

2024 Digital Accessibility Legal Update

[00:00:00.41] KELLY MAHONEY: Thank you, everyone, for joining us for today's session. This is our 2024 US Digital Accessibility Legal Update with Lainey Feingold. My name is Kelly, and I'll be moderating today's session. I use she/her pronouns, and I'm on the marketing team here at 3Play Media. Just a quick self-description for you-- I'm a young white woman with long brown hair, and I'm wearing a red sweater today.

[00:00:22.40] All right, with all of that taken care of, I'll stop blabbing. And I'm happy to welcome today's speaker, Lainey Feingold. Thank you so much for joining us today, Lainey, and I'll pass it off to you for what I'm sure will be another great presentation.

[00:00:35.39] LAINEY FEINGOLD: Thank you, Kelly. Thank you, the whole 3Play team. Really glad to have the opportunity to be here today. Like Kelly said, this is the annual 3Play Digital Accessibility Legal Update for the United States, and subtitle, top title, is "Accessibility is a Civil Right."

[00:00:55.95] So I have a website. For those of you who don't know me, I'm at LFLegal.com. I try to write a lot about the legal space, but I don't always get to everything. I have a long to-do list. I do try to post things that happen that are important in the legal space on LinkedIn. So if you don't already follow me or connect with me on LinkedIn, I welcome you to do that.

[00:01:19.15] And I'm also now on BlueSky. Sadly no longer posting on Twitter, which was a wonderful accessibility community. But I am on BlueSky, and I'm trying to develop a following there and share the legal update.

[00:01:33.93] In my accent color, which is celery green on a blue background, it says "No legal advice in this talk." Please remember that. If you need a lawyer around digital accessibility, I encourage you to find one that's reputable and ethical. But there's no legal advice in this talk.

[00:01:51.55] Also, in the background of my slides, some of them have a jumping dolphin, which represents my approach to law and the digital accessibility legal space, which is, we don't have to be sharks. We can be dolphins. We can collaborate, and that is what I have been doing in the space since 1995. I've written a book about it called Structured Negotiation-- A Winning Alternative to Lawsuit. It's in its second edition. It now has a Spanish version. I invite you to check it out.

[00:02:21.48] I loved Kelly's description of a young white woman with dark hair. I call myself an old white woman with gray hair. And I usually talk about that only because I've been in this space for a long time, and I've seen a lot of progress, and I'm trying to keep up with it all and have developed myself really as a bridge between what's happening in the legal space and what all of you doing the hard work of accessibility need to know. Because I believe the law should be for all of us, that you can all put it in your pocket to advance accessibility.

[00:02:57.84] And I want to thank you all in advance. I know people are on this call and listening to the recording from many sectors, many industries, doing many of the roles that make accessibility matter. So thank you for that. I have a lot to talk about. Let's get started.

[00:03:14.24] OK, today's roadmap. My arrow keys are working. Yes. We're going to talk quickly about what is digital accessibility, because if we think of it only as a checklist, we are not going to understand why the law matters in this space. We're going to talk about the United States accessibility legal framework.

[00:03:34.26] Sometimes, I'll use the shorthand a11y, which is on the slide, which stands for the 11 letters between A and Y in "accessibility," not that accessible itself as a word, but nonetheless. We'll talk about remedies and implementation. We'll talk about my favorite things and my not-so-much favorite things. We'll talk about possible new laws and regulations, and staying current with resources.

[00:04:00.97] I like to have a picture of a road for my roadmap slide, and this is a picture of Redwood trees along a curvy road in Northern California. And I picked this for three reasons. First of all, I'm from Northern California, doing this webinar from my home office where I have worked since 1996 in Berkeley, California.

[00:04:21.67] The Redwood trees are beautiful. They're strong. They represent the very strong legal foundation we have in the United States for digital accessibility. They have a very strong root structure. They can live to 2,000 years. So Redwoods-- if we had a tree for digital accessibility, I'd like it to be a Redwood tree.

[00:04:42.71] And also because the road in this roadmap picture is curvy, and we can't see around the corner, and that represents a word that I will be sharing throughout this presentation, which is uncertainty. I have the word on the slide now with yellow as a fill color and black and wavy around the text box. Because with the November election and with the-- I think if you're on this call, you know how I feel about things. I've written about Project 2025 and its risks.

[00:05:14.82] We are in a period of deep uncertainty. And I have spent the last several months-- not several months. It's only been a month, a month and a week, seems like a lot-- trying to understand what the new administration, the Republican Congress, and the agency changes will mean for digital accessibility. I want to share that, but I don't want to share it from a place of fear. I want to share it from a place of knowledge so we can be prepared and we can know what might happen.

[00:05:42.12] So I have this Uncertainty Ahead sign. It's like a yellow yield sign, but it says "Uncertainty Ahead" instead of "yield." And you will be seeing that throughout when we talk about different parts of the law and the foundation and the implementation. We'll talk, too, about what's the uncertainty and what can happen.

[00:06:00.01] Also, on the Uncertainty Ahead slide, there will always be an image of something sweet. This is a picture of a cake. The Uncertainty Ahead sign is bigger than the picture of the

cake, but the cake is there. This cake is four purple layers of cake with white frosting, but there's no frosting around the outside, so you see the delicious layers.

[00:06:23.28] This cake and the other sweet things that you will see on the uncertainty slides are from my article, "Accessibility is Delicious." You can find it on my website. If you're not familiar with it, I invite you to take a look. If you are familiar with it, I invite you to share your recipes. Because the truth is, digital accessibility is not a political hot button for the new administration, which protects us somewhat, and the foundation is very strong, and the state-level foundation is very strong. So we'll talk about all the different ways that digital accessibility is baked into laws in this country.

[00:06:59.92] And I don't want you to walk away from here with doom and gloom. I had many conversations with leaders in the field running up to this who I respect, and it's hard to use the word "hope" in this environment, but we are hopeful for the reasons I'll talk. We're not big picture hopeful, but we have drops of hope. We have frosting. We have cake. And we'll talk about that throughout. So yeah, let's go-- uncertainty ahead.

[00:07:28.12] What is digital accessibility? OK, I think of digital accessibility as the engine of disability inclusion in tech. It's the difference between inclusion and exclusion for disabled people. And it is the intentional practices that make that happen. And I want to thank you all, so many of you on this call, for doing those practices in your everyday work, which is not easy work. And sometimes it's unrecognized, and it's frustrating and leads to burnout.

[00:07:56.75] But you are the reason that accessibility happens and is the engine of disability inclusion. Accessibility is often also privacy, security, safety, and so many more things for disabled people. We have to hold on to in this time period-- essential to diversity, equity, inclusion, which is, of course, under threat, and essential to ethics, which we can hold on to.

[00:08:22.91] I like this picture of a closed door. You may have seen this in some of my talks. It's very closed, looks like it's been closed forever-- paint's peeling, double locks. This is because, without accessibility, disabled people are locked out. And with the work you are doing, accessibility opens the doors. And so you are a door-opener.

[00:08:44.11] To me personally, working out of my house by myself-- sometimes, the law can be very detailed, too-- I like to take the big picture look also, because I think we're going to really need that in the coming years. So I like to think of myself and yourself, 3Play Media, everyone supporting accessibility around the world, as door-openers.

[00:09:06.63] Digital accessibility is also a bridge to everything. This is a very tall bridge in India, mountain greenery on either side. I like to picture people with disabilities on one side of the bridge. Without accessibility, we cannot reach the technology on the other side. And so whatever role, whether it's big or small, that you're playing in this accessibility journey, you are a bridge-builder. So I have gratitude for that.

[00:09:35.72] Accessibility is a human and civil right, two words I used to use interchangeably, but now I know that human rights are the rights we acquire simply by being alive, and civil

rights are the rights we obtain from the laws where we live. And in the United States, digital accessibility is both, because digital accessibility is about participation, inclusion, communication, education, health and safety, and plus, plus, plus.

[00:10:06.41] Whatever sector you're in, whatever field, whatever part you're working on, you are working on human and civil rights, and those aren't going away. I don't care what happens in the next administration. Those things are real.

[00:10:19.20] I illustrate this with a picture taken by Tom Olin. In the run up to the Americans with Disabilities Act there was a protest, and you see people using wheelchairs with signs, "We shall overcome," "Access is a civil right." There's a blind person with a guide dog.

[00:10:33.00] I share this because the ADA was not dropped from the sky. The ADA was not just written in a congressional office. The ADA was the result of years of dedication and commitment and organizing and hard work by the disability community. And the disability community is strong, and the disability community is essential to digital accessibility. So I like us to remember that when we're talking about the law, we're not just talking about something written in Washington. We are talking about something that people have fought hard for.

[00:11:07.26] Those are the rights ideas that are baked into laws. I have a delicious close up of raw chocolate chip cookie dough, which I hope it looks on your screen like it looks on mine, if you can see the screen-- little chocolate chips with curls on the end. They're important ideas. And in the United States, we have a strong foundation of laws.

[00:11:25.72] The laws are part of the legal framework in the United States. The components of the legal framework are the federal laws, the federal regulations that are based on those laws, federal policy statements from agencies-- again, based on those laws-- as well as state and local laws and regulations. So all of those things become implemented, and so we have court orders, and we have settlement agreements that are part of the legal foundation. Think of this as all the roots of those Redwood trees. We have a very strong legal foundation today. We're living in the uncertainty, and we're focusing on what's left today.

[00:12:11.61] Existing federal laws and regulations. We have the Americans with Disabilities Act-- which, at its core, is an antidiscrimination law-- recognizes that effective communication between covered entities, like state and local governments or universities, private sector. Effective communication is essential to nondiscrimination. And accessibility is essential to effective communication in the digital age, because what is an accessible website but one that effectively communicates?

[00:12:46.22] And I just want us all to remember that this has been the ADA since 1990. In 1996, the US Department of Justice wrote that-- I have to read this every time because this is not new. Some of you may not have been born in 1996-- "Covered entities under the ADA are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or computerized media, such as the Internet." 1996, so the foundation runs deep.

[00:13:20.92] There is a new web and mobile rule. We'll talk about that. I want to talk about that separately, because that's big and on top of everyone's mind. That's part of the legal foundation.

[00:13:29.87] Section 504, another federal law that says if the federal government is going to give you money, you can't discriminate. And not having accessibility is discrimination. Section 508, many of you are familiar with, is, in part, a procurement law that says if you're the federal government and you're buying tech, you have to buy accessible. If you're selling to the federal government, you have to sell accessible. And if you're a federal employee, you have a right to work with accessible equipment.

[00:14:01.25] I just want to alert you there is a federal court challenge right now to-- let me back up one second. Federal agencies can issue their own regulations about 504. So this year, in May, the Department of Health and Human Services issued, updated their regulations about Section 504 that if you're receiving money from Health and Human Services, if you're a hospital, if you're a school that has a hospital, anything covered by Health and Human Services, there were new regulations, Section 504, in May.

[00:14:39.08] It's even hard to believe that I have to say this, but there is a lawsuit filed in Texas challenging that regulation, and while they're at it, they are also challenging the very existence of Section 504. 504 has been the law for over 50 years. It is the law that's at issue in Crip Camp, the wonderful movie that Judy Heumann fought so hard and became a national leader around.

[00:15:03.93] So there is a law, a case pending in Texas. I just want to tell you, 17 states have sued the federal government for making new regulations under 504. These regulations require accessibility of web and mobile and other technology. But the lawsuit is challenging something in the preamble of the new regulations, which is as follows. The Department of Justice-- Department of Health and Human Services, when they did the regulation, they noted in the preamble that someone with gender dysphoria may have a disability under Section 504, and actions which prevent, limit, or interfere with their access to health care may violate 504.

[00:15:56.00] And because-- I told myself I wasn't going to be doom and gloom in this talk, but that sentence in the preamble-- it's not even in the regulations-- protects trans rights for health care in US-funded agencies and hospital settings, and because of that, there's a lawsuit pending to try to throw out 504 as unconstitutional. So it's something we need to watch. It's very sad to me 17 states have signed on. The case is led by Texas. The case is filed in Texas. It's one case in one circuit. We'll see what happens. I'm going to say in uncertainty. I'm not going to gamble.

[00:16:42.32] OK, sorry. The Communication and Video Accessibility Act-- 21st Century Communication and Video Accessibility Act, CVAA, and the FCC regulations are a very important, strong part of the foundation and covers things like communication systems. If you're gaming and you're talking to someone through a system, that's an FCC thing. Captions, audio description-- so that's another part of the foundation.

[00:17:10.24] We have a separate law that covers airlines called the Air Carriers Access Act-- also has web and mobile and kiosk requirements. And the Affordable Care Act has a provision,

Section 1557, that requires digital accessibility for health organizations covered by the Affordable Care Act.

[00:17:30.25] I have a picture here of the United States. These are the federal foundation that covers every single law-- sorry, every single state in the United States. And this is a colored map because the court system is such that there's 12 different circuits. And these laws can always be interpreted differently in different states. And only those cases that get to the US Supreme Court, that applies to everyone.

[00:17:53.60] But you may hear about, oh, there's a case in New York that said this, or there's a case in California. It's important to pay attention to it, but it's also important to remember that you're not building your website for one part of the country. California's in the Ninth Circuit. New York's in the Second Circuit. Texas is in the Fifth or-- yeah, Texas is in the Fifth. So it's important to know that there can be differences in interpretation, but it's important to follow the most stringent interpretation.

[00:18:23.96] OK. The ADA web and mobile rule-- we don't have a lot of time to dig deep, but there is a wonderful resource on that I encourage all of you to read, which is [ADA.gov/resources/2024_03_08_web_rule](https://www.ada.gov/resources/2024_03_08_web_rule), and that is the Department of Justice's fact sheet about the rule. Tells you everything you need to in very plain language, and if you haven't read it, I encourage you to do so.

[00:18:52.99] It applies to state and local governments only. I have some pictures here of a jail, and a state college, and my own Berkeley public library, and a park where you see people walking and someone in a wheelchair riding down an accessible path. So it's state and local government only. It's a technical standard, which is WCAG, Web Content Accessibility Guidelines 2.1 AA.

[00:19:19.66] The time frame is based on the size of the state or local entity, so for anything shorter than 50,000 people it's in 2026. I hope someone will put it in the chat, I'm just right now forgetting is it April or June 2026? And if you're smaller than 50,000 people, then it's in the-- say the Berkeley Library. If Berkeley is smaller than 50,000 people, it's 2027. If it's larger, it's 2026.

[00:19:47.81] But the ADA is not suspended during this time. And that's very important to remember. In the end of 2023, before these regulations, the Department of Justice did an important settlement with the state of Oklahoma because their identification mobile app was not accessible.

[00:20:03.75] The same month as they passed the regulation, they did a settlement with the city of Virginia Beach that required accessibility to lots of things in the city, physical spaces as well as requirements for Braille, large print, real-time transcription, accessible websites, accessible electronic formats. And that's all without the regulations. So yes, you have until '26 and '27 for the WCAG under the rule, but the ADA nondiscrimination applies now.

[00:20:39.93] What is covered? Basically, web and mobile. It doesn't include some other things that we'll see are covered-- other technologies that are covered elsewhere. And there are

exceptions. There are exceptions, which I encourage you to look at that fact sheet. I put that up in front.

[00:20:58.63] But the one exception I want to mention there is a very narrow exception-- all the exceptions are very narrow-- for third-party content. And say you have a message board, and you let the public comment. The public comments themselves don't have to be accessible, but the message board has to be accessible to enable disabled people, again, to participate in government services.

[00:21:21.97] And I know there are people on this call from EdTech companies. It is very important to know that the exception does not mean, oh, if somebody else makes the content, it's not covered by the rule. No, the state or local government is responsible for everything they buy. So in some ways, this is a procurement requirement. And if you're selling to state and local agencies, and if you are a state and local agency buying, you have to make sure that your documents include requirements for accessibility. So that's the one exception. There are some other exceptions that you can find out in the fact sheet.

[00:22:01.84] OK. So those are the federal laws and regulations. What's the uncertainty? One thing that's good is that what you'll see happening starting January 20-- well, first of all, on January 20, apparently there's going to be 25 executive orders doing things that will probably be hurtful to many people in America, and everything that's hurtful to people in America is hurtful to disabled people. Because disability is a fact of life, and immigrants are disabled, and trans people are disabled, and everyone who's on the hot button list is going to be affected. But for digital accessibility, I do not expect any of those 25 to be focused on digital accessibility.

[00:22:49.72] Congress can immediately, without any big to-do, roll back regulations that were passed too close to the new administration. It's this complicated formula, but this year, the understanding is that anything that was finalized before August 1 of 2024 cannot be immediately rolled back under this law called the-- it's not called the congressional rollback law, but it's something like that. I'll have it in the links following.

[00:23:27.95] So the web and mobile rule was passed in April, and much of the work the Justice Department did around accessibility rules were finalized in April for this reason, no doubt. So we won't see a rollback of the Title II rule. Don't worry about that in January.

[00:23:46.50] However, Department of Justice can make new rules. If they do, has to go through the rulemaking process of notice. We'll have plenty of notice of that. We're living in uncertainty, so I don't want to guess what might happen. Do I want to guess? I mean, I'd say maybe the deadlines are vulnerable. Maybe the state and local governments will be pushing for a longer time frame. I don't know. But it's something that needs to be watched.

[00:24:15.71] Congress can make new or they can change existing laws. So we're going to need to pay attention to that. Congress did try to change the ADA in 2021 to make it harder for people to directly sue. This is motivated in large part by the large number of web accessibility lawsuits, where it's not required that you provide notice to sue. The disability community fought that back. Now that we have a full Republican Congress, that is the one thing I think that we may see

legislation on around issues affecting digital accessibility, but we're going to be paying attention to that.

[00:24:53.61] There can be private lawsuits that challenge regulations. That's something that we don't know, we're uncertain about. We are certain that someone's already challenging Section 504 and the Health and Human Services regulations, as I talked about. On the other hand, there's something sweet, the melted ice cream. You'll have to read the "Accessibility is Delicious" article to find out why.

[00:25:19.89] Oh, that law is called the Congressional Review Act, where they can look back and find the look-back of the statutes that were passed too soon. Then they're subject to immediate reversal.

[00:25:35.25] What are my other-- what are my sweet possibilities? I want to say that Andy Imparato, who is a leader in the disability community nationally, he's the executive director of Disability Rights California. He wrote a piece the week after the election, kind of arguing that may still be a chance for bipartisanship. And I talked to Andy about that, and I said, do you really believe it? And he said he did. And I said, well, I'm going to share it, because maybe you-- I personally don't think there's a chance for bipartisanship.

[00:26:05.80] But there is a history in disability rights about bipartisanship. George Bush did sign the Americans with Disabilities Act. John McCain, Bob Dole, they were big supporters of disability law. And Andy wrote in his piece, "We stand ready to work with leaders nationally to do various things, including to build a new bipartisan consensus that will modernize our approach to disability policy." So I don't know, maybe that will happen. Maybe that will be part of the ice cream.

[00:26:38.30] I do know there will be private lawsuits. We have a very strong Disability Rights Bar Association in the United States at the ready to file ethical lawsuits protecting these rights. The web rule, like I say, can't be erased in day one. We're going to have more and more conservative judges, which puts the whole legal system in an uproar.

[00:27:04.31] There was a lot of attention paid to a case that threw out what they call the Chevron rule, and that was, I think, a 40-year-old case that said courts have to give deference, they have to give special attention to agencies. And this Supreme Court said, well, no, they don't have to anymore. But there's a really good legal argument that that's not going to apply to the ADA. So it is possible that the incredible work of the Justice Department over the years will still get some deference in court cases.

[00:27:39.61] There's a disability rights lawyer named Amy Robertson. She has a blog at her law firm website, foxrob.com. If you're interested in the intricacies of those legal issues and what the court may do, I recommend that to you.

[00:27:54.82] OK, that's the uncertainty about the laws and regulations. The federal framework, the strong framework, is more than that. There's incredible guidance that federal agencies have put out over the years.

[00:28:12.73] The first one from the Health and Human Services and Department of Justice is on telehealth. And that's why I have this illustrated with a medical professional in the white jacket taking notes. And she's consulting with a patient, who obviously looks like he has a flu.

[00:28:33.29] When I do description, I've learned from blind people who are-- from blind people generally and specifically from blind people who are Black, that's very important to include the race because without the race, things can default to white. So both of the people in the images, the medical professional as well as the person on the screen, are Black. If you're not familiar with that issue about including race, I invite you to look at it yourself. So there's telehealth guidance from 2022.

[00:29:02.85] There's guidance about AI hiring tools that can discriminate against disabled people. Biden has done great executive orders on AI fairness and the importance of accessibility in the federal sector. There's a good Dear Colleague letter, which is guidance from Department of Education and Justice, about the importance of digital in the education setting. There's something from the EEOC about hearing disabilities in the workplace and the ADA.

[00:29:31.45] So I encourage you to look at this guidance, because it's not only guidance, but it talks about why-- what the underlying laws are. So if you're in these sectors, I really encourage you to look at them. I have articles about all these things on my website so you can find them by-- I'll try to get a links list after the session. But if not, you can search, and you can find them on my website.

[00:29:59.86] What is the uncertainty about federal guidance? It's very uncertain. Agencies can withdraw the guidance. So that's why I encourage you to read them now and download them just in case something happens. And remember that the underlying laws supporting that guidance are still the laws. They're all based on the ADA or Section 504 or Section 508. So the guidance is helpful to us. And it can also be withdrawn without much fanfare.

[00:30:30.18] The president can also reverse executive orders. Whether he will get to the AI fairness and the accessibility order from 2021, I don't know, but it can happen. And courts can ignore them also. So that's a lot of uncertainty. I guess I came up with something else, yes. On the other hand-- the picture is the blueberry muffins-- again, all the things that we're frustrated about that we don't get enough attention with accessibility and it's not recognized, may be our saving grace in the next period of time because are they going to get to revoking this guidance? I don't know. We're in a period of uncertainty. The guidance exists now. It's important to look at.

[00:31:14.93] So something more cheerful-- the US states. The states are an important part of the framework. And the states do their own thing. The map shows the states, 50 states of the United States by different colors to represent they all have different laws. Many states have anti-discrimination laws like the ADA, California, New York, New York City-- not just states, but state and local, many more.

[00:31:43.94] Many states have both the state-funded idea that it's like 504. If the state's going to give you money, you can't discriminate, which means you have to have accessibility, or the state's going to buy things, it has to buy accessible. There's increasing number of laws on state

agencies needing to be accessible-- Colorado, Massachusetts, California, Rhode Island, and more. I encourage you to send me your state if you have something good and I don't mention it.

[00:32:12.23] This is really important because the state agencies are also covered by the Title II Reg. So if anything happens to the Title II Reg, if the Department of Justice decides to put out a new notice of rulemaking to change it in any way. These states still have laws covering the state agencies, just as they would be covered by Title II. Maryland has, I think, the only in the country K-12 procurement statute for accessible technology in K-12. So if you're, again, in EdTech and you're selling to Maryland, if you're selling across the country, that's something to really pay attention to.

[00:32:50.75] I have a global page on my website in the dropdown menu under Legal Update, Global. In the Global page-- maybe this is confusing-- in the Global page, I have a United States section. And in that section, I have a State subsection. And so a lot of these laws are listed in the state with links to articles about them. I can also recommend the Equal Entry blog, where Ken Nakata and Thomas Logan cover some of these laws more in depth than, of course, I can do in 50 minutes for everything here. So I invite you to look at that. And again, I try to put articles up about the state laws and put on LinkedIn whenever anything new happens.

[00:33:33.03] So what is our uncertainty about the state laws? Honestly, they're not affected by federal agency actions. There are some state laws that may incorporate the ADA. So if something changes in the ADA, like the right to sue, perhaps it might impact a state law. But by and large, the states are going to save us in many places in the next four years-- environment, a million other things, probably including digital accessibility.

[00:34:01.08] States can strengthen their disability rights laws. And they may well. States are already thinking about making stronger protection for immigrants. Of course, like everything else, immigrants crosscuts. There's disabled immigrants, of course.

[00:34:18.76] In my Project 2025 article that I wrote before the election, I have links to a lot of ways that some of these other issues are going to impact people with disabilities, along with the digital accessibility stuff. And I have articles by other disability organizations around Project 2025. I expect to see a lot more state action strengthening laws where we see cutbacks in the federal space.

[00:34:45.97] It's possible that there can be federal court interpretation of state laws, but not often. If things stay in the state, we have state interpretation, which, in many states, is not impacted by judicial appointments like we're seeing in the federal government. So I'm not going to put the cake in the corner on this. I'm going to cover it with the cookies, because I think the state laws-- there's going to be a lot of sweetness there and a lot of hope and protection for digital accessibility rights.

[00:35:14.58] What's the legal framework globally? This is not about the globe. This is not about what's happening in other countries. However, I need to say that US companies are impacted by the European Accessibility Act. If you're covered by the European Accessibility Act, you need to really pay attention to what's required. And I invite you to take a look. 3Play Media had a very

good webinar with Susanna Laurin, who's really my go-to on the European Accessibility Act. So if you want to know what's happening, you're selling in the EU, really recommend that webinar.

[00:35:48.21] What happens if the law remedies are ignored? Laws include legal remedies. If you're on the wrong side of a lawsuit, you have to fix barriers and fix systems. You might get court or agency oversight. The DOJ has the potential, under the ADA, to impose penalties up to \$150,000. You have to pay the disabled person who brought the suit. These are potential remedies. You might have to pay the lawyers of the disabled person. You may have to pay your own lawyers to defend. And if you're covered by the European Accessibility Act, there may be fines. There can be market loss. There can even be jail time.

[00:36:32.36] So I have a picture of a tea bag, steaming hot tea, to represent remedies. But I like to replace that with a keyboard that says "Reactive" or "Proactive." Because if you want to comply with the law, it makes sense to fix your barriers and systems now, because you're going to have to do that if you're waiting for a lawsuit and end up on the wrong end of it. So be proactive. Be proactive with the laws that exist. Don't obey in advance. Don't let your fear of what might happen lead you to an inaction, because the foundation right now is very strong.

[00:37:09.87] What are the uncertainties about the legal remedies, the agency remedies? I do not expect the new administration's Department of Justice to go out and issue fines against bad actors. So some things will remain theoretical. There could be, like I said, the possible congressional action around the right to sue without notice. There is a cake, very pretty picture of a cake from the article on "Accessibility is Delicious." It's a triangle. You can see it's, like, six different layers surrounded by chocolate frosting.

[00:37:45.00] On the other hand, with the legal remedies, like I said, we have strong private party enforcement, and we're going to get state enforcement too, not just state laws. When I was thinking about this, I'm like, wait, I remember, early on, New York State was a leader in web accessibility when web accessibility was younger.

[00:38:05.58] And sure enough, I was happy to find an article on my website titled "New York AG--" attorney general-- "Announces Comprehensive Web Accessibility Settlement." And that was in 2009. So I expect the states, not just to have the laws on the books, but to be part of the legal remedy and enforcement.

[00:38:25.13] Without implementation-- of all these frameworks, the legal, the laws, the regulation, the state laws-- the cookie dough is still unbaked. So how are the laws implemented? In the United States-- this is a picture of a Black student speaking sign language-- the laws are enforced by people with disabilities every single day. If you have an organization and you receive feedback, and someone says to you, I can't find this. I can't see this. Where is this on the website? Chances are, that's an accessibility issue. And that is someone enforcing their civil and human rights to participate in the technology that you are offering. So people with disabilities, if you can nip it there and you don't have to get into the whole legal system, all the better.

[00:39:13.30] Government agencies, private party lawsuits, and structured negotiation, which is the way in which I have practiced law, what my book is about, for the last 30 years around accessibility-- so that's the implementation.

[00:39:27.34] And I'm going to share with you a couple of my favorite implementation things. I got the nice screen with the fireworks going off. And I like the work that's been done around health accessibility because healthcare is not only just a life and death thing. It's so much about privacy.

[00:39:47.71] Two things to bring to your attention. In May of this year, there was a really good settlement that the Department of Justice did against Springfield Clinic-- had to do with medical records. I think I've written about it on my website. I'm not entirely sure, but I'll put a link to this when we send out the post-session information. It covered web. It covered mobile. It covered the portal. These are the kinds of things that we are not-- the uncertainty, what the new Department of Justice will do-- unlikely to see strong enforcement actions.

[00:40:26.90] But there's also private enforcement. There's a very good case that the National Federation of the Blind and their lawyers at Brown, Goldstein, and Levy did against the University of North Carolina health care system. It talked about MyChart access. The plaintiffs, two different plaintiffs, were awarded \$130,000 together for the discrimination they experienced when they didn't have the privacy and the information they needed from their health care providers. And the attorney's fees, just recently, to the plaintiff's lawyers who brought the suit and negotiated a very strong settlement, were over \$1 million.

[00:41:06.65] So the health care accessibility work done by ethical lawyers and by an ethical Department of Justice are very good. The private enforcement is going to continue. The Department of Justice, I'm not so sure. And I don't know what the University of North Carolina lawyers paid their own lawyers to fight this. If you get a lawsuit, you don't have to be a shark. You don't have to be a defendant. You do not have to defend. You can collaborate and reach accessibility.

[00:41:35.60] Access to education is another such important thing about the digital space that I like. The Los Angeles Community College District I've written about. In 2023, there was a \$240,000 verdict. You can look this up on my website for more information. There was a verdict reduction this year and a weak injunction. So that's going up to the Court of Appeals. It was about course material, and the settlement was very-- not the settlement. The court orders are very good. The case is about accessible course material, websites.

[00:42:11.46] The City University of New York 2023 settlement, that's one of the most recent ones. I invite you to look at those. Earlier there were ones, again, so University of Montana, Harvard, and MIT. Harvard has since become a model of good accessibility on campus. I invite you to look at those settlement agreements, because they're also road maps if you're in the education space about what to do for accessibility.

[00:42:38.64] There was a case about accessible kiosks for a State University in California by a blind employee who couldn't use the kiosk in the dining hall. So part of the access to education is

Department of Education OCR complaints. That's going to be when we talk about the uncertainty that's coming up.

[00:43:00.86] Taking on false claims. This is really important because this is a case-- I've talked about this before, where the California Parks web case. The lawyers and the plaintiff said to the web developer, you lied about the accessibility. I don't want to say lie. You brought a false claim. You claimed it was accessible, but it wasn't. And this is not a specific accessibility law. This is a false claims law that applies to anything. Doesn't have to do with disability or accessibility, but it was used here to make the Parks Department website more accessible.

[00:43:35.99] So I think we can look to creative lawyers like Tim Elder in California, who brought this lawsuit, about what laws are there to advance accessibility that aren't necessarily accessibility laws.

[00:43:47.38] Another example of that is a case currently pending. I titled the slide "Taking on an Overlay Company." There's a case called Tribeca Skin Care v. AccessiBe, which is an overlay company. And that was filed by a small business who bought the product, bought the overlay product, and it didn't protect them from a lawsuit. So this is not a case about Title II or Title III or WCAG standards. It's about good faith and fair dealing. That if you're going to buy a product, as a small business, it needs to do what it says it's going to do.

[00:44:23.08] So I write all about that lawsuit on my website. You can just look up Tribeca Skin Care or AccessiBe. So these are examples of laws that are not designed for accessibility but can be used to advance accessibility. I expect to see more of that in the next four years.

[00:44:42.25] Beyond websites, the legal foundation is strong in other areas, too. Kiosks, we never did get the Title III kiosk regulations, but that hasn't stopped the legal space. There's pending cases against Quest and LabCorp about kiosks in the medical setting that have had several very strong accessibility rulings. CVS Health hub did a negotiation around their kiosks to make sure they're accessible. There's a picture of Quest.

[00:45:13.76] There's a case about VR captioning, Panarra v. HTC. I've written about that. There's a case pending about podcast transcripts against SiriusXM that is still winding its way through the courts. So this is all part of the implementation, which is a very important part of the legal foundation.

[00:45:36.22] I have resources on all these things on my website. For kiosks I have an article called-- I think it's called "Kiosks, The Law is Paying Attention." And since 2018 I have kept track of kiosk cases. And they're all there in every sector, and you can take a look at that. So it's not just about websites. It's not just about mobile apps.

[00:45:56.05] Uncertainty about enforcement and implementation. There's enforcement and implementation things to be concerned about. Again, we're in a period of uncertainty, trying to hold on. Agency inaction. We can probably expect the agencies to do far less. Even if they don't do anything harmful, they're going to-- whether they're going to do anything affirmative, I would

say, is much-- it's probably certain that they're not going to do anything affirmative. But still uncertainty.

[00:46:26.30] So the Department of Education. Project 2025, as you know, says there's a risk to the Department of Education's very existence. Of course, the elements of the Department of Education would go elsewhere. So we don't know what's going to happen with that. The EEOC, the DOJ, and the Department of Ed are our main agencies, the FCC. I'm sorry, I forgot to put FCC up here.

[00:46:49.97] I heard that the proposed head of the FCC has done in the past some things favorable to accessibility. So we don't really know what's going to happen, but something different will happen in the agencies. We have more conservative judges, on the other hand, with the picture from the "Accessibility is Delicious." We will have private enforcement, and we will have state enforcement.

[00:47:18.39] OK, my least favorite parts of the legal landscape, really quick. The numbers. I don't like the numbers, but I know the numbers of lawsuits are important to many people. There were 4,600 digital cases filed last year. I get my information from UsableNet. I don't independently verify it. I have no reason to doubt that it's wrong. They're about to put out their 2024 summary. They also put out a summary every month.

[00:47:47.77] There were 700 against defendants who have already been sued. That's 25% of the cases. Mostly, they're about desktop websites, less about mobile sites. And again, it's UsableNet. I've written a lot about this. Why I don't like it is mostly because I think it takes a law out of its civil rights foundation. It takes the law kind of away from disabled people focused on lawsuits and money, and it makes disabled people look greedy in many contexts. So I don't like them. I know some people do. It's important to share. Sorry.

[00:48:31.84] E-commerce lawsuits, that's part of the big picture of numbers that I don't really like, but it's a little more complex. I just want to-- 82% of the 2023 filings were against e-commerce lawsuits. There is a class action called Fashion Nova, which is approval when there's a class action that affects a broad range of people. And actually what a class action does is say, if you have a claim against Fashion Nova, we're dealing with it. You can't deal with it separately.

[00:48:59.83] Most of these cases are filed. You'll read, oh, class action against Beyoncé. Class action against this person. One of the reasons I don't like them, and I feel it's an ethics issue, is because we don't really know what happens. The results aren't public. The results don't have long-term opportunities for fixes.

[00:49:15.73] But this Fashion Nova class action is something to watch because they did reach a settlement, and it's waiting for court approval. And the settlement has a pot of money of over \$5 million. So that's one example of this-- one out of this number of cases that isn't just a quick drive by, get money, get out. So yeah, I just had to share that.

[00:49:43.15] Overlays and SLAPP suits. I can't play my whole Darth Vader song. I have the Darth Vader picture and The Imperial March, because overlays and SLAPP suits are a very bad part of our space that we all need to be aware of and do what we can to avoid.

[00:50:00.13] Audio Eye had a suit against accessibility leader Adrian Roselli for communicating around the harms of accessibility, overlays, and that suit got settled. I have an article on my site about that. There are two cases pending in France, one settled, one continued, against small French accessibility companies for speaking out about overlays. In 2023, of all those lawsuits that I don't really like, 933 of them were against--

[00:50:38.95] KELLY MAHONEY: Hi, everyone. Looks like we might have dropped off with Lainey. Oh, perfect timing. Welcome back, Lainey.

[00:50:47.02] LAINEY FEINGOLD: Oops, sorry.

[00:50:49.14] KELLY MAHONEY: We'll right where you left off.

[00:50:50.78] LAINEY FEINGOLD: Oh, no. But you don't see my slides.

[00:50:53.32] KELLY MAHONEY: Not yet. Do you need a minute just to re-present them?

[00:50:55.91] LAINEY FEINGOLD: Oh, I think so. Was that me? I'm so sorry.

[00:50:58.55] KELLY MAHONEY: That's OK.

[00:51:00.82] LAINEY FEINGOLD: I think it's my computer telling me that I've given enough--

[00:51:04.51] KELLY MAHONEY: You're working too hard.

[00:51:06.07] LAINEY FEINGOLD: I've given you enough information. OK, so I was complimenting the 423 people on the call, which I thank you for. And if you're not familiar with the overlay fact sheet, please look at it. Please share it. Yes, that's all I want to say about that.

[00:51:25.73] Possible new laws and regulations, there are right now proposed accessibility laws, the Website and Software Apps Accessibility Law, which I've written about on my website, the Communication and Video, Technology Accessibility Act, which is to strengthen the CVAA.

[00:51:44.21] There was a bill in California that got a lot of attention that did not get out of-- did not become a law in California, AB 1757. It's crossed out. It had two years to pass. I don't imagine it's going to pass next year, but we don't know.

[00:51:59.09] There's pending accessibility regulations that did not get done in the Biden administration, the self-service transaction terminals, which I call kiosks. As I said, I keep track on my website. The law isn't waiting for particular regulations on this, because, if you have a kiosk that's not accessible, people can't participate. People are not included. And that's

discrimination under the ADA. So we didn't get those regulations. EV charging-- electric vehicle charging stations didn't get finalized.

[00:52:31.73] I left this picture on. It says, "Don't Wait." I used to say don't wait, and I still say don't wait. Department of Education wanted to do an update to bring their regulations current and talk more about digital accessibility. They didn't, but there are so many lawsuits and complaints resolved in favor of accessibility. So the fact that we didn't get these regulations doesn't mean that the laws still don't require it.

[00:52:59.70] Uncertainty about new laws and regulations. Honestly, friends, I do not have a cake for this. I do not think we're going to see new laws and new regulations that advance accessibility in the next four years. Or maybe just two years, because right now, we have Republican Senate, Congress, and president. I don't think we're going to get any accessibility laws out of there. We've talked about the risks might be. So the disability community has done so much work on these pending things, and I think we just have to leave it at that.

[00:53:34.63] So for the roadmap, the only thing left is the resources. Oh, I did a pretty good job. OK. The first resource-- I left this on-- the DOJ email list, which you can sign up for at ADA.gov. This is where I get all my information about the DOJ. Whether they're going to use that list, what that list is going to say, I don't know, but I'm going to stay signed up so I can give you the information that will hopefully be helpful to you in your work.

[00:54:02.47] The Access Board also has an email list. I have social media, and I have an email list, which I put here as aspirational, because I'm sorry to say, I did not send one email to my list in 2024. I always say vow to do better, and I do.

[00:54:18.42] Seyfarth has an ADA Title III blog. They post things about the legal space from an ethical defense perspective. I get a lot of good information about that. I illustrated what are the resources, this rolling river with white caps. Because, like I say, things are uncertain. We don't know what's going to happen. I've already mentioned the Equal Entry podcast.

[00:54:43.54] All we can do is embrace the uncertainty. Taking a deep breath sounds trite, but honestly, we have to keep ourselves healthy and centered for the work ahead, because there will be work. And I put the word "trust" up here not to say I trust what's going to happen in the new administration. But I trust the accessibility community, the accessibility industry. I trust the strength and foundation of the legal framework that I share with you today.

[00:55:13.79] And I'm going to try to stay centered until I see specific things, and then I'm going to share them with you and report on the work that I know the disability, accessibility community, and civil rights lawyers are going to do to protect our rights.

[00:55:29.37] So that's what I got. Thank you. Time for questions. Let me--

[00:55:37.19] KELLY MAHONEY: Thank you very much. Well, revel in the emojis that are pouring in for you, first of all.

[00:55:42.62] LAINEY FEINGOLD: Thank you. I really have to say, this was a very hard talk to give. And I think you might have noticed, I wrote the description of the talk before the election. And then with the election, I felt I had to redo the talk. And should I be optimistic? Because I try to be optimistic. And I always quote Helen Keller, that nothing can be accomplished without faith and optimism.

[00:56:01.23] And I guess at the end of the day, I have it in our community and the civil and human rights, and the demands of the disabled people who rely on accessibility. So I don't know. I hope I struck the balance. I really welcome your feedback. And yeah, what do we got for questions?

[00:56:21.36] KELLY MAHONEY: I think we just have time for one question here, so I'll try to make it a good one. You've done a really great job of explaining comprehensively your viewpoint on things, and clearly, this audience appreciates that, but would you have any recommendations for organizations to handle those sort of gray areas in compliance, where the guidelines are less open to interpretation, they're a little more-- excuse me-- they're more open to interpretation, and so they're less prescriptive in the exact detail they provide?

[00:56:52.70] LAINEY FEINGOLD: Yeah, I think for that-- and this is why I always start with that foundational civil rights nondiscrimination. You need to do what's required so people with disabilities are not excluded from your products and services. And that is the first place to look if you're in a gray area. And the next place to look is these other settlements. Like in the university setting, there's been a lot of good legal work by ethical lawyers going back 5, maybe even 10 years.

[00:57:23.13] So there's a woman named Laura Carlson out of the University of Minnesota. And she has-- if you look up Laura Carlson-- I think it's with an E-- web accessibility, legal settlements. And she keeps track of them all. And you can just look at them, like I say, as a roadmap. And it's not just for education. It's for any sector. And also, bring in people with disabilities, either as employees ideally, and decision makers and consultants and speakers, and understand how the work that you're doing is going to include or exclude.

[00:57:57.07] Because in my experience, the more you can bring in stories, the more you can bring in people-- I do collaborations, so I have these meetings, and I bring blind people together with companies. And you may have heard me say this in another talk, but one of the people from a big finance company said to me, years after this meeting happened, she goes, that was the most holy shit moment of my career, when I saw your client try to use our website with a Braille display.

[00:58:26.14] And I have many of those stories. I should actually do a talk called "most holy shit moments." So that's what you do in the gray area. You try to bring it out of a strict checklist kind of law into a human-centered inclusion type of conversation.

[00:58:43.11] KELLY MAHONEY: Well, if you do compile all those moments into a session, I'm sure that would be an eye-catching title. Absolutely.

[00:58:48.59] LAINEY FEINGOLD: I think I need to do that.

[00:58:50.94] KELLY MAHONEY: All right. Well, that's all the time that we have today. Thank you so much, Lainey, for such a wonderful presentation. You've gotten so much love in the comments and with these emojis that keep coming in. For anyone who has any questions that may have gone unanswered, Lainey has put her contact information on this slide here. That's LF@LFLegal.com. And just a reminder, we'll also be sharing the slides along with this session recording.

[00:59:12.55] So I hope everyone has a great rest of your day. And that's all that we have time for today. Thank you very much.

[00:59:18.61] LAINEY FEINGOLD: Thank you all. Thank you, 3Play. Thank you, Kelly.