

Transcript: Legal Trends in Digital Accessibility Lawsuits, Reeve Segal.
AccessibilityPlus 2022.

Welcome to Accessibility Plus's January 2022 event Trends in Digital Accessibility Lawsuits. I'm Reeve Segal. I'm an attorney and contributor to the Accessibility.com Website Accessibility Database. We've got a great event planned for you today. After my presentation on Trends in Website Accessibility Cases, you're going to hear from another attorney, Richard Hunt, who will talk to you about the access defense and Understanding ADA Website Accessibility Litigation. And after that, you'll hear from Beth Meyer, the Executive Director of the Florida Independent Living Counsel, who will be presenting on the topic of Leveraging Your Customer Base to Create Policy.

And then our final presenter will be another attorney, Ken Nakata. And he's going to be speaking on the topic of Understanding Compliance Baselines and Implementing Accessibility Initiatives. But first, let's take a comprehensive look at the Legal Trends in Digital Accessibility Lawsuits.

So first, we're going to look at the process, something called the funnel technique, and that's how websites are targeted. We start with a wide net by identifying the target. Then you move down to a demand letter, which is narrower.

Then you get to the lawsuit, which is even narrower. Then we're also going to look at the research methodology that we use here at Accessibility.com and putting together our comprehensive database. And we're going to move on to the data itself, looking at the cases, the industries, the states, overlays, plaintiffs, and law firms.

Then we're going to see where we are headed or where we think we're headed in 2022. So the plaintiff's attorney can either choose to search by industry when they're looking for their target by going on Dunn and Bradstreet or Hoovers, or they can search the industry based on the technology used.

So as you can see from the screenshot, this is the list of companies that use accessiBe, which is a third party overlay. And as you may know, third party overlays are far from perfect. Usually, they just use an overlay sort of like a Band-Aid on a bullet wound where you think that you're helping your website to make it accessible, but you're really not. And there's a lot of holes and a lot of issues with those third party overlays. So here, for example, the plaintiff's attorney could go through this list, send it over to their client with all the websites that use accessiBe, then have their clients click on each website. You know, blind or deaf individual, see any issues, and then if they do find any issues which they most likely will with the website, then we move on to the next step of the process as we narrow down the funnel, which is sending the demand letter.

So, once the target's been identified, the next step is to send a demand or notice letter. So there are different types of notice letters and demands here. But generally speaking, what will happen is you as the defendant or the website, you're going to receive a letter.

It's going to give you the firm's name and let them know who they're representing - the blind or deaf the individual. They're going to show you your website and the one that's at issue and what the problems are. They're going to list out the potential violations that are alleged to have caused.

So, you know, Americans with Disability Acts or in California, a violation of the California Unruh Act. And then they're going to give you a timeframe to fix these issues or simply notice that the suit will be filed. So this is really step one in trying to resolve the matter, trying to get, frankly, their attorney's fees paid by sending this notice letter off. Because in California and New York, they are entitled to attorney's fees if they're able to settle this case. So, step one is send a demand or notice letter to the offending website and see if they can get a quick fix to the website and a quick settlement.

Now, if that doesn't work, the next step is filing a lawsuit. And as you can see here, the funnel is getting smaller and smaller of the websites targeted. You know, a large portion will get demand or notice letters and then if they're not fixed, it funnels down to an even smaller percentage where an actual lawsuit is filed.

And as you'll see later, New York is the number one most popular place for website accessibility lawsuits to be filed. So we've pulled up a sample complaint out of the New York Southern District Court. And so you can see here most of the complaints we will talk about the violation that the defendant has done.

You know, defendants failed to design this website to fully be fully accessible to plaintiffs, a violation of the ADA. So you're going to see that in almost every Federal Court complaint, then they're going to talk about the plaintiff and how they attempted to transact business on that website.

And the plaintiff was trying to purchase goods or services, and they were unable to do so. And then this is therefore a violation of the ADA. And as the other speakers will talk about later, websites are viewed as public places.

So that's sort of the equivalent of today's modern day website accessibility lawsuits where the web is really being looked at as a public place. And then the next allegation is going to be that the website contains specific issues that the plaintiff browse through at the date of the filing complaint, and they're going to give you some examples.

So here the screen reader failed to read the banner. The screen reader fails to read the item descriptions and then, you know, the screen reader fails when you read the cart links. They're giving you more specific examples of what the issues are, and then they are still existing today at the time of the filing of the complaint, and

they're intending to try to buy or use the services in the future, the blind or deaf plaintiff, but they currently can't. And since this website is not equally accessible, it violates the ADA and in turn, they're seeking a permanent injunction.

So basically seeking relief to cause the defendant, the website, to change their website and their policies and their procedures. So that's looking at sort of the cause of action and the sort of relief that the plaintiffs are looking for.

But then as you move on to the next part of the complaint, this is the actual prayer for a relief, just sort of the monetary damages and direct claim that they want relieved in each lawsuit. And this is going to look the same throughout all of Southern District complaints.

And so you can see here that they're looking for relief from the violation of the ADA Act. And then you've also got, in this case, the New York Administrative Code. So they're tagging along from Federal Court. They're bringing in these state claims as well, which again allows them to get attorney's fees and various other monetary damages.

They're also seeking an injunction, so they're forcing the defendant to try to take steps to fix their website to make it fully compliant. And then they're also looking to make sure that they are not discriminating against blind and deaf people and they list of areas of potential violations.

They're looking for compensatory damages. So that's, you know, the monetary relief for the violation, and each state will have a different amount that's statutorily required to pay if you do violate and then they're also looking for punitive damages and fines and most importantly, the reasonable attorney's fees and expert costs.

And that's really where the what the name of the game is here with the plaintiff's firms, they're just looking to get back their attorney's fees. So it's all about hitting as many potential websites as possible and then seeing what you know, how much they can get in attorney's fees or just violation fees and, you know, hit as many as you can and it adds up. That's sort of the name of the game. So now we're going to move on to the methodology that we specifically use in searching for cases. So we use Westlaw and a variety of other website sources which have the access to almost every single courthouse in the country, but both State and Federal, and all of the cases on our website, on our database, they're verifiable. Each case is reflected in our tally, which ties directly to a case on the docket in the pleadings are actually going through every case.

We have a proprietary search that we use that allows us to pull up just website accessibility lawsuits. So we only include cases in which there's an allegation and digital property, and a lot of times you're going to see on other websites the grouping in the old school ADA cases with violations of, let's say, you're going to a

hotel and there's no ramp and that sort of thing. That's a lot of these other companies are going to show you those lawsuits. And that's why sometimes the numbers look higher, but we're actually funneling down and getting you just the website accessibility lawsuits. So that's where our database is unique. In all of our websites or cases that we find on our website were published. Our full database is freely available every month. We have reports that come out that give you the latest data and information on how many suits were filed and which state and the names of the plaintiffs and the defendants and what the allegations are. And you know, it's very detailed and we have, you know, PDF complaints for every single one of these. And it's very detailed. It's taken us a while to get into this position where we can publish this monthly, but we're proud of our website accessibility lawsuit and happy for you guys to take a look at [Accessibility.com](https://www.accessibility.com). So now we're going to move on to the actual cases and get into some of the data. As you can see, in 2020, there were 2058 cases. And you can see it went way up by almost 300 cases in 2021.

And that's a trend that we've seen for the most part, year over year. The cases have just been increasing as, you know, website accessibility lawsuits are becoming more and more popular. So why the increase in cases in 2021? Well, the top filing plaintiffs filed more lawsuits in 2021.

So we really are seeing a narrowing of the plaintiff pool and more almost professional plaintiffs that are being utilized by the law firm. So in 2021, for example, Cristian Sanchez filed 139 website accessibility lawsuits. That's about 48% more than 2020's most litigious plaintiff.

So again, they're really these law firms are honing in on just a small number of plaintiffs to use and really sticking with them, rather than diversifying and using hundreds of different plaintiffs. They're having one specific plaintiff in this case, Cristian Sanchez, file 139 website accessibility lawsuits in one year.

So again, almost calling them professional plaintiffs. It's almost as if this is their job just to go on websites, find issues, and file a lawsuit. It's because again, naturally, as one individual, you wouldn't just go and file 139 lawsuits because every website you go on, you're having a problem with.

It's really as if you're going out there seeking issues, and this is almost a full-time job. And again, you could see three law firms which are going to be talking about later filed more than 270 lawsuits each last year.

One firm had a 340. The six firms accounted for more than 56% of all website accessibility lawsuits. So again, you have a narrowing of plaintiffs and we have a narrowing of firms. We're really, you know, just moving into this field and and and they have a niche on this and they're just focused on just filing website accessibility lawsuits. And again, you know, last year in 2021, there weren't any court closures due to COVID. So certainly we saw in 2020 the numbers weren't as high because courts were closed, whereas in 2021 the courts have been open.

So we've continued to see an increase in website accessibility lawsuits. And now we move on to the industry. So here's a pie chart breaking down from our website accessibility lawsuit database the most targeted industries in 2021. And you can see that consumer goods, services and retail was number one by far, with 50%.

In second was apparel, durables and beauty at 20% and then a three way tie, 10% with health, medical, food, beverage, tobacco tech software, and internet services. And on the one hand, I mean, generally speaking, consumer goods is probably the largest category anyways. That's why we're seeing, you know, them having 50% of the target with industries in the same thing with apparel and goods. But you know, that's likely related to the fact that a lot of these plaintiff's law firms are getting these lists.

And just by definition, they're going to pull more consumer goods and services websites because there are more and there's more apparel websites than there are health and medical and tech and software. So that's a lot of it, too.

I mean, you like to think that this is again something organic where they're naturally going onto these websites. But when it's list based, I think if you were to just look at the number of industries that we have in this country would likely parallel this list. Next we're looking at the lawsuit filings per state for 2021. You can see New York had 62% of website accessibility lawsuits in 2021 were filed in New York. 30% were filed in California and just 8% in the rest of the country.

And New York likely leads this tally for a number of reasons. As we mentioned previously, just a handful of firms filed these lawsuits, and most of them are located in New York, so most of them are going to be filing in New York courts. Also as some of our other speakers are going to

discuss, the state human rights laws in New York and California allow the plaintiffs to recover damages in New York and California by adding the state and city level claims to their lawsuits, which again can give them the attorneys access to attorney's fees and other various costs and expenditures if they win the lawsuit.

So that's why New York and California are very attractive states for lawsuits to be filed. And again, if you're filing a lawsuit, you can be in any state and then we've got Florida at 5% and Pennsylvania 2%. But really, over the last few years, we've seen New York and California are the top two states, and it's not even close and doesn't really look like any other states are approaching New York and California's level. Although we will talk later on in this presentation that over the fourth quarter of 2021, there were some signs that California is starting to potentially start catching up to New York.

But I think it's still safe to say that New York is the most popular state. So now if we move to lawsuits with third party overlays, you could see here that last year in 2021, there were 300 targeted websites that were using overlays.

So 300 websites that were sued in 2021 were still using website overlays. You can see 66% of them were using accessiBe, 25% using UserWay, and then, you know, a handful from AudioEye and others and EqualWeb.

And now what's interesting about that was that a lot of times, first of all, people think that if you're using a third party overlay on your website that you're safe from accessible accessibility lawsuits, but clearly you're not. As over 300 websites that were targeted last year, even though they had, they had third party overlays.

And then in 2021, in December, there was a big settlement with the disability rights activists who had sued ADP, which is a major payroll services company. And part of the settlement language actually stated here that for the purposes of this agreement, overlay solutions such as those currently provided by companies such as AudioEye, accessiBe will not suffice to achieve accessibility. So you can actually see in a settlement that it was written out that just because you use a third party overlay is, by definition, is actually not going to allow your website to be fully accessible in terms of the settlement language.

So that's something to bear in mind again. It's really being hammered down here, even in settlement language that just using a third party overlay is not going to be enough to have your website being deemed as accessible. All right, we're going to turn now to the plaintiffs who filed the most lawsuits in 2021, continuing looking at the data from our Website Accessibility Database. And as you can see on the right side here, Cristian Sanchez was number one as a one plaintiff who filed 139 lawsuits, and he's out of New York. You've got Luis Licea with 124 to California and then three other plaintiffs, also out of New York and California, with 93, 92 and 81 lawsuits. So these are just one individual. You know, these various individuals are just suing. You know this many times, which is just very interesting. Just to note, you can see more than 22% of all website accessibility lawsuits were filed by five plaintiffs.

So these five plaintiffs represent 22% of all website accessibility lawsuits filed in 2021. The top two plaintiffs, both out of New York and California alone, filed more than 11% of the cases. So again, this is really a narrowing of plaintiffs that we're getting into specialized plaintiffs who basically this is their job just to file lawsuits.

Then you've got for the first time in our database, we had more than 100 lawsuits filed by not just one person, but two, because last year Shael Cruz filed 94. That would have only been enough to put her at three this year.

But we already have two people that were in the triple digits, and it's just showing you that we really are just having specialized plaintiffs who are just doing this as a full-time job almost. And you can see again, they're out of New York, California, New York, California and New York.

So those two states are really leading the way with plaintiffs who are filing these lawsuits. Now from plaintiffs are moving to the law firms that filed the most

lawsuits in 2021. And again, you're going to see a common theme here on the right side.

California and New York, just the top two. You've got Pacific Trial Attorneys. They are the firm out of California that filed 340 lawsuits. Gottlieb and Associates at 296 and the list goes on and on. New York, New York, California.

So you can see again, much like the plaintiffs, the plaintiff's law firms are even bigger with with the amount of cases they're filing. And it's really, you know, a handful of firms that are doing the majority of the filing.

So more than 56% of all website accessibility lawsuits in 2021 were filed by just six firms. These six firms on the right here. Pacific Trial Attorneys out of California. They were in third place in 2020, and they have taken the top spot in 2021.

So again, California is on the move and they are now the state with the most lawsuits filed out of firm. And now we're going to move on to the law firms that filed the most lawsuits in 2021, according to our website accessibility database.

And as you can see on the right side, we've got California in New York again, and it's the same as with the plaintiffs. The plaintiff's law firms, even to a greater extent, are filing many more lawsuits. You've got Pacific Trial Attorneys out of California, even though they're the number two state, they now have the number one law firm. And one firm Pacific Trial did file 340 website accessibility lawsuits last year. Then you've got the next two through four all out in New York, Gottlieb and Associates filed 296. Mizrahi filed 273. That's Mizrahi Kroeb. We've also got Cohen and Mizrahi, who filed 170, and actually, Cohen and Mizrahi has now become Mizrahi Kroeb.

So if you added that up, they would actually be the number one firm in the country. So next year, we're anticipating that Mizrahi Kroeb will likely be the number one most litigious plaintiffs website accessibility firm in the country.

And then you've got Manning Law, APC out of California coming in fifth and you'll see that 56% of all website accessibility lawsuits were filed by just six firms. So just six firms are filing well over half of all the website accessibility lawsuits.

Pacific Trial Attorneys they were number three last year moved up. Sorry, they're number three in 2020 and moved up to number one in 2021, and we're anticipating them to be near the top with Mizrahi Kroeb next year.

And Gottlieb and Associates, who finished second, they would have had been number one based on 2020's numbers. So it shows you how the numbers have really gone up in 2021. We anticipate the numbers to get even higher in 2022.

So, you know, why are we anticipating that the numbers are going to be higher in 2022? Well, we had a record setting fourth quarter for website accessibility lawsuits in 2021. You can see the momentum is strong moving into 2022 and we had some historic records in all our years and our database up the strongest fourth quarter or

the strongest quarter we've ever seen. You know, from October through December of 2021, 711 website accessibility lawsuits were filed. That's more than a 30% increase over last year's total. And as we mentioned before, 273 lawsuits were filed by one firm.

This is Mizrahi Kroeb. They had just switched over from Cohen Mizrahi to Mizrahi Kroeb at the end of last year, and they really were, you know, shot out like a cannon and filed 273 lawsuits in that timeframe. And we had 398 lawsuits were filed in just November alone, which is nearly 17% of the year's total and sometimes

with Thanksgiving and some of the holidays in November, we sometimes see a decrease in November, but actually November was the highest recorded month in the history of our database in 2021, so shows you that these numbers are just continuing to increase, and we compare that to the historical data data.

17.9% more lawsuits were filed in the fourth quarter than in the quarter with the second highest total in our database's history. That was quarter one of 2021. So we've seen some record-breaking quarters in 2021. 26.9% more lawsuits were filed in the fourth quarter in 2021 than in 2020.

So again, just seeing the numbers rise and then 60.5% more lawsuits were filed in November than in the month with the second highest. So 60.5% more lawsuits were filed in November 2021 than in our record-breaking March 2020, our previous record.

So again, these numbers are just continuing to increase. So where are we headed in 2022? Well, we think even more website accessibility lawsuits are going to be filed based on our fourth quarter trends. We really should be on a record pace for 2022.

And generally, there's more of an awareness nationwide now about the importance of website accessibility issues. So I think that's being brought to the forefront. So we've got our professional website accessibility law suits, but then I do think we're going to see a few more organic ones just because of this national awareness of website accessibility issues and how

important they are. And I think we're going to start seeing the overall numbers rise because of that. We're also seeing a more narrowing of the plaintiff's pool. So I think we're going to keep seeing individual plaintiffs with higher and higher numbers.

Maybe eventually we're going to reach 250-300 lawsuits just filed from one plaintiff. And it seems like these plaintiffs are sticking with their firms. So you're getting certain firms using certain plaintiffs and they just keep reusing them. And we're just going to keep seeing those numbers increasing where these individual plaintiffs are going to be bringing in hundreds of lawsuits themselves. And then we were going to have this issue of can California move past New York as the most litigated state? You know, in in October and November, New York was surpassed by

California at the end of last year, but then in December, New York came roaring back.

But we hadn't seen in an individual month, you know, California be ahead of New York, except for back in 2020 March with with COVID when a lot of courts were closed. That was the last time California had passed New York.

So California did start to make a move in having more lawsuits than New York towards the end of last year. But in December, New York did take its lead back. So that's going to be an interesting battle to see in 2022.

Can California now become the state with the most website accessibility lawsuits? Or is New York going to hold on to its lead? And you know, we are predicting that there are going to be new plaintiffs law firms entering the arena.

You know, as we saw Mizrahi Kroeb came in first month filed almost 300 lawsuits, and we think that a lot of new law firms are going to be entering the fray just because there's a lot of money at stake.

You know, this is really a industry where you need to file a lot of lawsuits and make a little bit of money, a little bit of settlement money, a little bit of plaintiff's attorney's fees on each case. And the more you file, the more money that you make.

There's a lot of money at stake. It's a low cost of entry. I mean, as you saw, you can just send off a notice letter, you can file a complaint. Doesn't cost that much to do and you're in the game and you're likely getting settlement offers.

We're not really seeing these bodies go to trial. We're just seeing quick pre-suit and post-suit settlements. So it's a low risk and high reward. It's very formulaic. Once you get a plaintiff that you use, you get your lists, you send it to them of the websites, they go through, the websites they find any potential issues you send the notice letter, you send the demand letter, you file the complaint, and then you have your settlement. It's really just a rinse and repeat formula. So those are our predictions of where we think we're headed in 2022.

And if you want more information, you know you can check [Accessibility.com](https://www.accessibility.com). You get our monthly and year-end lawsuits statistics. We just had last month are our year-end lawsuit information came out our year-end lawsuits statistics where we summarize all of the data and trends from 2021.

And then every month we have January, February, March, you know, at the end of every month where we're giving you the previous months data and information and links to the lawsuits and information on the lawsuits. You can check out [Accessibility.com](https://www.accessibility.com) for more information on our monthly and year-end lawsuits.

That's where you have access to our database. You can get on our mailing list every month. We can send you our monthly reports. We also have our year-end report,

which just came out earlier this month, where we summarize all the data and trends of website accessibility lawsuits for the previous year.

And then again, we have all of our monthly lawsuits which will break down the plaintiffs, the states, the defendants, the website. Really, it's a one-stop shop for website accessibility lawsuits. So again, it's been a pleasure talking to you guys today for Are You Next? Trends in Digital Accessibility Lawsuits.

I'm Reeve Segal, attorney and contributor here at Accessibility.com, and I hope you enjoy the rest of your presentation.

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