NASCIO
Representing Chief Information Officers of the States

Digital Accessibility Compliance

Thoughts from a Public Sector Attorney

As states approach the Title II Department of Justice Final Rule on Web and Mobile App Accessibility, many state technology leaders anticipate that their digital accessibility remediation strategies will still be in progress past April 24, 2026. Since the final rule does not include a grace period, DOJ enforcement is expected to begin immediately after. This places states in a position where balancing ongoing remediation efforts with establishing a strong defense against potential legal action and managing relationships with third-party service providers that may fall under scrutiny is paramount. Further, the DOJ has broad authority to investigate noncompliance, which includes a variety of enforcement methods.

To gain more insight into these areas, NASCIO sat down with State of New York Information Technology Services Supervising Attorney Max Heintz, who provides legal guidance on final rule implementation for the state and has experience with lawsuits involving web accessibility, as a staff member of the general counsel.

Litigation Strategy

At a macro level, digital accessibility lawsuits have seen a steady increase in the last few years – in 2025, over 5,000 digital accessibility lawsuits were filed, with almost 1,500 targeting entities that had already been sued under the ADA. At a micro level, Heintz stated that lawsuits against states and public entities can largely fall into two categories: suits by citizens using digital services and suits from employees who need accessibility tools as reasonable accommodation for their jobs. "In both cases… they really get you to the same place. Public entities are best equipped to deal with either type of lawsuit by having a robust accessibility process."

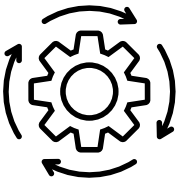
To Heintz, key features of a robust accessibility program/policy include not only intentional, continuous remediation efforts when issues arise but also ensuring accessibility is accounted for as part of the creation of web-based information and services and introduced to the public. Further, ensuring there are trained accessibility personnel available who can help incorporate testing into development processes and field feedback from public users and employees adds strength.

Knowing what to prioritize when building a strong litigation defense could be informed by knowing what legal firms look for when evaluating a potential digital accessibility lawsuit. "The potential for damages is huge," Heintz said, "that's going to drive conversations about a settlement. Just like any other civil lawsuit, the strength of the claim, potential damages, how much time it's going to take to fight it in court, the life of the case …" should be considered in such lawsuits. "Of course, they're going to evaluate the strength of the public entity's accessibility process. Do you have a process? Because if good-faith compliance with the law can be shown, [the entity] is in a much better position to defend itself. If [the entity] loses, then the likelihood of damages and an injunction to force change goes down, because the entity already had a process."

By other standards, evaluating the viability of a digital accessibility lawsuit largely reflects other standard civil rights lawsuit processes. Heintz described that these cases are also evaluated in terms of the firm's staff hours needed for discovery, depositions, litigation and other behind-the-scenes work on the suit. With an accessibility lawsuit however, "The only real difference is having the technical knowledge to understand how the WCAG (Web Content Accessibility Guidelines) standards work in reality... compliance is not a black and white thing. It's more nuanced than whether [an entity] is compliant or not."

In some cases, speedy legal resolution and risk mitigation could be impacted by public-sector leaders not fully understanding the nature of accessibility litigation. "Any gap in understanding on the part of leadership could delay the response to litigation because they have to come up to speed and understand the landscape they're working in to approve a plan of action or respond to it," says Heintz. It is essential for attorneys representing public sector entities in accessibility litigation to help leadership understand the nature of accessibility litigation and close the gaps in understanding as quickly and effectively as possible. He categorized the biggest understanding gaps as misunderstanding the audience impacted by digital accessibility issues and viewing accessibility as a single project.

> Web-based information is primarily presented visually, so there's a natural assumption that this is just an issue experienced by people with visual impairments, blind people, low sight, etc. But of course, that's not the case ... WCAG rules, which are the DOJ standard, are designed to make content accessible not only to people with visual impairments, but also learning disabilities, hearing impairments and a wide variety of other disabilities." ***– Heintz on accessibility litigation misunderstandings***



> The second big stumbling block is understanding that accessibility isn't a project; it's a process. Understanding that [accessibility] isn't something that can be responded to at one point in time, like its life is finite. [Accessibility] requires long-lasting, deep-seated institutional change... getting sued as a public sector entity is inevitable... [public entities] want to minimize damages when it arises. Having a process already in place makes a public sector entity more able to defend itself in that type of situation." ***– Heintz on accessibility litigation misunderstandings***

Vendor Relationship Management

The DOJ Final Rule applies to all content and services created and/or managed on behalf of the state by third-party contractors. States ultimately hold responsibility for ensuring third-party content and services are accessible, but third-party service providers are responsible for remediating their own services should they be found non-compliant. Any DOJ enforcement measure or lawsuit involving third-party services, and in turn, their staff, could create a difficult journey towards remediation if the relationship is not managed delicately. Heintz provided context around vendor relationship management through this lens.

"There are challenges [in vendor relationship management] ... [entities] can't control what a vendor does to the same degree they can control what their own workforce does when they build something in-house. The way [entities] mitigate that problem is to set clear expectations from the start. Have a clear understanding of the landscape [the entity] wants to achieve."

In New York, Heintz described that their foundational vendor management pillars come from **a statewide policy** that existed before the DOJ Final Rule and has undergone consistent revisions to reflect changing federal and state priorities. It creates more room for states to assess accessibility compliance, even when a vendor claims accessibility without supporting documentation.

> A vendor is building something on behalf of New York to serve the public, right? So, it has to accomplish the goals of preventing and eliminating barriers to access for citizens with disabilities… it says that when a vendor builds [web-based content] for New York State, it has to abide by **WCAG 2.0 or a successor standard**. We refine and operationalize that in our contracts, ensuring those vendor contracts are uniform."

Heintz mentioned that the uniform contract terms also specify clear expectations for monitoring, vendor compliance, and state-run product or service testing to ensure compliance, while emphasizing that the vendor is responsible for meeting all relevant standards. Once the digital content or service is made available for public use, it becomes part of New York's accessibility governance for potential remediation, feedback collection, and additional periodic testing.

Heintz also provided clarity on potential vendor hesitancy to cooperate with mandated remediation efforts and contract management under legal pressures. "I don't think [a state severing a vendor contract] is inevitable… some vendors might take [an uncooperative] attitude, but states are big customers… so there's an incentive to understand that this is just the cost of doing business. If [vendors] want to be in the game, they have to play by the rules."

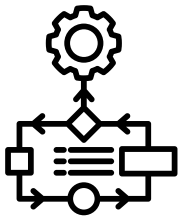
Heintz stated that it is important to remember that as a government entity, if the decision is made to prevent a vendor from doing business with you, the vendor may have a right to challenge that, depending on a state's laws – which could lead to an administrative hearing. Before ultimately choosing severance, public entities can positively leverage their status as large clients to reach a plan that suits all stakeholders. "Because [states] are big customers, they [can] go to the table and have a conversation saying, 'we would love to continue working with you, but there are some serious [accessibility] barriers … we need you to change how you're doing things,' and you can have this same conversation around many different topics."

DOJ Final Rule Enforcement

While many understand the beginning of the enforcement period and what types of complaints could trigger external audits, investigations and potential further legal action, remediation timelines remain unclear. "It's difficult to say with a lot of definitiveness what those timelines are. I think it very much depends on the specifics… judges are given a lot of latitude to interpret the facts of the case and fashion a remedy… before the rule came out, there were a lot of consent decrees basically settling these types of lawsuits… so the judges, even though [consent decrees] aren't necessarily precedent-setting in the way a court decision is… look to those as guidance."

Heintz also noted that because public entities will likely face challenges to the accessibility of their websites in litigation brought by diverse plaintiffs **state and federal courts**, the exact tools used to measure noncompliance aside from standard audits are unclear. "There's a plethora of testing tools… the trend is towards lawsuits that would be brought in state court. Of course, DOJ's going to investigate some cases, but in most types of lawsuits that [NASCIO state members] would see, [they'd] likely deal with a lawsuit in federal or state court rather than a DOJ investigation. But of course, they do happen."

The DOJ also references across mandates that states showing "**good faith compliance**" but not fully compliant by the April deadline and states making "**reasonable effort and/or progress**" towards compliance or mandated remediation may incur lighter penalties. Heintz provided some clarity on both terms:



If you don't have [a strong accessibility program and processes], that is not good faith compliance… if [an entity] is doing nothing and just responding to complaints, playing whack-a-mole with fixing problems as people report them… that's not good faith compliance. Good faith compliance is more like [an entity] has a process and, in spite of that, [a user] identified an accessibility issue with a website. [The entity says] 'because we have this process, we're actively working to remediate it and screening [for other] issues as well.'"
– ***Heintz on defining good faith compliance***

[Reasonable effort towards compliance] is not just black and white… a similar fallacy is to get into the trap of 'What's the number? What percentage of standards do we have to tick off?'… There isn't an answer to that question… it depends on the specifics of the website, the claimant and the state or entity's remediation and accessibility governance process. Your goal isn't to hit a number or to tick a number of boxes. It's to make sure that the [members of the] public and the workforce [with a disability] are able to access your resources online to the same degree as people without those disabilities." ***– Heintz on the myth of reasonable effort/progress***

Parting Thoughts and Compliance Tips from Max Heintz

Heintz ended by speaking on how public entities can best balance continuing final rule compliance beyond the deadline and managing vendor relationships while possibly fielding complaints and cooperating with audits, investigations and more.

Document everything. Keep records across the accessibility life cycle for all products and services; "Clear documentation is what's helpful … being able to point to something and show there is a policy, structure, procedures, reports showing it in action… more is better."

Get legal involved early. As soon as an entity is made aware of a complaint, audit or relevant finding and needs to respond, "Do not let those issues get tied up in chains of communication… loop in your legal team right away."

Be proactive. Even if the entity has not yet received a complaint, "There are tons of educational resources out there for legal professionals to learn about accessibility lawsuits. Be proactive."

Proactively prepare others. Proactivity also includes "making [accessibility lawsuit educational materials] a part of normal training rotations … [sponsor] attendance to seminars and continuing legal education." Becoming familiar with accessibility lawsuits processes across the enterprise can lessen delays in response time should a complaint be received because the background is already embedded into the culture.

Gain trust. Build and maintain relationships with service testers that are also in the target population, leading to improved in-house testing in response to inaccurate vendor ACRs and stronger documentation of issues.

Primary Author
Kalea Young-Gibson
Policy Analyst
NASCIO
kyoung-gibson@nascio.org

Reviewers
Maxwell Heintz
Supervising Attorney
NYSOITS

NASCIO
Representing Chief Information Officers of the States

About NASCIO

Founded in 1969, the National Association of State Chief Information Officers (NASCIO) represents state chief information officers (CIOs) and technology executives and managers from the states, territories and District of Columbia. NASCIO's mission is to advance government excellence through trusted collaboration, partnerships and technology leadership. NASCIO provides state CIOs and state members with products and services designed to support the challenging role of the state CIO, stimulate the exchange of information and promote the adoption of IT best practices and innovations. From national conferences to peer networking, research and publications, briefings and government affairs, NASCIO is the premier network and resource for state CIOs.