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UNDERSTANDING WEB ACCESSIBILITY: ITS OPPORTUNITIES & THE COSTS OF NON-COMPLIANCE

A guide to navigating and managing online accessibility regulations and policies.

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1. INTRODUCTION: THE ACCESSIBILITY CHALLENGE

As of this Guide's writing, there were nearly **1.16 billion websites in existence**, according to InternetLiveStats.com.

Only a small percentage of these sites are engaged in commercial activity, of course. But the fact is that the web has become incredibly pervasive, and the competitive pressures our digital economy has engendered have driven businesses to launch sites, without taking factors into account that can prove to have serious consequences.

Web accessibility is at the top of that list. The lack of guidance on website compliance, combined with the relative ease with which consumers, regulators or litigious third parties can spot noncompliance, has led to a sudden proliferation of class action enforcement lawsuits in the last few years.

In 2016 alone, U.S. lawsuits were filed against **Domino's Pizza, Potbelly Sandwich Works, Reebok, Panera Bread** and **AMC Theaters**, alleging aspects of these companies' websites were inaccessible to the blind. And this was just **a small fraction of the 240 companies** that were confronted with accessibility lawsuits in U.S. courts over the past year.

These lawsuits are largely driven by the fact that plaintiffs' lawyers have been able to obtain quick and easy settlements. Each suit has exposed companies to potentially dire damages, costly litigation, injunctive actions, and may also bring the attention of Federal regulators charged with enforcing the Americans with Disabilities Act.

If you multiply the potential costs of noncompliance in one market like the U.S. by the number of countries in which a company has a digital presence, we see the **extent of the challenge** facing digital compliance managers.

In this Guide, we'll define exactly what web accessibility involves, detail both the advantages of compliance and the risks of non-compliance, provide a checklist of best practices for compliance, and offer new solutions allowing businesses the ability to effectively ensure accessibility, even when they're operating across multiple borders.

1.3 billion people – nearly 18% of the world's population – have a disability of one kind or another.

(Source: Global Economics of Disability Annual Report 2014)

285 million people worldwide have a vision disability preventing them from reading all content on a website; 39 million of these are blind and cannot access any content via sight. (Source: World Health Organization)

2. DEFINING WEB ACCESSIBILITY

When we discuss web accessibility, we're referring to the practice of removing barriers that prevent interaction with -- or access to -- websites by people with disabilities.

The goal? To provide all users with equal access to site information and functionality.

The disabilities that web accessibility practices aim to redress?

- **Visual impairments** including blindness, common types of low vision and poor eyesight, and various forms of color blindness
- **Motor/mobility impairments**, such as difficulty or inability to use the hands, including tremors, muscle slowness, loss of fine muscle control, et cetera, owing to conditions such as Parkinson's Disease, cerebral palsy, muscular dystrophy and stroke.
- **Auditory impairments:** Deafness or hearing impairments, including for those who are categorized as hard-of-hearing, with only partial hearing loss.
- **Cognitive/Intellectual impairments:** Developmental disabilities, learning disabilities such as dyslexia, and cognitive disabilities of multiple types affecting memory, attention, developmental "maturity", problem-solving and logic skills, and so on.
- **Seizures:** Photo-epileptic seizures triggered by visual strobe or flashing effects.

8% of caucasian males in the US suffer from some form of color blindness, compared to 0.5% of females. Source: NIH.gov

7% of working age adults have a severe dexterity difficulty. Source: Microsoft/Forrester study

15%-20% of people in the U.S. have reading difficulties, including dyslexia.

(Source: NIH.gov)

3. WCAG & OTHER W3C ACCESSIBILITY STANDARDS

WCAG 1.0 and 2.0

Guidelines for web accessibility were first set out in 1999, when the Web Accessibility Initiative (WAI), a project launched by the World Wide Web Consortium (W3C), first published its **Web Content Accessibility Guidelines**, or WCAG 1.0.

Nine years later, the WAI issued an update, WCAG 2.0, as a recommendation intended to be more technology-neutral and current with changing standards, especially in light of the advent of mobile platforms; 1.0 had been strongly based on HTML and CSS.

Designers are at liberty to follow either 1.0 or 2.0, but 2.0 is being embraced as the de facto standard for creating accessible guidelines.
On its own, WCAG 2.0 (like other W3C recommendations) doesn't have the force of law, but it's employed as the standard many governments follow in setting forth their respective regulatory frameworks for site accessibility.

Other W3C standards

In 2015, the W3C issued a set of Authoring Tool Accessibility Guidelines (ATAG) for creating web tools to enable people with disabilities to create, publish and manage content. Its User Agent Accessibility Guidelines (UAAG) are intended for developers of platforms such as web browsers and media players, and are aimed at making these accessible to users with disabilities. Other W3C guidelines have been published for XML accessibility (XAG) and rich internet applications (WAI-ARIA).

As with WCAG, these standards have been used as the basis for actual regulation in various countries, or are under consideration.

Over 5% of the world's population – 360 million people – has disabling hearing loss.

(Source: World Health Organization)

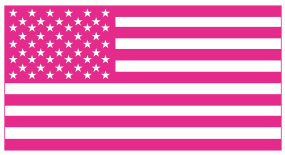
4. SELECT REGULATORY OVERVIEWS

Here's a revelatory statistic: **23% of web accessibility-related litigation** in the U.S. since 2000 has happened in the past 3 years alone.[1] But that doesn't mean the rise is exclusive to America.

Regulations such as the European Commission's 2016 rules on accessibility, the Equality Act 2010 in the U.K. and Canada's Accessibility for Ontarians with Disabilities Act are evidence of the increase in legislation and regulation, likely to become more prevalent – and stringent – in years to come.

Outside of the U.S., nearly 2 dozen countries already have laws or regulations preventing "disparate access" to websites or other electronic information channels. They're often part of a specific law aimed at reducing discrimination against individuals with disabilities, and not limited to web accessibility. In some cases, these laws only apply to a government's websites.

Here's a quick overview of how regulation and legislation operate in select countries:



United States

In the U.S., web accessibility regulation falls under multiple statutes.

- **The Rehabilitation Act of 1973, Section 508:** Section 508 provided the first-ever US federal accessibility standard for the Internet, and bars the Federal government from procuring electronic and information technology (E&IT) goods and services that aren't fully accessible to those with disabilities, including web design, and mandates that Federal employees should have equal access to information and content.
- Section 508 also applies to states that accept federal funding, and several (e.g. Arizona, Nebraska and Wisconsin) have codified Section 508 into state law. It also requires businesses supplying E&IT goods and services to comply, too.
- In January 2017, the United States Access Board announced updates to Section 508 requirements to put it in line with WCAG 2.0.
- **The Americans with Disabilities Act (ADA)** is civil rights legislation governed by the Department of Justice. To date, the DOJ hasn't directly regulated web accessibility, except as part of court cases relating to Title II, which states that communications with persons with disabilities must be "as effective as communications with others", and Title III, which deals with public accommodation of people with disabilities. The DOJ has stated it will issue proposed rules on websites for public entities under Title II, but those rules have been delayed until 2018. However, that hasn't stopped the DOJ from taking action against websites and mobile applications they believe aren't in compliance with WCAG 2.0.
- **The Individuals with Disabilities Education Act (IDEA)** provides for a "free appropriate public education" for all children with disabilities from preschool through high school. IDEA provides regulations, funding, and assistance to state and local education agencies, and a failure to allow web accessibility for disabled students may have consequences for those organizations.
- **The Telecommunications Act of 1996, Section 255:** Enforced by the Federal Communications Commission (FCC), it directs that manufacturers of "telecommunications equipment and customer premises equipment" must ensure the equipment is designed, developed, and fabricated to be accessible for

and usable by people with disabilities. As a regulation that specifies product design standards, it could be interpreted to extend to websites.

United Kingdom

- **The Disability Discrimination Act (DDA)** was launched to end discrimination against disabled people and give them rights in employment, access to goods and services, and buying or renting land or property, and to make web accessibility a legal requirement in the UK and Europe.
- **The British Standards Institute** has issued guidelines for organizations on how to go about commissioning an accessible website from a design agency.
- **The Special Educational Needs and Disability Act (SENDA)** was introduced as an amendment to the DDA and aims for "comprehensive enforceable civil rights" for people with disabilities in pre- and post-16 education in England, Scotland and Wales, by enforcing web accessibility for students.

European Union

- Most EU/ G20 countries have in-country legislation or policies relating to web accessibility. Right now, nearly all mandate either full or partial conformance with WCAG, though not many have transitioned to using WCAG 2.0 as the standard. Many are expected to make that update in the near future, though.

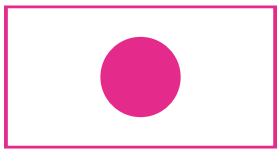
Canada

- The **Canadian Human Rights Act** proscribes discrimination, and the government of Ontario took it a step further with the **Ontarians with Disabilities Act**, mandating that the provincial government only purchase goods or services, including websites, that take web accessibility for persons with disabilities into account.
- Recently, Ontario expanded those rules to the private sector for businesses with over 50 employees. Fines for non-compliance can range up to **$100,000 per day** for corporations and **$50,000 per day** for directors and officers.
- In 2011, the national government began phasing in new web standards aimed at ensuring government websites are accessible, usable, interoperable and optimized for mobile. The first of these four standards follows WCAG 2.0, and contains a list of exclusions that is updated annually and an explicit Assessment Methodology to help government departments comply.

Australia

- **The Disability Discrimination Act (DDA) of 1992** isn't explicit about web accessibility, but has been interpreted to apply to such instances.

So, businesses operating websites in Australia are advised to provide equal access for people with disabilities.



Japan

- Japan has no binding government legislation for web accessibility, but an industry standard, **Web Content JIS**, is widely observed by private companies, while national and local government agencies are actually mandated to follow it for their websites.

- Interestingly, Web Content JIS was developed largely because WCAG 2.0 wasn't suited to work with the ideographic Japanese language. It does though, contain the same four principles, 12 guidelines, and 61 success criteria as WCAG.

5. CONSEQUENCES OF NON-COMPLIANCE

By not complying with web accessibility regulations, businesses open themselves up to a daunting range of costs and consequences:

- **Fines** from governments and enforcement agencies, both for corporations and for operating officers and directors
- **Lost business** if an injunction against a website means it must suspend operation
- **Legal costs** of defending (or even quickly settling) a plaintiff or government lawsuit
- **Monetary settlements** with plaintiffs, if imposed
- **Costs of remediation** as a business revamps its website to come into compliance with regulations or court settlements
- **Lost goodwill and damage to reputation** as lawsuits or regulatory prosecutions become public news or fodder for social media

Cases in point: A non-compliance sampler

Here are only a few of the hundreds or thousands, of court cases over the last decade involving allegations against businesses accused of website accessibility failures. The very lack of ADA definitions about accessibility has encouraged plaintiffs and lawyers to launch lawsuits:

- **Target** famously settled a web accessibility lawsuit in 2008 by paying out $6 million; the suit had been brought by the National Federation of the Blind (NFB), which claimed Target's site was not accessible to blind and visually impaired users. Target also agreed to compensate the NFB for its attorney's fees and costs, which exceeded $3.5 million.
- **Amazon** settled with the NFB in 2007 in what was termed a "groundbreaking achievement for the disabled community," in the first instance of a major online retailer being compelled to address accessibility barriers through technical and design improvements and an ongoing series of compliance reviews.
- **Netflix** settled a lawsuit brought by the National Association of the Deaf for $795,000; the NAD claimed that the Internet was a place of public accommodation and closed captioning was necessary to insure deaf individuals had equal access to Netflix's services.

- **The NBA** was sued by a plaintiff claiming its website didn't accommodate users who were blind or had vision impairment, illustrating another cost of such lawsuits: bad buzz and damage to the league's brand, as social media users piled on with comments like "NBA has major accessibility issues with both website and app, surprising no one!"
- **The U.S. Department of Health and Human Services,** its sub-agency, the Centers for Medicare and Medicaid Services (CMS), and CMS sub-contractors were sued by the National Federation of the Blind (NFB) and individual plaintiffs for communicating with blind persons using print and electronic formats they couldn't read.

- **Tenet Healthcare**, operator of **multiple hospitals** in Florida, was named in a class action **complaint** on behalf of all blind individuals, alleging the hospitals' websites were not accessible to blind individuals using screen-reader technology.

- **Red Roof Inns** was sued by a Pennsylvania woman who accused the motel chain of having a website that wasn't accessible to blind and visually impaired consumers.

- **Five Guys**, the hamburger chain, was hit with a class action suit that claimed it, too, had a website that didn't allow blind users to complete online transactions.

- **Hugo Boss** was sued, too, for having a website that failed to accommodate the blind and visually impaired.

- In a similar suit, **Colorado Bag'n Baggage** had the unfortunate distinction of being on the losing end when a California judge was the first to ever issue a summary judgment in such a case, ruling in favor of a blind plaintiff who accused the e-tailer of having an inaccessible website.

The last example, from 2016, is significant, as judges in U.S. and state courts are not waiting for proposed ADA guidelines to reach rulings. In one recent case, a Federal magistrate rejected arguments by Harvard University and the Massachusetts Institute of Technology that the court should dismiss or stay their cases while the DOJ develops these regulations.

6. A FORTUNE 500 ACCESSIBILITY AUDIT

Do the biggest firms, with the most extensive and professionally-managed online presences, outperform other companies when it comes to web accessibility?

In January 2017, Crownpeak summarized the results of a benchmark audit of the websites of 28 of the top 30 companies in the Fortune 500.

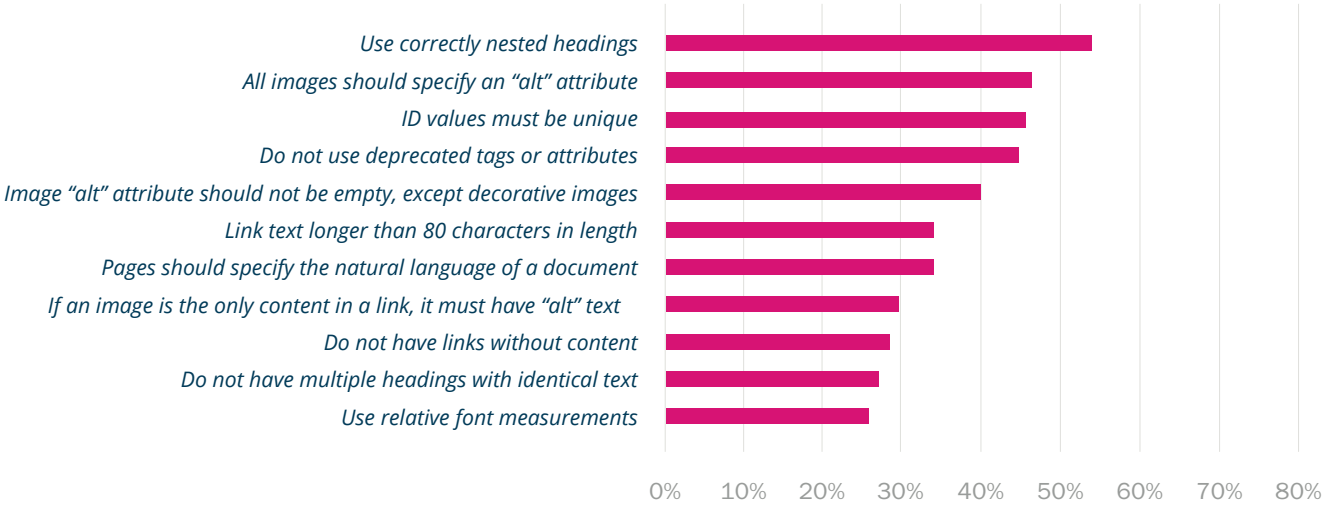
The audit examined 45 WCAG 2.0 and AA (the mid-level of conformance) accessibility checkpoints and as many as 500 pages per website.

The Findings

Industry Sector	Accessibility Benchmark *(out of 10)*	Accessibility Issues	Total Pages Analyzed	Accessibility Issues Per Page
Financial Services (6 sites)	5.8	12,800	2,592	4.9
Business Services (1 site)	5.4	1,021	139	7.3
Healthcare & Pharma (5 sites)	5.2	12,493	2,268	5.5
Technology (3 sites)	4.8	8,179	1,495	5.5
Energy & Utilities (3 sites)	4.4	6,370	1,016	6.3
Manufacturing (2 sites)	4.1	11,611	1,527	7.6
Telecommunications (2 sites)	3.6	6,626	888	7.5
Retail & Wholesale (6 sites)	3.3	17,472	2,303	7.6

- **The retail sector performed badly**, both in benchmarking score and the proportion of issues per page, despite their sites being so consumer-facing. This is a longtime pattern in the sector, however, and the recent onslaught of accessibility lawsuits have largely targeted retail companies.
- **The financial services sector performed best,** reflecting their strong focus on accessibility for older and disabled customers, and their sensitivity to injuring their reputation if accessibility problems did occur.

The most common accessibility issues, based on the percentage of pages affected?



7. ACCESSIBILITY AS BUSINESS OPPORTUNITY

Beyond regulatory requirements, dangers of litigation and basic altruism, there's another compelling reason for companies to embrace web accessibility:

Businesses that fail to do so are cutting themselves off from a sizable consumer audience.

How large an audience? The last U.S. Census found that **56.7 million Americans (18.7% of the population) have a disability** of some type:

- 19.9 million (8.2%) have difficulty lifting or grasping, which can affect their use of a mouse or keyboard.
- 15.2 million (6.3%) have a cognitive, mental, or emotional impairment.
- 8.1 million (3.3%) have a vision impairment and may rely on a screen magnifier or a screen reader, or may have a form of color blindness.
- 7.6 million (3.1%) have a hearing impairment, and may rely on transcripts and/or captions for audio and video media.

Moreover, **80 million people in the European Union** have some form of disability.[2] And to adopt a longer view, let's look at the year 2050: according to the United Nations, **the number of people 65 or older will triple to 1.5 billion**, making up 15% of the world's population.

Yet a 2015 survey by one web accessibility provider found that respondents, the great majority having vision disabilities, felt there had been less-than-breakthrough progress in web accessibility over the previous year:[3]

Web content has become more accessible	38.7%
Web content accessibility hasn't changed	37.7%
Web content has become less accessible	23.6%

Accessibility is good business

Failing to address web accessibility presents more than just a regulatory problem for any marketer. It represents lost opportunity and revenue for the company.

Just one example? By delivering accessibility to people over the age of 50 who are coping with diminishing eyesight, a marketer is increasing the possibility of making a sale or building loyalty among a group with tremendous spending power – **a segment that's of the utmost importance** to insurance, financial services and healthcare providers.

8. NEW TOOLS FOR AUTOMATING COMPLIANCE

As proven by the audit of Fortune 500 websites, even the largest and smartest enterprises – with the best resources – can make potentially costly mistakes when it comes to web accessibility compliance.

For global companies that need to operate in multiple markets across multiple borders, the risks and costs involved in accessibility compliance rise with every new digital experience that is launched.

The sheer expense of manually ensuring accessibility best practices are being followed across every branded digital representation can be backbreaking and expensive, especially considering the inefficiency and margin for error involved in manual compliance verification.

It's a major reason why global enterprises are turning to **Digital Quality Management (DQM)** platforms designed to automate the auditing of compliance issues across multiple websites and other digital touchpoints, even if they're distributed across many different (and regulatory-varied) locales.

These platforms allow centralized monitoring and flagging of web accessibility issues, assuring compliance while reducing or altogether eliminating the costs of manually managing compliance.

9. WEB ACCESSIBILITY CHECKLIST

What are the measures that aid accessibility, without compromising usability for non-disabled visitors?

Build an accessibility model:

Create a prototypical “user experience” model that includes all the components involved in accessibility to better recognize issues before they occur. This model should include:

- ☐ The website itself and content (text, images and sound) and markup code defining its structure and presentation.
- ☐ Any user agents, such as media players, search engines and web browsers.
- ☐ Any assistive technologies, such as screen readers and input devices used in place of the conventional keyboard and mouse.
- ☐ Your users' proficiency and experience at using the web.
- ☐ Your developers’ expertise in accessibility.
- ☐ The authoring tools used to create and publish content.
- ☐ The quality control processes or tools used to audit accessibility.
- ☐ A defined web accessibility standard or organization policy for your organization to benchmark against.

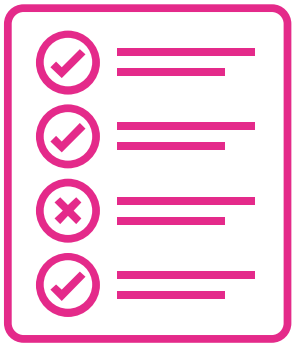
Apply design & development best practices:

There are many important aspects of usability to consider, depending on the level of compliance you’re seeking, which may be informed by your target audience and liability exposure. These are just a few to get you started.

- ☐ Review WCAG 2.0 standards.
- ☐ Site is coded with alt text for images, and links that can be interpreted by text-to-speech or text-to-Braille software for blind users.
- ☐ Larger/enlargeable text and images are provided for those with poor eyesight.
- ☐ Links are underlined as well as colored for color blind users.
- ☐ Clickable areas and links are large enough to accommodate users who can’t precisely control a mouse or are using a fingertip with mobile devices.
- ☐ Page navigability is possible via keyboard or single-switch access devices for those who can’t use a mouse or keyboard at all.
- ☐ Pinch and zoom is enabled to allow users to enlarge content on mobile devices and touchscreens.
- ☐ Videos with closed captioning, transcripts or even sign language versions for the deaf and hearing-impaired.
- ☐ Content is written in plain language, with instructional illustrations and animations, for those with reading and learning disabilities.
- ☐ Flashing or strobing effects that might affect those prone to seizures are eliminated.

Recommended measures:

- [ ] Investigate automated compliance solution options such as Digital Quality Management (DQM) platforms.
- [ ] Require any vendors providing website, app, advertising or other services to provide accessible work product and services, conforming to the ADA and WCAG 2.0.
- [ ] Obtain insurance coverage for digital-based ADA and Rehabilitation Act claims.
- [ ] Do not ignore or discard a demand letter, but seek qualified legal counsel before responding



10. SUMMARY

Web accessibility challenges will only increase for digital marketers and enterprise companies, driven in some places by a lack of clear legal definitions that give consumers and lawyers a window to launch litigation, in others by the official arrival of that very regulation, which may vary considerably in details, stringency and penalties between markets.

The bottom line is that companies need to acknowledge and accept that web accessibility is being increasingly viewed as a universal right in many countries. By ignoring that fact, companies are not only opening themselves up to costly consequences, but may be shortsightedly losing out on audiences that would gratefully embrace corporate efforts to deliver that accessibility.

Even with widely-accepted standards such as WCAG 2.0, there's still the potential for growing complexity as businesses strive to meet transnational accessibility requirements. Automated platforms that allow site compliance to be audited and corrected are one solution to this challenge.

Sources

[1]"List of Web Accessibility-Related Litigation and Settlements." Karl Groves. January 03, 2017.

[2]"Online Public Services to Be Made More Accessible for the Disabled and Elderly." News | European Parliament.

[3]"Scree1n Reader User Survey #6 Results." WebAIM - Web Accessibility In Mind.

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About Crownpeak Digital Quality Management

Crownpeak Digital Quality Management picks up where traditional web content management leaves off. It's specifically designed for multi-site, enterprise environments and works to automate key governance processes -- delivering the unified and consistent application of content quality and legal or regulatory compliance standards across your global digital touchpoints.

The platform comes with unrivaled compliance monitoring capabilities, and covers everything from SEO, user experience (UX), mobile web, and accessibility requirements. It is also uniquely customizable enabling precision monitoring of your company's unique brand and business rules, and content localization requirements.

Designed to work with any CMS and included with Crownpeak Digital Experience Management, it makes quality assurance seamless. The solution integrates directly with existing publication workflows, enabling digital marketers and content professionals to test and optimize their work in both pre- and post-publication environments.