

The Human, Design and Legal Implications of Web Accessibility



ACCESSIBLE 360
BETTER. FOR ALLSM

MARCH 22, 2017

The UN Convention

Purpose:

“Protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Those party to the convention will:

- Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet
- Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost

Accessibility



Then



Now

Digital Accessibility

Is the inclusive practice of removing barriers that prevent interaction with websites & apps for people with disabilities.

When digital content is correctly designed and coded, it offers disabled individuals equal access to information & functionality.

People With Disabilities

- 1 in 5 Americans 56.7 million people
- Wide range of disabilities across four categories
- People move in and out of disabled status

vision



physical



cognitive



auditory



1 US Census Bureau

Business Case for Accessibility

- **Social Responsibility**
 - Equitable Access; helps close the digital divide
- **Financial**
 - Lower costs if done with new site builds
 - 10:1 savings in recent national seminar
- **Legal**
 - Banking, medical, e-commerce are highly targeted verticals
 - Education & government sites are already suppose to comply
- **Maximize Profits**
 - Largest possible customer base

Disabled American Consumers

- By the year 2030, 71.5 million baby boomers will be over 65
- Over 1/3 of families have at least one member with a disability
- At nearly 57M people, the disability market is
 - more than twice the size of the tween market (20M)
 - has almost 3X the disposable spending power (\$180B)

www.disabledmarketing.com

Disabled Consumers, Cont'd

- The disability market represents 1.3 billion people globally
- Equivalent in size to the population of China global disability market represents an annual disposable income of \$1 trillion
- Friends and family adds another 2.3 billion people who control an incremental \$6.9 trillion in annual disposable income

[The Global Economics of Disability](#)
Fifth Quadrant Analytics

Legal Activity

- Hundreds of Website ADA Lawsuits
- Thousands of demand letters
- Targets are both large & small businesses

Enforcement and Trends

- 2016 - 2017
 - More government and private suits and enforcement
 - Increasing number of plaintiff law firms in action
- Public awareness and consumer pressure
- No industry is immune
- Next Wave?

The Law

- The Americans with Disabilities Act (ADA)¹
- Rehabilitation Act of 1973 (Sections 504 & 508)²
- International law address accessibility
- Many states have laws that address website accessibility

¹<http://webaim.org/articles/laws/usa/ada>
²<http://webaim.org/articles/laws/usa/rehab>

What Does the Law Require?

- Americans with Disabilities Act of 1990
 - ADA Title I, Employment
 - ADA Title II, Public entities
(state and local government and public education)
 - ADA Title III, “Public Accommodations”

Rehabilitation Act

- SECTION 508
- Act amended in 1998
- U.S. federal government departments & agencies
- “Access Board” published specific standards

Located at: <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards/section-508-standards>

29 U.S. Code §794

Healthcare

New HHS Regulations in May, 2016

For entities operating a health program or activity receiving federal financial assistance

“Covered entities shall ensure that their health programs or activities are provided through electronic and information technology accessible to individuals with disabilities...”

45 CFR §92.204

W3C & WCAG

- W3C

- The World Wide Web Consortium is an international community that develops open standards to ensure the long term growth of the Web.

- www.w3.org

- WCAG

- Web Content Accessibility Guidelines

- <https://www.w3.org/WAI/WCAG20/quickref/>

Section 508

- Been around since 1998
- Very specific about issues
- Severely limits ways to fix
- Overly prescriptive and rigid
- Refresh is pending now

WCAG 2.0

- Clear guidelines
- Excellent supportive documents
- Not only one way to fix the code
- Future-proof
- Flexible and adaptable

Section 508 Refresh in January 2017

<https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh>

Section 508 Refresh

The Access Board delivered a final rule, effective March 21, 2017

Because technology is constantly evolving, this “refresh” serves to address technological advancements and keep the Rehabilitation Act current.

... Section 508 refresh “seeks to harmonize its requirements with ... the Web Accessibility Initiative’s Web Content Accessibility Guidelines (WCAG),” serving to create an Internet-wide standard for accessibility, the Access Board explained.

By Jan. 18, 2018, Section 508 requires that when federal departments and agencies “develop, procure, maintain, or use electronic and information technology, they must ensure that it is accessible to people with disabilities.

The Architectural and Transportation Barriers Compliance Board

Cullen v. Netflix

No. 13-15092 (9th Cir., unpublished, 2015)

The image shows the Netflix logo, which consists of the word "NETFLIX" in a bold, white, sans-serif font. The letters are set against a solid red background. Each letter has a subtle 3D effect with a dark shadow on its right side, making it appear to float slightly above the red surface.

National Association of the Deaf v. Netflix

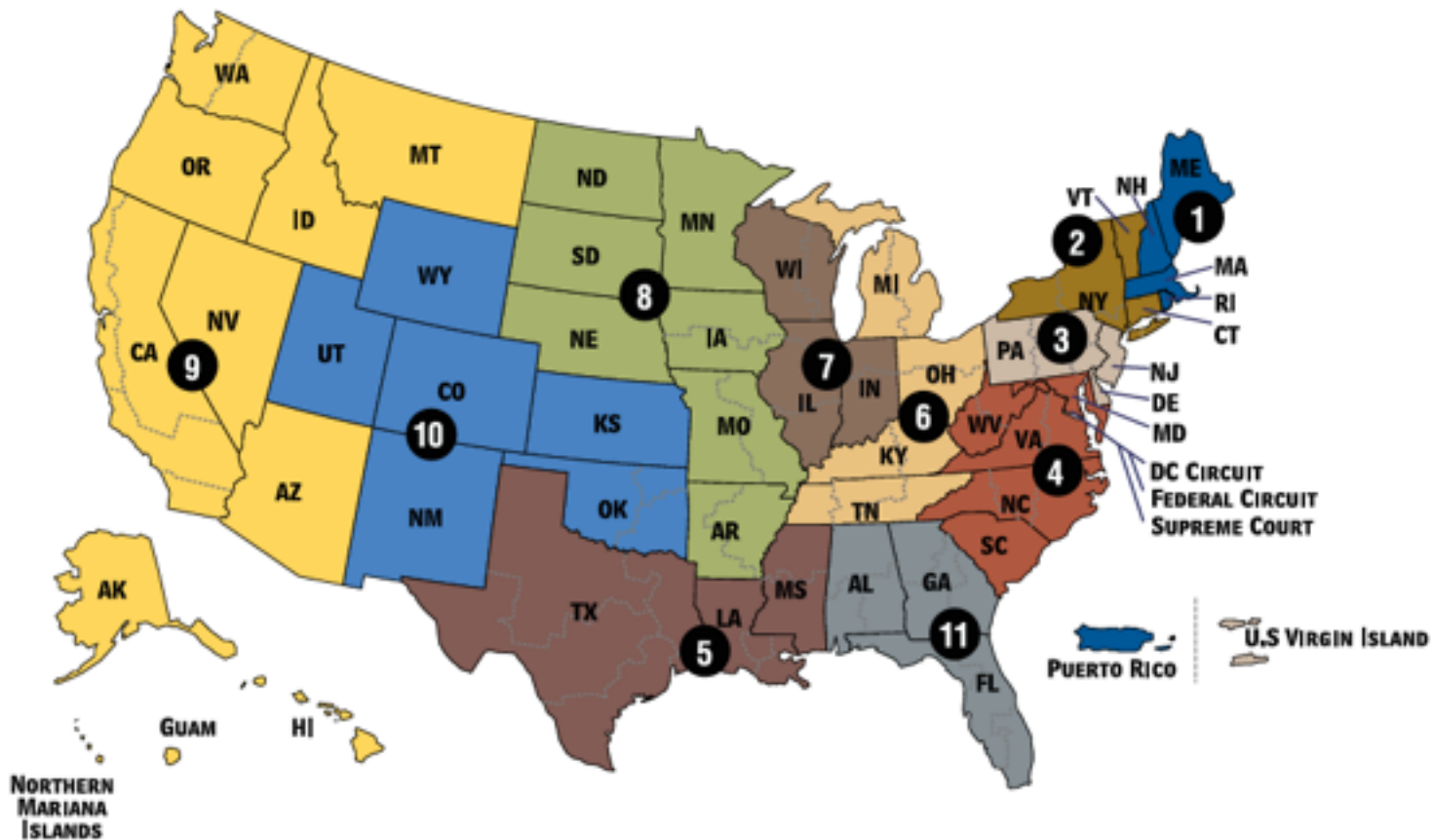
869 F. Supp.2d 196 (D. Mass. 2012)

Magee v. Coca-Cola Refreshments USA, Inc.



Geographic Boundaries

of United States Courts of Appeals and United States District Courts



Pending Certiorari Petition

Magee v. Coca-Cola Refreshments USA, Inc.



August 15, 2016

Decision of 5th Circuit Court of Appeals affirmed district court's dismissal

November 11, 2016

Petition for writ of certiorari filed

February 6, 2017

Briefing completed on certiorari petition

February 27, 2017

Supreme Court asks Solicitor General to file brief expressing views of United States

March or April 2017

Decision on petition for certiorari expected

If petition is granted

October 2017-June 2018

Supreme Court's ruling would be handed down during this time period

Dept. of Justice Settlements

Common elements:

- Engage independent accessibility consultant for audit
- Websites and apps meet WCAG2.0AA
 - Designate Accessibility Coordinator
 - Publish Accessibility Policy
 - Solicit feedback
 - Improved telephone support
 - Training
 - Continue to monitor

What We Do

- Live-user Accessibility Audits of websites to ensure they can be used by disabled individuals who access the internet with assistive technologies like screen readers.
- The established guideline in accessibility audit work is the Website Content Accessibility Guidelines, (WCAG 2.0 AA).
- Post Audit, we can support or perform Remediation, provide Training and Accessibility QA (a recheck) to ensure compliance.
 - We then continuously Monitor digital properties, collaborating on new builds and testing new elements before they go live.

Make sure you get a live-user Audit

What You Can Do

- Served a Demand Letter or Sued
 - Accessibility Audit
 - Rebuttal Report
 - Road Map for Accessibility Process
- Proactive Approach
 - Make 2017 the year to do this
 - Protect against being targeted

What Your Developer Can Do

- During design - create an accessible experience
 - Accessible site architecture
 - Accessible frameworks
 - HTML5 best practices for accessibility
- During development
 - Make accessibility part of development process
 - Lower web development costs when done congruently with new website builds

Accessible Design

- Cascading Style Sheets (CSS) allow you to separate content from presentation. This provides more flexibility and accessibility of your content
- WCAG2.0 compliant webpages are more robust and provide better search engine optimization

¹ census.gov *Americans With Disabilities: household Economic Studies*

New Vendor Contracts (2017)

- **General:**

“Vendor will comply with all applicable laws and regulations in providing Services and Deliverables.”

- **Specific:**

Services & Deliverables will comply with ADA, 508, WCAG2.0AA

- **Pass-through:**

Vendor complies with all laws & requirements applicable to Customer

A360's Report From the Front

- 80% of our clients in 2016 had received a legal demand or were sued
- Many clients didn't respond to 1st letter
 - Don't ignore the letters
- Companies are taking this seriously now
- Companies launching new sites in 2017
 - Reaching out now to include WCAG2.0 in build
- Some clients had previously used scanning software
 - Don't rely on it

What Does a Demand Letter Look Like?

CARLSON
LYNCH
SWEET
& KILPELA | **CARLSON
LYNCH**



Sent Via Federal Express

January 4, 2016

Chief Legal Officer
MAZZIO'S, LLC
4441 S 72nd East Ave
Tulsa OK 74145

Re: www.mazzios.com, including Notice of Preservation Obligation

FOR SETTLEMENT PURPOSES ONLY

Dear Sir or Madam:

We represent disabled individuals throughout the United States who use the Internet to facilitate their access to goods and services, and whose rights to access those goods and services are protected under the Americans with Disabilities Act (the "ADA"). These individuals have disabilities that include: blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, mobility impairments, speech disabilities, photosensitivity and combinations of these.

Accessibility is a Human Test

U.S. Accessibility Board - Section 508 Standards

Checkpoint	Checkpoint Title	# failed pages	% failed pages
a	Text equivalent for every non-text element.	155 (of 589)	26%
l	Provide equivalent text when using scripts.	513 (of 589)	87%
n	Forms providing same information and functionality.	85 (of 589)	14%

Web Content Accessibility Guidelines (WCAG-2)

Checkpoint	Level	Checkpoint Title	# failed pages	% failed pages
1.1.1	A	All non-text content (with certain exceptions) presented to the user should have an equivalent text alternative.	155 (of 589)	26%
1.3.1	A	Information about the meaning and structure of your content must be conveyed by more than the visual presentation of your content.	85 (of 589)	14%
1.4.4	AA	Except for captions and images of text, text can be resized without assistive technology up to 200 percent without loss of content or functionality.	31 (of 589)	5%
2.2.1	A	If the content enforces a time limit, the user should be able to extend, adjust or disable it, unless the time limit is part of a real time activity or would invalidate the activity.	29 (of 589)	5%

Scanning Software - U.S. Government

Conduct Website Testing and Remediation

Automated website testing tools can ‘crawl’ through the pages of a website and evaluate certain aspects of accessibility... **Automated scanning *cannot* determine if a website is accessible or conformant with accessibility standards...**

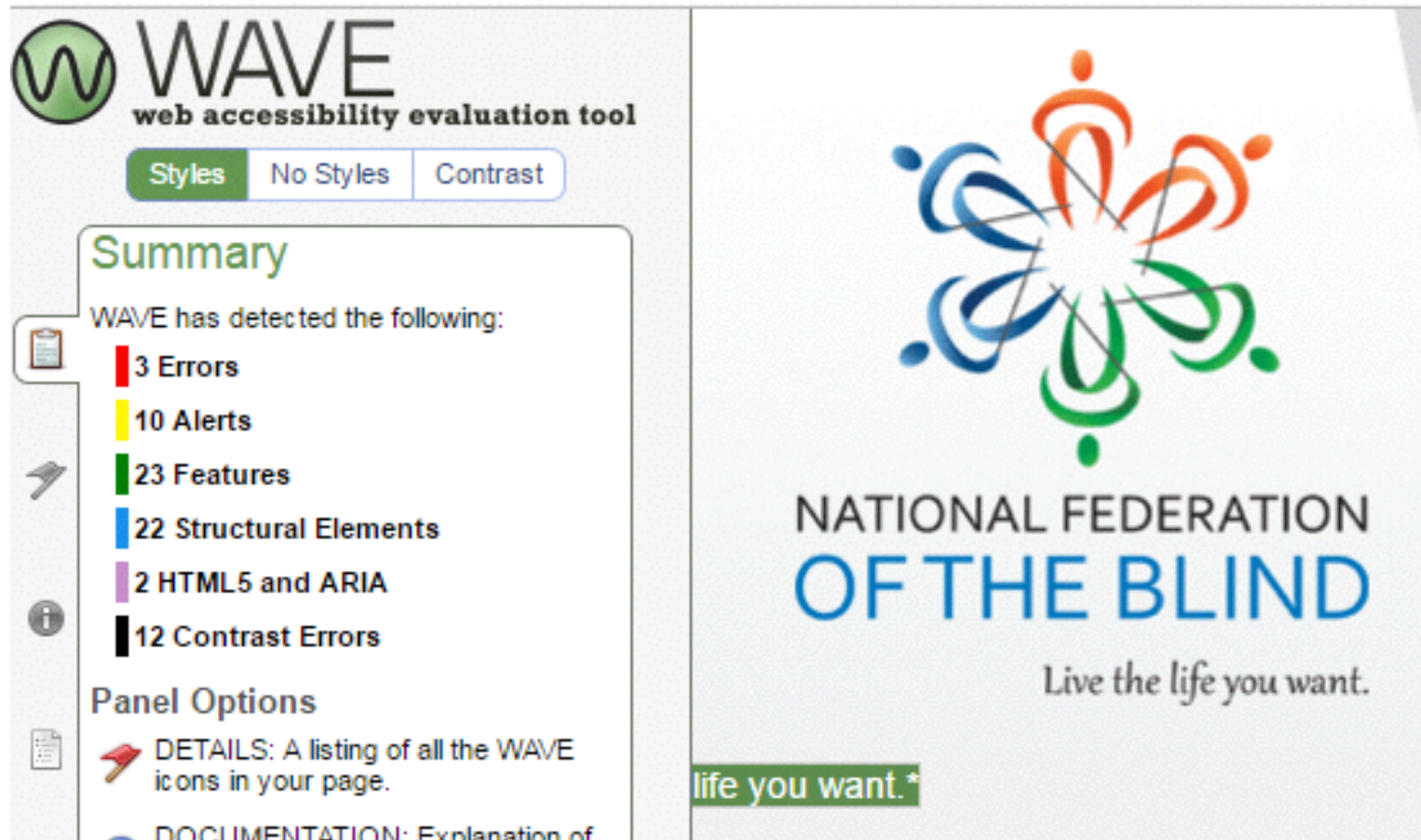
Conduct Manual Accessibility Tests

The tester must be expert in web accessibility and proficient in the use of input device alternatives and other assistive technologies. It is good practice to include persons with disabilities as testers for manual testing.

-U.S. GOVERNMENT

[-https://www.section508.gov/content/build/website-accessibility-improvement](https://www.section508.gov/content/build/website-accessibility-improvement)

Scanning Tools are Unreliable



The image shows a side-by-side comparison. On the left is the WAVE web accessibility evaluation tool interface. It features a green circular logo with a white 'W' and the text 'WAVE web accessibility evaluation tool'. Below the logo are three buttons: 'Styles' (highlighted in green), 'No Styles', and 'Contrast'. A 'Summary' section lists detected issues: 3 Errors (red bar), 10 Alerts (yellow bar), 23 Features (green bar), 22 Structural Elements (blue bar), 2 HTML5 and ARIA (purple bar), and 12 Contrast Errors (black bar). Below this is a 'Panel Options' section with a red arrow icon and text: 'DETAILS: A listing of all the WAVE icons in your page.' and 'DOCUMENTATION: Explanation of...'. On the right is the National Federation of the Blind logo, which consists of a stylized figure in orange and blue, surrounded by a circular arrangement of blue and green shapes. Below the logo is the text 'NATIONAL FEDERATION OF THE BLIND' and the slogan 'Live the life you want.' At the bottom of the right panel, the text 'life you want.*' is highlighted in green.

Proactive Action Items ~ Reduce Risk

- Audit website (+ apps)
- Improve website (+preserve evidence)
- Assess the remediation (re-check)
- Accessibility Statement (External)
- Accessibility Policy and Plan (Internal)
- HR portals & Vendor Contracts
- Insurance (Cyber/ Website)

If Targeted ~ Action Items

- Don't ignore demand letter
 - start working on improving your site
- Train and consult per client needs
- Track your actions
- Alternate methods
 - telephone support
- Website Terms and Conditions
- Monitor, it's not just one-time event

Be Accessible.



Michele Landis
Co-Founder
Business Development &
Strategic Partnerships
612-440-3601
michele@accessible360.com



Aaron Cannon
Co-Founder
Accessibility Engineer
612-440-3601
aaron@accessible360.com