Golden opportunity or poisoned chalice? Shaping your response to accessibility legislation for the benefit of disabled people

Editor's Foreword: Alistair McNaught gives us a detailed and reflective guide to the process of introducing the new regulations for public sector bodies on digital content. His article, based on experiences in the United Kingdom, where it was brought into law two years ago, provides excellent guidance for institutions, government and relevant bodies now responsible for moving this forward in Ireland.

Digital accessibility – what is it? Why does it matter?

For the purposes of the [EU accessibility of websites and mobile applications of public sector bodies regulations 2020](#) (EUAR), digital content refers to content viewed through a browser or mobile phone app. This includes websites, intranets, virtual learning environments (VLE's), SharePoint, timetabling systems, library database, e-books, electronic journals and so on.

It applies to your institutional learning platform and to an individual tutor's PowerPoint or Word documents.

Digital content is capable of flexibility and adaptability. It is usually much more flexible than hardcopy equivalent. Digital content should be capable of

- being magnified without scrolling off the edge of the screen,
- changing colours and contrasts to suit the user,
- allowing instant navigation by headings or subheadings, links, or lists,
- being equally operable by mouse, keyboard, or voice,
- reading text content out loud with text to speech tools,
- presenting different versions of the content according to need (for example image or text description of the image; video narration or subtitles; audio or transcript),
- being equally usable on a desktop, laptop, tablet, mobile phone, or assistive technology such as a screen reader or refreshable Braille device.

The core problem is that lack of awareness, lack of training, poor procurement choices or poor author practices undermine the potential benefits. Disabled people who were once disadvantaged by inaccessible hard copy are now disadvantaged by poor digital practices.

The legislation matters because web accessibility guidelines have existed since 1999 in the UK but nobody, bar a handful of enthusiasts, paid attention to them.

The legislation is virtuous

Accessibility is now a measurable legal requirement. Suddenly it matters. When the UK hit this stage in 2018, attendance at webinars soared, alongside requests for training and the emergence of communities of practice.

In a nutshell, the legislation requires two things:

1. Your organisation 'meets accessibility requirement'. The accessibility requirement is codified in the [Web Content Accessibility Guidelines (WCAG) version 2.1 level AA](). Although these are focused on web content, the [Harmonised European Standard Accessibility requirements for ICT products and services]() explains how they equally apply to 'non-web' content like documents.
2. Your organisation creates an [accessibility statement]() that transparently explains the extent to which you have or haven't met the accessibility requirement, how people can get in touch for support or escalate complaints/enforcement.

Three further benefits emerge from the virtue of this legislation.

Conviction

You can only write an accessibility statement after a thorough audit of your digital content. How to do this, given the scale and complexity of education platforms, is beyond the scope of this article. But it is a salutary experience to realise most of your PDFs and Word documents have accessibility failures. Or the new marketing pages are inaccessible to keyboard users. Worse, it is not unusual to find online guidance for disabled students is inaccessible. **Auditing digital content is a wake-up call**.

Confession

Once the audit is completed, accessibility failures must be acknowledged. Although there is scope for 'Disproportionate Burden' claims, these also need to be transparent and evidenced since they can be challenged. Disproportionate burden claims cannot be automatically rolled over from year to year because there is an assumption that both staff skills and available technology will continue to improve.

Pilgrimage

The accessibility statement is an ideal opportunity to inform disabled users how they can benefit from your accessibility successes and what your roadmap is for your accessibility failures. **Focusing on user needs, and how you support them, allows digital accessibility to become a cultural norm.**

The legislation as a golden opportunity

A further benefit of the legislation is the 'legal leverage' it provides for things you wanted to do anyway. Good accessibility is simply good practice. A document that is more flexible, useful, and adaptable for disabled students adds to everybody's productivity. The legislation can be a golden opportunity for achieving the following:

- **Digitally competent staff** - many staff are entirely self-taught in terms of IT skills. Mandatory training in digital accessibility may be required to ensure compliance, but more to the point, staff will be creating and using content in more efficient ways.
- **Digitally literate students** - If a student does not know how to 'skim' a Word document using the Navigation Pane or a web page using free plugins, the benefits of the accessible content has been lost. Digital accessibility tips and tools should be core to study skills support.
- **Raised teaching standards** - the legislation applies to technical standards, but the principles of inclusive

teaching include course design/delivery. Including this as part of accessibility training subtly raises teaching standards.

- **Joined up thinking** - many organisations struggle to ensure different services work together. Digital accessibility is a natural thread joining disability support, study skills, library, e-learning, IT, and academic practice.
- **Return on investment** - from Office 365 to learning platforms and e-book collections, mainstream tools and services have accessibility features built-in. They are rarely promoted. Highlighting these improves return on investment.
- **Procurement pressure** - many higher and further education organisations experience hit accessibility barriers in third-party systems. The legislation strengthens the hand of purchasing consortia. They can demand more accessible products. This has driven significant improvements in the UK amongst library platforms.

The poisoned chalice

Good things can go wrong. The UK transposed the EU directive into law two years ago. Not everything is going well. There have been unintended consequences, some of which significantly threaten the progress disabled students have enjoyed over recent years. Being aware of these may help you avoid making the same mistakes.

The rise of the technocrats

The Web content accessibility guidelines deal with complex content. Despite their best efforts, they remain largely incomprehensible to many people – not least the people whose practices matter: ordinary teaching staff. Content can 'meet standards' yet still be inaccessible due to complexity, dullness or poor design. Equally, content that **doesn't** meet standards can be used pedagogically in ways that are inclusive. Organisations need to grow beyond compliance to maturity. A focus on standards and compliance is only halfway along the accessibility maturity model.

Figure 1 - Simplified version of the Accessibility Maturity Model

Process over people

At the heart of the legislation is a desire to improve the lives of disabled people. However, objective, measurable standards can create a false sense of achievement. For example, the mandatory accessibility statement can easily become a transparent – but impenetrable - list of WCAG checkpoints. The average student is no wiser for reading it. Being compliant at the expense of being meaningful is a poor exchange. In the UK context, the FACTS model of accessibility statements has helped organisations turn a mandatory requirement into a genuinely useful document that helps users exploit accessibility benefits and mitigate accessibility failures.

Digital disincentives

The worst impact of the legislation is the potential for unintended consequences. We know that 'inaccessible' digital content is still better than a photocopied sheet. Yet the passionate, inclusive practitioners with presentations, videos, podcasts and interactivities online are the ones who will have 'accessibility failures' to correct. But those relying on 'chalk and talk' and dog-eared photocopies slip under the radar. Lecture capture roll-out - for inclusion -

may halt when auditors declare that 100% caption accuracy is the only benchmark for compliance.

Learning from others

In the grand scheme of things, nobody doubts the value of the legislation. But the unintended consequences can be serious. Monitoring and enforcement at national level needs to be strong enough to be taken seriously yet wise enough to avoid unwanted impacts. This requires a shared understanding between monitoring bodies and education sectors. Treating education as identical to other public sector bodies is dangerous because education has three unique challenges:

- **Engagement, challenge, and assessment** – education must engage all users with all content. Then challenge them to persevere with difficult or boring content. It sets tasks and tests the extent of understanding. No other public sector body needs to entertain, challenge, or require the audience to access and learn everything. This has implications on the media, formats and tools teachers use; and for the compromises they may need to make.
- **Third-party content** - an online teaching module may have links to YouTube, Vimeo, journal articles, e-books, professional or sector skills publications. These have their own copyright and IPR conditions. Even when technology allows tutors to improve their accessibility, copyright law forbids it.
- **Skills, resources, and training** – most public sector bodies have a small team of trained people uploading online content at a modest rate. A university or college may have a thousand different people with different skill sets uploading content daily.

After two years, the UK is still working through these challenges. **But there are some recommendations from the UK experience that might help.**

Sector level

- Develop a strategic relationship between education and the National Disability Authority. They are responsible for auditing and enforcing. Work together to avoid digital disincentives that negatively impact disabled students.
- Ensure stakeholders understand the different roles of the EU Accessibility Regulations (blanket improvements in digital accessibility at source) and pre-existing legislation. For example, it may not be feasible to caption all lecture capture for all students but a Deaf student's needs for captions would be still be met as a 'reasonable accommodation' under the previously existing regulation.
- Provide a national forum so that those responsible for changes in universities and colleges can share approaches, resources, and recommendations. In the UK we set up a Digital Accessibility Regulations Jisc mail list which currently has 981 subscribers. We also set up a Digital Accessibility Working Group to represent the sector directly to the monitoring body.

Institution level

- **Ensure a senior manager is in charge.** The changes required involve staff training, job descriptions, quality assurance and procurement processes. Too many UK organisations delegated responsibility to people with no authority or budget. It does not work.
- **Audit early** - the whole digital estate is in scope. For most institutions this means auditing dozens of systems. The website and learning platform are just the tip of the iceberg.
- **Don't rely on automated testing.** It is useful but only picks up around 50% of issues. Where possible,

employ independent auditors to manually test with assistive technologies.

- **Third-party systems (such as e-book platforms) require accessibility statements.** If they have already produced a good statement you can link to it using the SearchBox Finder service. If they haven't you will need to write one. Adapt procurement processes so that suppliers must provide a quality accessibility statement.
- Make your focus accessibility maturity rather than compliance. It will be more sustainable, more cost-effective and provide a better student experience.
- **Make training role-based and relevant.** Where possible, make it mandatory.
- **Develop internal expertise.** Consider which job descriptions should include digital accessibility as a desirable or essential quality.
- **Invest in systems that make failure difficult,** either by limiting an author's ability to make inaccessible choices or by giving feedback on levels of accessibility achieved.

Conclusion

This legislation is long overdue. It is over 20 years since the first Web Content Accessibility Guidelines were launched and yet disabled students rarely encounter truly accessible resources. Many wouldn't even know what to do with one - nobody has ever shown them the possibilities. Yet the benefits of an accessible resource can make **all** users more productive. The legislation moves us a long way forward by helping us to 'grow up' digitally and professionalise our practice. It is a golden opportunity for positive changes.

But, by themselves, technical standards do not create positive change. They may create digital disincentives, resulting in a poisoned chalice of unintended consequence. Negotiating the space between legalistic technical standards and creative inclusive practice is not easy. It will take active, positive engagement from education representatives and the monitoring body. **This is a once-in-a-generation opportunity to shift the needle on equality. Don't miss it.**

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