The Legal Landscape

EIT Accessibility
Legal Requirements

- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990, as amended
- Qualified individuals with disabilities must receive equal access to all of the programs, services, and activities of a covered entity.
- Qualified persons with disabilities must have an equal opportunity to participate in the programs, services, and activities of covered entities.
Programs, services, activities include...

- Websites
- Learning management systems
- New, newly-added, or modified online content and functionality
- Documents posted online (PDF, PPT, Word)
- Online videos
- Course registration sites
- Other technology
Equal Access

• What is “equal access”?

• Government’s guidance on emerging technology sets the standard.
  - “Receive all the educational benefits provided by the technology in an equally effective and equally integrated manner”
  - Must be able to:
    • Acquire the same information,
    • Engage in the same interactions, and
    • Enjoy the same services.
Separate access?

- “An agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. These alternatives, however, are unlikely to provide an equal degree of access in terms of hours of operation and the range of options and programs available. For example, job announcements and application forms, if posted on accessible website, would be available to people with disabilities 24 hours a day, 7 days a week.”

  - U.S. Department of Justice’s “Accessibility of State and Local Government Websites to People with Disabilities.” (Available at www.ada.gov)
Separate access?

- From University of Phoenix Resolution Agreement:
  - For “students who were segregated into single-student online classrooms (often called “directed study,”), instead of integrated courses with peer interaction because of technology considerations, the University will invite the students to repeat those or other courses in an integrated setting, tuition-free and with the University covering expenses such as textbooks, up to the number of credit hours for which the student experienced courses in a segregated setting.”
Fundamental Alteration Defense

- Covered entities are not required to take actions that would fundamentally alter the nature of the program or service at issue.

  - Example provided by OCR: “U.S. Geological Survey’s topographic maps cannot be reduced to words to make them accessible to people who use screen readers. The very essence of their “mapness” would be destroyed in the process.”
Where fundamental alteration defense applies…

- Covered entities must still provide “equally effective alternative access”
- Alternates are not required to “produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.”
Undue Burden Defense

• Covered entities do not have to take action that would impose an undue administrative or financial burden.
  - Example provided by OCR: “It might be an undue burden for a small college to try to meet a blind student’s last-minute request to provide audio-description for an online student film festival.”
When asserting an undue burden defense...

- Assertion should be made by President or designee who has budgetary authority.
- Must consider “all resources available for use in the funding and operation of the service, program, or activity”
- Must write a statement of the reasons for asserting the defense that includes:
  - Cost of meeting the requirement and the available funding and other resources
  - How effective alternate access will be provided
  - Certification by determining official
OCR’s guidance on websites v. distance learning

- Distance learning: the technology supporting “live” courses should be designed to be adaptable (no need to actually provide real-time captioning, if there’s no student who needs captioning currently enrolled, but educators should be ready to do so if a student with disability joins the class).

- Websites: all websites should be designed to be accessible to individuals with disabilities.

- The intersection of websites and distance learning: if an archived course is available online upon demand, then it should be captioned before posting – or the educator should be ready to provide another means of effective communication.

- [From OCR’s presentation on Website Accessibility]
Regulations?

• DOJ 2010 Advanced Notice of Proposed Rulemaking
  - Seeks to establish requirements for making goods, services, offered by public accommodations via the Internet accessible to individuals with disabilities
  - DOJ has “repeatedly affirmed the application of title III to websites of public accommodations.”
  - DOJ’s position in litigation: “a business providing services solely over the Internet is subject to the ADA’s prohibitions on discrimination on the basis of disability.”
Regulations?

• Rulemaking for Title III delayed until fiscal year 2018
• Title II Supplemental ANPRM issued in May 2016
• Title II rule “will facilitate the creation of an important infrastructure for web accessibility that will be very important” for Title III rulemaking
Guidelines for Web Accessibility

- World Wide Web Consortium’s (W3C’s) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 techniques for web content
- Section 508 of the Rehabilitation Act of 1973, as amended in 1998
  - Applies to the federal government
Recent OCR/DOJ actions

• Miami University Consent Decree

• U.C. Berkeley Letter of Findings
  - “In May 2015, UC Berkeley informed the Department that for ‘budget reasons,’ beginning in the Fall 2015, UC Berkeley would limit access to new online content on YouTube and iTunes U to enrolled UC Berkeley students taking specific courses.”

• National OCR complaints and investigation, particularly at the K-12 level
Recent Litigation

• National Association of the Deaf Litigation
  - Involves two Title III educational institutions
  - Issue: captioning of videos and access to audio files on websites
  - DOJ statements of interest

• National Federal of the Blind Litigation
  - Involved web-only reading subscription service
  - Issues: accessibility of website, content, mobile
Demand Letters

- Use of automated website testing tools
- Identification of plaintiff
- Draft settlement agreement
- Considerations:
  - Accessibility statement
  - EIT policy
  - Accessibility of public-facing pages
Looking forward…

• New administration
• Impact on whether regulations are issued
• Impact on form of regulations
• Enforcement activities
• Undue burden/fundamental alteration defenses
• Actions by advocacy groups and plaintiffs’ firms
• Action by states
2017 IT Accessibility Strategies Update
IT Accessibility Strategies

Institutional policies and procedures to comply with disability laws and regulations.
Sources

Eve Hill
Deputy Asst Attny General, DoJ, Civil Rights Division

Resolution agreements and lawsuits
University of Washington

IT Accessibility Risk Statements and Evidence
EDUCAUSE
1) Accessibility Policy

IBR WCAG 2.0 Level AA

All EIT (not just websites! – IBR WCAG2ict)
Instructional media
Technology
Business communications
Publications
eTextBook purchases
Mobile apps and content
...
1) Accessibility Policy

Exemptions for non-compliant EIT

- Not technically feasible
- Fundamental alteration
- No alternative products
- Compliance roadmap and date
2) Establish Leadership

Appoint an accessibility coordinator

Strong executive support

Leadership skills

Has the ability to influence people

Recommendation:

Appoint a backup

Train both in accessibility and leadership
3) Accessibility & Procurement

**RFPs**
- Statement on accessibility
- Technical questions
- Ask for VPATs

**Contracts**
- Require conformance to WCAG 2.0 AA
- Note non-conformance and exemptions
- Timely bug fixes
- *(DoJ wants an indemnification clause)*

*Buyer beware!*
3) Accessibility & Procurement

**Recommended:**

In-house testing before the contract is signed
- Automated testing is useful
- User testing is best

3rd Party testing
- Certification of compliance
- VPAT updates

*Trust but verify*
4) Communications & Feedback

Provide a simple feedback process
   An (accessible) form, or
   An email address (to the coordinator?)

Provide an accessibility resource site
   Statement of accessibility
   Link to policy
   Link to feedback tool

*Feedback is a gift*
5) EIT Audit

Identify risks!

- Enterprise applications
- Services
- Mobile apps
- Instructional content
- Textbooks
- Publications
- Websites

*Risk drives decisions*
6) Remediate Inaccessible EIT

*Recommended:*

**Triage:** Fix the “Blockers” First!

[accessibility.psu.edu/blockers](accessibility.psu.edu/blockers)

*Prioritize your resources*
7) Role-based Training

Production roles:

Developers
Designers
Content authors
**Faculty / Instructional designers**
Quality assurance / Testing staff
Help desk

*Everyone plays a part*
7) Role-based Training

**Process roles:**
- Project manager
- Manager
- IT Architect

**Leadership roles:**
- Directors
- Administrators

*Everyone has a part to play*
Summary of Strategies

1) Create a policy for EIT accessibility
2) Appoint an accessibility coordinator
3) Include accessibility criteria in EIT purchases
4) Include a link to an accessibility statement and resource; and provide a feedback mechanism
5) Complete a prioritized audit of EIT
6) Remediate inaccessible EIT
7) Provide role-based training for faculty, staff and administrators

... and provide adequate resources for success
IT Accessibility Landscape and Strategies Update

- **Standards**
  - WCAG
  - ITC Refresh
  - Epub

- **Access**
  - Universal Design/
    and Inclusivity

- **Planning**
  - Section 504

- **Executive Support and Cultural Change**

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Accessible materials provide opportunities to ensure that all students are able to participate in and benefit from learning opportunities.

**UDL On Campus: Legal Obligations for Accessibility**

**DOJ:**
- obtain the same result, to gain the same benefit, or have the same opportunity to reach the same level of achievement as persons without disabilities.
- Department questions whether alternative means would be likely to provide an equal degree of access.
Breaking it down: 3 High Level Priority Areas
Capability Maturity Model - annual assessments

- Procurement
- Instructional Materials
- Web
Procurement

- Updated Accessibility Docs (VPATS WCAG) Roadmaps & Accessibility Statements
- Within application Help and Support including accessibility – Bug Barrier Reporting
- 3RD party reviews RFP, MEA
- User analysis based on impact
- Buyers, departs, et al (Role based training)
- All info used to create Equally Effective Alternative Accessing Plans (EEAAP)

Web

- Standards based internal audits
  - Enterprise level and browsers based tools
    - Including manual evaluation
  - Problem ID – Remediation Plan
  - Contribution to EEAAP
  - Role based training

Instructional Materials

- UD/ Accessibility Recommendations for faculty materials
  - Campus 101
  - Captioning Prioritization Guidelines
  - Captioning Methods and education Webinars
- Contribution as needed to EEAAP
Strategic/Cultural Change
From Within:

- Executive Sponsor Leader(s) on each campus
- Evidence of implementation and coordination of activities on campus in support of policies
  - Role based committee membership
- President Summary [Goals and Remaining Effort]
- Periodic internal audits
- Plan overtime to reach specific goals and success indicators in each area
  - Resource identification and allocation
  - Business Process Documentation
  - Skills reflected in job descriptions
Strategies/Change from within cont.

• Accountability – Milestones - Accurate Reporting
• Provide evidence of procedures and documentation
  • What - When – Who - How
• Provide Campus-wide strategy to integrate - into daily work - use of remediation reports and accessibility compliance tools (enterprise level and browser based).
• Seek out – Find – RemEDIATE – Repeat
  • Better yet,  Design Accessibility In!
• Evidence of the integration of accessibility compliance into the design of websites, documents and the procurement/use of ICT.
• Campus-wide support and deployment of role based accessibility training
• Ability for users to report problems and find accessibility information within aps
From Without:

OCR investigations included

• Evaluation a subset of webpages
• Review of videos for captions
• Review of video player for accessibility
• Review of documents for accessibility
• Interviews with web administrators and content creators for familiarity with and training on creating accessible content
Common OCR Resolution Agreement Requirements

• Conducting a **full** third party web accessibility audit
• Providing a Web remediation plan
• Providing an implementation plan to ensure that going forward all web pages and content will be accessible
• Accessibility Coordinator(s)
• Reporting progress and present deliverables to OCR on a short rigid timeline
• Providing web accessibility training to all appropriate personnel
• Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible
• Noncompliance with the resolution requirements may initiate judicial proceedings.
Resent Compliant

- (3) months - submit Accessibility Policy
- ("WCAG") 2.0 AA all new websites redeveloped
- (5) months - Obtain automated accessibility testing
- automated accessibility tests – approx. every (3) months
- (18) months - websites and subdomains used for academic divisions, academic departments, and administrative offices
- Automated audits
Audit – Committee - Training

• (12) months
  • conduct a University-wide Accessibility Audit of digital technologies

• (2) months - University Accessibility Committee
  • Outlined membership
  • meet at least quarterly

• mandatory accessible technology training- expertise outlined