



**PEAK** PERFORMANCE  
DIGITAL

# GSSCC Website Accessibility Webinar

**Is your business a target for an accessibility lawsuit?**

Downloads, resources, and links at:

<https://peakperformancedigital.com/gsscc-website-accessibility-webinar/>

# Today's Goals

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Educate



Reduce Risk



Protect

# What We Do

	<p>Build Your Online Presence</p>	<p>Plan Websites Build Websites Manage Websites</p>
	<p>Protect Your Business</p>	<p>Security Privacy Accessibility</p>
	<p>Be Found Online</p>	<p>Search Engine Optimization Search &amp; Social Advertising</p>

Strategy  
Execution  
Support

# Website Compliance Topics

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## Privacy – Personal Data Protection

### GDPR - General Data Protection Regulation

- Protects EU citizens, residents, and visitors no matter where they are or where your business is located.

### CCPA - California Consumer Privacy Act

- Only applies when certain criteria are met:
  - 50,000+ California consumer data records
  - Generate 50% of revenue from selling consumer data
  - Earn \$25MM/year in revenue

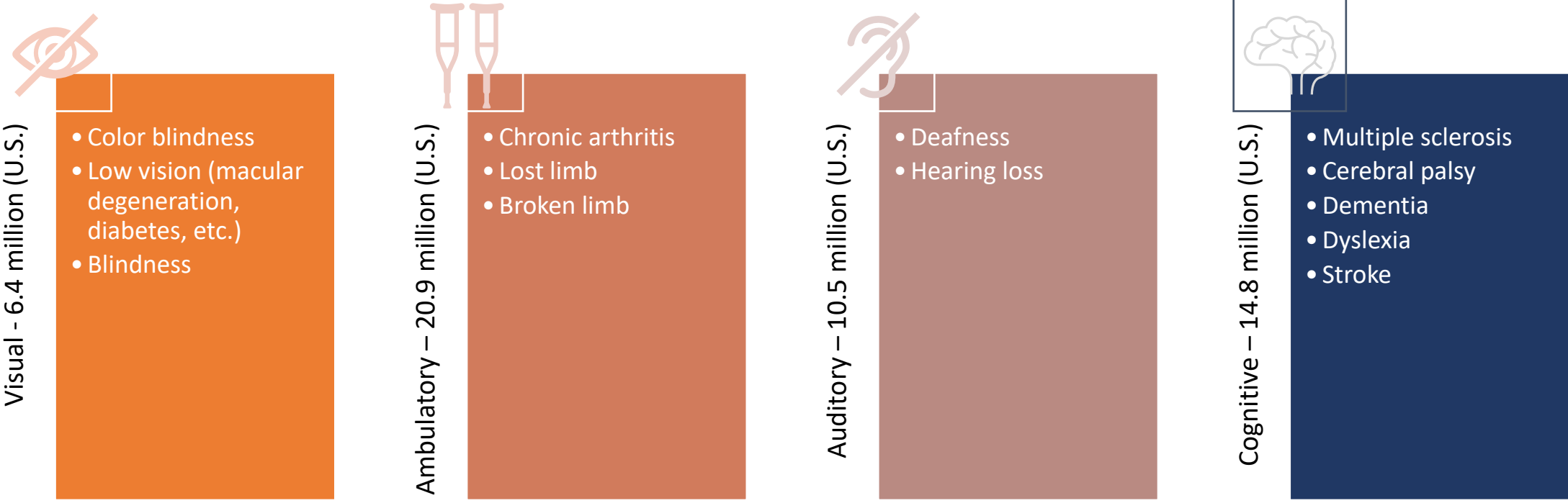
**Both go beyond websites and govern data control & retention**

## Accessibility – Accommodate Disabilities

- ADA – Americans With Disabilities Act
- UCRA – Unruh Civil Rights Act
- Corporate Social Responsibility

**And Google likes it too!**

# Disability Statistics



Worldwide: 1 billion people (15% of the population) - <https://www.worldbank.org/en/topic/disability>

# The Americans with Disabilities Act of 1990 (ADA)

# ADA

Americans with  
Disabilities Act



# Accessibility is for Everybody

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- More sales or donations
- Positive impression/reputation
- Differentiation
- Better user experience for ALL visitors
  - Improved website speed
  - Relevant content in search results
  - Improved readability
  - Improved navigation
  - Transcripts for audio and video
  - No surprises
- Accessibility will soon become a Search Engine Optimization (SEO) ranking factor

# What Makes the ADA Different?

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- Right to private action
- Statutory awards
- Objectivity





# Drive-By ADA Lawsuits

## Legal Article – “Drive-By” ADA Lawsuits: The Cities Strike Back

By  Hoge Fenton | 04.22.2022 | Business Litigation

LEGAL ALERT

## South Florida businesses suffer from ADA 'drive-by' lawsuits

Florida ranks second in country for ADA lawsuits



“ Faced with an ever-increasing number of lawsuits filed via the Americans with Disabilities Act, commercial property owners, landlords, tenants, franchisees and franchisors are looking to their lawyers to help them navigate the ADA terrain. A cursory review of these ADA lawsuits often reveals that the same plaintiff, known as a “tester”, has filed multiple lawsuits with the same attorney against persons who own, operate or lease a place for public accommodation. These lawsuits have been dubbed “drive-by” because the tester typically only drives-by the property to collect evidence before filing suit. ”

 HIRSCH & WESTHEIMER

ERIC METTENBRINK  
COMMERCIAL LITIGATION



# Websites: The New Shakedown

South Florida businesses, get ready for a wave of website-accessibility lawsuits

BY CAROL C. LUMPHUR AND STEPHANIE K. MOFF

## The Latest ADA Shakedown: Website Compliance



By Kyle Dudek on July 23, 2019

POSTED IN DISABILITY DISCRIMINATION (ADA)

Using a free plugin like UserWay? You are at risk of litigation

Blog / Web Accessibility Knowledgebase / Using a free plugin like UserWay



## Businesses Struggle to Comply With Unclear ADA Website Requirements

OC Register - December 7, 2019



Sheri Byrne-Haber, CPACC

Follow

Mar 17, 2019 · 5 min read · Member-only · Listen



## Businesses — Why using Wix and GoDaddy Increases your Lawsuit Risk

## Lawsuits Surge Over Websites' Access for the Blind

Complaints are new frontier in federal disability litigation, typically detailing roadblocks for 'screen reader' tools that read content aloud



Home » Federal Website Accessibility Lawsuits Increased In 2021 Despite Mid-Year Pandemic Lull

## Federal Website Accessibility Lawsuits Increased in 2021 Despite Mid-Year Pandemic Lull

By Seyfarth Shaw LLP on March 21, 2022

POSTED IN ADA TITLE III, WEBSITE

# The Domino's Effect

- Domino's Lawsuit in 2016
- Thousands of other companies targeted
- Not just big businesses
- Small and medium businesses are easy targets
  - Inexpensive, but inaccessible website platforms such as Wix, SquareSpace, Weebly, and Webflow
  - Few resources to help with website accessibility
  - Lawsuits are expensive and time-consuming

## POLITICS

### Supreme Court hands victory to blind man who sued Domino's over site accessibility

PUBLISHED MON, OCT 7 2019-9:40 AM EDT    UPDATED TUE, OCT 8 2019-6:31 PM EDT



**Tucker Higgins**  
@IN/TUCKER-HIGGINS-58162295/  
@TUCKERHIGGINS

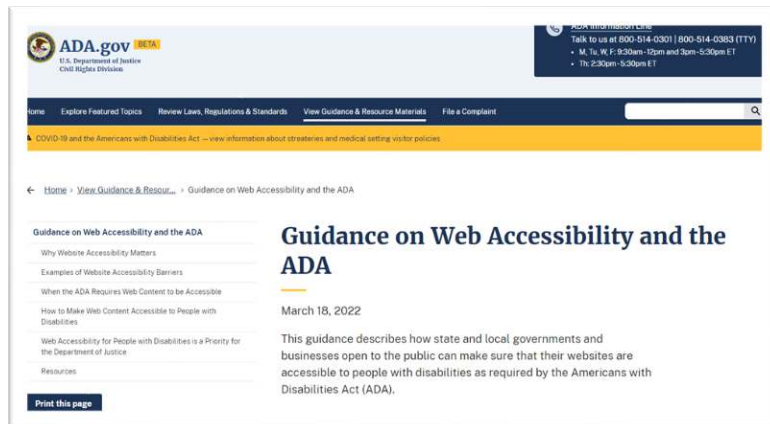
WATCH LIVE

## KEY POINTS

- The Supreme Court denied a petition from pizza giant Domino's on Monday to hear whether its website is required to be accessible to the disabled, leaving in place a lower court decision against the company.
- The case was originally brought by a blind man named Guillermo Robles, who sued the pizza chain after he was unable to order food on Domino's website and mobile app despite using screen-reading software.
- The decision not to grant the case is a loss for the company and a win for disability advocates, who have argued that if businesses do not have to maintain accessible sites, disabled people could be effectively shut out of substantial portions of the economy.

# The Department of Justice

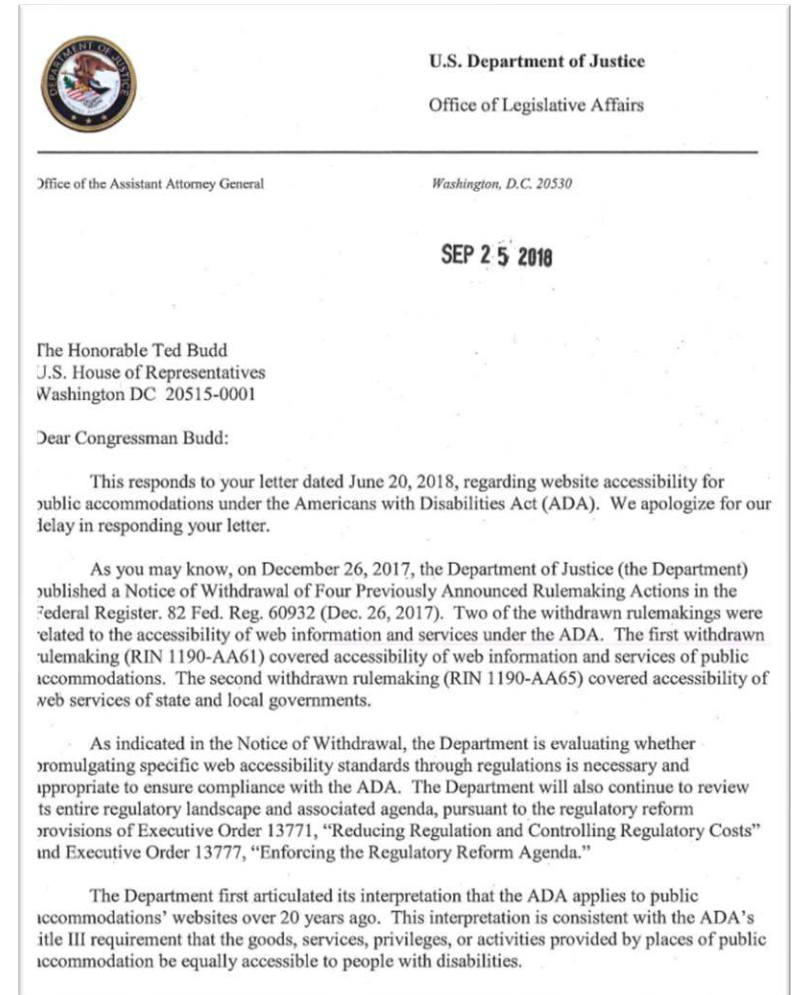
- 2018 – The DoJ reaffirms position that the ADA applies to websites
- 2019 – The Supreme Court declines to hear the Domino’s argument
- March 18, 2022 - DoJ released new guidance for ADA Compliance for Websites - <https://beta.ada.gov/resources/web-guidance/>



**For these reasons, the Department has consistently taken the position that the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web.**

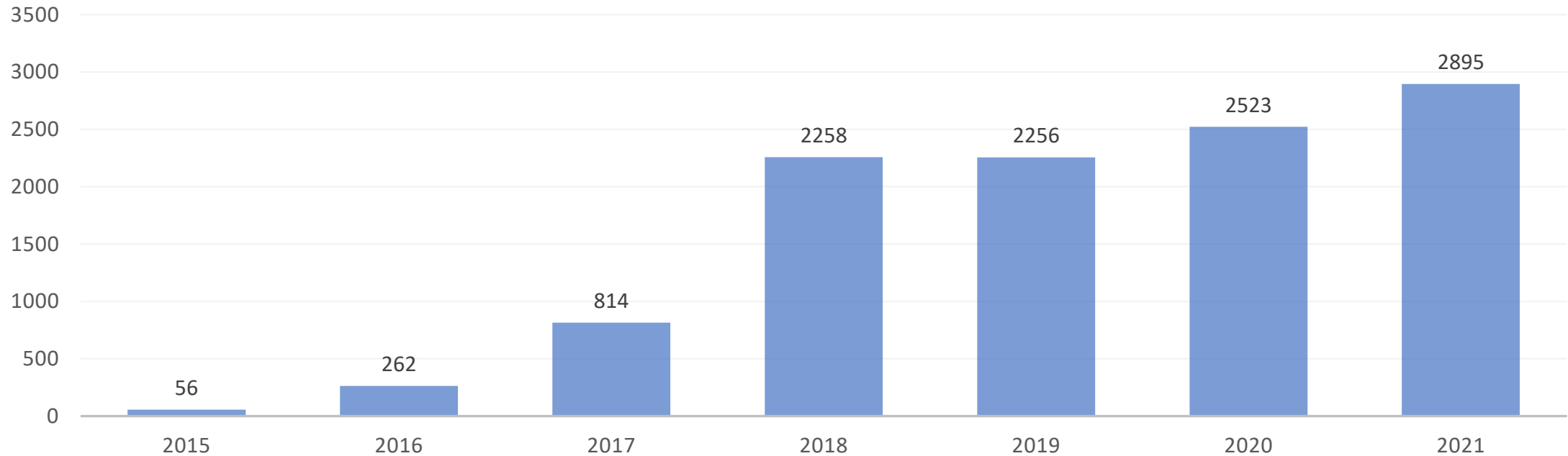


<https://peakperformancedigital.com/gsscc-website-accessibility-webinar/>



# ADA Title III Website Accessibility Lawsuits are Increasing

ADA Website Lawsuits In Federal Court\*



\* More lawsuits were filed in states, especially California.

# California Unruh Civil Rights Act (UCRA)

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- California is especially attractive for lawsuits
- UCRA Provides for more than the ADA
  - Cease and desist order to shut down the website
  - Out of pocket expenses
  - General and special damages
  - Emotional distress damages
  - Three times the actual damages for each event with a statutory minimum of \$4000

## Which States Have The Highest Rates of Digital ADA Lawsuits?

The top states where such lawsuits have been filed include New York, California, and Florida. New York more than doubled second place California. New York's Southern District has been most active.

# How Can You Protect Your Business?

Make your website accessible so **everyone** can use it!

- **Visual**
  - Color contrast
  - Screen readers / braille readers
  - Keyboard navigation
  - Page & Site structure
- **Ambulatory**
  - Voice commands and navigation
- **Auditory**
  - Captions & transcriptions
- **Neurological / Cognitive**
  - Limited page motion or auto-updating information
  - Provide enough time to read & use content



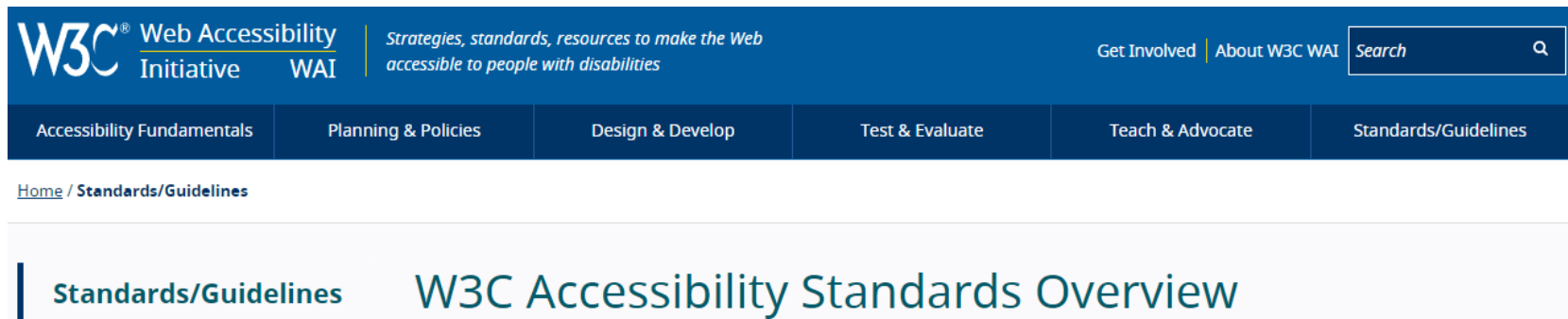
**All Businesses, non-profits, and entities  
must be accessible.**

Revenue, size, location, products/services, are all irrelevant.

# Web Content Accessibility Guidelines (WCAG)

- W3C began developing the Web Content Accessibility Guidelines (WCAG) in 1999
- WCAG 2.0 was published on 11 December 2008.
- WCAG 2.1 was published on 5 June 2018.
- WCAG 2.2 Draft is scheduled to be finalized by December 2022.

The WCAG are **guidelines, not standards**. Even the Department of Justice states that in their materials, although they do say that following the WCAG guidelines **demonstrates a reasonable attempt at accessibility**.

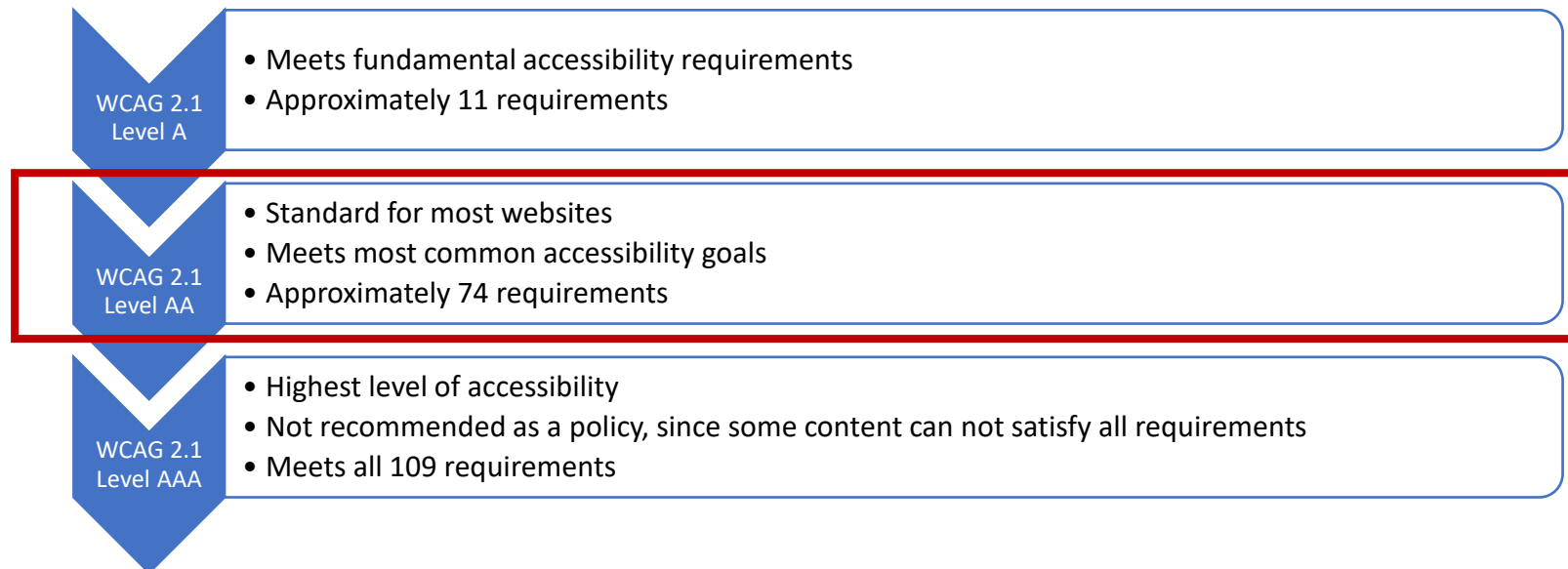


The screenshot shows the top navigation bar of the W3C Web Accessibility Initiative (WAI) website. The bar is dark blue with white text. On the left, the W3C logo is followed by 'Web Accessibility Initiative' and 'WAI'. To the right of the logo is the tagline: 'Strategies, standards, resources to make the Web accessible to people with disabilities'. Further right are links for 'Get Involved' and 'About W3C WAI', and a search box with a magnifying glass icon. Below the navigation bar is a horizontal menu with six items: 'Accessibility Fundamentals', 'Planning & Policies', 'Design & Develop', 'Test & Evaluate', 'Teach & Advocate', and 'Standards/Guidelines'. Below the menu is a breadcrumb trail: 'Home / Standards/Guidelines'. The main header area is light blue and contains the text 'Standards/Guidelines' and 'W3C Accessibility Standards Overview'.



# WCAG Levels of Accessibility

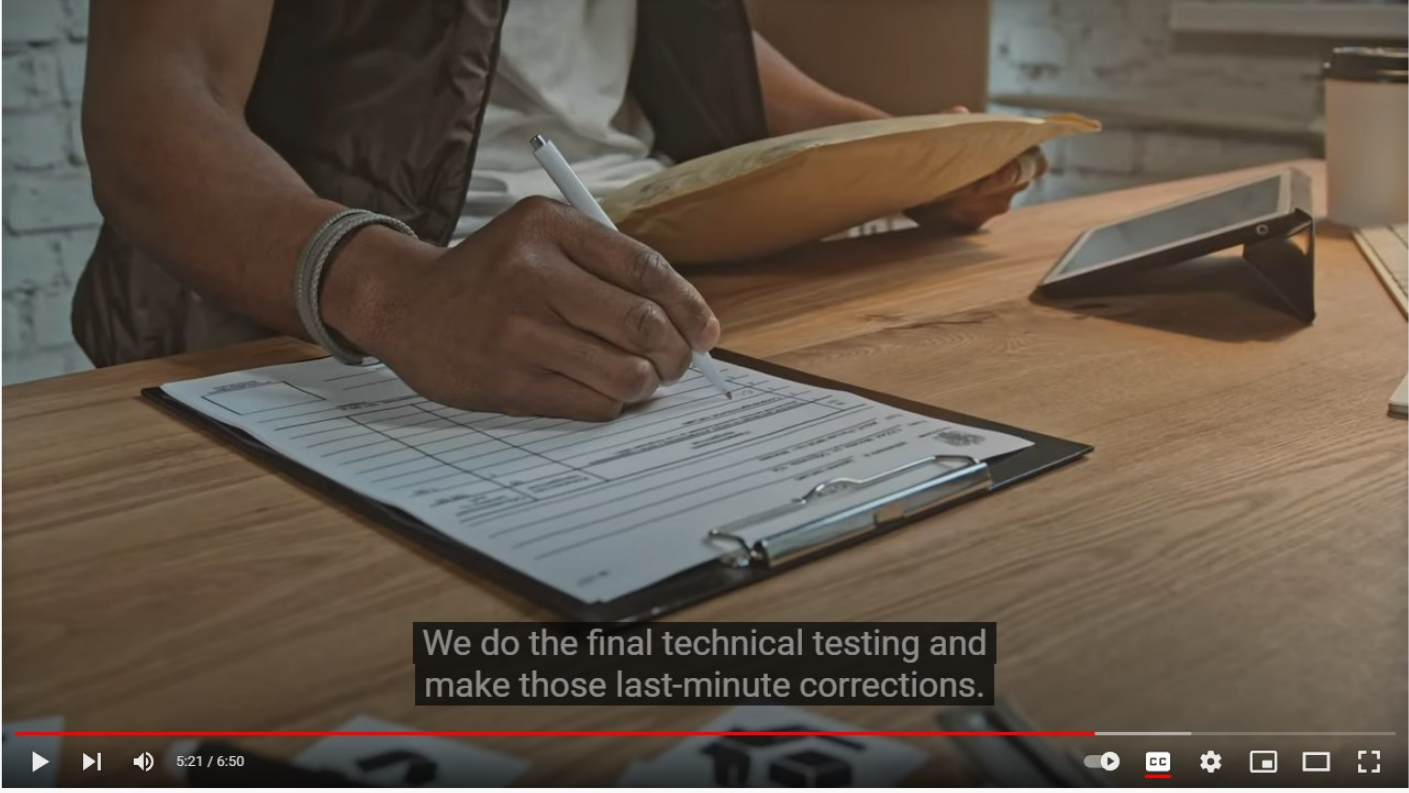
- “P.O.U.R.”: Perceivable, Operable, Understandable, Robust.
- Approximately 109 requirements in WCAG 2.1
  - Some are objective (e.g., “Provide Minimum visual contrast levels)
  - Some are subjective (e.g., “Make Web pages appear and operate in predictable ways”)



# Most Cited Accessibility Issues

- Image Alt text
- Navigation
- Color contrast
- Stoppable animations
- Video captions/transcriptions

Applies to all devices, browsers, and operating systems

A video player showing a person's hands writing on a clipboard. A subtitle overlay reads: "We do the final technical testing and make those last-minute corrections." The video player interface includes a progress bar, play/pause button, volume icon, and other controls. The video title is "How We Do What We Do: Peak Performance Website Process Overview" and it has 163 views as of April 5, 2022. The channel is "Peak Performance Digital" with 248 subscribers. The video is marked as "SUBSCRIBED".

How We Do What We Do: Peak Performance Website Process Overview

163 views · Apr 5, 2022

8 DISLIKE SHARE DOWNLOAD CLIP SAVE ...

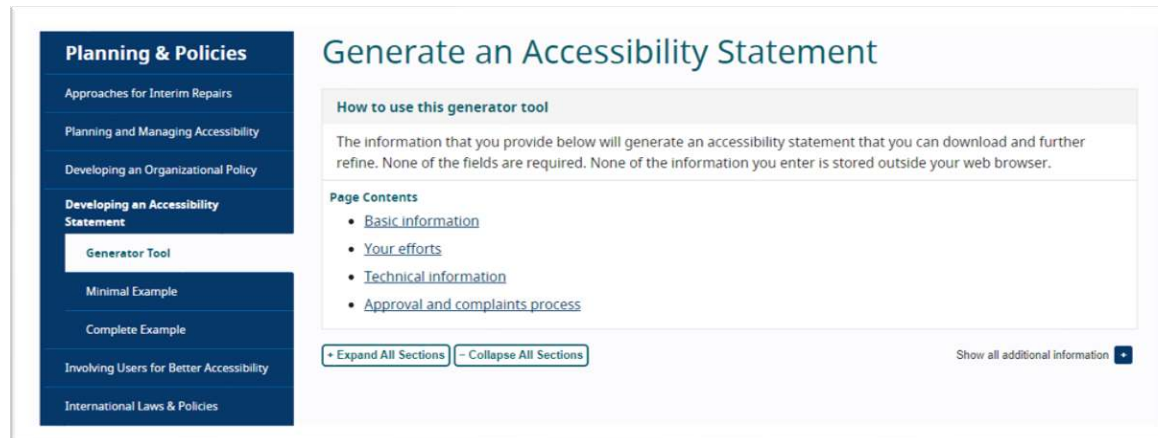
Peak Performance Digital  
248 subscribers

SUBSCRIBED

<https://peakperformancedigital.com/gsscc-website-accessibility-webinar/>

# Accessibility Statements

- Accessibility statements are important for several reasons:
  - Show your users that you care about accessibility and about them
  - Provide them with information about the accessibility of your content
  - Demonstrate commitment to accessibility, and to social responsibility
- Generate one for free from the W3C website. - <https://www.w3.org/WAI/planning/statements/>
  - You may want the help of your web agency to complete the form
  - Run the statement through your lawyers before publishing it



The screenshot shows the W3C 'Generate an Accessibility Statement' tool interface. On the left is a dark blue sidebar with a navigation menu. The main content area has a white background with a title 'Generate an Accessibility Statement' in teal. Below the title is a section titled 'How to use this generator tool' with a light grey background, containing explanatory text. Underneath is a 'Page Contents' section with a list of links: 'Basic information', 'Your efforts', 'Technical information', and 'Approval and complaints process'. At the bottom of the main area are two buttons: '+ Expand All Sections' and '- Collapse All Sections', and a link 'Show all additional information' with a plus icon.

**Planning & Policies**

- Approaches for Interim Repairs
- Planning and Managing Accessibility
- Developing an Organizational Policy
- Developing an Accessibility Statement**
  - Generator Tool
  - Minimal Example
  - Complete Example
- Involving Users for Better Accessibility
- International Laws & Policies

## Generate an Accessibility Statement

**How to use this generator tool**

The information that you provide below will generate an accessibility statement that you can download and further refine. None of the fields are required. None of the information you enter is stored outside your web browser.

**Page Contents**

- [Basic information](#)
- [Your efforts](#)
- [Technical information](#)
- [Approval and complaints process](#)

+ Expand All Sections   - Collapse All Sections   [Show all additional information](#) +

# Accessibility Overlays and Widgets

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audioeye



<https://overlayfalseclaims.com/>

<https://overlayfactsheet.com/>

# Accessibility Overlays and Widgets: The Truth

<https://overlayfalseclaims.com/>

<https://overlayfactsheet.com/>

In their own words

Many users with disabilities have expressed strong words of dissatisfaction with overlay products. As shown below, overlays themselves may have accessibility problems significant enough for users to take steps to actively block overlays from appearing at all.

Please note: while this section may mention specific vendors, these comments are par-for-the-course when it comes to the user experience provided by overlay widgets which have, in themselves, a pattern of negatively impacting the user experience.

...assuming your tool can do a good job making something accessible, it can do an even better job making something accessible running directly on the user's machine having access to machine code and machine APIs

[DerekRiemer](#)

...I finally managed to gain access to my @NameCheap account by blocking #AccessiBe in my Windows Hosts file. I should not need to do this to use the Internet. AccessiBe needs to AccessiBeGone

[WilfSploDNokit](#)

...I know with 100% certainty, any site which has deployed an overlay in the past year and a half has been less useable for both my wife and me—both blind.

[GeauxEnder](#)

...Still a pain to even try reading the article on a mobile device because of the constant interruption every few seconds. Considering every site using your service also has this problem... Nope.

[Big\\_D01](#)

...Making a webpage accessible does take work, and simply telling a business they can install your plugin is absolutely foolish, you build, and design accessibility in to a webpage using WCAG standards.

[w9fyi](#)

...Suggesting one line of code is cheap so you should do it by inference suggests disabled lives aren't worth investing in either. #a11y

[Kevmarmol\\_CT](#)

# Claim: You'll be Shielded From Litigation




Is Your Website ADA Compliant? | Avoid Lawsuits with accessiBe™

[www.accessibe.com/](http://www.accessibe.com/)

Comply with international legislation & standards: ADA, WCAG 2.1, Section 508 & EN 301549. The only automated web accessibility solution, trusted by industry-leading organizations. Image Recognition. Giant Tech Collaborations.

[Pricing ?](#) [Examples & Demo ?](#) [Story & Vision ?](#) [Technology](#)

Wondering how the competition stacks up against Accessus.ai? Simple. They don't.

	 Accessus.ai AI Solution	 Accessibility Services	 Accessibility Plugins
Options	✔ The only automatic solution	○ AudioEye, User1st & more	○ UserWay, WP Access & more
Compliance	✔ WCAG 2.1, ADA, s508 & more	○ Depends on project scope	○ Do not comply with legislation
Pricing	✔ Price start at \$490/year	○ \$5,000 - \$50,000/year	○ Free to low cost subscriptions
Turnaround	✔ Up to 48 hours from installation	○ Projects take 3-26 weeks	○ No full turnaround
Success Rate	✔ Industry highest success rate	○ Drops to 50% within 6 months	○ 5% - 15% of the requirements
Maintenance	✔ Re-scanning every 24 hours	○ Require additional services	○ No maintenance included

## WCAG & ADA Compliance



UserWay's solutions provide full WCAG & ADA compliance from day one, and every single day thereafter.

## Mitigate Legal Risk



Protect your website from accessibility-related lawsuits with the world's strongest automated solution for accessibility.

## Enhanced Usability & UI/UX

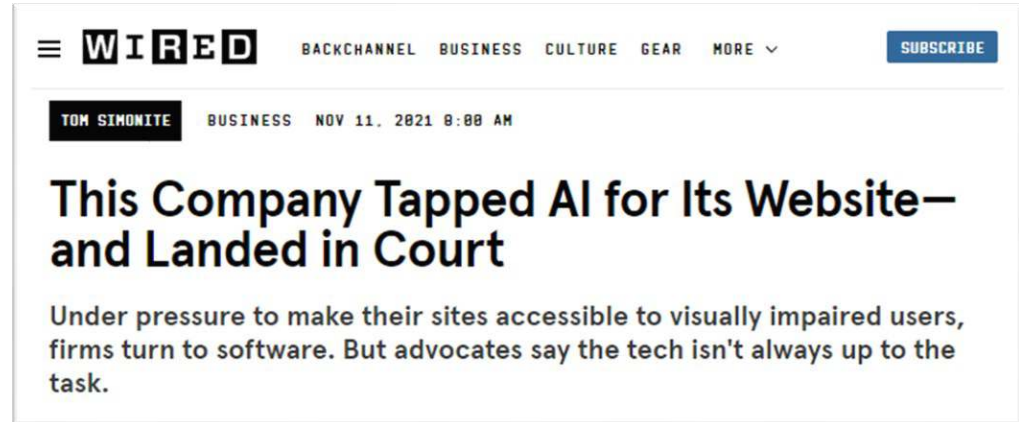


Accessibility sets your website apart and showcases your commitment to inclusion - all while boosting SEO, search rankings, conversions and your bottom line.

# The Truth: They Offer No Protection

- [accessiBe Is Cited in Accessibility Lawsuits](#)
  - [Thomas Klaus and Robert Jahoda v Upright Technologies](#)
  - [Blair Douglass v. Masterbuilt Manufacturing, LLC](#)
  - [Murphy v. Eyebobs, LLC \(lost 5-Oct-2021\)](#)
  - [Fischler et al v. Dorai Homes](#)

[#accessiBe Will Get You Sued — Adrian Roselli -  
https://adrianroselli.com/2020/06/accessibe-will-get-you-sued.html](#)



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TOM SIMNITE BUSINESS NOV 11, 2021 8:00 AM

## This Company Tapped AI for Its Website—and Landed in Court

Under pressure to make their sites accessible to visually impaired users, firms turn to software. But advocates say the tech isn't always up to the task.

After eight months of litigation, a digital accessibility case, [Murphy v. Eyebobs](#), appears to be settled. In the case, the plaintiff, Anthony Hammond Murphy, sued Eyebobs, LLC, citing its "failure to make its digital properties accessible to blind individuals, which violates the effective communication and equal access requirements of Title III of the Americans with Disabilities Act." The website used overlay provider accessiBe as its accessibility solution.

# Advocacy Groups Also Don't Like Overlays

Forbes

DIVERSITY, EQUITY & INCLUSION

## Largest U.S. Blind Advocacy Group Bans Web Accessibility Overlay Giant AccessiBe From Its National Convention

ACCESSIBILITY.WORKS

ABOUT

SERVICES

BLOG

RESOURCES



### Why Accessibility Overlay Solutions Fail to Protect or Serve

Updated May 5, 2022 (general update and additional articles at bottom)

The reason we update this post is because we are getting an increasing number of calls from companies using overlay widgets that are getting lawsuits and demand letters. Meanwhile these overlay companies continue their aggressive ad campaigns filled with absolutely false claims. The Federation of the Blind even banned the largest and most notorious, AccessiBe from its convention in 2021. In their statement, "the Board of Directors reviewed accessiBe's business practices at the urging of members who have researched and interacted with the



# White Labeling & Affiliate Programs

JOIN AN INDUSTRY LEADER

## Earn Commissions While Doing Something Good

accessiBe's affiliates earn high commission from generated sales by promoting a web accessibility solution that is legally required of any business, while simultaneously improving the lives of millions.

### White Label Your Accessibility Widget

Show your brand's commitment to providing an accessible and inclusive experience for all users.

Seamlessly incorporate UserWay's Accessibility Widget into your company's digital experience and design by white labeling, or custom-branding, the widget for one site or one thousand sites.

White labeling the UserWay widget means that you can remove the links and UserWay logo while custom branding allows you to add your own logo and present, or resell, the widget as your own.

Your brand will be seen as making a positive difference by providing critical accessibility features to your users.

Start Free Trial



Keyboard Nav



Read Page



Contrast +



Stop Animations

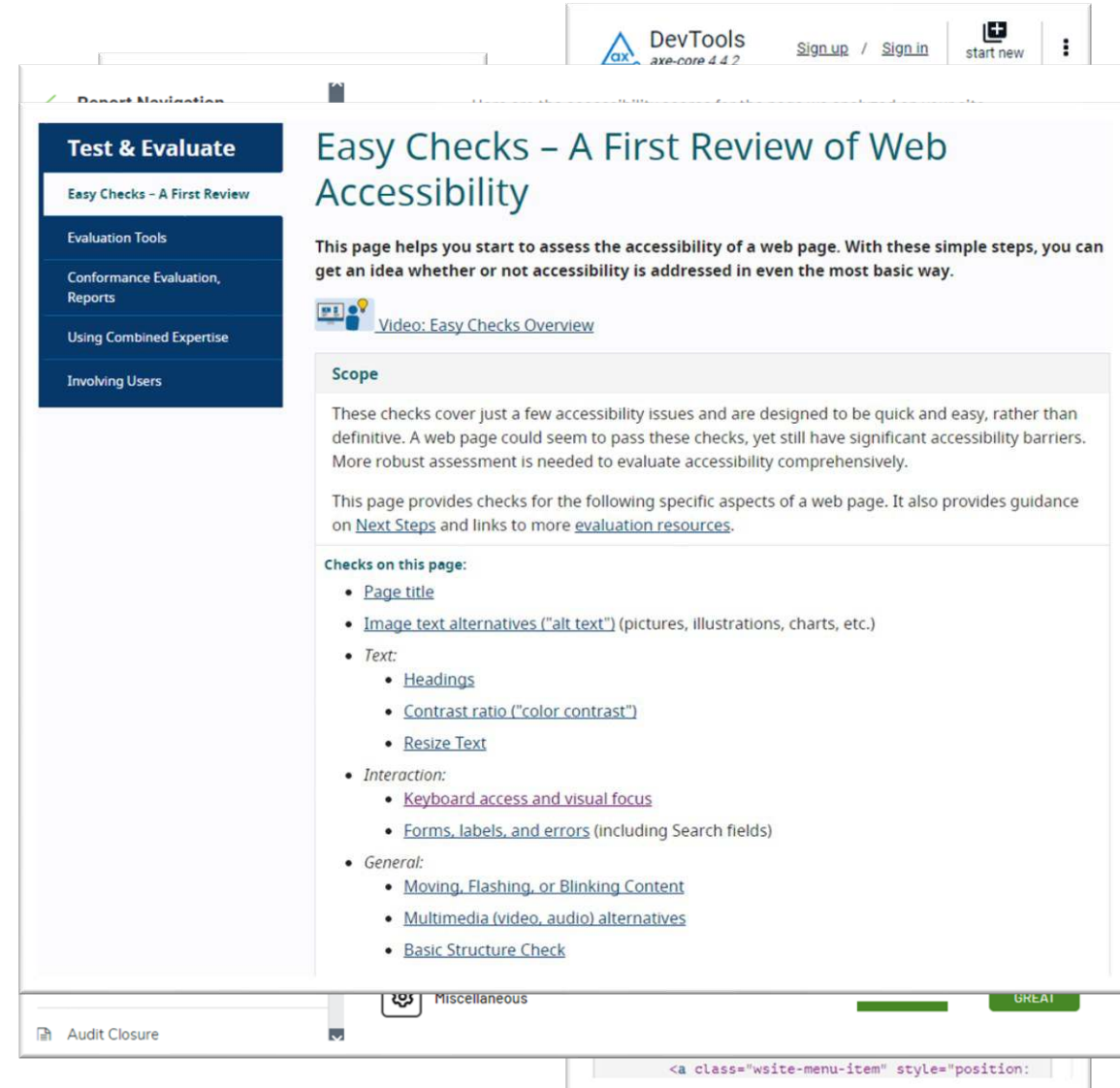
Reset all

Move/Hide Panel

YOUR BRAND 

# How Can I Tell How Accessible I Am?

- Free automated checking tools
  - WebAIM - WAVE
  - Deque – axe DevTools
- W3C "Easy Checks" evaluation checklist
  - <https://www.w3.org/WAI/test-evaluate/preliminary/>
- Contact us for a free accessibility report!
  - [info@peakperformancedigital.com](mailto:info@peakperformancedigital.com)
  - <https://peakperformancedigital.com>
- Comprehensive Audit vs. Practical Audit



DevTools  
axe-core 4.4.2  
Sign up / Sign in  
start new

## Test & Evaluate

### Easy Checks - A First Review

Evaluation Tools  
Conformance Evaluation, Reports  
Using Combined Expertise  
Involving Users

## Easy Checks - A First Review of Web Accessibility

This page helps you start to assess the accessibility of a web page. With these simple steps, you can get an idea whether or not accessibility is addressed in even the most basic way.

[Video: Easy Checks Overview](#)

### Scope

These checks cover just a few accessibility issues and are designed to be quick and easy, rather than definitive. A web page could seem to pass these checks, yet still have significant accessibility barriers. More robust assessment is needed to evaluate accessibility comprehensively.

This page provides checks for the following specific aspects of a web page. It also provides guidance on [Next Steps](#) and links to more [evaluation resources](#).

#### Checks on this page:

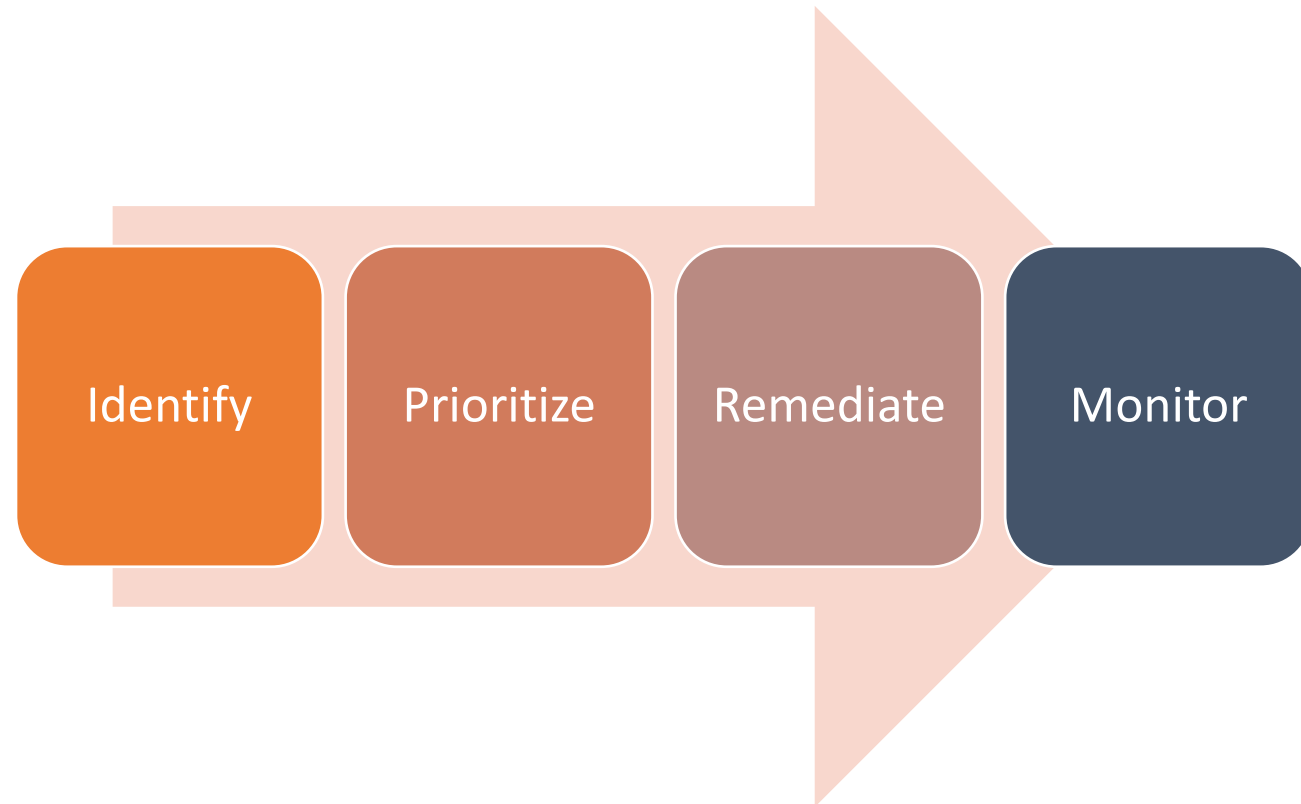
- [Page title](#)
- [Image text alternatives \("alt text"\)](#) (pictures, illustrations, charts, etc.)
- *Text:*
  - [Headings](#)
  - [Contrast ratio \("color contrast"\)](#)
  - [Resize Text](#)
- *Interaction:*
  - [Keyboard access and visual focus](#)
  - [Forms, labels, and errors](#) (including Search fields)
- *General:*
  - [Moving, Flashing, or Blinking Content](#)
  - [Multimedia \(video, audio\) alternatives](#)
  - [Basic Structure Check](#)

Audit Closure  
Miscellaneous  
GREAT

`<a class="wsite-menu-item" style="position:`

# How Do I Make My Website Accessible?

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**Many issues require re-coding the website**

# Can All Websites be Made ADA Compliant?

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- Website Builders like Wix, SquareSpace, Weebly, GoDaddy, and Webflow limit your options.

The logo for Wix, featuring the word "WIX" in a bold, black, sans-serif font. The letter "i" is lowercase and has a small orange dot above it.The logo for Weebly, featuring the word "weebly" in a lowercase, rounded, blue font with a white outline.

SQUARESPACE

The logo for GoDaddy, featuring a teal circular icon with a white "G" and the word "GoDaddy" in a teal, sans-serif font.The logo for Webflow, featuring the word "webflow" in a lowercase, blue, sans-serif font.

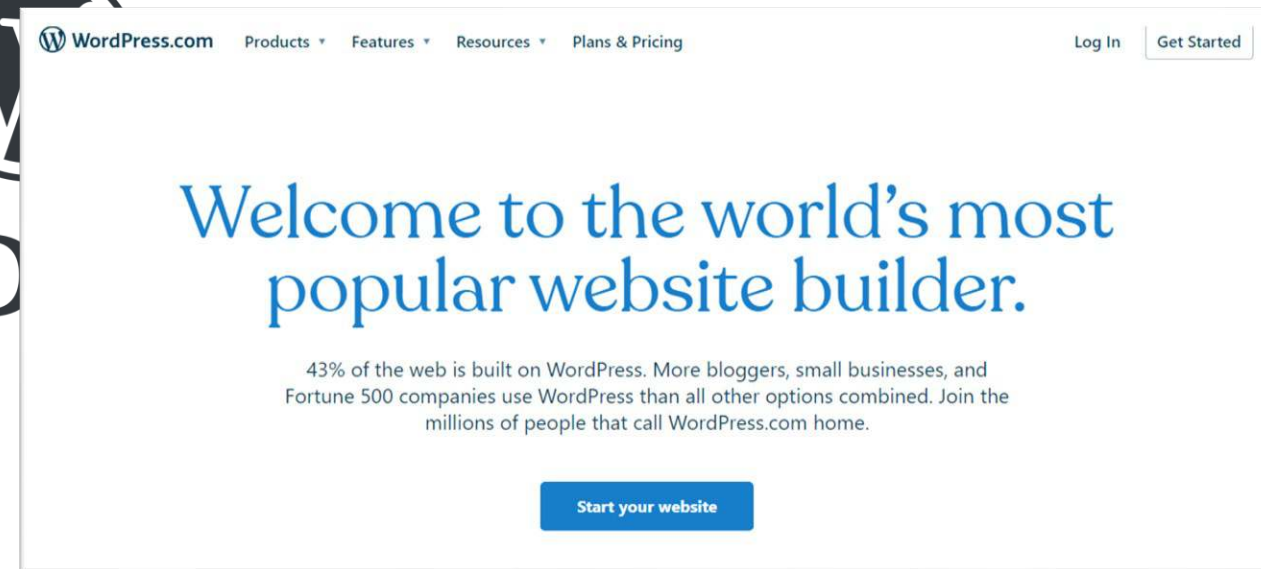
# Our Preferred Platform: WordPress (.org)

## WordPress.org



The screenshot shows the WordPress.org homepage. The top navigation bar is dark with white text for links: Plugins, Themes, Patterns, Learn, Support, News, About, Get Involved, Showcase, and Mobile. A search icon and a blue 'Get WordPress' button are on the right. The main content area features the headline 'WordPress: Publish your *passion*' in a serif font, with 'your passion' in italics. Below the headline is a sub-headline: 'Create a place for your business, your interests, or anything else—with the open source platform that powers the web.' A blue 'Get WordPress' button is at the bottom left.

## WordPress.com



The screenshot shows the WordPress.com homepage. The top navigation bar is white with black text for links: Products, Features, Resources, and Plans & Pricing. 'Log In' and 'Get Started' buttons are on the right. The main content area features the headline 'Welcome to the world's most popular website builder.' in a blue serif font. Below the headline is a sub-headline: '43% of the web is built on WordPress. More bloggers, small businesses, and Fortune 500 companies use WordPress than all other options combined. Join the millions of people that call WordPress.com home.' A blue 'Start your website' button is at the bottom center.

**We do NOT recommend WordPress.com**

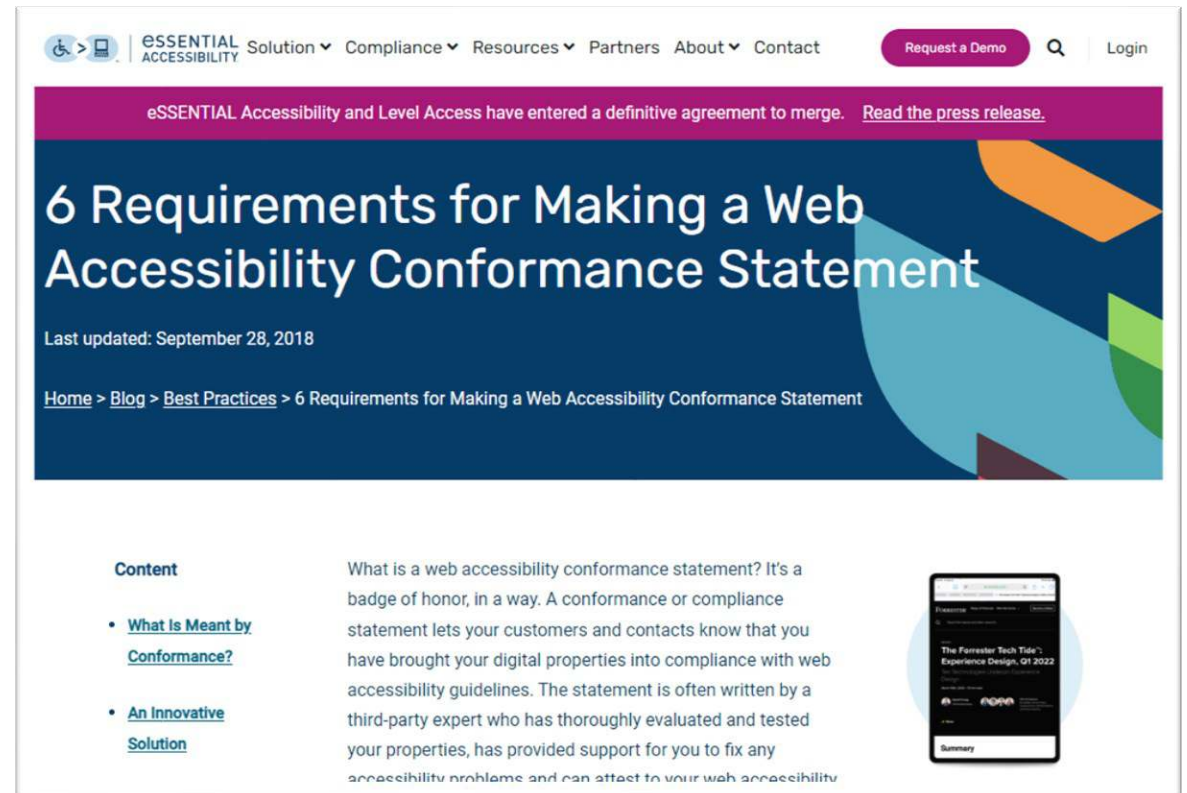
# WordPress Flexibility

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# Accessibility Certification

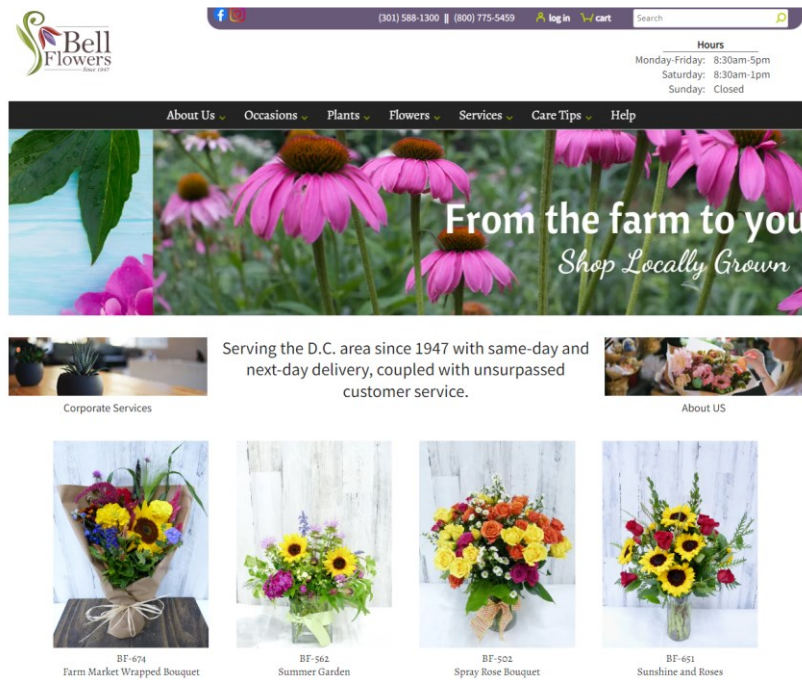
- There are no recognized certifications for website ADA Compliance
- No reputable company will offer a certification
  - Subjective parameters
  - Not a governing body
- The WCAG is a set of guidelines, not standards
- “Substantially conforms”
- WCAG Conformance Statement



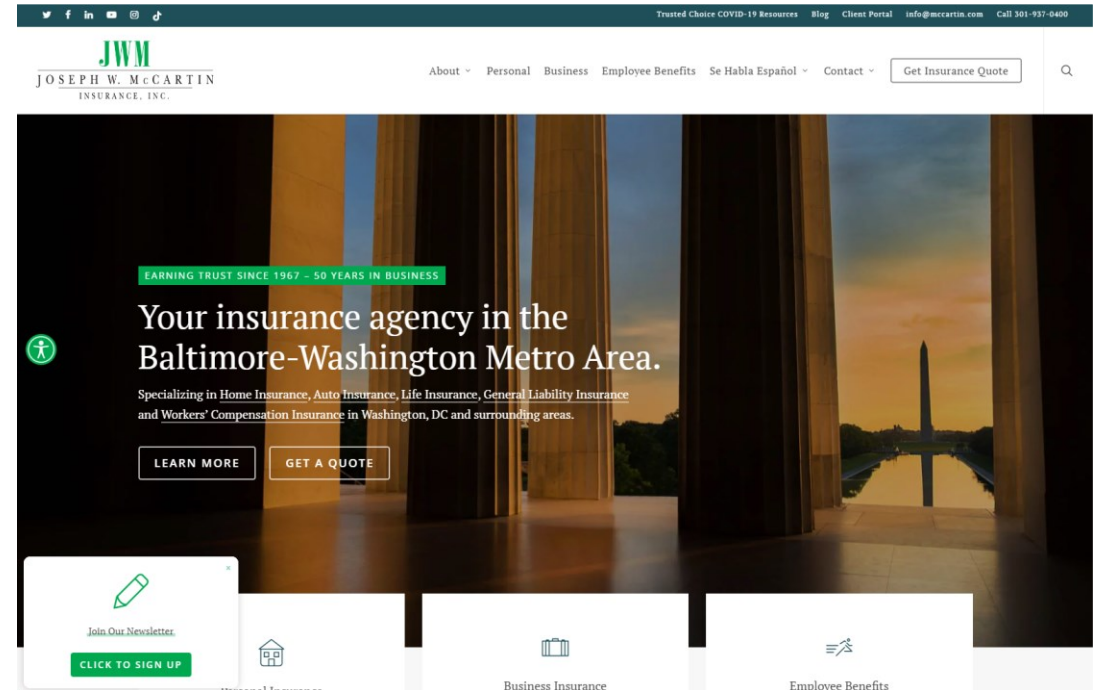
The screenshot shows the eSSENTIAL Accessibility website. The navigation bar includes links for Solution, Compliance, Resources, Partners, About, and Contact, along with a 'Request a Demo' button and a 'Login' link. A purple banner at the top of the article area contains the text: 'eSSENTIAL Accessibility and Level Access have entered a definitive agreement to merge. [Read the press release.](#)' The main heading of the article is '6 Requirements for Making a Web Accessibility Conformance Statement', with a sub-heading 'Last updated: September 28, 2018'. Below the heading is a breadcrumb trail: 'Home > Blog > Best Practices > 6 Requirements for Making a Web Accessibility Conformance Statement'. The article content begins with a 'Content' section containing two bullet points: '• [What Is Meant by Conformance?](#)' and '• [An Innovative Solution](#)'. To the right of the text is a small image of a smartphone displaying a document titled 'The Forrester Tech Titan: Experience Design, Q1 2022' with a 'Summary' button below it.

# Website Accessibility Demonstration

Volunteer #1 – Bell Flowers  
<https://www.bellflowers.com/>



Volunteer #2 – Joseph W. McCartin Insurance  
<https://mccartin.com/>





# Wrap Up

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Adam Lowe - President

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**Website:** [peakperformancedigital.com](http://peakperformancedigital.com)

**Email:** [adam@peakperformancedigital.com](mailto:adam@peakperformancedigital.com)

**Download these slides:**

<https://peakperformancedigital.com/gsscc-website-accessibility-webinar/>

**Request a free accessibility report:**

Email [adam@peakperformancedigital.com](mailto:adam@peakperformancedigital.com)