to share their stories and advice.

At numerous times in the early days I was told that it would be very difficult to expect plaintiff lawyers and defense lawyers to share the same room, let alone get them together to share the same stage. I countered that I thought we *could* indeed get them on the same stage, and furthermore I had a clever strategy up my sleeve to achieve this goal: *I would ask them nicely*.

The strategy worked. We had a tremendous dialogue as a result. In fact, one of the best received elements of the day's program was the result of a collaboration between a defense lawyer and a plaintiff lawyer. Kristina Launey and Timothy Elder got together before the event and generated a set of best practice guidelines for lawyers on both sides. Their guidelines were short but concise, and proved to be one of the biggest discussion points to come out of the event.

Even before the event took place, Jack and I had discussed the need for more publications to help newcomers to digital accessibility legal issues. This turned into one of the pitch elements for getting experts to sign up to speak—to get the word out beyond the in-person attendees of

the Summit. Unfortunately, other projects were in the way of getting to assemble this volume until many months after the March 2019 Summit.

\* \* \*

From the one-day Summit we had slides, handouts, and transcripts, but by themselves they were not in a form that could be just handed to a newcomer with any reasonable hope that they would know where to begin. Therefore, the materials have been re-ordered and re-assembled in this volume with the intention that newcomers to this area *will* have an idea of where to begin. Experienced professionals will also, no doubt, find new and useful insights and resources with which to better address issues they are confronting in this domain.

The first Summit tested the waters to see if there was interest in having members of the field come together to discuss and debate the topics. The interest has been clear, and so we are engaged in continuing the Summit, with the next event due to be held in April 2020. All of us involved hope to see greater collaboration and continued dialogue in the future. So, we hope and trust that you find Volume I useful and stay tuned for Volume II in the not-too-distant future.

Dr. Chris M. Law  
January 31, 2020

## **Preface to Volume II (2020)**

“The interest has been clear, and so we are engaged in continuing the Summit, with the next event due to be held in April 2020.”

Well, that’s what I wrote on January 31, 2020 ... and that’s not quite what happened.

## **Impacts of the COVID-19 Pandemic**

We actually held the Summit in June as an online conference. Like thousands of other events, our in-person gathering plans were derailed

by the COVID-19 pandemic.<sup>1</sup> At the end of January the virus was still a news story affecting faraway places. Here in the United States we were effectively prevented from leaving our homes just a couple of months later.<sup>2</sup> It took entire nations by surprise. (Jared Smith provided us his summary of predictions for the future at our first Summit in March 2019 ... but he didn't even bring up the *possibility* of a global pandemic affecting all of our work! (tsk-tsk!))<sup>3</sup>

As it turned out, the pandemic greatly affected work in the digital accessibility field in a way that many of us *could* predict. As the majority of work and education pivoted quickly to online-only formats, many of us already knew of the accessibility shortcomings of online collaboration and conferencing systems. At first there was a scramble by companies and hired consultants to provide quick fixes, and later there was a clear, demonstrable need to provide more sustainable accessibility throughout such applications. There was a time toward the middle of 2020 when some accessibility companies had more work than they could easily handle. This also meant that many lawyers were getting busy too. We adjusted our Summit program to reflect this new flurry of activity.<sup>4</sup>

### **At the Time of the Summit: Social Unrest Amid the Pandemic**

The pandemic had caused the organization and delivery of the Legal Summit to move from the earlier planned in-person event to a strictly online event, beginning Tuesday, June 2.

One week prior, on the evening of Memorial Day, Monday, May 25, 2020, George Floyd, a black American, was murdered by a (subsequently

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<sup>1</sup> Wikipedia, “COVID-19 pandemic,” [https://en.wikipedia.org/wiki/COVID-19\\_pandemic](https://en.wikipedia.org/wiki/COVID-19_pandemic).

<sup>2</sup> Amanda Moreland, Christine Herlihy, Michael A. Tynan, et al. “[Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement—United States, March 1–May 31, 2020](https://doi.org/10.15585/mmwr.mm6935a2),” MMWR Morb Mortal Wkly Rep 2020;69:1198–1203. <http://dx.doi.org/10.15585/mmwr.mm6935a2>.

<sup>3</sup> I’m kidding, of course! Jared’s “Future” talk from 2019 is still very relevant even if 2020 didn’t go as anyone had foreseen (see [page 61](#)).

<sup>4</sup> See “Legal and Accessibility Impacts of COVID-19” by Jack McElaney, starting on [page 287](#).



found guilty) police officer in Minneapolis.<sup>5</sup> The shocking video of the death caused outrage around the world, sparking widespread protests against police brutality. As part of the initial and subsequent reactions in the news and in society as a whole, discussions of the ongoing injustices around race were, quite rightly, pervasive. With our Summit taking place soon after, the killing of George Floyd (as well as other persons of color at the hands of police) and societal injustices based on race became an added part of the discourse at the Summit. Many speakers made reference to the events in their talks. Additionally, many made inferences and connections between racial injustices and ongoing societal injustices that have adversely affected people with disabilities.

Arguably, something that was adding “fuel to the fire” was an alarming rise in white supremacists that had seemingly occurred over the preceding years—notably, the August 12, 2017, “Unite the Right Rally” in Charlottesville, Virginia, in which a self-proclaimed neo-Nazi murdered a counter-protester by driving his car into a crowd.<sup>6</sup> Just a couple of weeks prior, on July 28, 2017, President Trump had addressed a crowd of police officers in a talk that the ACLU described as “Police State Authoritarianism Distilled to Its Essence.”<sup>7</sup> After the Charlottesville rally and killing, Mr. Trump infamously bungled, saying “I think there’s blame on both sides [...] you had people that were very fine people on both sides.”

It was against this immediate backdrop—of George Floyd’s death, the subsequent protests, and the rise in “police state” rhetoric—that one of our speakers, LaMondré Pough, said:

“I want to give you an example of how things change and how our perception of how things has changed. I believe [when one of the other speakers was interrupted by loud noise from outside, and somewhat flippantly] made a comment

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<sup>5</sup> Wikipedia, “[Murder of George Floyd](https://en.wikipedia.org/wiki/Murder_of_George_Floyd),” [https://en.wikipedia.org/wiki/Murder\\_of\\_George\\_Floyd](https://en.wikipedia.org/wiki/Murder_of_George_Floyd).

<sup>6</sup> Wikipedia, “[Charlottesville car attack](https://en.wikipedia.org/wiki/Charlottesville_car_attack),” [https://en.wikipedia.org/wiki/Charlottesville\\_car\\_attack](https://en.wikipedia.org/wiki/Charlottesville_car_attack).

<sup>7</sup> Jefferey Robinson, “[Donald Trump’s Talk to Police Officers Was Police-State Authoritarianism Distilled to Its Essence](https://www.aclu.org/blog/criminal-law-reform/reforming-police/donald-trumps-talk-police-officers-was-police-state),” the American Civil Liberties Union, July 31, 2017, [www.aclu.org/blog/criminal-law-reform/reforming-police/donald-trumps-talk-police-officers-was-police-state](https://www.aclu.org/blog/criminal-law-reform/reforming-police/donald-trumps-talk-police-officers-was-police-state).

about fighter jets flying overhead that were ‘probably on their way to blow up protesters’—Of course it was an off-the-cuff comment—and I know that could never happen. But then I paused. It possibly could.<sup>8</sup> We could possibly be in the situation where someone in ‘leadership’ (I’ll just say that ambiguously) has declared that, ‘You know what—those protesters should not have a voice.’ So they may ask—of course I don’t believe it would happen—but they may ask for something like that to happen. Just a few short months ago that would have been totally unthinkable, and the comment would be absolutely 100 percent laughable. But not anymore.

“The world has changed in some really obvious and critical ways but that also means that our response has to be obvious and critical as well. That we must take bold actions, that we must take big steps. Even in the changing of our perceptions, and how we view accessibility and inclusion.”

In the editing process to create this volume, we have kept in the references and comments regarding both the pandemic and social unrest going on at the time of the event. Both incidents had subsequent impacts on the field of accessibility and inclusion. To put this into its proper historical context for the reader, these particular incidents were very recent when the Legal Summit took place.

## A Difficult Subsequent Year

When we gathered the steering committee at the end of 2020 to begin planning the third Annual Summit, we were thinking (hoping!)

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<sup>8</sup> In fact, on the day before the Summit began, something resembling this had actually happened: “On June 1, 2020, amid the George Floyd protests in Washington, D.C., law enforcement officers used tear gas and other riot control tactics to forcefully clear peaceful protesters from Lafayette Square and surrounding streets. Minutes later, President Donald Trump and senior administration officials walked from the White House to St. John’s Episcopal Church. Trump held up a Bible and posed for a photo op in front of Ashburton House (the church’s parish house), which had been damaged by a fire during protests the night before.” Wikipedia, “[Donald Trump photo op at St. John’s Church](https://en.wikipedia.org/wiki/Donald_Trump_photo_op_at_St._John's_Church),” [https://en.wikipedia.org/wiki/Donald\\_Trump\\_photo\\_op\\_at\\_St.\\_John's\\_Church](https://en.wikipedia.org/wiki/Donald_Trump_photo_op_at_St._John's_Church).

“This should be over soon!” It wasn’t. We thought of March 2021, then April, then May, then . . . we settled on October. The United States had done well enough with the vaccination process that we were reasonably sure that we might be able to hold a combined online and in-person event by the fall. (At the time of writing this, we still don’t know for certain that in-person conference gatherings will be allowed at our venue.)

At the end of 2020 I also told the steering committee (and the publisher) that I should have Volume II of the Digest completed early in 2021 . . . and that’s not quite what happened either. A major back operation for me took me out of work for most of the first months of the new year. (It’s good to have a very patient publisher!)

The social unrest continued, most notably with the failed insurrection at the U.S. Capitol on January 6, 2021, by Trump supporters, and the aftermath of that event.<sup>9</sup> In mid-2021 the United States is continuing to struggle with issues of race, injustice, and political division.

The whole country is talking about when we will finally be back to “normal.” In 2021 we’ll hope and try for a “more normal” Summit. Maybe we’ll be having our fourth Summit in 2022 in a truly “back to normal” state?

Maybe.

Let’s hope.

Dr. Chris M. Law  
July 7, 2021

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<sup>9</sup> Wikipedia, “[2021 United States Capitol Attack](https://en.wikipedia.org/wiki/2021_United_States_Capitol_attack),” [https://en.wikipedia.org/wiki/2021\\_United\\_States\\_Capitol\\_attack](https://en.wikipedia.org/wiki/2021_United_States_Capitol_attack).

# Acknowledgments

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## **Acknowledgments for Volume I (2019)**

The origins of the Summit I can directly trace back to four fortuitous meetings. The meetings happened over the course of five years, and to give proper acknowledgment, here is the story of how the event came about.

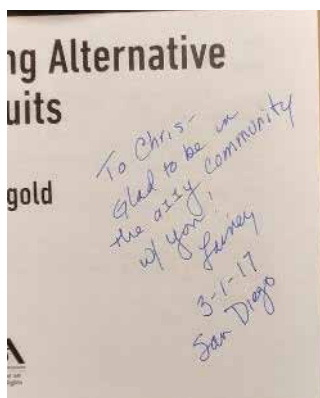
The first meeting took place in early 2014, when I was working as an accessibility contractor at the federal government. Clayton Lewis, a professor working on cognitive disability issues at the University of Colorado, was visiting our department in downtown Washington, DC, and over lunch I told Clayton about my doctoral work on business/organizational responses to accessibility. Sometime later he fielded a call on a related topic from Dan Goldstein, so Clayton referred Dan to me.

The second “meeting” was actually a phone call from Dan in the spring of 2015. Dan was working at the law firm of Brown, Goldstein and Levy, helping Anil Lewis and colleagues at the National Federation of the Blind in efforts to persuade companies to fix their website accessibility problems. The short version was that NFB was establishing agreements with companies to fix their websites, which the companies did . . . but, when NFB checked back in a year or so later, invariably the websites were broken again. I asked Dan whether changing the way the organization operated was part of any agreement, as opposed to just changing the website. (This was why Clayton had suggested that we connect.)

In the fall of 2015 I left the contracting position and formed my own company to provide accessibility consulting services. My earlier conversation with Dan later led to more conversations with him and his colleagues at NFB, and the inception of the Accessibility Switchboard project in 2016. The “Switchboard” is a collection of guides and resources for newcomers to the accessibility field, focusing on the organizational aspects required to achieve accessibility. Enculturating accessibility is needed so that accessible websites aren’t made inaccessible when they are updated or “improved” by new features and ways of

implementing programming (for example, by programmers and others who want to make progress, but have never been educated on the needs of people with disabilities for accessing digital content). As part of the Switchboard information portal, we had developed a guide for consumers—providing advice on how to interact with companies, and how to escalate issues with customer support, and so forth—with legal actions being the *last* resort. We also provided short guides for industry on how to proactively take measures to avoid getting sued (published in January 2017) and what to do if you are sued (published in June 2018). This work for the Switchboard project provided the impetus for the next meetings.

The third meeting was actually two meetings with Lainey Feingold, separated by a year. (I have known Lainey since the early 2000s when she was working on lawsuits over automated teller machines, and I had been working on and promoting kiosk and ATM accessibility.) I attended a CSUN Assistive Technology conference presentation after which Lainey was signing copies of her new book *Structured Negotiation, A Winning Alternative to Lawsuits*. This was March 1, 2017 (and I can prove it!) ...



Over the course of the next year the book became a crucial reference for the Switchboard project. I had also suggested Lainey as a keynote speaker to the committee planning the next ICT Accessibility Testing Symposium, due to be held in the fall of 2018. So, at the next CSUN conference in March 2018 Lainey and I took a stroll to discuss the symposium keynote idea, and we got to talking about the need for more activities, and possibility an event just on digital accessibility and legal. At this time though, this was just one of too many ideas competing

for time and attention for both of us, and the idea of an event was effectively on hold.

The fourth meeting was the final catalyst needed, leading directly to the Summit's inception. At the M-Enabling accessibility conference in early June 2018, someone (and I can't remember who, sorry) came up to me and said something like "You have to meet this guy ... his name is Jack McElaney, and I think you two will have a lot to talk about." I figured I would meet him for five minutes, and then be on my way. I think we chatted—actually, we had a very animated and at many times funny conversation—for about an hour and a half. Funny because we had both been experiencing *exactly* the same sorts of exasperation about the state of affairs around digital accessibility and legal in general; but at the same time not funny because this serious societal issue persisted. Particularly concerning to us was the lack of collaboration and fruitful dialogue. Lawsuit numbers were increasing, and even though there were news and blog articles, plus the odd promotional webinar and the occasional conference session panel or presentation, we thought that there should be an event just on this topic. I had the background on putting on events for professionals working on digital accessibility—namely the annual ICT Accessibility Testing Symposium—and Jack had the legal background and contacts from his work at Microassist. By the end of the month Jack and I had our first call to properly discuss the creation of such an event, and soon thereafter I had reconnected on the topic with Lainey seeking additional speaker recommendations.

The rest, as they say, is history.

Therefore, my first thanks—for providing the necessary meetings, encouragement, and ingredients for the Summit to come to be—are to Clayton Lewis, Dan Goldstein, Anil Lewis, Lainey Feingold, and Jack McElaney.

I would also like to thank all of the speakers who generously gave their time and shared their expertise to present at the Summit. Besides Dan, Lainey, and Jack, I thank Howard Rosenblum, Kristina Launey, Timothy Elder, Karen Peltz Strauss, Jared Smith, and Pina D'Intino.

There were a number of people who were also critical in providing connections as we approached the first Summit. There are too many to list individually, but I would particularly like to recognize Mike Paciello and Debra Ruh for their help. My thanks also to the many individuals who also helped out at the event, including the hotel staff and those at the event registration desk. A special thanks also to Laura Renfro, for

helping with the last-minute push to gather and assemble the materials for attendees.

For the creation of this volume, the blame really needs to go to Jack McElaney. He said that the world really needs this, but he was too busy . . . and so he thought I ought to do it. Thanks, Jack! My sincere thanks also to all of those who provided review and proofing of the content.

Finally, and most importantly, my wife Caroline. Without her support, understanding, and encouragement, the Summit and the publication of this volume would never have happened.

Dr. Chris M. Law  
January 31, 2020

## **Acknowledgments for Volume II (2020)**

First, my thanks to all of the speakers who have also kindly contributed to the content in this volume: Jon Avila, Jennifer Chadwick, Robert Dinerstein, Pina D’Intino, Deepa Goraya, Karl Groves, Eve Hill, Marcie Lipsitt, Jack McElaney, LaMondré T. Pough, Shane Rhodes, Debra Ruh, Karen Peltz Strauss, and Minh N. Vu.

Several of the speakers also served in the steering committee, a job that effectively doubled in size from the planned workload as we pivoted to an online event. Again, thank you to Deepa, Debra, Karen, Pina, Robert, and Jack.

Laura Renfro provided a tremendous help with the online event, keeping track of and managing questions from the audience.

With our 2020 event being switched from a planned in-person event to an online event, our original hosts at Washington College of Law, part of American University in Washington, DC, were supremely helpful in postponing an in-person gathering until 2021. In particular, I would like to thank WCL’s Tess Safar and Shayan Davoudi for their kind assistance with the re-worked plans.

We also welcomed sponsors for the first time at the 2020 event. We were very grateful for the extra support in what was an extraordinary year. Our sincere thanks to Tom Busillo at TestPros, Inc., Rachel Braaten at Thomson Reuters, Mark Turner from iAccessible, and Eric Feinberg & Eduardo Meza-Etienne from eSSENTIAL Accessibility.

Many people registered initially for a one-day in-person event in April, and then kept with us for the online event that was spread out over four days in June. Others joined us, making for a good online crowd for each of the eight sessions over the four days. With that, our biggest thanks are to the people who attended the 2020 Summit. Your support and interest keeps the Summit going, not just as an annual event, but also allows for the creation of these volumes, bringing the ideas conveyed at the Summit to a wide audience.

My sincere thanks to Morgan Morrisette Wright at Full Court Press (the Publisher) for having patience with me as I recovered from surgery in the first half of 2021, moving our planned publication date out as late as possible.

Finally, I am happy to repeat my most important thanks from the previous year. My wife Caroline helped me not only keep the Summit going in 2020 but helped me stay sane through the dark days that we all experienced in the COVID-19 pandemic. Thank you!

Dr. Chris M. Law  
July 7, 2020





# Introduction to the Talks

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These two volumes are both divided into three parts, A, B, and C. Part A includes talks giving expert opinion and perspectives on what is happening currently, as well as predictions for the near and long-term future. Part B focuses on guidance and standards for practitioners. Part C provides resources for readers seeking to address legal issues in digital accessibility.

**Note:** Author bios are provided in Appendix D, starting on [page 327](#).

## **Volume I, Part A: Perspectives and Insights on Digital Accessibility in the Legal Space**

### **Digital Accessibility Equality—*Howard A. Rosenblum***

In considering the opening keynote for the Summit, we were naturally seeking out someone with a great deal of experience and insight regarding digital accessibility and legal issues. We also wanted to hear from someone who has a *personal* experience with disability: someone who is continually engaged in legal issues at a practical level (which brings its own accessibility problems because there is inaccessible technology and content all around us), as well as someone who has gone through law school with their disability experience (because, let's face it, accessibility is still a fairly new concept to many schools, as we find out ...). Howard A. Rosenblum, CEO of the National Association of the Deaf, kindly shares his personal journey with us. Howard relays the story behind his team's successes in changing the practices of big technology companies. He also provides us with words of caution by illustrating that there is still very much left to be done with regard to technology, to provide *accessibility*—and, more specifically, *equality*—for people who are deaf and hard of hearing in the digital space.

### **Fixing the Slow Progress—*Dan Goldstein***

At the end of 2017, Dan Goldstein retired from practicing law, but didn't retire from his passionate interest and advocacy for fixing the problems that he and his team were tackling while he was at Brown, Goldstein & Levy, LLP. In this talk, Dan shares with us his take on how far we have come, and how none of us should be under any illusion that we have come far enough. In "retirement" Dan has continued to work with colleagues to try to jump-start a new set of industry/organizational standards for inclusion. Dan's talk is divided into two sections of this volume. In Part A we hear from Dan on "Fixing the Slow Progress." Later, In Part B's "Guidance and Standards," Dan's proposed draft "Organizational Standards for Inclusion" are provided along with Dan's commentary. (A short-form version of the draft standards is also included in Appendix B.)

### **A Defendant's Point of View—*Kristina Launey***

Many of us are aware of Kristina Launey's work from the popular Seyfarth Shaw ADA Title III Blog, publishing, among other topics, periodic updates on the state of digital accessibility lawsuits. Kristina brings a wealth of experience from the defendant side, and she shared with us her experiences with clients, the majority of whom *want* to do the right thing, but they don't necessarily know (or at least have confidence in) what would be the *right* thing to do. (This message feeds into to Kristina's collaboration with Timothy Elder ([below](#)) to co-create the first set of "Best Practices for Practitioners." The "Best Practices" are covered in Volume I, Part B.)

### **Ethics—*Lainey Feingold***

At the Legal Summit, Lainey Feingold presented a talk entitled "Strategies in the Digital Accessibility Legal Space: The Good | The Bad | The Ugly." Later, Lainey published an article on her website that presented a summary of the main points of her talk, formatted for online reading, including inline links to additional sources. We decided to include the article version for this volume. In this article, entitled "Ethics in the Digital Accessibility Legal Space," Lainey provides her assessment as to why there has been a proliferation in the number of

digital accessibility lawsuits over recent years and argues for a return to the ethical basis for legal actions: civil rights.

### **Technology and Practice Trends—*Timothy Elder***

With the preceding presentations, the reasons underpinning the rapid and expansive rise in the number of digital accessibility lawsuits are posited. Timothy Elder's presentation takes the next step: we're given insights into the leading edges of current practice. Timothy discusses new technologies as well as new types of litigation that we should all be aware of, and he concludes with an insight (a forewarning?) on Artificial Intelligence, which he cautions may, despite the creators' intentions, bring negative impacts for people with disabilities (and possibly even lawyers).

### **The Future: What's Next?—*Jared Smith***

One of the best things about gathering a group of experts in a field is that you get to hear their predictions of what will be happening in the short-, medium-, and long-term future. With a very full program on the day of the Summit, we decided in advance to ask speakers to focus on the past and the present in their presentations, and then we would separately collect and convey their predictions for the future in one summative session. Jared Smith and the team at WebAIM at the University of Utah have been pioneers in surveying the status of web accessibility across the world. Jared kindly interviewed each of our speakers in advance of the event, and aggregated the results for an insightful session looking into what might be coming our way in digital accessibility and legal in the coming years.

## **Volume I, Part B: Guidance and Standards**

### **Guidance for Practitioners—*Timothy Elder and Kristina Launey***

This section is a continuation of the talks by Timothy Elder and Kristina Launey from Volume I, Part A. When the agenda for the Legal Summit was being put together, we were looking for talks providing a defendant (Kristina) and plaintiff (Timothy) perspective. Exemplifying

the spirit of collaboration by people on opposite sides of an issue, Timothy and Kristina decided together to create an informal set of best practices for plaintiff attorneys, defense and compliance attorneys, and accessibility practitioners. Initially presented as a bullet list of items under each heading (see Appendix A), the best practices proved to be a big hit with the audience. Generating this list marks the first time that the outcome of this kind of collaboration has been published. In this volume, we present the best practices along with the commentary of Timothy and Kristina from the Summit. We also provide resource links, where applicable, to the resources provided in Part C and other information and guidance published online.

### **Organizational Standards for Inclusion—*Dan Goldstein***

This section is the continuation of Dan Goldstein’s talk in Part A. Included here is commentary from Dan, and an open invitation to participate in the process of turning a “draft” concept into an industry-recognized standard. A table provides the proposed standards and a good-better-best style rating system for organizations.

## **Volume I, Part C: Resources for Addressing Legal Issues in Digital Accessibility**

### **Resources for Responding to ADA Lawsuits—*Jack McElaney***

Where does an organization go to research accessibility as a whole? Does Google provide us with the information we need to know when we receive a demand letter? What does the mainstream press, both print and online, provide for accessibility legal coverage? With all of the information on the web, can an organization realistically research and resolve a demand letter by themselves? At the Summit, Jack McElaney provided us with a wealth of resources, and these resources have been organized in this volume around proactive and reactive responses to digital accessibility lawsuits.

### **Additional Resources for Responding to FCC Requirements—*Karen Peltz Strauss***

The previous section is entitled (Resources for) Responding to ADA Lawsuits, and in the area of website accessibility there are thousands of

cases each year. In the area of Communications and Video Programming, under the jurisdiction of the Federal Communications Commission, there have been fewer legal actions, but nevertheless there are a large number of legal requirements around digital accessibility. In the future we may see more lawsuits being directed to these areas (and, for anyone responding to a lawsuit, the resources provided in the previous section will be worth consulting). Karen Peltz Strauss provides a comprehensive overview of the FCC's activities at the Legal Summit. The resources Karen provides have been organized around the two main focus areas: communications and broadcast/video programming. Karen also provides helpful advice for legal and accessibility practitioners in organizations developing relevant products and services.

## **Volume II, Part A: Perspectives and Insights on Digital Accessibility in the Legal Space**

### **Experiences as a Blind Lawyer in the Legal Profession—*Deepa Goraya***

As we learned in the opening keynote from the first Summit (by Howard Rosenblum), the legal profession was and is itself a microcosm of what is going on in wider society in digital accessibility. Legal cases were being heard against companies, while the websites of the lawyers involved were often falling short regarding standard accessibility requirements. For the second Summit, we wanted to explore this issue further: if we can build up a collective understanding that an individual with disabilities' journey through education, examinations, and work practice was and is an exercise in overcoming pervasive technology barriers—*regardless of their chosen profession, including the legal profession*—then perhaps we will collectively have a better recognition of the validity of digital accessibility violation claims. In her opening keynote, Deepa Goraya shares the story of her own journey. It was only through extreme determination and resolve that she helped to level the playing field for aspiring lawyers with disabilities. And, she notes, there's still a long way to go.

### **Cognitive Disabilities—*Robert Dinerstein***

The lion's share of past legal cases in digital accessibility have been based on technology barriers to those with sensory (predominately

visual and hearing) and physical disabilities. Early digital accessibility guidance and standards that emerged soon after the internet emerged contained few, if any, references to cognitive disability issues. That has since changed, and now guidance and standards are reflecting the need to address cognitive issues, and this will have implications for legal practice in this area. Professor Robert Dinerstein, a long-time researcher and expert in cognitive disabilities and the legal profession, introduces us to the main issues we should consider from the size and nature of the population to applicable laws and guidance for developers.

### **Making a Difference—*Marcie Lipsitt***

In the first Summit, Dan Goldstein spoke of his frustration that after years of practice in this area he and his colleagues positively impacted only a handful of websites. Even if there are thousands of digital accessibility lawsuits each year, there are hundreds of thousands of corporate, educational, and governmental websites that citizens with disabilities need to access, with most still posing digital accessibility barriers. In “traditional” legal cases, *a* plaintiff sues *a* defendant. How could one person make more of a difference? Sure, *a* plaintiff could take it on themselves to sue *many different* defendants, and that does happen, bringing along legal costs, but still not substantial widespread change. What if there was a better way for one person to make a bigger difference? Marcie Lipsitt tells us how.

### **The Leading Edge—*Debra Ruh and LaMondré Pough***

Upon the first receipt of a digital accessibility complaint, a lot of people are initially confused: “What’s digital accessibility? What do you mean, *‘Blind people use computers?’!*” Some companies will treat accessibility as a “whack a mole” exercise, fixing individual problems as they are pointed out, and not making the connection that the cause of the existence of accessibility problems lies within their current corporate culture. When people don’t think “accessibility” on a regular basis, accessibility doesn’t happen on a regular basis. The same is true for the wider concept of “inclusion,” not just of people with disabilities but also equity for people of color, of different beliefs, of different genders, and so forth. Debra Ruh has been at the forefront (or, we can say, the leading edge) of changes in corporate culture and inclusion. Making

accessibility and inclusion part of the normal, everyday narrative of all employees of client organizations—from the highest levels to the entry levels—is what Debra and her colleague, LaMondré Pough, do. In this talk, Debra and LaMondré share their insights on drivers of change in this area, and provide proactive steps that any company can use to begin the journey.

### **Future Technologies—*Jon Avila and Jennifer Chadwick***

In the first Summit, Jared Smith summarized his and the other speakers' views on the future, mainly in terms of the professions of legal and accessibility consulting. For the second Summit, we wanted to focus on specific emerging and future technologies, and how those might be either beneficial or detrimental in terms of digital accessibility. While we still mostly think about legal cases in terms of websites, mobile apps, and the like, a new world of digital technologies (software and hardware) is already here ... and most of it has emerged with evident accessibility problems. For the future to work for people with disabilities, accessibility should be built in from the beginning. In this talk, Jon Avila and Jennifer Chadwick take us through the plethora of new technologies and the accessibility problems brought to light only after their introduction to the public. Jon and Jennifer remind us that there can be benefits too, if we design, test, and introduce technologies in a way that is grounded in inclusive practices.

## **Volume II, Part B: Guidance**

### **Making a Good Start—*Minh N. Vu, Eve Hill, and Karl Groves***

Continuing from Tim Elder and Kristina Launey's Best Practices from the first Summit, we explore one of the first problem-prone areas identified: making a good start. Experience shows that in digital accessibility, it's easy for companies that are new to the area to make missteps. It's also easy for lawyers who are similarly new to the area to misjudge the reliability of certain sources of information and guidance. Taking our cues from the success of the first year's collaboration, we again invited a defendant lawyer (Minh Vu) and a plaintiff lawyer (Eve Hill) to get together to discuss ways in which to improve the starting points for any case. And we added the perspective of the accessibility consultant: Karl



Groves has been called on by both plaintiff and defendant sides to weigh in with his expertise. Minh, Eve, and Karl provide us with pointers to get going in the right direction.

## **Volume II, Part C: Resources for Addressing Legal Issues in Digital Accessibility**

### **The Accessible Canada Act—*Shane Rhodes, Pina D’Intino, Jennifer Chadwick, and Karen Peltz Strauss***

In 2019, Canada signed into law the Accessible Canada Act. The Act has many similarities with a number of U.S. laws and regulations. Providers of digital products and services in both nations should be aware of and ready to address the needs of both sets of laws. For this reason, we invited our Canadian colleagues to share with our predominately U.S.-based audience their latest developments and initiatives around the Act. Pina D’Intino and Jennifer Chadwick recruited Shane Rhodes from Employment and Social Development Canada to present the history of the formation of the Act based on his involvement with its creation. Shane also presents the plans for the immediate and long-term future with the Act in Canada. Providing the U.S. perspective, Karen Peltz Strauss introduces the talk from the American perspective (Karen provided a background on FCC-related laws and guidance in the first Summit), and helps to compare and contrast the two nations’ approaches in the Q&A for the session.

### **COVID-19’s Legal and Accessibility Impacts—*Jack McElaney***

We conclude this year’s Summit with Jack McElaney’s talk and extensive list of resources relating to the pandemic. While we were still in the early days (as it turned out) of the pandemic in June 2020, Jack’s talk provides a revealing insight into what was going right and what was going wrong in the response at that time as it relates to digital accessibility. Jack manages to keep pace with the plethora of legal cases, news articles, and blogs relating to this area as part of his weekly curated digest, “Accessibility In The News.”<sup>10</sup> In this talk, Jack succinctly distills this “mountain” of information—relating to COVID-19 and legal

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<sup>10</sup> For more detail on “Accessibility In The News,” see Jack’s talk in Volume I (specifically [page 116](#)).

issues relating to digital accessibility—into the salient points that we should all be aware of. There’s so much that changed as a result of the pandemic, and we need to be able to look back and take heed of the lessons from living through it. For the area of digital accessibility and the initial responses, Jack provides us with the definitive summary.

## **Appendices**

The appendices contain short forms of the guidance and draft standards presented in Volume I, Part B, as well as an overview of a course on risk assessment that was presented as an optional part of the first Legal Summit. Author bios round out the appendices.



# Notes on the Presentation of Information in These Volumes, and Accessible Digital Copies

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## **Dialogue and Names**

In the talks that were given in the Summits, many speakers referenced other speakers in the room or online on a first-name-only basis. To make reading and cross-referencing easier, in each instance last names have been added in square brackets to clearly indicate who is being referred to.

## **Transcripts**

Transcripts are verbatim or from edited live-captioning service transcripts. In some cases we have omitted sections where the conversation digresses, or the content was not related directly or indirectly to digital accessibility and legal issues. For the most part, Q&A sessions at the end of Summit talks are not included herein.

## **Subheadings and Footnotes**

In each section, subheadings and information provided in the footnotes is either (a) sourced either from the speaker's presentation files, or (b) added by the editor and/or the speaker during the editing process.

## **Summit Speaker Order Versus This Volume**

The archive of the program order for previous Summits can be found on the event website ([www.accessibility.legal](http://www.accessibility.legal)). The content in this volume does not follow the same order as the Summit. The content has been organized herein for ease of reading and finding information

of use to practitioners. (For the same reason, and in particular for the Resources in Part C, the order within each section herein is also not necessarily in the same as the order as was presented during the Summits.)

## **Definitions of Terms for Newcomers**

The Summit brought together people who work primarily in the digital accessibility field, and people who work primarily in legal professions. In some of the slides, and in some of transcripts, certain terms may be unfamiliar to newcomers to the other domain. For this reason, we have added footnotes where appropriate, with definitions of selected terminology.

## **Quotes From Home Pages**

In many cases we have replicated marketing-style quotes from home pages of sources. This is particularly the case in Part C (Resources), but is also the case in some other places. If a quote immediately follows a company heading or precedes a company website address, and is not accompanied by a footnote or other citation, then the text is being quoted from that company's home page. This has been done to reduce citation "clutter." If in doubt as to the source of any quote, please consult the relevant company's home page. Also note that these quotes were accurate at the time of publication, but as they are marketing messages they are subject to change.

## **Accessible Digital Copies**

This book is available for sale in print and accessible electronic versions.

Because the content contains many internet links, some visual readers may prefer the accessible PDF version, in which hyperlinks are blue and underlined. An accessible e-book version is also available.

The Digital Accessibility  
Legal Digest Volumes I & II:  
Practice Updates, Guidance,  
and Resources

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Volume I, Part A:  
Perspectives and Insights on  
Digital Accessibility in the  
Legal Space

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# Digital ~~Accessibility~~ Equality

Opening Keynote Address,  
Howard A. Rosenblum,  
CEO, National Association of the Deaf

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Thank you, Chris [Law], for inviting me to be here today. I hope everyone is awake and ready. The first point that I wanted to talk about today is the concept of digital accessibility and the fact that really, what we want to see is not only *accessibility*, but digital *equality*. You'll see that noted on the title where I've crossed out the word accessibility to replace it with equality. That truly is our core desire. We are focusing on the accessibility but with the end goal of having an equitable situation.

We need to ensure that accessibility is not our end goal, but we realize that there is much further to go after that to be able to actually have equality in our digital access.

I work currently as both the CEO and the Legal Director of the National Association of the Deaf or the NAD. This is the oldest civil rights organization in the country. The NAD was founded in 1880. It was founded by deaf and hard of hearing individuals themselves, led by deaf and hard of hearing individuals and has been to this date.

I want to give you a little bit of a background on myself. I became deaf at the age of two. My parents did learn how to communicate with me through sign language. My mother was a Jewish woman, and she kept telling me, she told me persistently, "You will either be a doctor or a lawyer. Period." Those were my options. As a kid, I had that attitude of my mom like, "Yes, mom, whatever," but one day, I happened to be at a lecture in Chicago. At the time I was growing up, there was one deaf attorney in the world, and they happened to live in Chicago. My mom one day said, "Well, let's go and hear them speak." Now, can you imagine? Who wants to go and listen to a lawyer speak? Again, my regrets for

you having to sit here this morning and throughout the day, but that day when my mom suggested we go to this presentation, I really didn't want to, but it was my mom and she twisted my arm and I got there.

Now, it was interesting because as this attorney spoke, a lightbulb went off for me. I sat there watching and I realized, "Hold on a second. Deaf can actually sue people who can hear? Okay, I'm in. Sign me up." I was ready. Ever since then, I wanted to become a lawyer. When I was at the age of twelve, there was one deaf attorney throughout the entire country. I became an attorney in 1992. That is the same year that the ADA [Americans with Disabilities Act] went into effect.<sup>1</sup> Now around that time, there are approximately thirty deaf attorneys in the country. Currently, there are over 400 deaf attorneys in this country. You can see that there has been a huge bloom, a huge rise in our population. Compare that to the global numbers, we have approximately 130 deaf attorneys outside of the United States globally. We have a great potential for deaf individuals to attend law school here in this country.

The issue has never been one of abilities, it has never been one of, "Can a deaf person do this?" The issue has always been one of removing barriers. When we remove barriers, then we see the amazing possibilities for everyone. When I became an attorney, I actually had a degree in Computer Engineering. I got that before I attended law school. I utilized the combination of engineering and law to search for a job within intellectual property law. I interviewed with 30 law firms and not one of them offered me a job.

Not that there were many attorneys out there who also happened to have an engineering degree, but not one of them offered the job. I ended up finding myself working in the field of disability law and working with the ADA. I haven't regretted it since, because again, I have the opportunity to sue a whole lot of hearing people!

So, I mentioned that we have a rising number of deaf attorneys out there and we constantly face barriers as far as finding jobs, accessibility in a courtroom, and in the entire system, being able to access information is even an issue for us. Continuing Legal Education, CLE courses, imagine taking those online as a deaf person. Most of those are not accessible for us, so we do face many challenges and many barriers in our field.

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<sup>1</sup> For information on the ADA, see "Understanding the Americans with Disability Act," starting on [page 113](#).

I worked in Chicago for nineteen years. And at that point, I was offered employment with the National Association of the Deaf and I relocated to Washington DC. I had a paradigm shift in the way I looked at doing law. When I was working in Chicago, I was focusing on individuals who had disabilities. I was looking at how to ensure they would win their rights under the ADA or under the Rehabilitation Act, but again, I was focused very individually.

My paradigm shift: I realized that this work is not something that focuses only on the individual, but it is a systemic focus instead. With the NAD, I have started to focus more on systemic law and looking at how we can make accommodations for these laws with the NAD, and I'm going to share with you some of the work that we've done at the NAD today. Before I get into that, however, I want to again go back to the concept of digital accessibility and the fact that for people with disabilities, this really means digital equality.

There are a few categories that I feel are incredibly important here to note. First would be that of education. Not only in K-12 but in higher educational institutions as well and in continuing education, we need digital accessibility. Instruction nowadays has shifted to an online focus. We need complete accessibility for all students who have disabilities to be able to access this new platform of education. The second category would be employment. At your place of employment you're utilizing software daily, you're accessing the internet, you're using technology to do your job. Almost every job now incorporates the internet and digital technology in its duties. We also have a high population of people with disabilities who need jobs. We have a high unemployment rate for people with disabilities and partially, a barrier there is because of the attitude of individuals who are not open to hiring someone with a disability.

Another issue that we face is the lack of accessibility to the digital world. This is another realm in which we need to bring digital equality for all. The next category will be access to services. Here, I'm talking about professional services, the legal, the medical realms, any services that you need to obtain from a professional. In these services we see now more and more, a growth of digital access. We have telemedicine now. We have video remote interpreting, which I'm going to get into a little bit later, and we have technology that has been brought into the field of professional services. We need to ensure that the technology that is provided is accessible in its provisions.

Last but not least, I look at the category of enjoyment of life. This is part of our code and our culture, right? The Pursuit of Happiness is found within our very constitution. Many things that we enjoy every day we take for granted. A lot of those things incorporate technology, apps, online services, online streaming, watching your videos. This world is a very different world than that in which the ADA was written back in 1990.

Now, before I look at different areas that we're going to get into during this presentation, I would like to look at some of the economic considerations that impact each area of digital accessibility. First I'd like to talk about this CVAA. This is the 21st Century Communications and Video Accessibility Act, which requires many different items, but the point is that they have a great impact on the deaf community.<sup>2</sup> The CVAA requires that anything that is seen on TV that is required to have closed captioning and then is uploaded onto the internet to be viewed, must be captioned as well. Now, this was a huge shift. Prior to the CVAA, as deaf people, we were able to watch television without a problem, in that we had closed captions on the programs that we watched. However, we were left out of being able to access any of this information online. Nowadays that seems fairly odd, but we've seen that shift [toward greater access] because of the CVAA, and because of other laws such as Section 504 and 508 of the Rehabilitation Act.

Section 504 requires that every program receiving federal funding must be accessible for people with disabilities. This law impacts the provision of services and provision of digital technology. Anything online or on the web is impacted by Section 504.

Section 508 has a little bit different focus. It states that any technology that is utilized in correlation with the federal government must be accessible, so technology, software applications, all must be accessible to individuals who are utilizing any federal software. Any company that works with a federal government as well has to provide this accommodation and this accessibility.

Do you think that really opens up the market? Anyone who does business with the federal government is required to be 508 compliant.

Next we have the ADA, the American Disability Act. ADA has been expanded to now include internet content and have internet accessibility.

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<sup>2</sup> For information on the CVAA, see "Relevant Laws," starting on [page 144](#).

The Department of Justice has allowed for the ADA to be something that is now having applicability online [i.e., to the internet]. The WCAG [Web Content Accessibility Guidelines] is now in 2.0 AAA. Many of you already know 2.1 is going to be rolling out soon.<sup>3</sup>

The concept first came out in *EdX* [online courses from the University of California, Berkeley]—video stream content from universities had to be easily accessible. Any content that was like that, streaming, had to have the same accessibility. These were the same rules as WCAG. A lot of people are a bit confused over the different regulations and the increasing use of [regulations] with respect to lawsuits. But, the main point of all of this is to increase accessibility and to help *avoid* lawsuits.

There’s a lot of people that have been saying, “Look, the number of lawsuits that have been done over web accessibility has increased.” Honestly, if you look at it, it’s been a struggle. If you look at the statistics, the increase really is small compared to other lawsuits, but there are two states where they have the largest increase of web accessibility lawsuits and those are where? California and New York, so people who live in those two states, you guys will have a lot of money.

The reason why those two states are there is because they—(it’s not about the ADA)—the reason why they have those increased suits are because of people who are taking advantage of the financial gains under the suits and what the law permits via the state laws. Another reason why those lawsuits have increased in those two states is that the law provides for financial damages. The state law itself provides that financial incentive, and that’s the reason why there is increased lawsuits.

But really, it’s simple to avoid those kind of lawsuits, and it’s just following the WCAG. And, remember the “curb-cut benefit” for disability access. What are we talking about? Many of you are aware that the ADA requires curb cuts to be used everywhere. Every sidewalk has to have them. Who uses those? Not just people with disabilities. We’re talking about mothers with strollers. Talking about people who are late for the airport with their luggage. We’re talking about people bringing things [with a cart] from the store. We’re talking about people who are running one day and then they get an injury and now they’re limping. So there’s a curb-cut benefit for everyone. It’s really the same thing with

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<sup>3</sup> See Shawn Henry, et al. “[What’s New in WCAG 2.1](https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/),” updated April 8, 2019, [www.w3.org/WAI/standards-guidelines/wcag/new-in-21/](https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/).

the web. If you *add* accessibility, everyone will use it. Not just only people with disabilities: there'll be benefits to others beyond.

So, this is my favorite topic: Suing web-based services! The NAD started working on it in 2011, and one of the first lawsuits was against Netflix. If you remember a long time ago, Netflix was famous for mailing you a DVD. You could watch the movie, send it back. All of their DVDs had captioning so people loved it. But when they switched over to streaming, there was no captioning. *Nothing*.

So then NAD approached Netflix and said, "You already have the captioning on the DVDs, why don't you just go ahead and transfer over to the web content?" They replied "No, it's too difficult. It's expensive. We have to type all the captioning all over again ... there's no way to take it from the DVD and put it onto the web content. And it's in analog format and switching it over to a digital format. ... *No, it's too much work.*"

I said "*Bullshit!*"

We tried to negotiate with them. They weren't at all wanting to do that so we went ahead and looked for representation from the DREDF, the Disability Rights to Education Defense Fund, and the law firm of Lewis, Feinberg. And they helped us to do the lawsuit to go after Netflix.

And then there was another, when the National Federation of the Blind sued Target, in California. That lawsuit resulted in the [U.S. Court of Appeals for the] Ninth Circuit opinion that any establishment—where web-based stores are linked—that they must have accessibility but only if they had a physical presence. They said that if there's no physical "part," then the website did not have to follow the ADA.<sup>4</sup> So knowing that it would be a challenge for us, we [still had to follow through] with Netflix.

We looked at another case for an insurance company. That was a [U.S. Court of Appeals for the] First Circuit case. The insurance company didn't have an office—a physical office—so you contacted them by phone only. In that case, the person who contacted them was denied services because of their disability. And in that case, the opinion was they hadn't provided services under the ADA even though they didn't have

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<sup>4</sup> See "[Ninth Circuit Rules Website Must Have Nexus to a Physical Place of Business for ADA to Apply](https://www.adatitleiii.com/2015/04/ninth-circuit-rules-website-must-have-nexus-to-a-physical-place-of-business-for-ada-to-apply/)." Kristina M. Launey & Minh N. Vu, ADA Title III Blog, Seyfarth Shaw, April 3, 2015, <https://www.adatitleiii.com/2015/04/ninth-circuit-rules-website-must-have-nexus-to-a-physical-place-of-business-for-ada-to-apply/>.

physical buildings.<sup>5</sup> We went to Massachusetts, and we sued Netflix, and we won. The judge said, “Yes, the ADA applies to Netflix,” so we went over to Netflix and the agreement was that they would have 100 percent captioning in four years.<sup>6</sup> We got an agreement for 100 percent captioning with Amazon, Apple, Google Play, Hulu, and Vudu.

It’s simple, right? Yet still we’re fighting the battle today.

Let’s see, what’s next? Courts, Harvard [University], and MIT [Massachusetts Institute of Technology]. *Why?* Two of the wealthiest universities in the world with *billions* in endowments don’t have captioning on their content, which is online. Doesn’t seem like a very smart idea on their part. Students who attend this university need to have accessibility, but they won’t make it accessible to all. So that’s our next battle.

Also, the Department of Justice had a ruling with Berkeley [University of California at Berkeley] for making their content online accessible.<sup>7</sup> Berkley said, “You know what? We have too many issues with this ... and because of pirating ..., we’re just going to do everything offline.” That was the mistake they started with: they’re really on the wrong side of history. Eventually they’ll have to put their content up and make it accessible. For me, I think it would be better now than later.

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Many webpage services are “fine” with Automatic Speech Recognition (ASR). I’ll let you know—and personally, I’ve watched a lot of it—an ASR is not ready for primetime. It’s not acceptable yet. It’s not “better than anything else.” Why is that? It’s not even proper captioning. There’s no tool yet—that can deliver captioning—that’s been developed. As of right now, you can turn on the ASR and doesn’t mean it’ll

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<sup>5</sup> *Carparts Distribution Center Inc. v. Automotive Wholesaler’s Association of New England Inc.*, 37 F.3d 12, 22-23 (1st Cir. 1994).

<sup>6</sup> *National Association of the Deaf v. Netflix, Inc.*, No. 3:11-cv-30168-MAP (D. Mass. 2012).

<sup>7</sup> [The United States’ Findings and Conclusions Based on its Investigation Under Title II of the Americans with Disabilities Act of the University of California at Berkeley, DJ No. 204-11-309](https://www.fda.gov/oc/2016/08/30/uc-berkeley-lof.pdf). U.S. Department of Justice Civil Rights Division, August 30, 2016, [https://news.berkeley.edu/wp-content/uploads/2016/09/2016-08-30-UC-Berkeley-LOF.pdf](https://www.fda.gov/oc/2016/08/30/uc-berkeley-lof.pdf).



be correct. Then people will say, “ASR is enough.” No. You really need to use a professional captioning service. ASR is not ready for it. Maybe in the future it will be, but as of right now, it is not. I will show four pictures that clearly show why it’s not ready. I’ll go ahead and explain those and you’ll see what is happening.

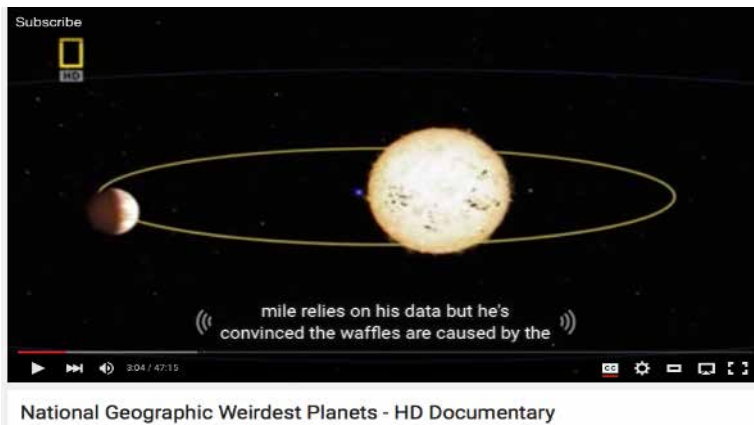
I have this picture here of *Hotel Mario*. It’s a game. And the captioning says, “Al Qaeda Iraq with this shady mario game.” Maybe that’s what the person said?



The next slide. These are sharks in the water. And the captioning states “tour guide sleeping draw the Sharks in.” For those of you who can’t see, it’s clearly evident there is no tour guide. Maybe the sharks ate them?



The next slide. You'll see the sun, with some loops around it, and a planet. And it states, "mile relies on his data but he's convinced the waffles are caused by the." I don't see the waffles. Maybe somebody ate them for breakfast this morning? I don't know!



Last one. The person with a big sword, and there's two captions. One is automatically closed captioned and the other is already manually open captioned. So let's read the ASR first: "we *will* lose to someone who believes *it* nothing but himself." So now let's read the caption that is [manually] placed there: "We *won't* lose to someone who believes *in* nothing but himself." There is a big difference there, correct?



Again: ASR is not ready yet. Please don't use ASR—thinking you're really captioning—yet.

Now I want to look into some of the different kinds of technology that we have. Virtual technology, communications technology. We have this new thing out recently that's the "Text-to-911." The FCC [Federal Communications Commission] has already mandated that cell phone carriers such as Sprint, AT&T, Verizon, T-Mobile, et cetera, must allow text to successfully go through to 911 call centers. Now the other portion of the equation, however, is that the 911 call centers must be able to receive those texts. The challenge here is that the FCC did not have the jurisdiction over 911 call centers to mandate this provision. So they're not in the Department of Justice, and we've not yet seen any meaningful informational requirements that have gone out to apply to these 911 centers. So, with the NAD, again, I got to go back and do what I love best: I got to sue some hearing people!

I worked with the Arizona Center For Disability Law and Stein & Vargas law firm. Together we went after all of the 911 call centers in the state of Arizona. In this case, we were able to reach a settlement. However, the judge did feel that it was more likely than not that the decision would have been that the ADA would be mandated to have the 911 call centers compliant with it. So, Arizona has created 911 call centers that are able to receive these text messages throughout their state.<sup>8</sup>

I want to share a little bit about why this is so critical for all of us. Can you imagine that in the event of a public-school shooting? We've seen that rise more and more in our recent history. If you're in that setting, you don't want to pick up a phone and make a call to 911 because you don't want the shooter to hear you. It would be natural for students and adults in that setting to want to text 911. Currently, only about 18 percent to 20 percent of the 911 call centers in the country are capable of accepting text messaging. This is not accessibility for anyone. This needs to change.

We also have issues with video phone accessibility. This technology is the one that is utilized by most individuals in the deaf community who use sign language. We're able to use the phone just like any of you do through a system called "relay" that is under the purview of the FCC. Unfortunately, often when we try to place the call through relay most corporations say, "We don't accept this type of call," and they hang up quickly. For a long time, most of the banks out there refused to accept

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<sup>8</sup> See also subsection "Access to Next Generation 911 Emergency Access," starting on [page 140](#).

relay calls, so the NAD ended up filing over 100 complaints against Wells Fargo in particular, filing them with the Department of Justice.

The Department of Justice went to Wells Fargo and mandated that they accept relay calls. Wells Fargo ended up paying over \$4 million in their settlement in this case. Still, to this day we get hung up on by various businesses, including banks, when we attempt to make video calls. This is not accessibility. On the other side, deaf and hard of hearing individuals are still unable to gain access to video phones frequently—those that require internet accessibility. They are not able to get this type of technology oddly enough in two settings mainly. First, state and federal prisons and the jails. In these settings, individuals do not have video phone access. That means those who are incarcerated do not have the ability to call their friends or family, and they don't have the ability to call their counsel. [Second,] many deaf individuals who work for the federal government as well, still don't have video phones in their office. How is this making any sense to us? Who doesn't have a phone in their office today?

Another important advancement that we see is Real Time Text, or RTT. Real Time Text is considered the next version of the TTY. Maybe you have some experience or you've heard of the TTY. It's a device that I grew up with that is really outdated analog technology. What it does is allow you to communicate via text by phone in real time.

As deaf individuals, we need to be able to communicate in more real time, to text in real time so that you can see exactly what it is I'm texting as we have a conversation. That means we actually have dynamic communication rather than having to wait until someone has completed their message before we see any of it. It took a while for us to get information across, to share messages back and forth when we were utilizing TTYs but now with real-time text, we are able to see that in real time.<sup>9</sup>

We also have video relay interpreters. Just as we have interpreters with us here today, with Video Relay Interpreters, or VRI, the interpreters are in a separate location. They're tagged in through technology, and they provide the interpretation instantly. However, there's not always the availability for the internet and there aren't standards established yet to allow for this. We haven't been able to find a place where we *always* have both the video and the audio streaming capabilities to ensure quality of interpretation delivery, not just the provision of interpreters.

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<sup>9</sup> See also "Real-Time Text (RTT)," starting on [page 139](#).

Now, last but not least, let's look at the apps. Who in this room doesn't ever use an app? That's pretty ridiculous at this point to think. But, there's things that come up that are very unexpected as we utilize our apps. For example, look at Uber and Lyft. When Uber first launched their platform, they never realized that many of their drivers—well, many of those who were wanting to provide their services—would be deaf. They hadn't anticipated that dynamic. Your next Uber ride you may have a driver who is deaf. When Uber saw that they have this demographic so highly reflected in their drivers, they reached out to NAD. They said that they didn't realize that even their own app for their drivers was not accessible to their deaf drivers. For example, when a driver receives an alert for a pickup, typically, historically, it was a beep, it was a sound that provided that notification. How is the deaf driver supposed to find this notification? It ends up that drivers often missed the opportunity to provide rides because they didn't have an accessible notification. Uber has shifted to a flashing lights system for deaf drivers.

Another issue is that riders are able to call their drivers. However, as the deaf individual that's a little trickier, so what they've done is they have blocked any type of audio calls to their deaf drivers, and riders are required to text the drivers instead. In these shifts, we've seen a great increase in the provision of services. We've seen an increase in the number of deaf individuals who are working with Uber and so we've seen that more people with disabilities get jobs.

We've seen both the corporation and the individuals growing benefit from this. We see that Lyft is coming along in dealing with the same issues and responding to them as well. Often designs do not incorporate a universal design philosophy and we find retrofitting being necessary. So it's important as you go forward and design your apps and design your technology to do so with accessibility in mind.

Another technology that we see is Speech to Text. Try that one sometime—and see how your Speech-to-Text app works when there's some background noise in the room. You might find that you get a few chuckles like you did on some of those speech recognition images that I showed earlier. Speech to Text may work great if there's no background noise, if you're able to speak clearly and distinctly in a dialect that's familiar to it for it to be accurate; but it's not yet accessible fully.

Again, I bring us back to “digital accessibility” or “equality.” In the Internet of Things in our day and age, I would suggest that what we need to focus on is not just the Internet of Things (IoT) but the

Internet of *Accessible* Things. We need to ensure that all of our connectivity has redundancy incorporated in its design so that there's capability for both speech and text and other modes of communication between the individual user and the technology itself. Especially when we look at the Input-Output features of our technology, we need to have speech IO and text IO available. Think about Alexa or Google Home. If I were to set my home up with this type of networking, it wouldn't be of any use for me. Suppose I want to have connectivity with my thermostat, with my lights, with various pieces of technology within my home. I would love to be able to find a way to connect all of those and to manage them via text rather than voice. We need to have various modes of communication that are accessible to these technologies, rather than just voice-based technology.

What about self-driving cars? If you look at those and you look at who it is that has designed these, you can see a little bit of a glimpse about their own demographic because they only function based on voice commands. What do you do if you've got laryngitis? What do you do if your voice is out that day? You need to have an ability to utilize text. We need that redundancy. We need the ability for text for those who don't use their voices and we need the ability for speech for those who don't text or who don't have the sight. We need the redundancy.

Now, I recognize that we're all here because we have a desire for greater digital accessibility. What we've seen typically, and historically, is that this comes more to a *depth* of accessibility. How *far* do we have to go to make this accessible? What I would suggest is if we're compliant with WCAG, the Web Content Accessibility Guidelines, and if you incorporate actual individuals with disabilities in your designs, then you would be just fine. There are so many people out there who are blind, who are deaf, who have various disabilities who are also engineers. Why not capitalize on the resources that they have to help design new accessibility? Who would know better what needs to be done than an individual who lives it? This is one method to utilize in creating a universal design system.

Thank you for your attention. Thank you!

“A very useful legal resource that serves as an excellent primer for professionals who want to know the legal side of accessibility. No other accessibility publication has this amount of accessibility legal resources and accessibility legal thought leadership. You will find yourself referring to this digest often.”

—Jack McElaney, Vice President of Sales and Marketing at Microassist  
and Curator of Accessibility in the News

The first notable digital accessibility lawsuit, the *National Federation of the Blind v. Target Corp.*, was settled in 2006. Since that time the number of lawsuits has steadily grown, and now thousands are filed each year in the United States. To provide a forum for discussion and knowledge sharing, the first Digital Accessibility Legal Summit (Volume I) took place in Anaheim, California, in March 2019. The second summit (Volume II) was held online in June 2020. These two volumes begin a planned recurring series of publications, providing a permanent record of the annual summit’s informative talks by experts from the legal and digital accessibility fields. This digest book contains edited transcripts, added footnotes, cross-references, links to further resources, and additional editorial commentary to aid reading. For those seeking to understand the complexities of responding to digital accessibility legal issues, this digest is designed to be of use to newcomers to digital accessibility, as well as seasoned veterans of the field.

# About the Editor

Dr. Chris M. Law is an accessibility consultant based in Arlington, Virginia. Chris founded and organizes the annual Digital Accessibility Legal Summit. In 2016 he co-founded (and has since chaired) the annual Information and Communications Technology Accessibility Testing Symposium. In 2021 he started a new member-driven organization developing standardized accessibility reporting methods for digital content and electronic consumer products. His prior academic research includes the analysis of accessibility guidance (at the University of Maryland, Baltimore County), the development of accessible user interfaces for mainstream consumer and public use products (at the University of Wisconsin–Madison), and examining how businesses can best respond to accessibility issues (as his Ph.D. Thesis in Australia, at the RMIT University School of Business).

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