

# Higher Education

## Report on ADA compliance (digital inclusion).

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February 2022



# FOREWORD

The requirement for websites to comply with the Americans with Disabilities Act (ADA) is not going away. Organizations that ignore this are likely to face litigation, negative public opinion, and much higher costs than those that take immediate action. In the same way that we expect buildings to accommodate people living with disabilities, inclusivity for all is expected online.

Due to lucrative rewards and the ease of demonstrating non-compliance, litigation is growing exponentially across all sectors – one of the softer targets being education, particularly Higher Education, with larger digital landscapes that have grown rapidly. Regulatory compliance has failed to keep pace, leading to risk exposure and vulnerability across the sector.

Compounding the problem is a false sense of security, felt by many who believe that they have matters in hand, spurred on by service providers that promise compliance but lack accountability.

There are solutions; AAAtraq provides the first service of its kind to make the assessment of risk easy to understand, i.e., non-technical reporting and monitoring, protects you from litigation with insurance cover and provides a checklist for you to follow to mitigate risk. Most of all to make the changes that continually improve and accommodate all users equally – to ensure compliance for good.



Andrew Grant  
Chair – Diversity and Inclusion Committee.

*"Most of all to make the changes that continually improve and accommodate all users equally – to ensure compliance for good."*

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## USE OF DATA

The use of the findings of this report for litigious reason is not permitted – any claim made reliant on the data contain herewith should be considered invalid.

# ADA

**You wouldn't have a building without a ramp – the law also requires websites to accommodate.**

# Higher Education Practice

Higher Education Institutions are complex communities comprised of students, faculty, staff and invited guests. They operate as global enterprises with a unique infrastructure consisting of diverse operations, which range from operating large utilities to exploring cutting edge research. Gallagher Higher Education risk management and consulting team understands that this unique business model brings a considerable amount of compliance risk, including our obligation to ensure our technology platforms are accessible to our stakeholders under the Americans with Disabilities Act.

## Higher Education Resources:

A new generation of students and faculty, rising costs and emerging risks presents a unique set of challenges for institutions. To assist our industry in responding to these challenges, Gallagher's Higher Education resource page offers a suite of risk management resources including webinars, white papers, thought leadership and [more](#).

**Please review our Higher Education resources at:**

<https://www.ajg.com/us/higher-education-resources/>



## Higher Education Webinar Series

Rising costs paired with a new generation of students and faculty present a unique set of...

Join the webinars at:

[www.ajg.com/us/higher-education-webinar-series/](http://www.ajg.com/us/higher-education-webinar-series/)



*We are delighted to partner with AAAtraq in publication of this report in hopes that together, we can raise industry awareness and engagement around ensuring access to our educational programs.*

*Not only does greater accessibility optimize an institution's ability to accomplish their mission, greater accessibility for those with disabilities means greater accessibility for all.*

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**Gallagher**

Insurance | Risk Management | Consulting

# BACKGROUND

On July 26th, 2021, the United States celebrated the 31st anniversary of the Americans With Disabilities Act of 1990, also referred to as the ADA, (42 U.S.C. § 12101). When the ADA came into law, it established protections against discrimination in places of public accommodation for American citizens living with disabilities. While many facets of life for individuals living with disabilities in the United States are protected under the ADA, certain aspects have been left without proper protections from discrimination.

One such area is the internet. The first website didn't go live on the internet until August 6th, 1991(a full year after the signing of the ADA), making it impractical to assume that the drafters of this legislation would have considered including mandatory protections for inclusivity on the internet in their drafting of the articles describing the scope of the definition; places of public accommodation. No standard, then, could have been created to describe website accessibility and digital inclusivity.

In today's post-secondary education environment, 19.4% of students are disabled. Due to the emergent transition from the in-person environment to the virtual environment because of the Covid-19 pandemic, many disabled students were subject to the deficiencies of the websites provided by their schools.

Despite efforts and increasing spend on attempting to make websites inclusive, the reality is that more than 9 out of 10 of higher education websites are non-compliant. This represents a challenge for institutions to find a more effective approach, the current one clearly isn't working, against a backdrop of the increasing threat of litigation.

## HOW CAN WE ACCESS OUR OWN RESULTS?

The full results, including details of individual institutions, are not published here and not available for general usage – certain opportunist lawyers may try and make use of them for their own means (although it is prohibited). Page 17 of this report covers how to audit any website.

## HOW DO WE REQUEST A PRIVATE AUDIT FOR OUR OWN WEBSITES?

Institutions can request a private audit, looking at risk across their full digital landscape. It includes websites that they manage the content for, and those they have 3<sup>rd</sup> parties operating. The key to Risk Management is understanding where you are.

## RESULTS

Institutions should note that the results cover a limited proportion of the website and as such, low risk doesn't indicate that the website overall is low risk.

To ensure risk is minimized the website should be audited in full; we suggest this should be at least once per quarter.

## CONTACT

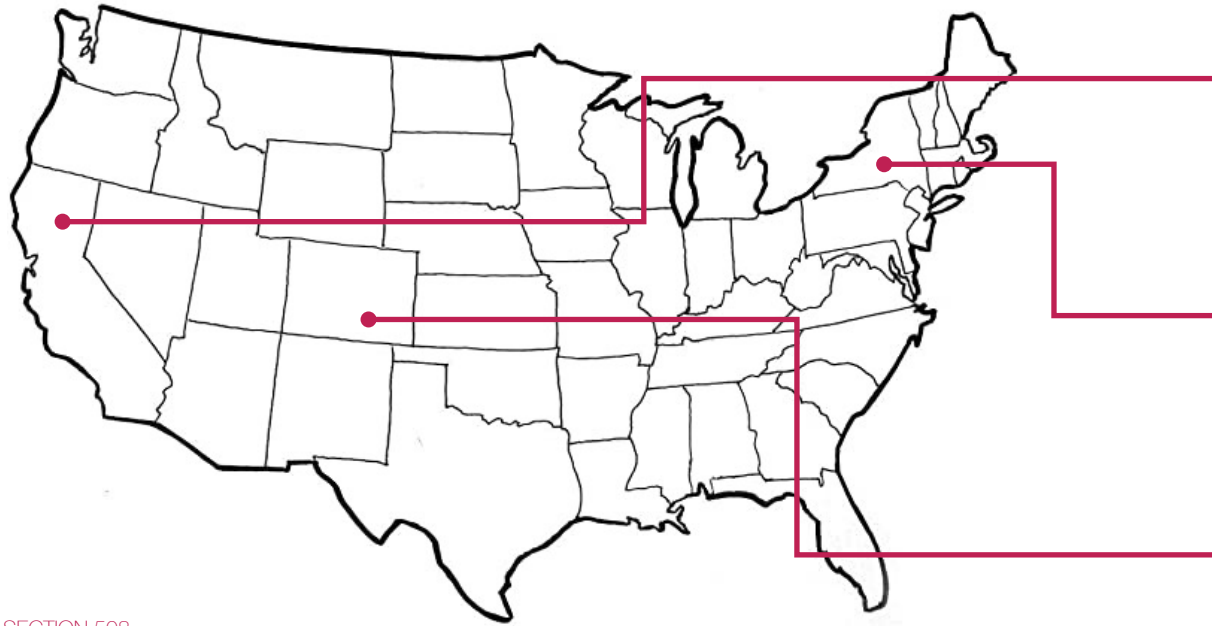
To discuss any of the above, in the first instance please contact:

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# REGULATION

Introduction to federal & OCR rules along with examples of additional local regulatory requirements.



## CALIFORNIA

UNRUH & CDE CA gov code 7405 requires that EIT development or purchased by the state is accessible to disabled students. Comply with 508 and CDE Web Accessibility standards.  
<https://krisrivenburgh.medium.com/california-unruh-act-and-ada-website-accessibility-lawsuits-in-2020-db71a3e352b>

## NEW YORK

New York State has established specific web accessibility guidelines that are applicable to institutions that fall under the jurisdiction of the New York State Department of Education (NYS Policy NYS-P08-005). The require compliance to WCAG 2.0 (moving 2.1) AA.  
<https://its.ny.gov/document/accessibility-web-based-information-and-applications-compliance-reporting>

## COLORADO (EMERGING)

In June of 2021, the Colorado State Legislature passed HB-1100, making it the first state to require local and public entities to comply with web accessibility standards. The plan for this law will be released by July of 2022, and its enforcement will begin in July of 2024.  
<https://co.colorado.gov/accessibility-standards>

## OCR

OCR "complaint review," or investigation of a complaint of discrimination by the district against a student or students. Anyone who believes that a district has discriminated against a student on the basis of race, color, national origin, sex, disability, or age may file a complaint with OCR.  
<https://www2.ed.gov/about/offices/list/ocr/blog/20200724.html>

## SECTION 508

The Government of the United States is required by Section 508 of the Rehabilitation Act of 1973 (29 USC § 794d) to make their technologies (including sites) accessible to people living with disabilities when developing, procuring, or maintaining, information and communication technology (ICT).

<https://www.section508.gov>

<https://www.webfx.com/web-design/learn/ada-vs-508-compliance/>

## SECTION 504

Depending on the type of institution, section 504 is more applicable to lower levels of education (elementary and secondary). For post secondary, 504 is applicable such that it offers a qualified student the avenue to get "appropriate adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program". The institutions are not required to make a fundamental alteration or an alteration that would impose an undue burden.

<https://cdn-files.nsba.org/s3fs-public/16.%20Klimesh%20Website%20Accessibility%20Paper.pdf>

[https://en.wikipedia.org/wiki/Section\\_504\\_of\\_the\\_Rehabilitation\\_Act](https://en.wikipedia.org/wiki/Section_504_of_the_Rehabilitation_Act)



# RESULTS

Education is a soft target – it's easy to prove that more than 9 out of 10 websites are discriminating

The results from the audit show that 96% of website homepages, failed to be inclusive. The stark reality is that more than 9 out of 10 websites are at risk and vulnerable to litigation from opportunist lawyers.

The INDEX is made up of over 2000 higher education institutions (looking at their primary websites) across the US and took no more than an hour to build. It really is very easy to identify vulnerabilities, which is why the opportunist lawyers are targeting higher education. There really is no defense either; with the prospect of a futile and expensive legal fight, most claims are settled.

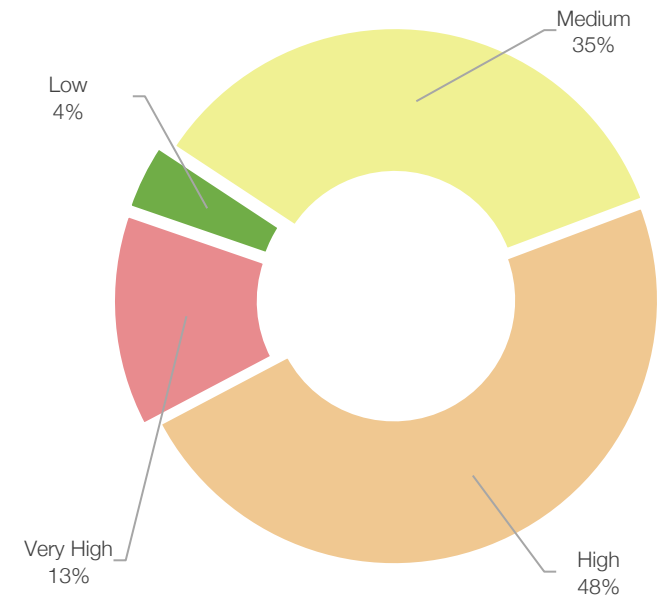
Even those institutions that show as 'low-risk' can not afford to be complacent. The results are based on an audit of the homepage of the institutions main website. With a more in-depth audit, it's highly likely that failures could be identified on every website.

*In the last 4 years, claims and spend have risen exponentially – with little or no change in compliance adherence. Until there is a **risk control** led approach, we continue with repeated spend to fail.*



## HIGHER EDUCATION SECTOR

Summary of the findings, following audit across Higher Ed.



## WEBSITE HOME PAGES

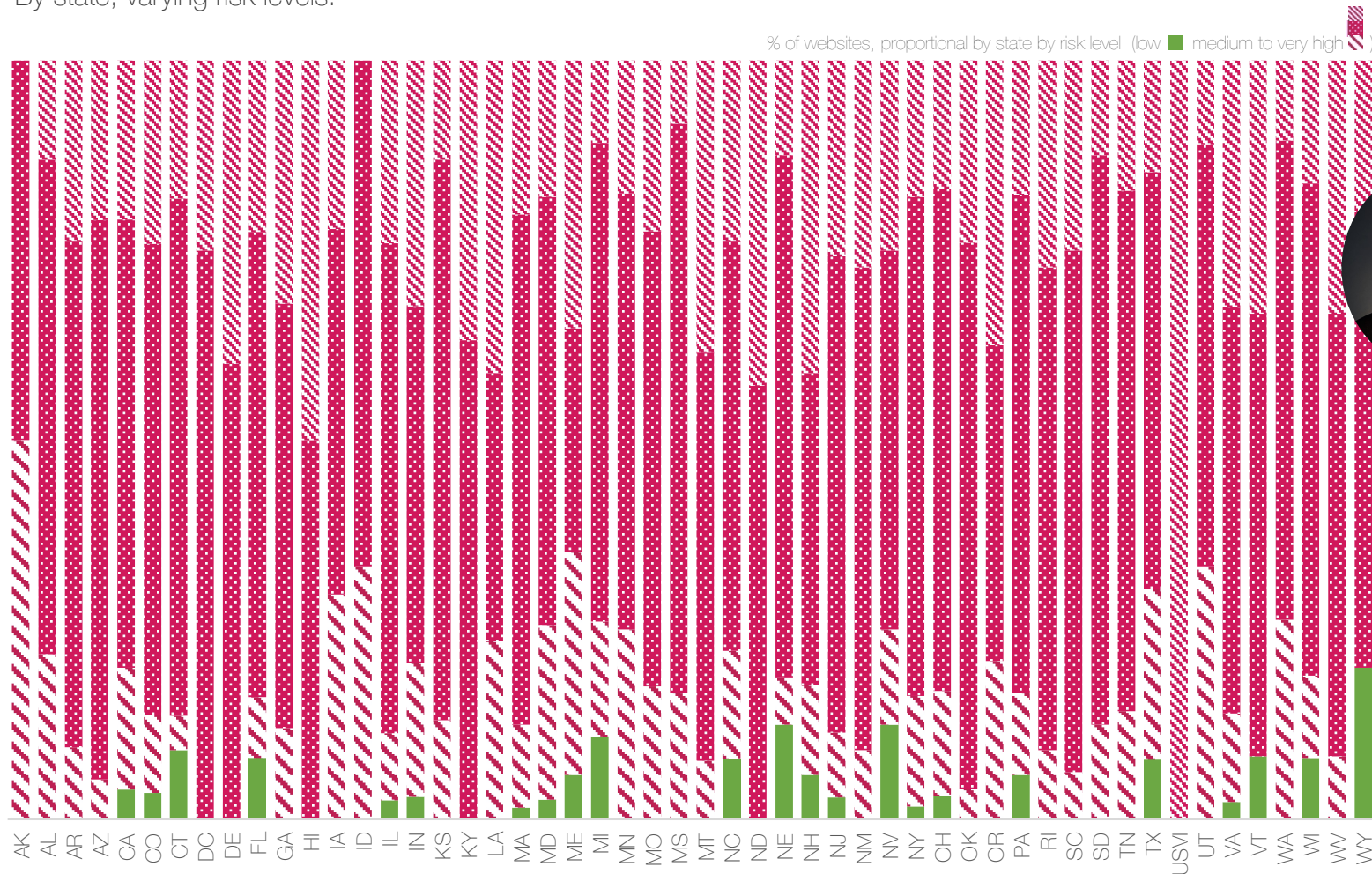
Plaintiff lawyers often focus on 3 ADA vulnerabilities ahead of issuing a demand. Across the various home pages, the % that had failings in these 3 key (some would call basic) areas:

ALT TEXT	71%	<a href="#">(alt text explained)</a>
LINK TEXT	84%	<a href="#">(link text explained)</a>
FORM LABELS	79%	<a href="#">(form labels explained)</a>



# FINDINGS BY STATE

By state, varying risk levels.



Hiram Kuykendall  
CTO  
Microassist

*"Quality institutions of higher education strive to attract a diverse student and faculty body, including people with vision, hearing, mobility, and neurodiversity challenges. As the findings by state reflect, only a handful of schools measured project a message of inclusivity with an accessible web presence.*

*Those embracing digital inclusivity enjoy reduced threats from OCR complaints, DOJ actions, litigation, and, more importantly, the risk to reputation."*

Three mannequins with duck heads are seated in a row. The mannequin on the left is wearing a white dress shirt and a solid grey tie. The middle mannequin is wearing a white dress shirt with thin vertical stripes and a patterned skirt. The mannequin on the right is wearing a white dress shirt and a striped tie. They are all sitting on black chairs against a plain grey background.

**9 out of 10  
organizations found  
to be vulnerable.**

# Importance of contract clarity



**Kara Thorvaldsen**

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Educational institutions often rely on vendors to supply content and platforms upon which students learn. While the educational institution may take steps to become compliant, their efforts may be for naught if they direct students to use specific platforms or access certain content. It is therefore critical for the institutions to ensure that every vendor it uses agrees to comply with the ADA and indemnifies the institution for its failures. Such contract clauses can protect the institution for the failures of the vendor. For example\*:

Compliance with Americans with Disabilities Act (ADA). Contractor (vendor) agrees to comply with the ADA, including, but not limited to, including ADA-compliant accessibility of electronic media and web sites.

In addition, contractor agrees to comply with accessibility guidelines under Section 508 of the Workforce Rehabilitation Act of 1973. Contractor agrees that any material, Product, Work Product, access to material, Product, or Work Product, and any platforms on which material, Product or Work Product is delivered, displayed, used, or accessed, shall be accessible to persons with disabilities as defined and/or provided for in the Americans with Disabilities Act, 42 U.S. Code § 12101 et seq., under Section 508 of the Workforce Rehabilitation Act of 1973, as required by relevant state law, or as otherwise is required to meet industry standards so that individuals with disabilities are afforded equality of opportunity, full participation, independent living, and economic self-sufficiency, such that 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.

It is further understood that to the extent that Contractor provides org name with a service that allows for its students to access educational material on a computer or mobile device, Contractor agrees that such material will be made available in a format that is accessible to all students, regardless of any disability they may have. To the extent that content is uploaded to the platform provided by the Contractor, Contractor shall inform org name immediately and take whatever steps are necessary to make such content as accessible as possible.

*Institutions cannot blindly rely on the promises of vendors and should consider monitoring be performed to ensure accountability. To the extent that monitoring reveals deficiencies, vendors can be notified to take the appropriate actions or have their contract voided. Such surveillance should reduce the incidence of failures and ensure inclusivity.*

# LITIGATION

The publicized cases represent less than 0.013% of the demands issued.



**HARVARD**  
UNIVERSITY

## National Association of the Deaf v. Harvard

In 2015, deaf and hard of hearing students, along with the National Association of the Deaf (NAD) filed federal class action lawsuits against Harvard. The suit alleged the school did not caption online content, including massive open online courses (MOOCs), making the content inaccessible to individuals with disabilities.

Class counsel sought over \$1.5 million in attorneys' fees from Harvard.

*In the last 4 years, claims and spend have risen exponentially – with little or no change in compliance adherence. Until there is a **risk control** led approach, we continue with repeated spend to fail.*



State: CA  
Entity: Los Angeles CCD  
Site: <http://laccd.edu>  
Date: 7/22/19  
Amount: **\$40,000.00**  
Claimant: Roy Payan  
<https://storage.courtlistener.com/recap/gov.uscourts.cacd.671736/gov.uscourts.cacd.671736.330.0.pdf>

State: FL  
Entity: Florida State University  
Site: <http://fsu.edu>  
Date: 3/6/12  
Amount: **\$150,000.00**  
Claimant: Christopher Shane Toth  
Jamie Ann Principato

State: OH  
Entity: Miami University  
Site: <http://miamioh.edu>  
Date: 10/17/16  
Amount: **\$25,000.00**  
Case: Dudley v. Miami University  
<https://www.justice.gov/opa/pr/miami-university-agrees-overhaul-critical-technologies-settle-disability-discrimination>

## EXAMPLES

– further reading can be found at:

### Higher Ed Accessibility Lawsuits, Complaints, and Settlements

Higher educational institutions face liability for inaccessible web content and technologies.

#### Atlantic Cape Community College (ACCC)

- [Atlantic Cape Community College Consent Decree \(PDF\)](#)
- [National Federation of the Blind and Two Blind Students Resolve Complaint Against Atlantic Cape Community College - National Federation of the Blind \(via the Internet Archive Wayback Machine\)](#)
- [ACCC Press Release \(PDF\)](#) - Dan Goldstein and Trevor Coe (via the Internet Archive Wayback Machine)
- [Blind Students' Lawsuit Leads to Big Changes at N.J. County College](#) - Kelly Heyboer

#### Arizona State University

- [Arizona State Settlement Agreement](#) - A.D.A.
- [Advocates for the Blind Sue Arizona State U. Over Kindle Use](#) - Marc Beja
- [Colleges Lock Out Blind Students Online](#) - Marc Parry
- [Lawsuit Over Kindle Navigation by Visually Impaired Settled](#) - Jacqui Cheng

BarBri

Higher educational institutions face liability for inaccessible web content and technologies.

<https://www.d.umn.edu/~lcarlson/atteam/lawsuits.html>

# DEMANDS ARE THE RISK

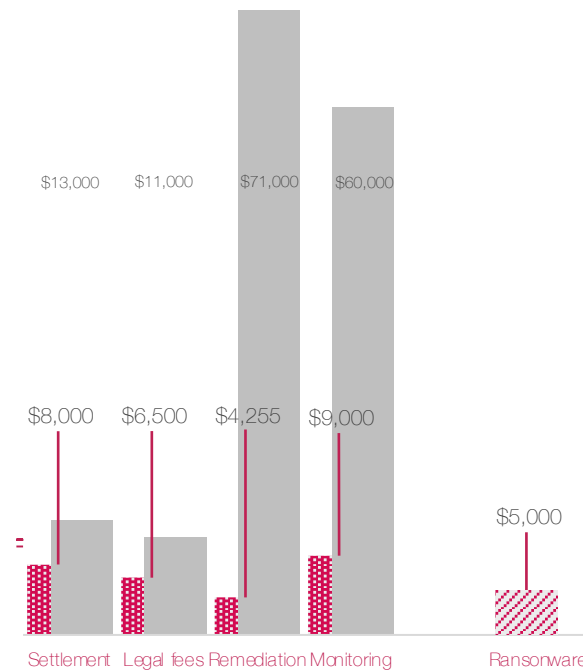
Legal landscape outlines very rich pickings – difficult to win against a compliance failure.

## Lawsuits filed

Claims last 4 years / 57% increase



## Cost of a demand [min] (exc. internal costs)



0.013%

Proportion of demands to claims (2019)

\$6.62bn

Estimated (external) costs to settle demands, excludes the cost of ongoing monitoring (2020)

64%

Increase in search term 'ADA Demand letter' (2021)

\$110,000

Typical expense of a repeated claim



# OBSESSION WITH TECHNICALITIES

Until the approach changes, exposure continues.

**No one meets the  
technical standards.**



**All are exposed until there is  
focus on the legal requirement;  
*reasonable accommodation.***

# RISK MANAGEMENT APPROACH

Website is a key asset for an organization, and should be treated as such.

## Assess

What is the risk and likely impact on the organization? What is the level of risk?

ADA exposure needs to be a risk metric and organizations need an independent and simple way to continually monitor their level of risk.

Executives must have monitoring that is immediately understandable (without technical explanation) highlighting the level of risk and reporting progression as risk mitigation measures are implemented.

## Protect

It's important to have the ultimate protection in place, 'insurance cover', (with min. deductibles), shielding you while ongoing mitigation removes risk.

In addition, organizations need 'insurance' for the time when things go wrong, be it human error or supplier failure.

Support from efficient claims management is required with on-hand expertise.

## Mitigate

What are the steps you should take to mitigate the risk?

Organizations need a checklist to follow, one linked to increasing cover as they demonstrate diligence and risk mitigation.

Evidence of activity is required, an 'audit trail of actions taken' is the key to the defense of an ADA claim.

Organizations need to demonstrate understanding of their process and provide evidence of actions taken as they 'make appropriate, proportional and reasonable adjustment.'



# CONTRIBUTORS

Organizations working together to bring you this report.



Gallagher is a global business insurance, risk management and consulting services company offering clients and customers innovation and tenacity across 150 countries.

We use our 90 years of intelligence and insight to protect what matters most: your business. We form lifelong partnerships with our clients and underwriters which, when combined with our world class data and analytics, helps our customers face their futures with confidence.

In every community where we do business, more than 30,000 Gallagher colleagues create and follow a culture based on strong values, collaboration and professional excellence.

Over 6 billion USD in revenues Gallagher are a global leader in insurance.



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Crownpeak helps organizations take the complexity out of managing their digital footprint. Our Digital Quality Management solution automates the identification of accessibility and digital quality problems at scale.



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Microassist is a trusted advisor to higher education institutions seeking to advance disability inclusion on issues ranging from governance, policy, procurement, training, auditing, and technology development.



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More than 800 attorneys strong, Wilson Elser serves clients of all sizes, across multiple industries and around the world. one of the nation's most influential law firms, ranked 53<sup>rd</sup> in the NLJ 500.

# Do it now

**Assess the risk of any website**  
(it's free and takes 60 seconds)

**@ [www.AAAtraq.com](http://www.AAAtraq.com)**

# 2022 SCHEDULE

## JAN

Understanding ADA  
webinar.

## FEB

Sites audited.  
First report,  
results.

## MAR

Results **Webinar**  
(Gallagher / Wilson Elser).  
Crownpeak and  
Microassist dates TBC

## APR

21<sup>st</sup> // next report.  
ADA // Partner workshop.

**Webinar**  
Supplier accountability indemnity,  
responsibility.

## MAY

ADA // Partner  
workshop.

## JUN

3<sup>rd</sup> results & second  
quarter summary.

## JUL

**Webinar**  
Understanding ADA.

## AUG

Fourth report, results.  
ADA // Partner  
workshop.

## SEP

Third quarter  
summary Is your  
site ready  
forthcoming intake?

## OCT

Sites audited.  
ADA // Partner  
workshop.


## NOV

Fifth report, results.  
Understanding ADA  
webinar.

## DEC

Sites audited.  
Annual summary and  
awards.

# TBC



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## Disclaimer

This document is offered for informational and illustrative purposes only and as an example of a review that was performed on the homepage of certain websites. The information is based on a review from a specific day and time and websites/webpages change often. As such, the report should not be viewed as authoritative or accurate as of the date of reading, and it should not be used as a single, sole authoritative guide. You should not consider any aspect of the service, or its provision, as legal services, advice or guidance.

In general, the services provided by AAAtraq are based on an assessment of the available areas of a website at a point in time. Sections, / areas of the site that are not open to public access or are not being served (possibly be due to site errors or downtime) will not be covered by our findings.

Where matters of legal compliance are concerned, you should always seek independent advice from appropriately qualified individuals or law firms.

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## Accessibility

AAAtraq is committed to ensuring access to content for all, without discrimination of any kind. We engage in ongoing efforts to ensure adherence to the requirements defined by the World Wide Web Consortium (W3C), specifically, the Web Content Accessibility Guidelines (WCAG) 2.1.

Content contained within PDF documents can be provided in alternative formats to ensure access is available to as wide an audience as possible.

Although AAAtraq endeavours to meet the WCAG requirements, it is not always possible to do so in all areas of our websites, all documents formats at all times; be it our reliance on 3rd parties, technical or usability limitations.

If you experience problems, please let us know, at your convenience by email ([accessibility@AAAtraq.com](mailto:accessibility@AAAtraq.com))

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ADA Compliance.  
For Good.™

AAAtraq™



## Continuous PROTECTION

CIMS offer protection from ADA litigation.

## Risk MONITORING

Risk alerting and progress visibility.

## Staff TRAINING

Confidence in actions.

## Risk AUDIT

Independent audit and opinion.

## ada RESPONSE

Claims management // demand support.

## Content MANAGER (ACM)

Anyone can remove discrimination.

## AAAtraq™

Websites, like buildings must adhere to the ADA (Americans with Disabilities Act).

Despite efforts, the majority are discriminating – resulting in distracting, expensive litigation.

Offering comprehensive protection; AAAtraq combines insurance, risk clarity and continuous mitigation.