

ADA  AUDIO  
Conference  
ADA NATIONAL NETWORK

ADA Audio Conference Series  
May 20, 2014

This session is scheduled to begin at  
2:00pm Eastern Time

Real-Time Captioning and the PowerPoint presentation are available through the Webinar Platform. Audio Connection is available through the webinar platform/telephone/Mobile App depending on what you registered for.

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Listening to the Session



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## Listening to the Webinar, *continued*



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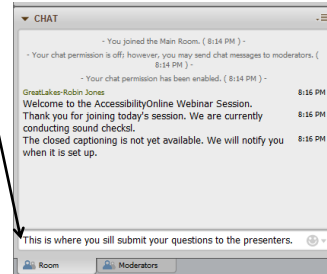
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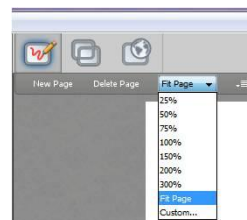
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# Customize Your View



- ▶ Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”



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## Customize Your View *continued*



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## Setting Preferences



- ▶ Depending on your system settings you may receive visual and audible notifications when individuals enter/leave the webinar room or when other actions are taken by participants. This can be distracting.
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  - Select “Edit” from the tool bar at the top of your screen
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  - Scroll down to “General”
    - select “Audible Notifications” Uncheck anything you don’t want to receive and “apply”
    - Select “Visual Notifications” Uncheck anything you don’t want to receive and “apply”
  - For Screen Reader User – Set preferences through the setting options within the Activity Window (Ctrl+ slash opens the activity window)

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# Technical Assistance



- ▶ If you experience any technical difficulties during today's session:
  1. **In webinar platform:** Send a private chat message to the host by double clicking "Great Lakes ADA" in the participant list. A tab titled "Great Lakes ADA" will appear in the chat panel. Type your comment in the text box and "enter" (Keyboard - F6, Arrow up or down to locate "Great Lakes ADA" and select to send a message ); or
  2. **By Email** [webinars@ada-audio.org](mailto:webinars@ada-audio.org); or
  3. **Call** 877-232-1990 (V/TTY)

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## Electronic Information & Digital Access

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Trial Attorneys  
Civil Rights Division  
Disability Rights Section  
U.S. Department of Justice  
ADA National Network  
ADA Audio Conference Series  
May 20, 2014

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# Agenda

- Brief overview of the Americans with Disabilities Act, its regulatory provisions, and application to services migrated to digital technologies
- Department of Justice
  - Public Enforcement Actions
  - Technical Assistance
  - Regulatory Actions
- Just an FYI: Other Public Accessible Tech Matters
- Case Study: Consent Decree among the U.S., National Federation of the Blind, and HRB Digital LLC and HRB Tax Group, Inc. (H&R Block subsidiaries)

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# Digital Migration

- Digital migration of a service may include certain inherent features:
  - Convenience
  - Flexibility
  - Remoteness
  - Rapidity
  - Independence
  - Availability
  - Efficiency
  - Security
  - Ease of recordkeeping
  - Etc.
- Potential to substantially benefit all individuals, including individuals with disabilities; or significantly marginalize opportunities and participation if designed and implemented without accessibility

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U.S. Department of Justice  
Civil Rights Division

## ADA Title I – Overview

**“No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”**

**42 U.S.C. § 12112(a).**

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U.S. Department of Justice  
Civil Rights Division

**State and Local Governments**  
**Private Employers**  
**Employment Agencies**  
**Labor Unions**

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U.S. Department of Justice  
Civil Rights Division

**Employers with fewer than 15 employees**  
**Executive Branch of the Federal**  
**Government: White House and Cabinet**  
**Offices**  
**Private Membership Clubs**  
**Native American Reservations**  
**Religious Organizations may give a**  
**preference to people of their own religion or**  
**religious organization**

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U.S. Department of Justice  
Civil Rights Division

**“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity, or be subjected to discrimination by any such entity.”**  
**42 U.S.C. § 12132.**

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## ADA Title II – Overview

- **“Public Entity”** includes any State or local government and any department, agency or other instrumentality of a State or local government.
  - Covers the breadth of state and local government services, programs, and activities
  - Examples include
    - Web information
    - Education (elementary, secondary, undergraduate, and beyond)
    - Benefit programs
    - Property tax payments
    - Registering a business
    - Obtaining a recycling bin
    - Paying a parking ticket
    - Applying for a job
    - Finding an emergency shelter
    - Engaging the court system
    - Etc.

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**“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”**  
**42 U.S.C. § 12182(a)**

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## Public Accommodations:

- Places of lodging;
- Food or drink establishments;
- Places of exhibition or entertainment;
- Places of public gathering;
- Sales or rental establishments;
- Service establishments;
- Specified public transportation;
- Places of public display or collection;
- Places of recreation;
- Places of education;
- Social service center establishments; and
- Places of exercise or recreation.

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## Relevant Regulatory Provisions – Title I

29 C.F.R. pt. 1630

ALL employment practices:

### **Job Application Processes**

Hiring

### **Firing**

Advancement

### **Compensation**

Training

Recruitment

Advertising

Tenure

Layoff

Leave and Fringe Benefits

Other terms, conditions, and privileges of employment

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## Some Relevant Reg. Provisions – Titles II and III

- **28 C.F.R. pts. 35 and 36**
- **Discrimination directly or through contractual, licensing, or other arrangements;**
  - Denial of participation or benefit;
  - Unequal opportunity to participate or benefit;
  - Separate or different, but unnecessary opportunity to participate or benefit;
  - Ineffective aids, benefits, or services;
  - Aiding or perpetuating discrimination;
  - Otherwise limiting rights, privileges, advantages, or opportunities;
  - Utilizing standards or criteria that result in discrimination;
- **Failing to take appropriate steps to ensure effective communication through the provision of appropriate auxiliary aids and service, unless fundamental alteration or undue burden;**
- **Failing to make reasonable modifications to policies, practices, and procedures, unless fundamental alteration.**

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## Auxiliary Aids and Services, Relevant Examples

- “Qualified interpreters . . . through video remote interpreting (VRI) services; . . . written materials; . . . open and closed captioning, including real-time captioning; . . . voice, text, and video-based telecommunications products and systems; . . . videotext displays; . . . accessible electronic and information technology; *or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;* . . .
- “audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; *or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;*
- “Acquisition or modification of equipment or devices; and
- “Other similar services and actions.”

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## What are examples of accessibility barriers?

- Lack of text labels for forms, images, and buttons for screen reader navigation
- Keyboard accessibility for screen reader and voice dictation software navigation – e.g., Flash-based without appropriate code
- Lack of captions and audio descriptions of multimedia
- Lack of adequate contrast
- Timing or logging out – e.g., timeout for security reasons
- Notification of errors – e.g., incorrect credit card number or log-in
- Ability to change layout without losing content – e.g., remove Cascading Style Sheet
- Use of structure for navigation – e.g., lack of heading designations

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## Selected Department of Justice Enforcement Actions

- [Intervention, Complaint, and Consent Decree](#), *NFB et al. v. HRB Digital LLC et al.*
  - Resolving accessibility of [www.hrblock.com](http://www.hrblock.com) and mobile applications
- [Statement of Interest](#) of the U.S., *New v. Lucky Brand*
  - Discussing application of effective communication obligations to touch-screen point-of-sale devices used to independently transact debit and credit purchases
- [Statements of Interest](#), *National Association of the Deaf v. Netflix*
  - [Statement of Interest](#) concerning closed captioning of Netflix's "Watch Instantly" Internet streamed content
  - [Statement of Interest](#) concerning interplay between Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) and the ADA



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# Recent Department of Justice Enforcement Actions

- [Settlement Agreement](#) with Newseum
  - Requiring appropriate auxiliary aids and services in all public programs, media, and exhibits, including its website



- Project Civic Access [Agreements](#)
  - Accessibility of state and local government websites



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# Recent Department of Justice Enforcement Actions

- E-Reader Agreements, concerning Kindles:
  - Case Western Reserve University [Letter of Resolution](#)
  - Pace University [Letter of Resolution](#)
  - Princeton University [Letter of Resolution](#)
  - Reed College [Letter of Resolution](#)
  - Arizona State University [Settlement Agreement](#)



- [Settlement Agreement](#) with the Sacramento Public Library Authority
  - Concerning the use of inaccessible Nook e-book readers in patron lending program



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# Recent Department of Justice Enforcement Actions

- [Settlement Agreement](#) with Louisiana Tech University

- Use of an inaccessible web-based learning management system software



- [Settlement Agreement](#) with Atlanta's John Marshall Law School

- Requiring an application process that is usable by applicants who are blind

# Technical Assistance

## [Dear Colleague Letter](#) to College and University Presidents

Concerning the inaccessibility of course materials, technology, and equipment in the university setting



# Rulemaking

On July 26, 2010, the Department issued [Advanced Notices of Proposed Rulemaking](#) in the following areas:

- Accessibility of Web Information and Services
- Movie Captioning and Audio Description
- Accessibility of Next Generation 9-1-1
- Equipment and Furniture

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## Just an FYI: Other Accessible Tech Matters

- [Settlement Agreement](#) between the U.S. Department of Education and University of Montana
  - Requiring policies and procedures to ensure all electronic and information technology procured or deployed by the University, including e-textbooks, course materials, online course registration, learning management systems, classroom technology (e.g., smart podiums and clickers), library services, office equipment, etc., can be used by students who are blind and have other disabilities.
- [Settlement](#) between Disability Rights Advocates and Berkley University
  - Requiring policies to ensure information access for students
- [Accessibility Initiative Agreement](#) between the National Federation of the Blind of Massachusetts and Square
  - Requiring accessibility of mobile payment application



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# Just an FYI: Other Accessible Tech Matters

- *Faraj v. Marriott International, Inc.*, 3:13-cv-00300 (S.D. Cal. filed Feb. 6, 2013)
  - Accessibility of software used in management positions
- [Settlement Agreement](#) with CVS
  - Regarding talking prescription labels
- [Settlement Agreement](#) with Safeway
  - Regarding accessibility of website for ordering groceries and delivery



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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Timeline:
  - **April 8, 2013:** Class Action Complaint by National Federation of the Blind, Mika Pyyhkala, and Lindsay Yazzolino against HRB Digital LLC and HRB Tax Group, Inc., subsidiaries of H&R Block, Inc., alleging violations of Title III of the Americans with Disabilities Act and the Massachusetts Equal Rights Act
  - **November 25, 2013:** United States moves to intervene, asserting claim under Title III against HRB Digital LLC and HRB Tax Group, Inc., seeking injunctive relief for individuals with disabilities generally, damages for Mr. Pyyhkala and Ms. Yazzolino, and a civil penalty.
  - **December 11, 2013:** United States filed Complaint in Intervention.
  - **March 25, 2014:** Court enters parties' proposed Consent Decree to universally resolve litigation.

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Consent Decree Overview:
  - Website and Online Tax Preparation Product: WCAG 2.0 AA conforming by January 1, 2015
  - Mobile Apps: WCAG 2.0 AA conforming by January 1, 2016
  - Various Steps to bring [www.hrblock.com](http://www.hrblock.com) and the mobile apps into conformance, and keep them in conformance

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- General Nondiscrimination Requirements Injunction:
  - Prohibits denying individuals with disabilities the opportunity to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through [www.hrblock.com](http://www.hrblock.com), the mobile applications, and the Online Tax Preparation Product
  - Prohibits unequal opportunity to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through [www.hrblock.com](http://www.hrblock.com), the mobile applications, and the Online Tax Preparation Product
  - Must take the necessary steps to ensure individuals with disabilities are not excluded, denied services, segregated, or otherwise treated differently because of the absence of auxiliary aids and services, through [www.hrblock.com](http://www.hrblock.com), the mobile applications, and the Online Tax Preparation Product
  - Prohibits the use of standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or perpetuate discrimination of others who are subject to common administrative control.

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Web Accessibility Policy – June 1, 2014
  - Distributed initially, on new hire, and annually to web content personnel, call center personnel, and contractors responsible for web content
  - Publish a statement of commitment to accessibility, and the ability to submit questions
- Web Accessibility Coordinator – June 15, 2014
  - Knowledgeable of the terms of the decree, including the legal requirements, WCAG 2.0, and web accessibility generally
  - Responsible for overseeing, managing, and coordinating implementation of the decree
  - Responsible for reporting and documenting quarterly, at minimum, to the Enterprise Chief Information Officer that all new releases have been made accessible pre-production; any post-production accessibility bugs have been remediated; and whether the requirements of the decree have been met, and, if not, which ones and why

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Web Accessibility Committee – July 15, 2014
  - Monitoring and maintaining conformance
- Web Accessibility Feedback – July 15, 2014
  - Notice, prominently and directly linked from [www.hrblock.com](http://www.hrblock.com) homepage, soliciting feedback from visitors on how the website, mobile apps, and Online Tax Preparation Product can be improved
  - Must include several methods to provide feedback, including an accessible form to submit feedback or an email address, and a toll-free number (with TTY) to contact knowledgeable representatives about the Website Accessibility Policy
- Customer Assistance for H&R Block Users with Disabilities – December 1, 2014
  - Train call service personnel to auto escalate web access barriers – no less than 5% on staff at any given time.
  - December 1, 2015 for mobile apps
- Web Accessibility Training – August 15, 2014 and when hired into such roles
  - For all employees who write or develop programs or code for, or who publish final content to, [www.hrblock.com](http://www.hrblock.com), its mobile applications, or the Online Tax Preparation Product on conforming to WCAG 2.0 AA.

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Performance Reviews of Web Accessibility Coordinator and H&R Block Employees
  - Performance reviews evaluate degree and effectiveness of incorporating accessibility considerations by coordinator, call service operations personnel, and Web Content Personnel
- Automated Testing – October 1, 2014
  - Select tool acceptable to Private Plaintiffs and U.S. to evaluate conformance with WCAG 2.0 AA
  - Beginning December 1, 2014, and every three months for five years conduct automated tests of [www.hrblock.com](http://www.hrblock.com)
  - June 1, 2015 and each year thereafter, and once per month, test Online Tax Preparation Product
  - October 1, 2014 – if one exists, select mobile app testing tool
- User Accessibility Testing Group – October 1, 2014, annually
  - Whenever a substantial proposed change will be made, individuals with different disabilities shall test the change

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## A Case Study: [www.hrblock.com](http://www.hrblock.com) and Mobile Applications

- Modification of Bug Fix Priority Policies – December 1, 2014
  - Modify existing policies to include accessibility bugs are remedied with same level of priority as any other equivalent loss of function
- Web Accessibility Consultant and Evaluation
  - July 15, 2014 - Retain consultant, approved by all parties
  - September 15, 2014, and annually, consultant provides written evaluation on whether website, mobile apps, and Online Tax Preparation Product are in conformance, whether there are recurring or significant deviations, and make recommendations.
  - Copies provided to all parties.
  - Block to incorporate recommendations.
- \$22,500 to each individual Private Plaintiff, \$55,000 civil penalty
- Reporting

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Thank you for participating in today's  
ADA-Audio Conference Session

The next scheduled session is:

***“Disclosure under the ADA and it’s relationship to  
Section 503 Regulations”***

**June 17, 2014**

[www.ada-audio.org](http://www.ada-audio.org)

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