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LEGAL AND COMPLIANCE TRENDS IN DIGITAL ACCESSIBILITY

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Introduction

At least six in ten persons rely on digital tools and platforms globally. Combining this with the fact that at least one in six persons has a disability means that the margin of digital accessibility is still a wide gap. The World Wide Web Consortium (W3C) defines digital accessibility as designing and developing digital tools and platforms in ways that people with disabilities can use and understand. Disabilities as used here include vision, auditory, motor, and cognitive. In this report, I look at the legal and compliance trends in digital accessibility.

Incorporating digital accessibility in today's digital world is essential to ensure equal access and opportunity for everyone. Over 1 billion people live with disabilities that could be permanent, temporary or situational. At least 80 million of this 1 billion are Africans. This is an enormous user group that cannot be ignored, and in fact need to be prioritized.

Motivations for organizations to ensure digital accessibility range from moral to business to legal and compliance. I focus my attention on legal and compliance. Several laws and regulations at the national and international levels mandate businesses and organizations to provide accessibility accommodations for people with disabilities.

Accessibility laws include Americans with Disabilities Act (ADA), Section 508 of the Rehabilitation Act, European Accessibility Act, Nigeria's Discrimination Against Persons with Disabilities (Prohibition) Act, and the UK's Equality Act. Accessibility standards include Web Content Accessibility Guidelines (WCAG) 2.2 by W3C, ADA standards based on the ADA, and Section 508 Voluntary Product Accessibility Template (VPATs) based on Section 508 of the Rehabilitation Act.

Increased awareness in recent years have seen a rise in legal cases and out of court settlements regarding inaccessible websites and apps. Avoiding legal and financial risks motivates more companies and organizations to be proactive towards digital accessibility.

Laws and Standards Regulating Digital Accessibility

Americans with Disabilities Act (ADA)

The ADA prohibits discrimination against individuals with disabilities and mandates equal opportunities in employment, transportation, public accommodations, and access to federal and state government services. The U.S. Department of Justice has affirmed that Title III of the ADA applies to accommodations for digital resources such as websites and apps. Federal courts have also upheld lawsuits against inaccessible websites under the ADA. To comply, organizations must ensure accessibility following standards such as WCAG 2.2, which we will look at next.

Web Content Accessibility Guidelines (WCAG)

Published by the World Wide Web Consortium (W3C), WCAG 2.2 provides recommendations for making web content accessible for a wide range of situations. It covers several disabilities including visual, auditory, physical, speech, cognitive and neurological disabilities. WCAG 2.2 has three levels of conformance from A (minimum) to AAA (highest). Most experts recommend organizations aim for at least AA conformance. As we will see below, many accessibility laws and regulations reference WCAG conformance levels.

Section 508 of the Rehabilitation Act United States

Section 508 requires federal agencies and federal contractors to make electronic information and technology accessible to those with disabilities. It also applies to contractors doing business with United States government agencies. 508 compliance draws upon standards in the WCAG and requires a Voluntary Product Accessibility Template (VPATs) to detail accessibility.

Equality Act (EA) 2010

The Equality Act 2010 is a key piece of legislation in the UK that prohibits discrimination against people with disabilities. The EA mandates organizations to make “reasonable adjustments” to ensure services are accessible, including for websites and digital platforms. The Equality Act has been applied in legal cases related to inaccessible websites, making it clear that digital accessibility is covered under the law. For example, just last year, in March, the British Broadcasting Corporation (BBC) reported on Stephen Campbell’s lawsuit against the Health and Social Care Northern Ireland (HSCNI). Campbell alleged that he was unable to use the HSCNI website to apply for promotion as it was incompatible with his screen reader.

UK Government Digital Service Standard

In addition to the EA, the UK Government Digital Service (GDS) Standard sets accessibility requirements for public sector websites and services. It requires that all public facing government digital services must meet WCAG 2.2 AA accessibility standards. The standard covers websites, mobile apps, intranets, online tools and services operated by central government, local authorities, and arms-length bodies (ALB). Any new government digital services must be designed and built to be accessible from the outset to comply. The UK GDS provides guidance and resources to help public sector organizations understand and implement the accessibility regulations. Services that don't meet the standard cannot be released or will have their approval revoked.

This strong stance on digital accessibility for the public sector has helped drive change and set an example for private organizations to follow suit in making technology inclusive for all.

Public Sector Bodies Accessibility Regulations 2018

The Public Sector Bodies Accessibility Regulations 2018 are another key set of rules governing digital accessibility in the UK. PSBAR requires public sector bodies to ensure their websites and mobile applications meet WCAG 2.2 AA accessibility standards. This includes websites and apps for government services, libraries, museums, universities, hospitals, and other organizations providing services to the public. The regulations align the UK with the European Union's [Web Accessibility Directive](#). Public sector bodies must publish an accessibility statement on their websites and digital properties outlining their level of conformance. Mobile applications fell under the regulations starting June 2021. This regulation and the last two discussed demonstrate the UK's commitment to ensuring equal access for disabled users to public sector digital information and services.

EU Web and Mobile Accessibility Directive

The Web and Mobile Accessibility Directive (WMAD) was adopted by the European Union in 2016. It aims to make websites and mobile apps of public sector bodies more accessible across EU member states. WMAD requires public sector websites and mobile apps to meet specific accessibility standards, which are based on the WCAG 2.2 AA level. This covers a wide range of public sector organizations including government administration sites, public libraries, schools, police departments and more. EU member states were tasked with enacting their own national laws to comply with this directive.

European Accessibility Act

Three years after the EU WMAD, in a bid at harmonising accessibility requirements in the EU, the European Accessibility Act (EAA) was adopted in 2019. You can consider it the [private sector version of the WMAD](#). It covers a wide range of products like computers, phones, e-books, and services like banking, e-commerce, and transportation.

For digital products and services specifically, it requires compliance with accessibility requirements derived from WCAG 2.2 AA and other relevant standards. EAA sets out a responsible economic operator policy, where economic operators (companies) must ensure products and services are designed and developed accessibly from the start. By creating common accessibility rules at the EU level, the EAA seeks to provide more choice and independence for the EU's over 101 million people with disabilities.

EN 301 549 - European Standard for ICT Accessibility

EN 301 549 is the European standard that specifies functional accessibility requirements for Information and Communication Technology (ICT) products and services. It was developed by European standardization bodies following the EU's mandate on e-accessibility under Directive 2016/2102. EN 301 549 provides harmonised technical specifications for ICT accessibility, heavily referencing and aligning with WCAG 2.2. Conformance with EN 301 549 is a way for companies to demonstrate that their ICT products and digital services meet accessibility requirements under the European Accessibility Act, other EU and international regulations.

Accessibility Laws in Africa

While digital accessibility laws and regulations are still emerging in many African countries compared to places like the US, UK and Europe, there has been some progress. In South Africa (SA), the Electronic Communications and Transactions Act 2002 includes provisions requiring websites of public and private entities to be accessible to persons with disabilities. Ten years before the UK, SA already passed its own Equality Act, Promotion of Equality and Prevention of Unfair Discrimination Act. This Act prohibits the failure to remove obstacles to accommodate the needs of persons with disabilities.

Considered the first in Africa, in 2022, Kenya published two sets of ICT accessibility standards known as Kenya Standards KS 2952-1-2:2022. This standard directly incorporates WCAG and applies to websites and web applications belonging to government ministries, departments, agencies, county governments, and any entity providing services to the public in Kenya.

The [Discrimination Against Persons with Disabilities \(Prohibition\) Act](#) was signed into law in Nigeria in 2019. While the Act does not go into extensive technical details, Section 16 covers "Access to Information and Communication Systems." It states that providers of web services, including websites, must put in place measures to make their information resources available and accessible to persons with disabilities. The five-year transition period to enable organizations achieve conformance under the act ended in January 2024.

This is a critical time in digital accessibility [in Africa](#) as evidenced by the incoming [African Disability Protocol](#) by the African Union. With [Nigeria signing the treaty](#) on 22 January 2024 after Malawi signed in December 2023, only one more signature is needed for the protocol to come into force. We are optimistic that it will happen this year!

Recent Legal Cases and Settlements on Accessibility

According to [Ada Site Compliance](#), in the US alone, there was a 143% increase in lawsuits against companies for digital accessibility. We can extrapolate this to assume a similar increase in legal cases and settlements on accessibility in several other countries. It is safe to conclude consumers and citizens now expect accessible products and services from companies and governments. A couple of highlights below.

In March 2021, [Brittney Mejico](#) sued KnowBe4, an internet security company alleging that their website www.knowbe4.com is inaccessible under the then WCAG 2.0 standards. Mejico's complaints include empty headings making navigation difficult and confusing for keyboard and screen reader users. Are you wondering if KnowBe4 is now compliant? Satisfy your curiosity by scanning their website with our [Accessibility Scanner](#). It is interesting to note that KnowBe4 is an internet security company.

In a [lawsuit filed by Carlos Herrera](#) in January 2023, Niantic Inc., the developer of the Pokémon Go mobile game was sued for violating the ADA. Herrera who uses a screen reader alleged that pages were not properly labelled and titled, links were broken and alt texts non-existent.

Compliance Best Practices


To avoid legal risks, provide equal access and increase revenue, organizations should make digital accessibility a priority. Below are some best practices to consider.

Conducting Accessibility Audits (Frequently)

A detailed audit evaluating websites, apps, digital products and services against WCAG 2.2 AA standards can uncover shortcomings and inform an accessibility conformity roadmap. Audits should include code analysis, assistive technology testing, and user research with disabled individuals. Regular recurring audits help maintain compliance and account for new developments and technologies.

Implementing Accessibility by Design

Drawn from the principles behind Privacy by Design, implementing accessibility by design helps ensure accessibility is considered from ideation and not as an afterthought. Building in accessibility from initial design and development is far more effective and cheaper than retrofitting. Developers, content creators, staff, and even users should be trained on inclusive design principles and standards. Companies should set policies to ensure accessibility is considered at all stages to prevent future issues. We will explore this further in a different report.



Publishing Accessibility Statements

Detailed accessibility statements on websites, apps, digital products and services inform users of available accessibility features while demonstrating commitment. Statements should be updated whenever significant changes are made.

Accessibility Training for One and All

Ongoing training for staff, designers, developers, content creators, QA testers and everyone helps instil an understanding of various disabilities and needs. Hands-on testing and simulation with assistive tech for people without disability builds empathy. For example, creating a simulation where someone who is not blind is blindfolded and made to depend on a screen reader would help ground their understanding and get more buy-in. Accessibility should also be part of onboarding.

Making Public an Accessibility Roadmap

Users are not only interested in when you are launching your product. Is it accessible? As already discussed above, your first line of action is conducting an audit, regardless of the stage in the product lifecycle. And now that you have published an accessibility statement, walk the talk by also publishing timeline of specific short and long-term actions based on audit findings, stakeholder input, and available resources. A roadmap allows for incremental, accountable improvement. All stakeholders can track progress over time.

Emerging Digital Accessibility Compliance Trends

Accessibility, whether digital or physical has always been a challenge globally. While the veil of stigma and exclusion is being lifted, many organizations are trying to catch up. Staying updated on emerging trends allows organizations to take a proactive stance on accessibility and avoid falling behind on expectations and requirements. Some trend to watch out for below.

Emerging Technology Regulation

New technologies like Artificial Intelligence (AI) that could enhance assistive technologies are being subject to stricter regulation aimed at protecting users. A core requirement of the EU AI Act which passed on the 13th of March 2024, is fairness. This fairness is needed more than ever for people with disabilities considering that AI is used for solutions ranging from speech recognition to screen readers, generative AI (for alt texts), and Optical Character Recognition (OCR).

Expansion of Extant Laws to Include Mobile Applications

Existing accessibility laws generally focus on web-based applications, products, and services. Even the most recognized digital accessibility standard globally is called Web Content Accessibility Guidelines (WCAG). According to Facts and Figures 2023, a report published by the International Telecommunication Union (ITU), 40% of the world uses 5G mobile internet, and another 39% uses 4G mobile internet. These figures point to the fact that majority of internet users access the web on their mobiles. This highlights the need for developers and designers to prioritize accessibility for mobile applications. Responsive web design alone is insufficient as apps have unique features. Mobile accessibility should be addressed separately.

Increased Conformance Expectations

Gone are the days when digital accessibility was considered a 'nice to have'. As seen in previous sections, new and updated legislations and standards suggest that many governments and organizations now consider accessibility a 'must-have'. Attaching fines and other penalties to nonconformance is accelerating the priority given to accessibility. In fact, many standards and regulations require conformance reporting quarterly or annually. Moreover, with increased awareness championed by companies like Fezzant, users today are more aware and expect accessibility and inclusion when using digital products and services.

Accessibility User Testing

Usability studies with disabled users will provide valuable insights that automated testing cannot. Which is why, in addition to our accessibility scanner, Fezzant offers several auditing and testing services through our team of technical and lived-experience experts. Observing real-world usage uncovers challenges and drives better design decisions.

Certifications and Accreditations

As demand for conformance increases from both government, users and business partners, we can expect standardisation bodies to begin issuing trusted accessibility certifications that organizations can use to demonstrate conformance. These certifications and accreditations may help reduce legal liability but should complement ongoing efforts. Wix offers a [free certification](#) that anyone can take to prove that they can build accessible websites or that their business website is accessible. At the moment, most certifications and accreditations are for individuals who want to prove their skills at building accessible products and services. We can expect a new trend of certifications for organizations to prove they and their products are accessible. We already see this in job vacancies where companies mention that they are disability friendly.

Increased Investments in Assistive Technology for Disabilities

With all the trends discussed above, it is clear that this is the decade for accessibility for people with disabilities. Increased expectations and regulations also mean that budgets for accessibility are increasing.

Earlier this month, US president Joe Biden requested a \$150 billion budget over the next ten years for the improvement of products and services for people with disability. If it gets approved, the private sector is likely to mirror this pro rata in investments in research and development of assistive technologies.

Challenges and Opportunities Ahead

While progress is slow and steady, achieving fully accessible technologies comes with challenges and opportunities. The top challenge is lack of accessibility skills and training. Most developers and designers lack proper accessibility training. Fixing access barriers later can be difficult and expensive.

On the other hand, there is the opportunity for accessibility to create new products and services. In fact, it is called the Curb-Cut-Effect. In 1990, US laws required curb cuts for roads and buildings because of people using wheelchairs. But today, almost everyone uses a curb cut when rolling a suitcase for instance. Another good example is the Swivel Peeler, a creation from the collaboration of Smart Design and OXO International. The popular Good Grip line was initially meant for people with arthritis but is now loved by everyone. Other examples include speech-to-text tools, keyboards, bendy straws, and audiobooks.

Again another notable challenge is the wrong perception that accessibility is time-consuming, difficult, and expensive. This is a fallacy. Many organizations incorrectly see accessibility as a burden driving up costs. However, incorporating it from the start into design thinking costs little and pays dividends long-term.

On the other hand, there is the opportunity for simple accessibility efforts to be the driver of securing a larger market share as users would always opt for products and services that do not rob them of their independence because it is accessible.

Conclusion

Accessible cybersecurity is the ultimate goal...

The message is clear - prioritizing accessibility is no longer optional. By taking proactive and meaningful steps to ensure technology and digital services work for everyone, organizations can open doors to more customers while meeting their ethical and legal obligations. The path forward is an inclusive one, with or without legal impetus. Establishing digital accessibility now out of a genuine desire for equity is certain to be most rewarding for everyone involved.



About Fezzant

Accessibility in cybersecurity is our watchword

Fezzant is an international cybersecurity and digital accessibility company offering training, tooling, assessments, audits and consulting. Lack of accessibility could increase cybersecurity risks for people, processes and products. One of our core products is an accessibility scanner for the cybersecurity industry.

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