

2023 Year in Review Website Accessibility Lawsuits - Event Transcript

Opening

Lori Litz

Hello, everyone. Happy New Year! Welcome to today's Accessibility.com event, "2023 Year in Review Website Accessibility Lawsuits." My name is Lori Litz and I am the Director of Conferences here at Accessibility.com. And today's presentation features Mark Shapiro and Reeve Segal discussing the report that we released yesterday. If you haven't had a chance to grab that report, head out to Accessibility.com, and right there on our homepage, in one of the top three sections, is the link to download that document. So you can take a look at that as a supplemental piece of today's presentation. Very excited about what we have in store for you for 2024. Today's event... the recording will be available later this evening. Once you've registered for the event, you'll receive an email tonight from me letting you know the recording's available so that you can watch it again.

And here we go. Mark and Reeve.

Presentation

Mark Shapiro

Hi, I'm Mark Shapiro. I'm the President of Accessibility.com.

Reeve Segal

Hi, I'm Reeve Segal, a contributing attorney at Accessibility.com.

Mark Shapiro

And we're here today to talk about the 2023 Year in Review for Website Accessibility Lawsuits. More specifically, we're going to talk about the lawsuit process, how websites are targeted, what a notice and demand letter actually is, and then talk about the lawsuits themselves. Then we're going to discuss what our methodology is in creating the Accessibility.com legal database.

Then we're going to get into some specifics for 2023, discuss the industries that were targeted, states where the most website accessibility lawsuits were registered, discuss some of the plaintiffs and the law firms that filed the multiple suits,

And we're also going to discuss where we're headed in 2024.

The process really begins with identifying who the candidates are that are going to be sued. And law firms have selected a bunch of different maps, bunch of different ways to do this. One is they'll do a search for certain specific industries, download a list of the companies, get their websites from that. Occasionally they'll even look at what website technology they're using.

So, for example, if a company is using a third party overlay such as accessiBe, you could go to an organization like BuiltWith and get a full list of who's using that specific third party overlay, get the website, get the address, and it becomes much easier to identify them and send a demand letter.

Reeve Segal

Yeah, and then once the company has been researched and targeted, then the next step is sending out the demand letter. You know, never just jumps immediately to the lawsuit. A lot of people think, oh, the getting sued is the first part. But no, there's first a detailed demand letter that goes out. And if you receive one, typically it's going to have the name of the firm that represents the blind or deaf consumer.

And as we'll see, a lot of times these blind or deaf consumers are the same people used, you know, over 100 times as a plaintiff. Then they're going to identify the website at issue, then list the specific violation, whether it's the American with Disabilities Act, If we're looking at a Federal Court . Or, you know, in California, the California Unruh Act or a similar act in New York. Basically a way for them to get attorney's fees and then there'll be a time frame or, you know, telling you when you have notice that suit will be filed.

Sometimes they just use that as a threat. Other times they will actually sue on that date. So it is important to at least, you know, respond. And with that timeline, you know in mind that a suit could be on the way. And then finally, as you can see, this is a funnel technique. It's getting from wide down to small.

And then just a small fraction of these cases are actually filed with a lawsuit, because, as you know, if they can settle on the demand letter stage, they're saving a lot of costs, court fees, filing fees, any actual, you know, discovery and legal work is gonna go on with the lawsuit. It's going to raise the costs for the attorneys, and they don't want that.

So it's, you know, on the rare side compared to the demand letters in the funnel that you'll see an actual lawsuit. But this is a typical New York Southern District complaint and it's going to

break down various categories. First, it's going to, you know, mention what potential violations. You're always going to see the Americans with Disabilities Act in a Federal Court.

You know, here they're saying it failed to design its website to be fully accessible to plaintiff. And then the reason the plaintiff has actual standing or reason to sue is because they were trying to purchase goods or services. So that's a key that the actual plaintiff was going through the site. It's not just a random person. At least they're, you know, someone who was trying to use the site in theory.

Then you've got the website specifically listing what their issues are. Like here it's the screen reader failing. That's always typical. And then once they have listed now the specific issue with the site, they're going to talk about how the plaintiff, you know, still is intending on purchasing this item, but they can't. So that's sort of the breach or the error that's been made here by the website.

And then since they can't, you know, access the site as a quote unquote normal person, would they be visually impaired or, you know, blind consumers are now claiming that the website has violated the ADA and they're seeking a permanent injunction, which is basically just a way of saying, "hey, you have to change this." So a lot of this is, "hey, can you change or fix these issues?"

And then as we'll see in the next section with the prayer for relief, we're going to see what the attorneys want to actually get out of this. So you can see that they'll list a specific violation. Again, the Americans with disabilities Act and then specific New York administrative codes. In California, you'll see the California code. And they want this permanent injunction, which basically means to take all the steps to fix the site so that it doesn't happen again and so that the plaintiff will actually be able to use the site.

And the defendant is, you know, basically is the owner of the site. And it's discriminating is the claim there. And then because of this discrimination, the plaintiff and their attorney will be able to get compensatory damages. But more importantly for the attorney, it's the award of costs and attorney's fees and expert fees. So, really, you know, even if they're not seeking that much money for the actual violation itself, and sometimes those are codified, you know, certain amounts, what really will get these damages high is the attorney's fees.

So that's really what is sort of the most scary part, at least from a monetary aspect when you have a site. And that's sort of the the big, you know, carrot and stick that they're using here to try and get people to change their their website is, "hey, fix this. But if you don't, guess what? We're sending you a bill for a lot of attorney's fees and expert costs. "

Mark Shapiro

But it's not just their fees. It's, you know, internally you have to defend this. And that can get quite expensive, not just for the attorney, but for the management team and all the internal personnel to pull all the paperwork together.

Reeve Segal

Right.

Mark Shapiro

It can be quite expensive for the companies.

Reeve Segal

Oh, yeah.

We have our methodology here. You know, we take pride at Accessibility.com that we're not just going on Google and searching, you know, cases and just listing any case that is, in theory, going to be filed. We have a verifiable system in how we calculate the number of lawsuits each year, and it's directly tied to dockets and pleadings that we actually personally review.

So we, you know, have access to websites like Westlaw and we go through each and every case to actually match up and see that this is a website accessibility case versus a lot of other companies are simply doing sort of more broad searches and getting non-website accessibility cases, maybe actual, you know, accessibility like for ramps and wheelchairs and that sort of thing.

And that's why sometimes their numbers may appear higher, but ours are actually digging down and getting you the, the website accessibility cases. And ours are, you know, published. So we've got our full database. It's freely available. We're just going to give you all the lawsuit metrics and the lawsuit themselves and the date file and the status. So I really would take our Accessibility.com methodology in cases up against anyone else's because we really vet these cases quite well.

Mark Shapiro

Especially since each one is actually listed. So it's easy to add a number of lawsuits, but when you're actually showing here are the specific ones that are using our calculations, this is a true measure of what's going on. Results from what we found was actually a slight decrease from the prior year. We found there's still over 2000 lawsuits.

So this is not demand letters. This is just the lawsuits. The companies that have been sued in State and Federal Court. So technically there was... we identified a 4% decrease. However, in talking with our audience, we saw an increase in the number demand letter sent, which we're estimating at about 18%. So if you look at the increase in demand letters, but a decrease in number of lawsuits, it's a strong indication that more companies are settling at the demand letter phase and are settling outside of court.

Reeve Segal

Right. And we have to remember, too, that a lot of people are only publishing the information on the lawsuits that were filed. That's the actual bottom of the funnel. It's, you know, the smallest part. So we you know, we we don't have the exact numbers on the demand letters, but let's say we're at 20,000 or 100,000. We're filtering down to only 2000 plus, you know, lawsuits being filed.

But it doesn't mean that at the top there, there's still not, you know, an influx of demand letters, which we're finding now. And I think the demand letters have gotten sort of so fine-tuned over the years that a lot of and just more, more companies, more companies realized the severity of website accessibility lawsuits, whereas a few years ago, maybe they would kind of sweep it under the rug, but now they want to get it resolved before lawsuit.

So that's why, you know, if we see a few, you know, declines in the lawsuit stage, it doesn't mean that this is still not a prevalent issue because it's really the pre-suit demand letters that are that are really increasing.

Mark Shapiro

We are also looking for a website for mobile applications and mobile sites. But for the most part, we've seen 97% were all predicated on the desktop version of their websites. We also saw that one in five businesses sued were utilizing some kind of a third party magic widget like accessiBe. And 26%, which this was sort of interesting. 26% were filed against companies that have already been sued for website accessibility.

So just because somebody settles with one firm does not mean that they're they're clear. They can still be sued by all the other law firms.

Reeve Segal

Right. So if you have a widget, you're not safe. And also, once you settle, then you basically have to keep vetting your site, making sure, you know, if they find a hole in the wall... You better

make sure that your fence is fixed, too, you know, metaphorically speaking. So it's you know, just because you fix one area doesn't mean that you're you're in the clear.

Mark Shapiro

Exactly. But 90% are coming from New York and California, with New York clearly leading at 73%. So New York and California are dominating. Florida and Illinois and Pennsylvania are still in the mix, but not as much as New York and California.

Reeve Segal

And I think last year we saw California was a bit on the rise. But now New York has sort of firmly taken back its its greater lead here. And I think really what it comes down to is the two state laws. The Unruh in California specifically, and New York has its own administrative version. The the attorneys fees are just so friendly in New York and California. These attorneys are all flocking there and filing the lawsuits from those states. And it really, New York seems to kind of just only be increasing from last year. And I think California might have taken this a bit of a smaller dip. Florida is steadily rising. And then after that, it's really the other ones are sort of in a little class of their own. But it's really the big three with with New York as the clear number one.

Mark Shapiro

In terms of the industries we saw between Consumer Durables and Food, Beverage and Tobacco, that was about 50% of the lawsuits with Retailing and Consumer Discretionary and Consumer Durables. But essentially it's it's across board. It's for the most part, any company that has revenues we've seen typically over 15 million is where most of them are targeting and they are targeting by size of company.

We have seen some mom and pop retailers that have, they're probably doing tens of thousands of dollars a year getting sued. But for the most part, it's the larger organizations. It's the Fortune 500 or the Fortune 10,000. But companies that have some substantial revenue so they can pay off whatever the demand is.

Reeve Segal

Exactly. Yeah. When you know, from a plaintiff's perspective, the plaintiff's attorney, the larger the pockets on the defendant, the better. So you don't want to you go with a mom and pop settling for \$1,000 is a big deal to them. But you go to some of these other bigger companies especially, they don't want the bad publicity. They're more willing and more likely.

And so it's, you know, somewhat random on which companies they're targeting. And it's not as if they're following, you know, iPhones are selling big this year. They're just rather looking and saying, "okay, who are the the biggest companies that we haven't gone after after yet?" And it's really the Consumer Durables and the Food and Beverage, Tobacco, which are always just very steady companies that they can continue to try to hit.

Mark Shapiro

In terms of the plaintiffs, 16% of the lawsuits were filed by five plaintiffs. We've been asked if the numbers three, four and five are related. We don't know. They do have the same last name. We just don't know if they're actually related. But Perla at 105 last year was also number one, and last year it was 108. So she's been involved in over 200 lawsuits.

Reeve Segal

Just over the last two years. And it's really fascinating to think because a lot of people think that this kind of happens organically, like, you know, grandma or a friend or someone is on a website and they just are trying to book a flight and they can't, you know, either hear the audio or see the screen perfectly because of issues with the website.

So you think, "now let's try to sue them." But instead what happens is you have this small group of people that are just all day long just searching these sites. And I mean, the fact that Perla has over 105, it's not as if she tried 105 random tasks and she just, you know, decided to start suing because of that.

It's clear that this is almost sort of a targeted experience. And again, they are trying to improve the website by making it accessible. But it is interesting that it's the same people, for the most part, over and over are doing this. And it's yeah, it's it's hard to know kind of which side to fall on with that.

Mark Shapiro

I mean, there's a chance that Perla's just had very bad experiences with websites and goes to one and can't do anything, goes to another and happens to contact the law firm every time. So that's certainly is possible.

Reeve Segal

Right. And if you think about it, it's 105, it's 365 days a year. So basically every third day she's out there filing the suit.

Mark Shapiro

Almost 70% of lawsuits were filed by five firms. Primarily in New York. And depending on which side of the coin you look at, you know, ambulance chaser or helping out the small guy that's being discriminated against, these law firms are there. And in all fairness, curb cutouts wouldn't be there without lawyers. They are helping to make a change and websites are becoming more accessible.

Reeve Segal

So, yeah, it is definitely it's yeah, it's a double edged sword. On the one hand, are these attorneys doing it for the fees or are they sort of the moral justice police who are who are helping those who who don't have a voice? And in New York, clearly it's it's growing. I mean, I think last year maybe we had two of the top five or maybe even three were California.

But now it's only one in California. And the law firm of Noor Saab looks like a new entry. I don't believe they were on this last year. So they are moving up the rankings quick. I wouldn't be surprised if they get in the top two or three next year, but clearly the Mars firm and Stein Saks are sort of in a bit of a class of their own right now in New York.

Mark Shapiro

So in terms of predictions for this year, WCAG 2.0 and then 2.1 has been what lawyers are referencing for website accessibility. You have to be WCAG 2.1 accessible. WCAG 2.2 came out in October with nine new checkpoints. Those nine new checkpoints now open up a bunch of areas that most companies probably haven't even tested for. So we do believe that there will be an increase in the reference to WCAG 2.2.

And based on that, there should also be an increase in the number of lawsuits in 2024.

Reeve Segal

Definitely. And I think, like you were saying, the mobile sites are going to start to become much more targeted this next year. And it's a little more difficult to file a mobile lawsuit because it's sort of not as cookie cutter as kind of the website ones. But we're going to see the mobile websites probably become the new norm soon.

Mark Shapiro

Yeah. The Fortune 500 at this point, 99 plus percent have been, have received a demand letter or been sued. All for their website, not their mobile application. Mobile application, we've identified roughly 5%. So there's clearly an opportunity for them to go from a saturated area, which is the website to mobile. Mobile. It's a lot more work for... to analyze a website using automated tools for just a regular website.

Very straightforward nowadays. Mobile applications are custom, so somebody actually has to take the time to go through those. But we do see it going from two or three percent to a three-fold increase, but still that's going to be under 10%.

Reeve Segal

Yeah, it'll be interesting to see where it goes because it is like you said, not as saturated, but the work is a lot more. So it's going to be an interesting balance to see. And I do think obviously with technology, everything's moving much more in the direction of mobile. So 10-15 years from now, we'll see how big these numbers are.

Mark Shapiro

Exactly. Reeve, thank you very much for joining us today. And I hope you all got a lot out of this. This is where we were in terms of 2023 lawsuits. We're still publishing these on a monthly basis. So you can get an idea. At the end of the day, make sure your website is accessible. You know, whether the lawyers are doing the right thing or the wrong thing.

If your website's accessible, you can get yourself out of the lawsuits pretty easily. If they're not accessible, you need to fix it. So regardless of where you are on the issue, an accessible website will get you out of being sued. So we suggest you make your websites accessible. There's plenty of companies out there, plenty of software, plenty of ways to get your website accessible, but for the most part, the lawyers are out there.

Whether you view it as trolling or not. They're very active.

Reeve Segal

Great. Well, thank you for having me. I appreciate it.

Closing

Lori Litz

Thank you Reeve and Mark for such a detailed interpretation of 2023 Website Accessibility Lawsuits. We really appreciate your time today and I hope everyone here on the call enjoyed what they heard and gained some insights in what might be ahead for 2024.

Today's event... the recording will be available this evening. I will go ahead and email that out to you all once it is complete. And coming up for the year ahead in 2024, we're going to be taking a deeper dive into specific accessibility services and showcasing some different companies that provide the solutions. Each of these sessions, and there will usually be... some months there's two, some months three.

We like to take July off as most people are out of the office on holiday. We'll have, you know, two to three different presentations each month and we'll go through what you should look at when trying to select that service, how to budget for it, and then, you know, highlighting some specific companies within each one of those. First up on Tuesday, February 6th, is ASL Interpretation Services.

So go ahead and register for that and I'll see you all in February. Thank you.