

Communications Law

Dull name, exciting stuff!

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NATIONAL ASSOCIATION OF REALTORS®



It was funny in March, it's **moderately** funny now, but is posting it legal?

video conference bingo

"Hey are you talking? I think you're muted"	This meeting ID is not valid. Please check and try again.	Not looking at the camera	Everyone is exactly 8 minutes late	Logging in with the wrong email for Google hangouts
Getting an invite with both video link and phone number	Staring at only video of yourself	Looking at close-up of someone's face on the big screen	Small talk for the first 5 minutes while waiting for the last person to join	"Can everybody see my screen?"
"Soooo.. how was everybody's weekends?"	awkward silence		Not sure if you should join with video or just audio	Forgetting to stop screen sharing
"Hey Dave theres some background noise can you mute yourself"	Random gargling noises in the background	"Omg sorry I thought this was PST not EST"	"Sorry, can you hear me now?"	After interrupting each other: "Sorry you go first"
"Hey guys sorry I have to hop off, you guys keep talking"	Forgetting to turn off text notifications while screen sharing	WFH person shows everyone their cat	"Maybe we should switch to a phone call?"	Ambulance or fire truck noises in the background

@inagfatt

Copyright

- Original
- Fixed
- Non-Functional Expression

WHEN
DOES
COPYRIGHT
ATTACH?

Right about now!

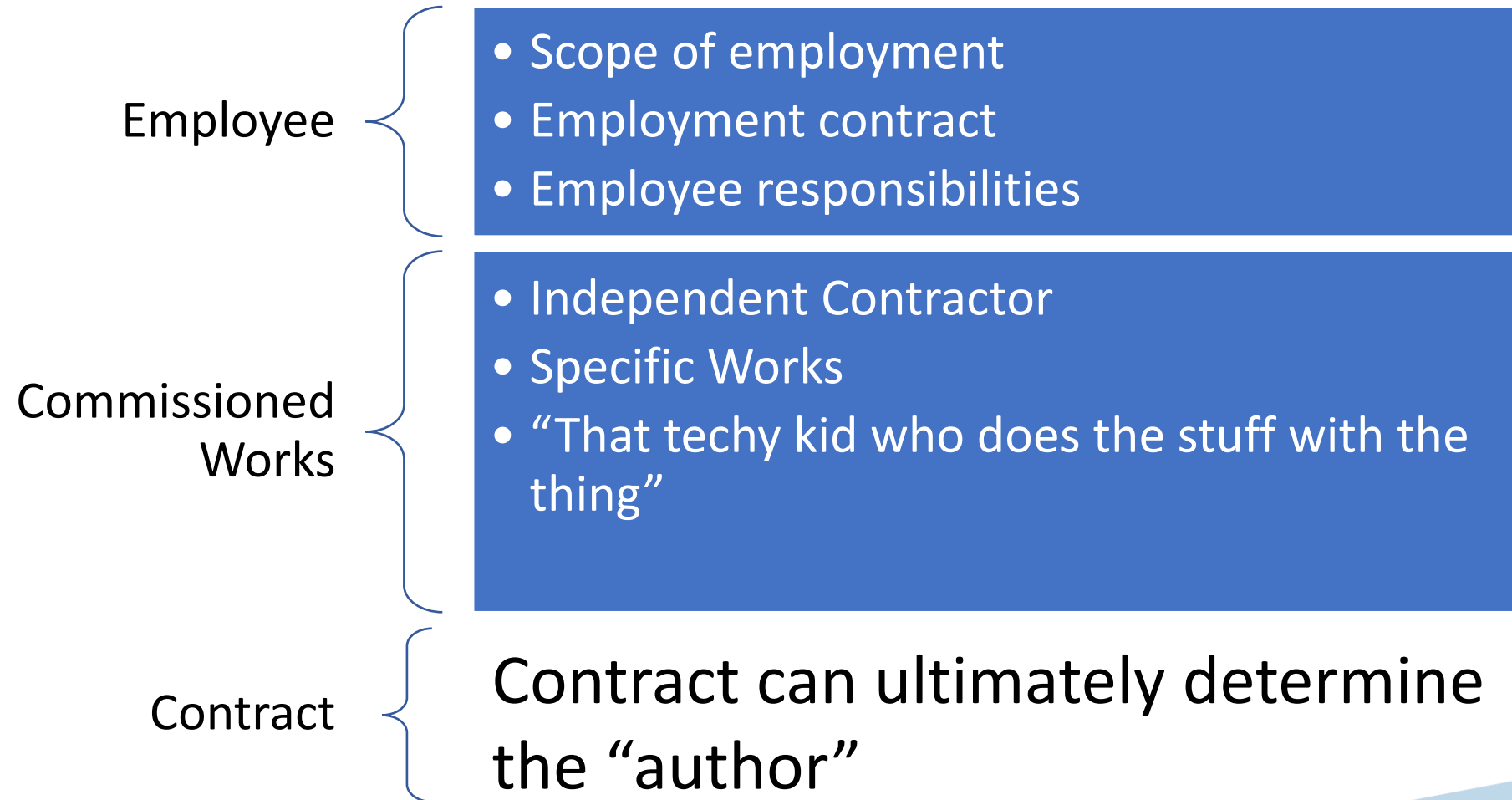
Why © at all?



Who is the author?

Traditional
Work-For-Hire

WORK-FOR-HIRE



What are the “rights” that an author gets?



Copyrights

1

**Make &
Distribute Copies**

I spy with my little eye...

2

**Make Derivative
Works**

3

**Make Public
Performances**

Copyrights

4

Authorize the use.

In writing is best!

Can be a complete transfer of authorship.

Can be a license for certain uses.

Contributory infringement

Infringing Act

- Employee or volunteer improperly uses copyrighted materials.

Knowledge by Secondary Party

- Knowledge can be actual or constructive.

Secondary Party induces, causes or materially contributes to the infringement

- Material contribution generally refers to providing the “site or facilities”

PLAGIARISM AND INFRINGEMENT

Plagiarism is using the work of another and claiming it is your work.

Infringement is using the work of another without authorization. **NO INTENT IS NEEDED**

The Public Domain



Works comprising the public domain

1. Generic Information

2. Works whose copyrights have lapsed

3. Works created before March of 1989 that don't include proper notice of copyright.

4. Works created by the United States Government.

Lapsed copyrights?

Copyright Terms Today:

70 Years from the death of the author.

95 years from publication or 120 years from creation for works-for-hire, anonymous, or pseudonymous works.

What about fair use?

- That's a thing, right?

FAIR USE

- **The Purpose and Character of the Use**
- **Nature of the Copyrighted Work**
- **Amount and Nature of the Portion Used**
- **The Effect of the Use on Copyrighted Work**



Using pictures of people...

1) Do I need permission?

2) Why don't I have eyebrows in pictures?

AMERICANS WITH DISABILITIES ACT

- **Enacted in 1990**
- **Signed by H.W. Bush**
- **Prohibits discrimination against individuals with disabilities.**

Three sections

- **Title I: Employment**
- **Title II: State and Local Government**
- **Title III: Public Accommodations**

Title III

- **Public Accommodations**
- **Commercial Facilities**
- **Private entities that offer certain examinations and courses related to educational and occupational certification.**

Is a website a public accommodation?

- **First Circuit: No need for physical place of business.**
- **Ninth Circuit: Nexus to physical place of business required.**
- **District of Vermont: Web-Only businesses = public accommodation.**

DISABILITY

- **An individual with a disability is a person who:**
 - 1. Has a physical or mental impairment that substantially limits one or more major life activities, or**
 - 2. Has a record of such an impairment, or**
 - 3. Is regarded as having such an impairment.**

Title III requires:

- **Facilities that are accessible to persons with disabilities;**
- **Reasonable modifications to policies, practices, and procedures;**
- **Provision of auxiliary aids and services at no additional charge, including those necessary to ensure effective communication with individuals with disabilities; and**
- **Maintenance of accessible features.**

Relief available under title III

- **Private Action: Injunctive relief, attorney's fees, costs.**
- **DOJ Action: Injunctive relief, civil penalties, damages for aggrieved persons.**

States & Localities

- **Some states and localities have additional relief available, including statutory damages.**

Title III Litigation Trends

- **2013: 2,722**
- **2015: 4,789**
- **2017: 7,663**
- **2018: 10,163**

Number of ADA Title III Lawsuits Nationwide in
Federal Courts

Title III litigation trends

- **10th and 11th Circuits have determined that “tester” plaintiffs have standing.**
- **10th Circuit has found that an individual can bring a class action lawsuit for nationwide injunctive relief even if the plaintiff has only encountered barriers at a single location.**
- **Private plaintiff lawsuits seeking damages are on the rise.**

DOJ Actions of Note

- Settlement Agreements

- **Peapod**
- **Quick Trip**
- **Museum of Crime & Punishment**
- **edX**
- **Louisiana Tech**
- **Florida State**
- **Law School Admissions Council**
- **Carnival Cruise Lines**

- Lawsuit/Consent Decrees

- **H&R Block**
- **Hilton Worldwide**

Statement of Interest

- **NFB v. Harvard**
- **NFB v. MIT**

Private actions

- **Safeway**
- **Wellpoint**
- **Charles Schwab**
- **Weight Watchers**
- **Bank of America**
- **Major League Baseball**
- **American Cancer Society**
- **CVS**
- **JCPenney**
- **Kmart**

ADA TITLE III WEBSITE ACCESSIBILITY



Must provide auxiliary aids and services to ensure equal access to their goods and services and to ensure effective communication.”

What is digital accessibility?

The practice of making websites, mobile applications, and other online systems accessible and usable by individuals with disabilities.

Auxiliary aids and services for the blind

- **Qualified readers**
- **Documents in alternate formats**
- **Accessible websites and other electronic and information technology**

Auxiliary aids and services for the deaf

- **Exchange of written notes**
- **Captioning on videos**
- **Telecommunications relay services**
- **Accessible websites and other electronic and information technology**

About those videos...

- **Video accounted for 75% of all online traffic globally in 2017.**
- **Predicted to reach 82% by 2022**

CC Videos

The screenshot displays the YouTube Creator Studio interface for editing video subtitles. On the left is a navigation sidebar with options like DASHBOARD, VIDEO MANAGER, Videos, LIVE STREAMING, COMMUNITY, CHANNEL, ANALYTICS, TRANSLATIONS & TRANSCRIPTIONS, CREATE, and YOUR CONTRIBUTIONS. The main area is titled "Transcribe and set timings: English" and includes a toolbar with "Info & Settings", "Enhancements", "Audio", "End screen & Annotations", "Cards", and "Subtitles/CC". A blue notification bar states "This content has been auto-generated. Remove auto-generated content". Below this is an "Actions" dropdown and a text input field with a "+" button. A list of subtitle entries is shown with their start and end times and text. On the right, a video player shows the video with a subtitle overlay. The video player includes a progress bar, play/pause button, volume icon, and a "CC" icon.

CREATOR STUDIO

DASHBOARD

VIDEO MANAGER

Videos

Playlists

LIVE STREAMING

COMMUNITY

CHANNEL

ANALYTICS

TRANSLATIONS & TRANSCRIPTIONS

CREATE

YOUR CONTRIBUTIONS

Help and feedback

Info & Settings Enhancements Audio End screen & Annotations Cards **CC Subtitles/CC**

Transcribe and set timings: English All changes saved in Drafts Delete draft Save changes

This content has been auto-generated. Remove auto-generated content

Actions

Type subtitle here then press Enter +

0:01.8	Hi Ya'll! i'm <u>tristan cursillo</u> and Shooting	✕
0:06.6	Videos Stresses me out	+
0:07.2	I don't know about you but it causes me a	
0:10.8	great deal of Anxiety	
0:10.9	I had a swim Workout today and i can See	
0:15.9	where the goggles have left a Lion on my face?	
0:16.5	The Chlorine in the Water Left my Hair a	
0:21.0	Little Crispy and Kind of Weird I'm really questioning	
0:22.1	If i should Have ever Purchased This	
0:28.8	Really obnoxious shirt Let Alone Worn it in a video but it's not the	
0:29.1	Cosmetic Stuff That Really Causes me	

Keyboard shortcuts | Help

"How's that"

Hi Ya'll! i'm tristan cursillo and Shooting Videos Stresses me out

0:01 / 2:17

00 0:01 0:02 0:03 0:04 0:05 0:06 0:07 0:08 0:09 0:10 0:11

Hi Ya'll! i'm tristan cursillo and Shooting Videos Stresses me out

I don't know about you but it causes me a great deal of Anxiety

I h
wh
fac

Deaf Brooklyn Man Sues Pornhub for Not Having Enough Subtitles

A deaf man has filed a suit against Pornhub because apparently, he can't "feel" what he is watching without the subtitles.



By Derya Özdemir

January 21, 2020



Assistive Technology

Devices, software, or techniques used to assist disabled individuals in using or accessing information.

- **Screen Readers**
- **Refreshable Braille displays**
- **Screen magnifiers**
- **Onscreen or special keyboards**

Web content accessibility guidelines

As created by the Worldwide Web Consortium:

A. Most basic accessibility

AA. The standard expected to be adopted by the DOJ in its regulations, it is the standard the DOJ uses in recent enforcement actions.

AAA. Most stringent and most accessible.

WCAG 2.0 Level AA concepts

- **Ensure that a page is designed so it can be read by assistive technology in a logical order.**
- **Provide alternative text for images.**
- **Ensure the page can be used with only a keyboard.**
- **Provide sufficient color contrast for text.**
- **Provide captions and audio descriptions for any video or audio presentations.**

Ensure that a page is designed so it can be read by assistive technology in a logical order.

SCREEN READERS

- **NVDA (Windows)**
- **Serotek System Access**
- **Apple Voice Over (OS X)**
- **ORCA (Linux)**

Provide Alternative Text for Images

Trista Curzydlo
Attorney/Educator/Nerd

Home

Course List

Contact



Hello!

I'm an attorney, real estate educator, nerd and occasional stay-at-home mom. I started my legal career in the Statehouse, as Assistant Legal Counsel to Kansas Governor Bill Graves. That was a challenging and amazing experience that allowed me to develop an understanding of how and why legislation is enacted. Being able to succinctly explain the process and the impact of legislation was a skill I developed as a contract lobbyist for several large associations. A desire to develop courtroom skills led me to the Office of the District Attorney for the 18th Judicial District of Kansas where I was an Assistant District Attorney. My love of politics was my reason for joining the REALTOR family as Government Affairs Director and Legal Counsel for a local association. It was there that I saw a need for educational opportunities that focus on the regulation of the real estate industry and are presented in a manner that everyone could relate to. I now travel the country providing excellent education opportunities to real estate licensees.

```
<div id="wsb-element-f70be723-788f-42e9-a9b1-e6f325b8dc4c" class="wsb-element-image" data-type="element">  
  <div class="wsb-image-inner">  
    <div class="img">  
        
    </div>  
  </div>  
</div>
```

The screenshot shows the Chrome DevTools interface. The top pane displays the HTML code for the image, with the `alt` attribute highlighted in yellow. The middle pane shows the CSS styles for the image, including `vertical-align: middle;`, `width: 196px;`, and `height: 204px;`. The bottom pane shows a box model diagram with a blue box representing the image dimensions (196 x 204) and a yellow box representing the container. The right pane shows the Accessibility tab with a list of accessibility-related properties.

Alternative text best practices

- Describe the image, and be specific. Use both the image's subject and context to guide you.
- Keep your alt text fewer than 125 characters. Screen-reading tools typically stop reading alt text at this point, cutting off long-winded alt text at awkward moments when verbalizing this description for the visually impaired.
- Don't start alt text with "picture of..." or "Image of..." Jump right into the image's description. Screen-reading tools will identify it as an image from the article's HTML source code.

Ensure the page can be used with only a keyboard



Provide sufficient color contrast for text


Google chrome = wave

Styles No Styles Contrast

Details


Contrast Errors (6)

6 X Very Low Contrast ⓘ




Does not account for background images, gradients, etc. Ensure fall-back contrast is defined in case images or CSS3 do not display.

Contrast Tools

Foreground color:
 

[lighter](#) | [darker](#)

Background color:
 

[lighter](#) | [darker](#)

Contrast Ratio: **8.6:1**

Normal Text: Sample

AA: **Pass**
AAA: **Pass**

Large Text: Sample

AA: **Pass**
AAA: **Pass**

[Desaturate page](#)

Attorney/Educator/Nerd


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Color Contrast

What do you see?

What about now?

What about this?

THANK YOU.



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nar.realtor

