

ADA COMPLIANCE:



NAVIGATING THE LEGAL & WEBS CHALLENGES

8.15.19 Orlando World Center Marriott

Part 1: Updates on Legal Claims Against Local Governments

TABLE OF CONTENTS:

1. [Introduction: A Problem You Cannot Ignore](#)
2. [How Did We Get Here?](#)
3. [What Legal Guidance Is There?](#)
4. [Executive/ Legislature](#)
5. [Potential Defenses to ADA Claims](#)



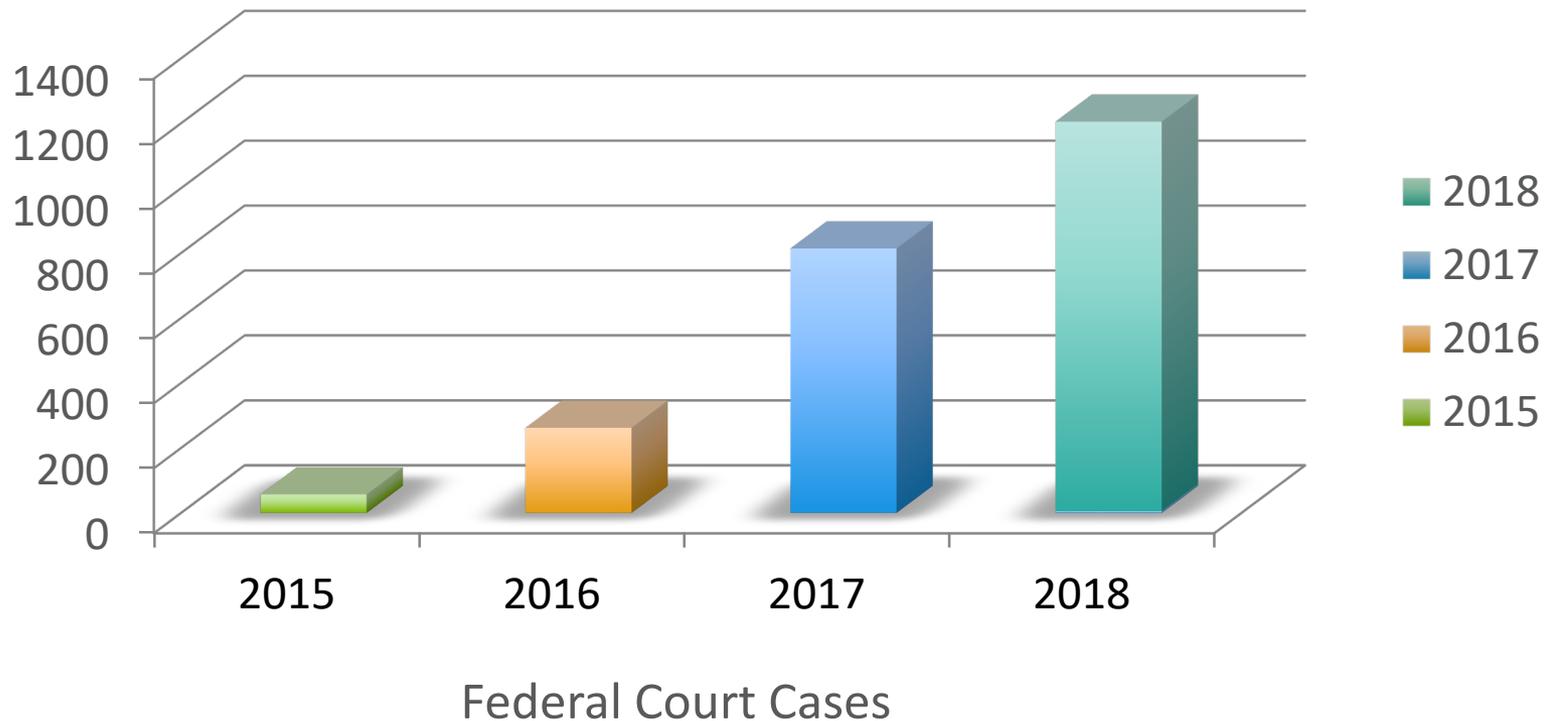
Introduction: A Problem You Cannot Ignore

“The power of the Web is it’s universality. Access by everyone regardless of disability is an essential aspect.”

- ◆ - Tim Berners-Lee, W3 Director and inventor of the World Wide Web

Rise of Web Accessibility Lawsuits

ADA Web Litigation



How Did We Get Here?

- ◆ **Basic Premise:** By failing to make site accessible to blind or deaf, entities are failing to “furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.”
- ◆ **Emerging Trends:** Piecemeal litigation: attack accessibility of individual platforms and resources, including PDFs, closed captioned videos, job application systems, mobile apps, calendars, and other individualized elements.
- ◆ **Florida’s Added Legal Wrinkle:** These claims are emboldened by Florida’s legislative culture of open governance in its Sunshine law and public records laws

What Legal Guidance is There?



Absence of Legally Binding Standards (example 1)

- ◆ Despite thousand of suits, there are no bright-line rules that entities can follow in order to avoid being targeted
- ◆ **FEDERAL REGULATORS: US DOJ**
 - ◆ In 2010, announced it would issue new regulations to address website accessibility, but never did
 - ◆ In 2018, the DOJ exited the field completely and demoted the issue to its inactive list, i.e. regulatory purgatory

Absence of Legally Binding Standards (example 2)

◆ June 20, 2018

- ◆ 103 members of the House sent a letter to then-Attorney General Sessions urging DOJ to “state publicly that private legal action under the ADA with respect to websites is unfair and violates basic due process principles in the absence of clear statutory authority and issuance by the [DOJ] of a final rule establishing website accessibility standards.” (Recall the Hobby Lobby case)
- ◆ Asked DOJ to “provide guidance and clarity with regard to website accessibility under the . . . ADA.”

◆ July 19, 2018

- ◆ 19 state attorneys general sent a letter to then-Attorney General Sessions urging DOH to provide clear guidance regarding website accessibility under the ADA, noting “[t]his void in the law has led to unnecessary lawsuits,” and requested “a proposed rule to provide exact standards for web accessibility, and provide any guidance in the interim”

◆ Sept 4, 2018

- ◆ Six U.S. Senators sent a similar demand for clear guidance

Letter from Congress

Congress of the United States
House of Representatives
Washington, DC 20515-3313

June 20, 2018

The Honorable Jeff Sessions Attorney General
of the United States
U.S. Department of Justice 950
Pennsylvania Ave NW Washington,
DC 20530-0001

Dear Attorney General Sessions:

Thank you for your service to our country. We write today to express support for the Department of Justice providing guidance and clarity with regard to website accessibility under the Americans with Disabilities Act or ADA.

Although there have been several recent court decisions on the application of the ADA, the statutory authority for applying the ADA to websites is unclear.¹¹¹ However, businesses of every shape and size throughout the country are being threatened with legal action by private plaintiffs for unsubstantiated violations of the ADA. This problem is expanding at a rapid rate since the Internet allows such actions to be filed from anywhere, and there are no restrictions or limitations on making such complaints. The absence of statutory, regulatory, or other controlling language on this issue only fuels the proliferation of these suits since there are no requirements these complaints have to meet. In fact, in most cases these suits are filed for the purpose of reaching a financial settlement and do little or nothing to improve website accessibility.

We support the original spirit and intent of the ADA. However, unresolved questions about the applicability of the ADA to websites as well as the Department's abandonment of the effort to write a rule defining website accessibility standards, has created a liability hazard that directly affects businesses in our states and the customers they serve.

It is critically important for the Department to take steps now to state publicly that private legal action under the ADA with respect to websites is unfair and violates basic due process principles in the absence of clear statutory authority and issuance by the Department of a final rule establishing website accessibility standards. We agree with the U.S. District Court for the Central

¹¹¹ See *Carroll v. ABNB Fed. Credit Union*, No. 2:17CV521, 2018 WL 1180317, at *1 (E.D. Va. Mar. 5, 2018), and *Robles v. Domino's Pizza LLC*, No. CV1606599SJOXPX, 2017 WL 1330216, at *1 (C.D. Cal. Mar. 20, 2017); but see *Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340 (S.D. Fla. 2017), and *Markett v. Five Guys Enterprises LLC*, No. 17-CV-788 (KBF), 2017 WL 5054568 (S.D.N.Y. July 21, 2017).

District of California in *Domino's Pizza v. Robles* which held that "impos[ing] on all regulated persons and entities a requirement that they 'compl[y] with the WCAG 2.0 Guidelines' without specifying a particular level of success criteria and without the DOJ offering meaningful guidance on this topic ... files in the face of due process."¹ Further, as it dismissed the ADA complaint, the court said:

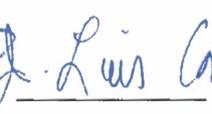
The Court concludes by calling on Congress, the Attorney General, and the Department of Justice to take action to set minimum web accessibility standards for the benefit of the disabled community, those subject to Title III, aQd the judiciary.²

It is important for Congress to act to provide greater clarity through the legislative process. However, in the meantime, it is also unfair and disruptive to subject businesses to litigation risk caused by insufficiently specific statutory language or even basic direction on compliance from the Department. We respectfully urge you to help resolve this situation as soon as possible.

Thank you again for your service to this nation and we look forward to your response.

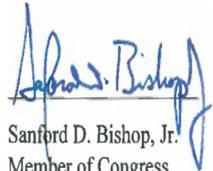
Sincerely,


Ted Budd
Member of Congress


J. Luis Correa
Member of Congress


Don Young
Member of Congress


Member of Congress


Sanford D. Bishop, Jr.
Member of Congress


Ken Calvert


Ed Royce

Absence of Legally Binding Standards (example 3)

◆ Sept 25, 2018: DOJ Statement

- ◆ Acknowledged withdrawal of the proposed rules
- ◆ Emphasized ADA applied to public accommodations websites over 20 years ago
- ◆ “The absence of a specific regulation does not serve as a basis for noncompliance”
- ◆ “Public accommodations have flexibility in how to comply”
- ◆ “Noncompliance with a voluntary technical standard for website accessibility **DOES NOT** necessarily indicate noncompliance with the ADA”

DOJ Response



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 25 2018

The Honorable Ted Budd
U.S. House of Representatives
Washington DC 20515-0001

Dear Congressman Budd:

This responds to your letter dated June 20, 2018, regarding website accessibility for public accommodations under the Americans with Disabilities Act (ADA). We apologize for our delay in responding your letter.

As you may know, on December 26, 2017, the Department of Justice (the Department) published a Notice of Withdrawal of Four Previously Announced Rulemaking Actions in the Federal Register. 82 Fed. Reg. 60932 (Dec. 26, 2017). Two of the withdrawn rulemakings were related to the accessibility of web information and services under the ADA. The first withdrawn rulemaking (RIN 1190-AA61) covered accessibility of web information and services of public accommodations. The second withdrawn rulemaking (RIN 1190-AA65) covered accessibility of web services of state and local governments.

As indicated in the Notice of Withdrawal, the Department is evaluating whether promulgating specific web accessibility standards through regulations is necessary and appropriate to ensure compliance with the ADA. The Department will also continue to review its entire regulatory landscape and associated agenda, pursuant to the regulatory reform provisions of Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" and Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

The Department first articulated its interpretation that the ADA applies to public accommodations' websites over 20 years ago. This interpretation is consistent with the ADA's title III requirement that the goods, services, privileges, or activities provided by places of public accommodation be equally accessible to people with disabilities.

The Honorable Ted Budd
Page Two

Additionally, the Department has consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute's requirements.¹ Absent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication. Accordingly, noncompliance with a voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA.

We very much appreciate the concerns regarding the impact that the risk of litigation has on covered entities. The Department remains committed to safeguarding accessibility for individuals with disabilities while also working with covered entities to ensure that compliance with the ADA is feasible and sustainable. Given Congress' ability to provide greater clarity through the legislative process, we look forward to working with you to continue these efforts.

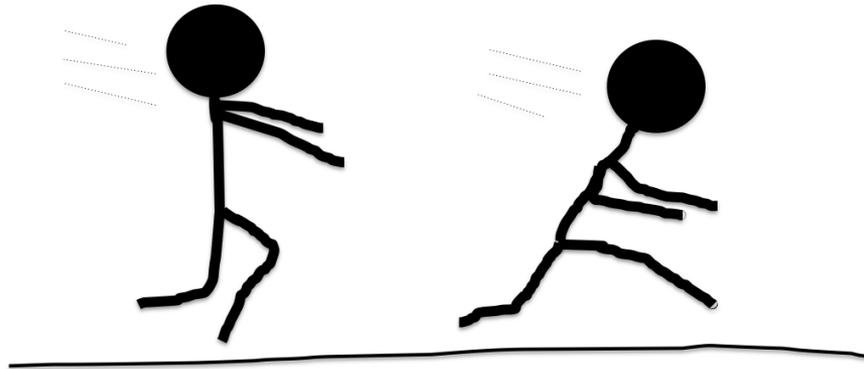
We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Stephen E. Boyd
Assistant Attorney General

Executive/ Legislature

*Tag,
You're It!*



Informal Standards

◆ **World Wide Web Consortium & WCAG (W3C)**

- ◆ An international community where Member organizations, a full-time staff, and the public work together to develop web standards. Mission is to lead the Web to its full potential
- ◆ No typical organizational structure and is not incorporated
- ◆ NOT an official regulatory body, or arm of the U.S. government simply a set of guidelines articulated by certain industry shareholders

◆ **W3C Web Content Accessibility Guidelines 2.0 Level A or AA & 2.1**

- ◆ Attempt at offering guidance
- ◆ Split into three levels: A; AA; and AAA – A being the minimum and AAA being maximum
- ◆ Have no rule of law, but courts and industry alike have looked to these for some guidance

The Advocate's Solution: Litigation

- ◆ Recipe for Litigation
 - ◆ Guiding principles of maximized access
 - ◆ No binding technical regulatory standards
 - ◆ No legislative amendments or standards
 - ◆ Aspirational technical standards
- ◆ Courts are left to fill the legal void, while bound by very broad principles promoting accessibility

Common Web Accessibility Complaint Language

COMPETING NARRATIVES

KNOWLEDGE IS POWER vs. RESOURCE ALLOCATION

- ◆ “A citizen’s right to meaningful participation in the political process and to access publicly available information needed to participate in the process is a fundamental right requiring heightened scrutiny.”
- ◆ “Defendant is required to present the electronic documents it provides to the public in an accessible format in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.”

Common Web Accessibility Complaint Language (Cont.)

- ◆ “Defendant has violated Title II of the ADA in numerous ways, including discriminatory action which occurred when the Defendant failed to maintain policies and procedures to ensure compliance with Title II of the ADA by creating barriers for individuals with disabilities who are visually impaired and who require the assistance of interface with screen reader software to comprehend and access Defendant’s electronic documents provided within the Website.”

AMERICANS WITH DISABILITIES ACT

◆ TITLE II

- ◆ “[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” **42 U.S.C. § 12132.**
- ◆ To state a claim under Title II, a plaintiff must establish: (1) that he is a ‘qualified individual with a disability; (2) that he was excluded from participation in or...denied the benefits of the services, programs, or activities of a public entity or otherwise discriminated against by such entity; (3) by reason of such disability. Section 504 of the Rehabilitative Act has the same requirements as applied to programs or activities receiving federal financial assistance.

POTENTIAL DEFENSES TO ADA CLAIMS



The Nexus Theory – Gil v. Winn-Dixie

- ◆ Title III of the ADA prohibits disability discrimination in places of public accommodation. 42 U.S.C. § 12182. The statute lists twelve finite and definitive categories of physical entities that qualify as places of public accommodation. 42 U.S.C. § 12181 (7).
- ◆ Nationally, there is a split of authority as to whether Title III applies to non-physical locations. But the Eleventh Circuit has previously held that Title III only applies to access to physical spaces. **Rendon v. Valleycrest Prods., Ltd.**, 294 F. 3d 1279, 1285-86 (11th Cir. 2002) (finding Title III prohibits tangible and non-tangible barriers to “concrete space”).
- ◆ In **Gil v. Winn-Dixie**, 2017 U.S. Dist. LEXIS 90204, one of the only known website accessibility cases to go to trial, Judge Robert N. Scola, Jr. of the United States District Court for the Southern District of Florida ruled in favor of Gil, holding that Winn-Dixie’s website was indeed a place of public accommodation inaccessible to persons with visual impairments and holding that the website had to be fully accessible and that Winn-Dixie was required to implement the Web Content Accessibility Guidelines (WCAG) 2.0 for its website by an agreed-upon date.

Winn-Dixie Appeal

- ◆ The **Gil v. Winn-Dixie** case is currently on appeal to the United States Court of Appeals for the 11th Circuit. The appellate court heard oral argument on October 4, 2018. Winn-Dixie's arguments were as follows:
 - ◆ Websites are not places of public accommodation under Title III of the ADA;
 - ◆ WCAG is not law and the trial court's adoption of those guidelines violated due process;
 - ◆ Winn-Dixie was in compliance with the ADA because Gil had not been deprived of the full benefit of and equal access to the services and goods in Winn-Dixie's stores.
 - ◆ The Plaintiff lacked standing to sue.

That is, Winn-Dixie argued that Gil could not establish a nexus between the website and the denial of access to a physical structure.

Nexus Approach

- ◆ Nexus Approach
 - ◆ Must be a nexus between the website and the physical locations of the public entity.
 - ◆ Plaintiffs are required to show that their inability to access portions of a website impedes their access to a physical location of a defendant.
- ◆ The 11th Circuit has not yet issued its decision in the Winn-Dixie appeal. The outcome of the appeal could potentially dramatically impact the landscape of website accessibility cases, particularly in Florida.

Gil v. Broward County

- ◆ Does the nexus theory apply to a Title II ADA case?
- ◆ One of the few Title II cases with a Court Decision.
 - ◆ Judge William P. Dimitrouleas applied the nexus approach.
- ◆ Court held that “in the absence of allegations that Plaintiff’s inability to use the website impedes his access to Defendant’s physical buildings or facilities...” his claim must be dismissed.

Gomez v. Palm Beach County

- ◆ Another District Court Judge in the same District found otherwise.
- ◆ Held that a Title III Nexus approach is inappropriate because Title II of the ADA is substantially different.
- ◆ Judge William J. Zloch stated:
 - ◆ Defendant's position is further undermined by the language of Title II and Section 504. Those statutes broadly prohibit discrimination by public entities and federally funded programs and activities, respectively, unlike Title III, which specifically addresses public accommodations. Title III naturally implicates physical places in a way that Title II and Section 504 do not. The Court holds that Plaintiff need not plead that he is impeded from physical use of Defendant's physical facilities or spaces.

Standing

- ◆ A plaintiff bringing suit under Title II of the ADA must have Article III standing to maintain a justiciable claim.
- ◆ A plaintiff must demonstrate three things to establish standing under Article III: First, he must show that he has suffered an “injury-in-fact.” Second, the plaintiff must demonstrate a causal connection between the asserted injury-in-fact and the challenged action of the defendant. Third, the plaintiff must show that “the injury will be redressed by a favorable decision.”

Injury In Fact

- ◆ To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical. “Particularized” means that the injury “must effect the plaintiff in a personal and individual way.” A “concrete” injury, meanwhile, must be “de facto; that is, it must actually exist,” or in other words, “real, and not abstract.” Claims for injunctive relief, moreover, require “a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury.
- ◆ **Shotz v. Cates**, 256 F. 3d 1077, 1081 (11th Cir. 2001) (further noting that “[t]hese requirements are the ‘irreducible minimum’ required by the Constitution” for a plaintiff to proceed in federal court.”)

Price v. Ocala

- ◆ The Honorable James S. Moody, Jr. of the Middle District of Florida recently articulated a viable test for determining whether a “tester” plaintiff possesses standing to pursue a Title II website claim. **Joel Price v. City of Ocala**, Case No. 5:19-cv-00039-JSM-PR, 2019 WL 1811418 (April 22, 2019).
- ◆ Judge Moody dismissed the “tester” plaintiff’s complaint because he lacked adequate standing to pursue his claims against the defendant municipality. In finding that there was no immediate threat of future injury to the tester plaintiff in his Title II website case, Judge Moody identified and analyzed the following non-exclusive, non-dispositive factors:
 - ◆ What ties or connections a plaintiff has to link the plaintiff to the defendant governmental entity;
 - ◆ The type of information that is allegedly inaccessible; and
 - ◆ The relationship between the inaccessibility of the information and the plaintiff’s alleged future harm.

Price v. Longboat Key

- ◆ Following that framework, the Honorable William F. Jung of the Middle District of Florida also dismissed a tester plaintiff's complaint against the Town of Longboat Key in the matter styled **Joel Price v. Town of Longboat Key**, Case No. 8:19-cv-00591-WFJ-AAS, 2019 WL 2173834. Judge Jung found that the tester plaintiff lacked Article III standing and dismissed the complaint because the plaintiff failed to allege facts sufficient to give rise to "a real and immediate threat of future injury" and because the plaintiff did not suffer an injury in fact.
- ◆ We have filed a number of motions to dismiss in the Southern District of Florida attempting to get the court to adopt this test. No decisions yet.

Mootness

- ◆ Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of “Cases” and “Controversies.”
- ◆ A case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome. Put another way, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.
- ◆ If an ADA plaintiff has already received everything to which he would be entitled, i.e., the challenged conditions have been remedied, then these particular claims are moot absent any basis for concluding that plaintiff will again be subjected to the same wrongful conduct by this defendant.

Haynes v. Hooters

- ◆ The Eleventh Circuit determined that a tester plaintiff's Title III ADA claim against Hooters was not moot because "while Hooters may be in the process of updating the accessibility of its website, there is nothing in the record demonstrating that Hooters has successfully done so" and because "some of the relief requested by [the plaintiff] remains outstanding and could be granted by a court."
- ◆ When the defendant is not a private citizen but a government actor, there is a rebuttable presumption that the objectionable behavior will not recur. "Governmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities." **Coral Springs St. Sys., Inc. v. City of Sunrise**, 371 F. 3d 1320, 1328-29, 1331 (11th Cir. 2004)
- ◆ In **City of Sunrise**, the Eleventh Circuit held that the plaintiff's case was moot because the defendant city amended the subject sign code soon after the plaintiff complained about its constitutionality.

The Primary Jurisdiction Doctrine

- ◆ The primary jurisdiction doctrine provides that a court of competent jurisdiction may dismiss or stay an action pending a resolution of some portion of the action by an administrative agency.
- ◆ In deciding whether abstention under the primary-jurisdiction doctrine is appropriate, two factors are considered: the “expertise of the agency deferred to” and the “need for a uniform interpretation of a statute or regulation.” **Sierra v. City of Hallandale Beach, Fla.**, 904 F.3d 1343, 1351 (11th Cir. 2018).

The Primary Jurisdiction Doctrine (Cont.)

- ◆ The Department of Justice—charged with rule-making pursuant to 42 U.S.C. §12134(a)—has not promulgated any regulations uniformly adopting specific website accessibility guidelines for Title II ADA entities’ websites. See 82 FR 60932 (dated December 26, 2017, withdrawing previously proposed advanced notices of proposed rulemaking pertaining to Title II of the ADA for the purpose of “evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate”).
- ◆ The high volume of website accessibility ADA suits against local governmental entities in federal courts and the inconsistent and varied manners in which courts have dealt with these cases demonstrates the need for the DOJ to first define, promulgate, and enact regulations adopting clearly-defined and easily enforceable website accessibility guidelines.

Undue Burden

- ◆ Public entities must make reasonable modifications of policies, practices, and procedures if necessary to avoid discrimination. The ADA's "reasonable modification" principle, however, does not require a public entity to employ any and all means to make auxiliary aids and services accessible to persons with disabilities, but only to make "reasonable modifications" that would not fundamentally alter the nature of the service or activity of the public entity or impose an "undue burden."
- ◆ According to the Technical Assistance Manual for the ADA: "This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity."
- ◆ The reasonable-modification inquiry in Title II-ADA cases is a highly fact-specific inquiry.

Compensatory Damages

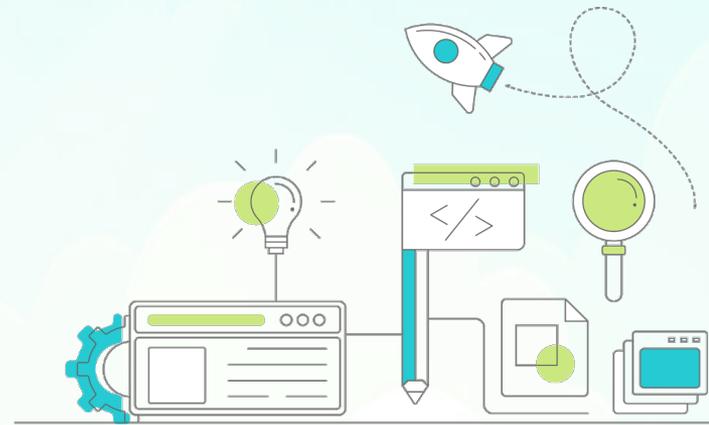
- ◆ To prevail on a claim for compensatory damages under either the ADA or the Rehabilitation Act, a plaintiff must show that the defendant violated his rights under the statutes and did so with “discriminatory intent.”
- ◆ A plaintiff may prove discriminatory intent by showing that a defendant was deliberately indifferent to his statutory rights. This standard is an exacting standard which requires showing more than gross negligence.
- ◆ Deliberate indifference requires that the indifference be a deliberate choice. And that the defendant knew that harm to a federally protected right was substantially likely and failed to act on that likelihood.

PART 2: A HIGH LEVEL LOOK AT GUIDELINES, AND STEPS YOUR LOCAL GOVERNMENT CAN TAKE TO INCREASE INCLUSIVITY AND HELP REDUCE RISK

TABLE OF CONTENTS

1. [Who Benefits & Your Responsibility](#)
2. [Quick Overview of the Guidelines](#)
3. [Best Practices & What You Can Do Now](#)
4. [Mitigating a Common Target: The PDF](#)

WHO BENEFITS & YOUR RESPONSIBILITY





A STORY ABOUT AN ELDERLY WOMAN
WITH NEAR-BLINDNESS

CONSIDERATIONS FOR INCLUSIVE DESIGN

SOME DISABILITIES LOOK
LIKE THIS:



OTHERS
LOOK LIKE THIS:



A SCREEN READER VERSUS AN INACCESSIBLE WEBSITE

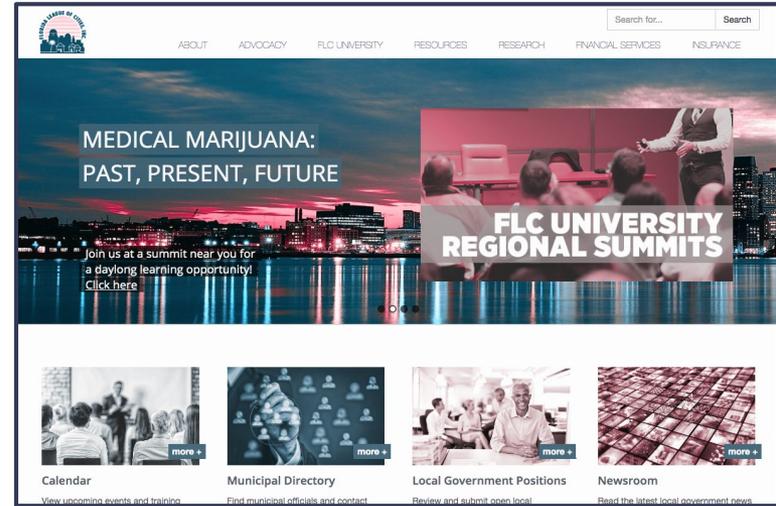


EXAMPLE COLOR VISION DEFICIENCIES

NORMAL VISION



TRITANOPIA: RARE Blue & Yellow



DEUTERANOPIA: COMMON Red & Green



GRAYSCALE: VERY RARE No Color





1990

^
'90
FIRST WEB
BROWSER



'97-'98

^
'93
FIRST CELL
PHONE

WCAG 1.0 - 1999



Section
508

1998

* UNDER 1973
REHAB ACT

2008 - WCAG 2.0



REFRESH!
2.0

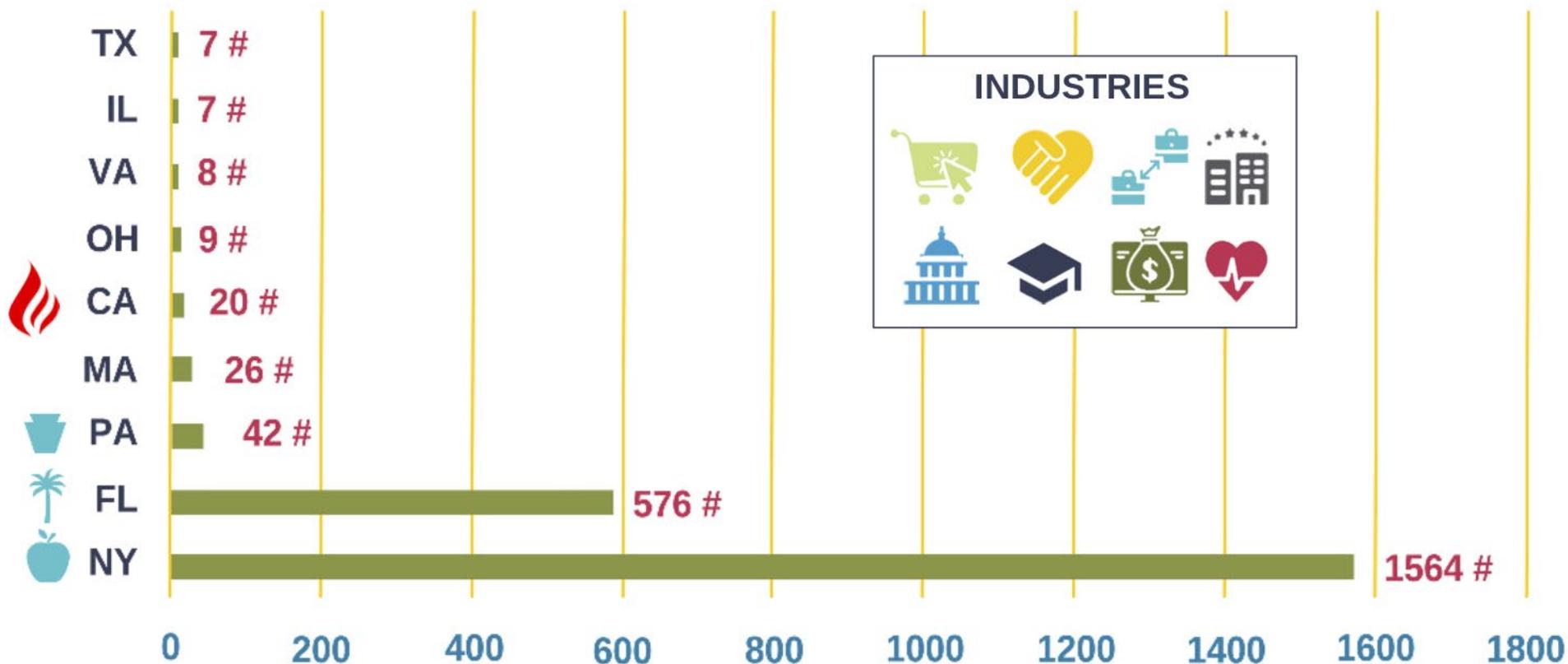
01.2018

WCAG
2.1

6.5.18

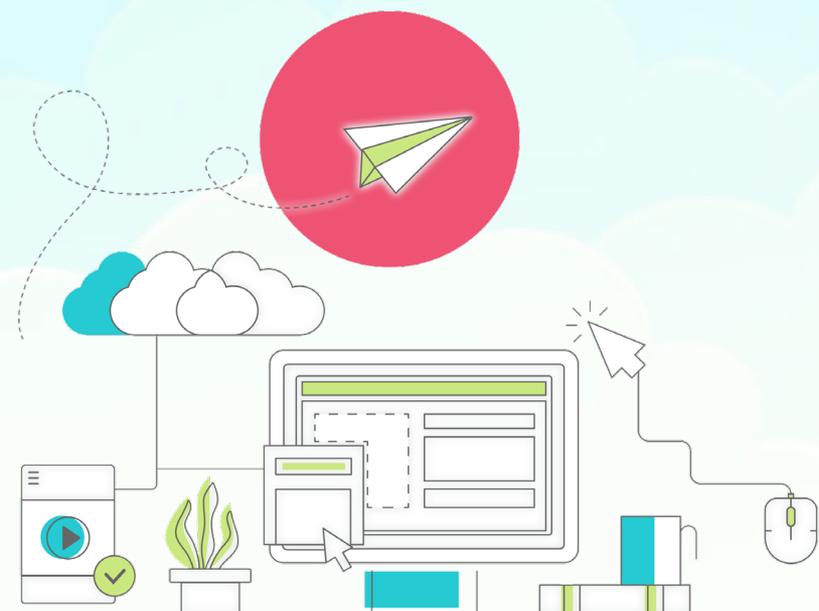
EVOLUTION OF SECTION 508 & THE WCAG GUIDELINES

TOP 10 STATES FOR ADA TITLE III WEB LAWSUITS



Last Update: January 24, 2019

QUICK OVERVIEW OF THE GUIDELINES



THE WCAG 2.1 GUIDELINES

[Link to the WCAG 2.1 Guidelines](#)

Web Content Accessibility Guidelines (WCAG) 2.1



W3C Recommendation 05 June 2018

1. Perceivable

Information and user interface components must be presentable to users in ways they can perceive.

Guideline 1.1 Text Alternatives

Provide text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language.

Success Criterion 1.1.1 Non-text Content

(Level A)

[Understanding Non-text Content](#)
[How to Meet Non-text Content](#)

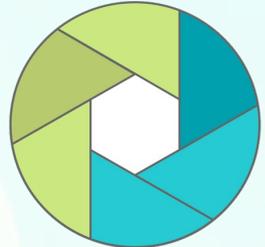
All [non-text content](#) that is presented to the user has a [text alternative](#) that serves the equivalent purpose, except for the situations listed below.

- **Controls, Input:** If non-text content is a control or accepts user input, then it has a [name](#) that describes its purpose. (Refer to [Success Criterion 4.1.2](#) for additional requirements for controls and content that accepts user input.)
- **Time-Based Media:** If non-text content is time-based media, then text alternatives at least provide descriptive identification of the non-text content. (Refer to [Guideline 1.2](#) for additional requirements for media.)
- **Test:** If non-text content is a test or exercise that would be invalid if presented in [text](#), then text alternatives at least provide descriptive identification of the non-text content.

Table of Contents

- Abstract**
- Status of This Document**
- Introduction**
- 0.1 Background on WCAG 2
- 0.2 WCAG 2 Layers of Guidance
- 0.3 WCAG 2.1 Supporting Documents
- 0.4 Requirements for WCAG 2.1
- 0.5 Comparison with WCAG 2.0
 - 0.5.1 New Features in WCAG 2.1
 - 0.5.2 Numbering in WCAG 2.1
 - 0.5.3 Conformance to WCAG 2.1
- 0.6 Later Versions of Accessibility Guidelines
- 1. Perceivable**
- 1.1 Text Alternatives
 - 1.1.1 Non-text Content
- 1.2 Time-based Media
 - 1.2.1 Audio-only and Video-only (Prerecorded)
 - 1.2.2 Captions (Prerecorded)
 - 1.2.3 Audio Description or Media Alternative (Prerecorded)
 - 1.2.4 Captions (Live)
 - 1.2.5 Audio Description (Prerecorded)
 - 1.2.6 Sign Language (Prerecorded)
 - 1.2.7 Extended Audio Description (Prerecorded)
 - 1.2.8 Media Alternative (Prerecorded)
 - 1.2.9 Audio-only (Live)

LAYERS OF WCAG 2.1

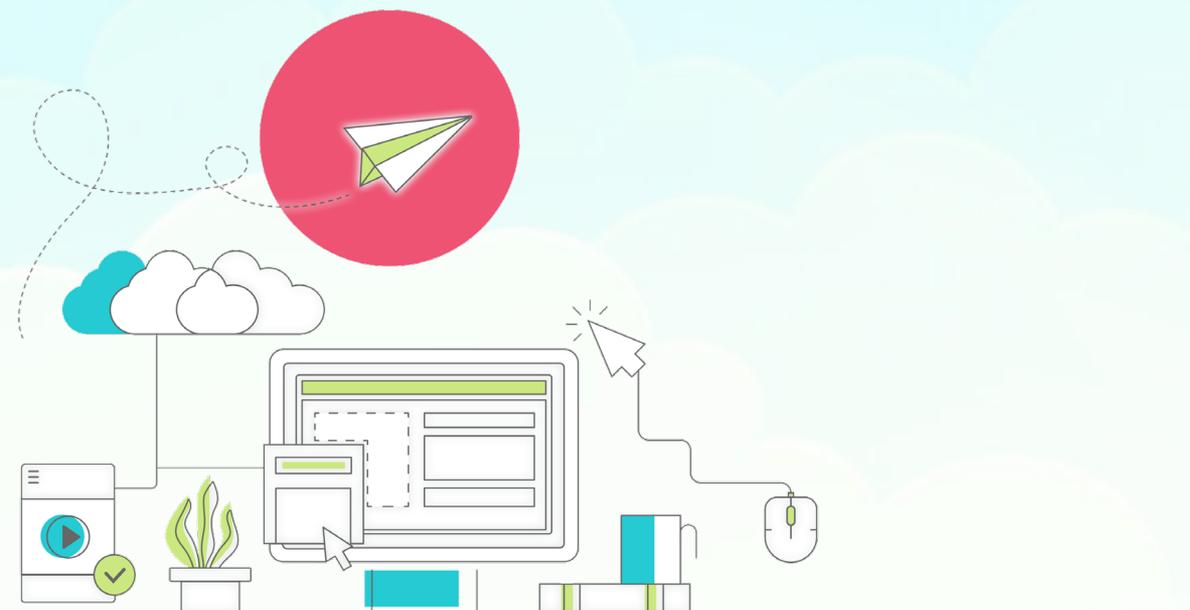
1. **Principles:** foundation for how people access and use the web
2. **Guidelines:** general concepts for delivering digitally compliant content & technology 
3. **Success Criteria:** specific checkpoints required to conform
4. **Levels:** A, AA and AAA (AA is recommended)

THE PRINCIPLES AS A MENTALITY = SUCCESS

- **Perceivable:** “are the content and interface available to all of my senses?”
- **Operable:** “can I use the entire interface, including menu items and other navigation?”
- **Understandable:** “do I understand all of the information and how to use it?”
- **Robust:** “will it break with assistive technology or other user agents?”



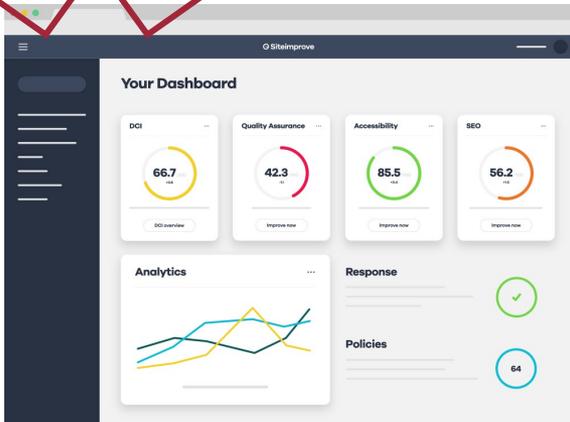
BEST PRACTICES & WHAT YOU CAN DO NOW



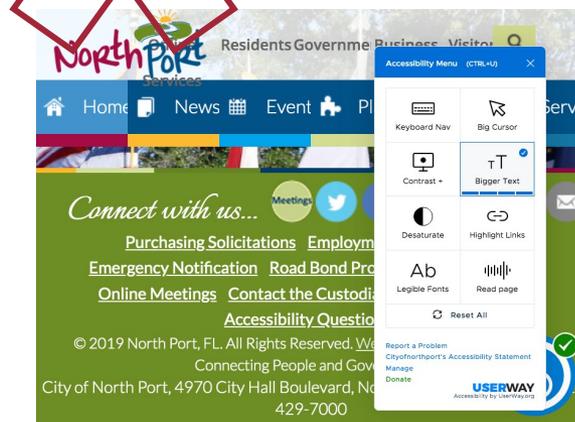
AVAILABLE SOLUTIONS

LEARN HOW TO WEED OUT EXPENSIVE SERVICES THAT DON'T MINIMIZE YOUR RISK *OR* HELP USERS

DASHBOARDS



OVERLAYS



TRUE CODE REMEDIATION



DEVELOPERS ARE CHEAPER
THAN LAWYERS



RISK OF WAITING, REWARD FOR UPDATING



STEP 1: ASSESS

ASK YOURSELF THE FOLLOWING 10 QUESTIONS ABOUT YOUR DIGITAL ASSETS

1. Do we have a complete & current inventory of everything that needs to comply?
2. Are they responsive on all devices?
3. How old are they and is it time for a refresh?
4. Were they compliant upon point of delivery?
 - If yes, did someone qualified verify or did you take their word?
 - If yes, have they been maintained?
5. Was manual testing conducted?
6. Do they each have an Accessibility Statement, VPAT or statement of conformance?
7. Do those things list areas of Partial Conformance?
8. Do we know our level of risk and exposure?
9. Do we know our responsibility?
10. Have we defined a policy for reasonable burden, and have we shared provisions around these?



STEP 2: ACCESSIBILITY STATEMENT REVIEW

[LINK TO RECOMMENDATIONS FROM THE W3C](#)

HOWEVER, YOUR VENDOR SHOULD PROVIDE THIS!

A proper Accessibility Statement addresses the following points:

1. Your organization's policy & intent for providing inclusive technology
2. Which guideline levels you conform to & are aiming towards
3. What actions you have taken & those you will be making on an ongoing basis to continue to offer an inclusive experience
4. Identification of what has been reviewed & is planned for review
5. Identification of features outside of your control due to 3rd party integrations (non-fed only)
6. Contact information for potential grievances
7. Open request for feedback on site's usability



Note: 6 and 7 must be backed by a response team & formal process

STEP 3: TAKE ACTION

AUTOMATED & HUMAN TESTING >



CORRECT YOUR CODE >



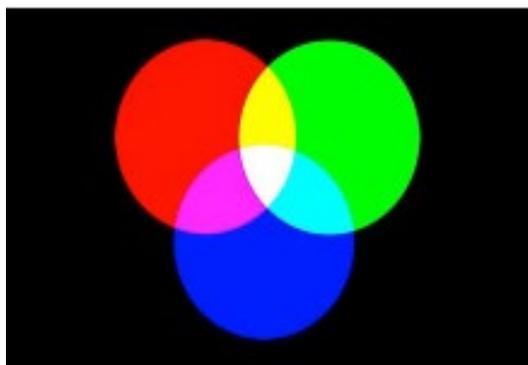
DOCUMENTATION + POLICY >

CULTURE & TRAINING >



EXAMPLE AUTOMATED TEST TOOLS

CHROME COLOR CONTRAST ANALYZER



WAVE BROWSER EXTENSION



HTML CODE SNIFFER



W3C MARKUP VALIDATION SERVICE



NVDA/ VOICEOVER/ JAWS



WP ACCESSIBILITY BY JOE DOLSON



MANUAL TESTING CHEAT SHEET

- **Hire an external vendor:** aka “why writers can’t and don’t edit their own books”
 - IAAP certified testers
 - With many years of on the ground experience
 - Is willing to provide statements of conformance backing their work



- **Define the scope of work:** aka “don’t overdo it”
 - Don’t intensively test that which automatically tools can accurately assess
 - Manually review each unique element, template or component once
 - Get a custom quote (paying per page might mean you have paid to have all the guidelines reviewed on a page where only 4 actually apply)

COMMON CODE ERRORS TO START CHECKING NOW

```

```

Color Contrast

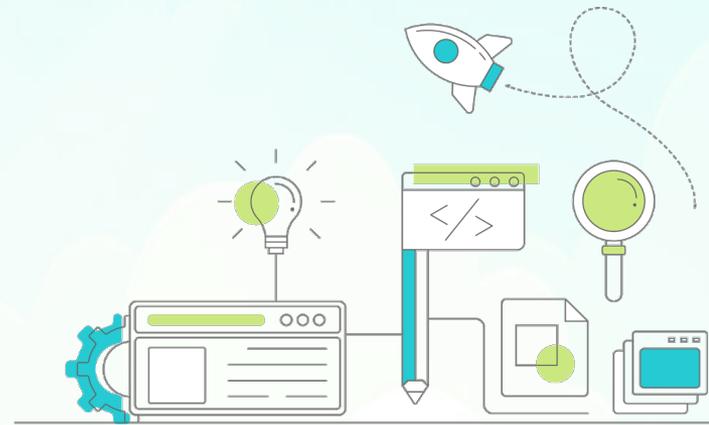
Note: the above is an intentional contrast failure for demonstration purposes

```
<h1> <h2> <h3>...
```

```
<nav> <ul><li><a href="#">Menu Item</a></li></ul></nav>
```

Tables, Forms, Videos, Plugins...OH MY!

MITIGATING A COMMON TARGET: THE PDF



STEP 1: ASSESS DOCUMENTS

DETERMINE HOW THE REVISED SECTION 508 STANDARDS APPLY

1. Can anything be archived or deleted?
2. Can anything be converted to HTML and placed on a website?
3. Do we have the source files to remediate?
4. Can we handle this in-house?
5. Is outsourcing the remediation more practical (time/ money/ experience)?
6. Would making these accessible create an 'undue burden' for us?
7. What is our biggest risk with 'drive-by' plaintiffs?



STEP 2: POLICY REVIEW

IDENTIFY HOW FAR BACK YOU WILL GO, WHAT WILL BE INCLUDED & YOUR PLAN TO REMEDIATE

Required Fixes (RFs): violations that must be corrected and have direct mappings to either Section 508 or HHS accessibility guidelines.

- Ref: <https://www.hhs.gov/web/section-508/making-files-accessible/index.html>
- Ref: <https://www.section508.gov/create/pdfs>

PDF Properties and General Checks

Links

Images

Tag Structure

Tables

Lists

Headings

Forms

Color

Encouraged Fixes (EFs): issues that should be corrected in order to meet best-practice accessibility standards but are not required for conformance with Section 508 of the Rehabilitation Act or HHS accessibility guidelines.

PDF Properties and General Checks

Links

Images

Tag Structure

Tables

Lists

Headings

Forms



STEP 3: TAKE ACTION & PROTECT YOURSELF

THE INTERNAL OR EXTERNAL TEAM MUST:

1. Maintain current test tools
2. Follow organization's agreed document-posting policy
3. Create templates and accessible source files when possible
4. Migrate to accessible HTML when possible. Yes, this CAN be done! [Link to example web-based meeting agenda.](#)
- 5. Re-confirm all final exported files**
 - Export quality can vary based on MS Office version, quality of source file, and/ or automated errors introduced during the conversion process (For example: Save As, Export or pass through online tools or portals)
- 6. Conduct manual testing**
 - OCR (optical character recognition) is not always 100%
 - Automated tools don't know how to intelligently add alt text
 - Automated tools don't know how to handle scanned pages or images
 - Tables, forms, site plans, blueprints, etc....are all complex PDF content that in most cases **cannot be remediated and need actual human redesign**
 - Extra precaution for secure information

SUMMARY

- ✓ Lawyers & expert consultants can help you analyze your risk and build a roadmap you can rely on, even if you are handling the remediation effort in-house
- ✓ A second set of eyes never hurts!
- ✓ Don't forget to consider all of your digital assets



Q&A

THANK YOU & CONTACT INFORMATION

Speaker 1:

Christopher J. Stearns, Esq.
Johnson, Anselmo, Murdoch, Burke, Piper &
Hochman, P.A.
Fort Lauderdale, FL
(954) 463-0100 ext. 2904

Speaker 2:

Jenna Reardon
Co-Founder, ilumino
Cincinnati, OH
833-832-6695 x 700

Moderator:

Brian Ross
CIO, City of Haines City, FL
(863) 421-9984 ext. 5984

