

# *Accessible Media & Digital Content Laws:*

## **Faculty Responsibilities**

Teaching With Technology

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*Accessible Media & Digital Content Laws: Faculty Responsibilities for Institutional Compliance with Federal Laws & Regulations*

## *What is the purpose of this presentation?*

Most instructors recognize that there are major legal risks that come with denying a student's approved accommodations, but many are still unaware of the **legal problems** associated with showing, distributing, and/or posting **inaccessible digital content, including video, audio, and other media files**, in their courses...

**The purpose of today's presentation is to familiarize faculty with their federal requirements for producing and providing accessible media and digital content in their MU courses.**

*\*\*Resources for making accessible media and online course components will be offered throughout the presentation, including an overview of Universal Design and a demonstration of how to use the YouTube Captioner. \*\**

- It is important for faculty to have a clear understanding of what they are personally responsible for ensuring and providing, under the eyes of the law, as it relates to accessible media and digital content, which includes ANY and ALL documents and content that are posted to Canvas or linked to MU's website.

## *What does federal law say?*

Three pieces of federal legislation cover access to **all media and digital content** that is used or assigned in an MU course:

1. **ADA** (Americans w/Disabilities Act) of 1990 & its 2008 Amendments
  - Title III applies to all non-public & commercial entities, including private universities.
2. **Sect. 504** (Rehabilitation Act of 1973) – applies to all institutions that receive any federal financial subsidies, like Stafford educational loans or gov't research grants.

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## *What does federal law say? (cont'd)*

3. **Sect. 508** (Rehabilitation Act, as amended 1998) - detailed technical standards for Section 508 compliance are outlined in the publicly-available [WCAG \(Web Content Accessibility Guidelines\) 2.0.](#)
  - Sect. 508 was originally intended to apply to certain gov't agencies only, to reinforce governance over "**electronic and information technology**"
  - **However**, as of 2011, governing agencies and court decisions have routinely cited the Sect. 508 laws and WCAG web accessibility guidelines in their recommendations and investigative actions for [all types of colleges and universities.](#)
- Although Sect. 508 is currently undergoing revisions to expand its coverage to include requirements for colleges & universities, in recent cases where "digital discrimination" against higher education institutions has come up, the courts and federal agencies will routinely refer to Section 508 laws. (Universal Design concepts can help you plan for seamless integration!) Proactive legal enforcement of private universities is not set to take place for another 2 years, but digital discrimination cases are still being entertained and
- MU's liability insurance company recommends that until Section 508 revisions are complete, all MU media and digital content should follow the existing WCAG 2.0 standards for "Level AA", as much as possible.

## *What is meant by “media and digital content”?*

Both the ADA and Rehab Act sections require that MU and its faculty operate all aspects of our academic programs, services, and activities in a non-discriminatory manner and in the most integrated way. These laws apply to **all media and digital content** that is used in the course, including:

- Content that is posted online, in Canvas, or any other digital/web-based platform
- Computers, websites, software, learning mgmt systems, telephones, videos, apps, and any document that you post online or to the web.
- Video and audio files played in class or assigned to students in the course

- In the past five years, the feds have been ramping up their enforcement of EIT accessibility laws on college campuses and they have reinforced the inclusion of **“electronic and information technology”** language in the interpretative and enforcement scope of existing federal disability anti-discrimination laws. Full list of cases can be located here: <http://www.d.umn.edu/~lcarlson/atteam/lawsuits.html>
- Any and all content that is posted to the website, Canvas, or any other digital platform must be made accessible, regardless of whether or not a student has requested accommodations in the course.

## *What do these laws means for faculty?*

In addition to honoring the accommodations and auxilliary support services that have been approved for a student by Student Access Services (SAS), Marymount **FACULTY also have a legal obligation to ensure the following in their courses:**

- 1) Equal or equivalent access to all media and digital course content,
- 2) Effective electronic communications, and
- 3) Barrier removal in the transfer of information, use of classroom technology, and access to online course materials.

- Everyone at MU is responsible for following these requirements, whenever it is feasible and readily achievable to do so. Students cannot be required to undergo an extensive disability determination process in order to have these “e-information” and effective communication” needs addressed by the faculty member.

## *How does this differ from SAS accommodations?*

Although an interactive accommodation determination process is available to students with documented disabilities (via Student Access Services @MU), the U.S. Dept. of Justice & the Office of Civil Rights have upheld the position that:

**Relying solely upon the accommodations process to meet the needs of students with disabilities in your course is discriminatory and a violation of the ADA.**

- Rather than relying upon/waiting for students to report disabilities and request services, DOE & DOJ expects the university to be proactive and take practical steps to remove barriers to communication and electronic information.

- Violations of the ADA and Rehab Act are reported to and investigated by the Civil Rights Division of the U.S. Dept. of Justice (**DOJ**) and the U.S. Dept. of Education's Office for Civil Rights (**OCR**).
- The accommodations process through SAS is meant to be used when/if university programs, services, or activities cannot be made inherently accessible by the faculty/staff member who is running the program or teaching the course.
- According to an alert that was recently sent out by Marymount's liability insurance company (United Educators)... accessible media and web content are minimum requirements, they can be litigated without there being an "injured party".

## *What is considered to be “discriminatory”?*

Marymount's liability insurance company (the folks we pay to cover us in a lawsuit) have labelled the following instructor practices as putting the institution at-risk for discrimination complaints, federal investigations, and/or civil lawsuits:

- Not having a readily available means for making your course accessible;
- Showing, posting, or assigning uncaptioned videos in a class (the same goes for audio files without a transcript);
- Requiring students to provide disability documentation for minimum access to accessible media and online materials;
- Providing only partial access to your online course content.

- Waiting for students to disclose a disability and/or to provide an accommodation letter, before you begin to think about the accessibility of your course media and web-based content.
- In order of their level of legal liability, the following individuals are responsible for ensuring that online course content is accessible:

#3 The **AUTHOR** of the content: *Who created the original content? Who recorded the video file? Who typed up the document?*

#2 The **PUBLISHER**: *Who issued, printed or otherwise reproduced textual or graphic material?*

#1 The **DISTRIBUTER**: *Who distributed the materials for “public” consumption? Who uploaded the video to the website?*

## *What should faculty do to ensure course accessibility and avoid unnecessary litigation?*

- ✓ **For the Fall 2016 semester**, please refer to the specific tips on how to make media and course documents accessible, as described in the handout, "[Web Accessibility Guidelines](#)" from Portland Community College
- ✓ Take notes during Clint Watnee's presentation on "YouTube Video Captioning" and practice on your own. See full list of [captioning resources on MU's website](#).
- ✓ Apply Universal Design concepts for "multiple means of representation" to your course plan, as described today by Marcia Dursi.
- ✓ Follow the WCAG web accessibility guidelines for a detailed list of technical 508 website standards

## *Final question for concept reinforcement:*

**Do we still have to make all of our e-info accessible, even if no student with a disability asks for it? YES!**

Again, these are **REQUIREMENTS**, not options!



Remember that accommodations are intended to facilitate the removal of barriers in the learning environment or provide access through another route that could not be prevented through the use of UDL and other accessible design concepts.

- Accommodations cannot be relied upon as the primary go-to method for providing access and meeting the needs of SwD's. **Providing individualized accommodations alone do not meet current federal requirements.** So it is both inefficient and illegal.