Foundational

ADA as Basis for litigation over web accessibility.
Suit under Title III of the ADA – public accommodations section.
The Statistics on the increased number of these cases between 2017-2019 (up over 177%).

What is a place of public accommodation?
Netflix example for example in two different district courts it was found by one to be a place of public accommodation (could be sued under Title III) and by another to not be a place of public accommodation (not subject to suit under Title III).

Define Web/Digital Accessibility
Digital accessibility is the ability of a website, mobile application, or electronic document to be easily navigated and understood by a wide range of users, including those users who have visual, auditory, motor, or cognitive disabilities.

WHO is vulnerable to suit

Comparing the Dominoes/Winn-Dixie cases (9th and 11th circuits, respectively) to establish a circuit split on the nexus problem (there is a divide as to whether a website has to have a nexus to a physical location in order to fall under the purview of ADA Title III). Makes it difficult because we don’t know which businesses are actually vulnerable to these suits (or a Netflix type problem of being subject to suit in some jurisdictions but not others).

Comparing the two approaches to the Nexus Question (independent approach and nexus approach) – fleshing them out a bit more based on current case law. The circuits have filled on this issue (which have decided what). Personal Jurisdiction and websites/mobile apps (as the suits are being filed in district courts that often seem distant, at least at first blush, to the defendant company.

The Use of boilerplate complaints makes it possible for plaintiffs’ attorneys to largely reuse the same complaints (basis for repeat liability)
Including examples of relevant pieces – complaints saved from Law360. Incentive for bringing these claims despite no remedies for the plaintiffs – attorney’s fees. This is the Basis for recovery of attorneys fees.
Electronic Accessibility Post-Domino’s: Detangling Employers’ and Business Owners’ Web and Mobile Accessibility Obligations
May 18, 2020

The Concept of “surf-by” suits (rather than "drive-by") is the definition of these. Intent to get settlement. This is hard to defend against in Class suits (Law 360)

WHAT the ultimate problems are with these suits.

Concerns for the Companies being sued:
The Cost of litigation (cheaper to settle?)
The Time-intensive and costly to get Compliant plus no guarantee that you have reached compliance based on unclear standards

This is Hard to defend because of jurisdictional problems (continued).
Lack of a unifying federal standard as to what web accessibility is. Web not contemplated in ADA. There is no DOJ Standard for example Robles v. Dominos – called to Congress to determine some guidelines for what accessible looks like.

Pieces from letters between Congressmen (asking for clear standard on what web accessibility standards should entail) and DOJ (DOJ’s letter that none are adopted and how multiple ways to be reasonable under the ADA – left up to companies).

The most looked to standards are the WCAG guidelines. But even attempts to remediate don’t time on the same issue – repeat liability One example is Haynes v. Hooters of America

Best Potential Solutions:
Proactivity to reduce potential Harms and Make websites and apps as accessible as possible. Also to consult web accessibility experts (though this can be costly) and Use band-aid solutions like having a call-center to take calls and help impaired individuals use the site (24/7). We Recognize that good-faith efforts may not be enough -- Haynes case -- consider adding Title III litigation to the budget where possible.