

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

NATIONAL ASSOCIATION OF THE DEAF,  
on behalf of its members, C. WAYNE DORE,  
CHRISTY SMITH, LEE NETTLES, and  
DIANE NETTLES, on behalf of themselves and  
a proposed class of similarly situated persons  
defined below,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY,

Defendant.

CIVIL ACTION NO.

CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

Plaintiffs, the National Association of the Deaf, on behalf of its members, and C. Wayne Dore, Christy Smith, Lee Nettles, and Diane Nettles, on behalf of themselves and a proposed class defined below, by and through undersigned counsel, file their Class Action Complaint for Declaratory and Injunctive Relief and respectfully allege as follows:

**INTRODUCTION**

1. Defendant Massachusetts Institute of Technology (“MIT” or “the Institute” or “Defendant”) makes available a variety of online content on websites that have received, to date, at least 125 million visitors.<sup>1</sup> MIT makes thousands of videos and audio tracks publicly available for free to anyone with an Internet connection, on broad-ranging topics of educational or general interest. With only a few keystrokes, anyone can access videos ranging from campus talks by President Obama, Noam Chomsky and other “Laureates and Luminaries,” to introductory classes

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<sup>1</sup> MIT, About OpenCourseWare, <http://ocw.mit.edu/about/> (accessed February 3, 2015).

in topics such as computer programming, to higher-level classes in topics such as business and mathematics, to educational videos made by MIT students for use by K-12 students.

2. While MIT claims to make this online content -- which constitutes important services, privileges and advantages that it provides to the general public -- “open and available to the world,” it has largely denied access to this content to the approximately 48 million -- nearly one out of five -- Americans who are deaf or hard of hearing. Many of these individuals require captioning to meaningfully access the audio component of online audiovisual and audio content.<sup>2</sup> Much of MIT's online content is either not captioned, or is inaccurately or unintelligibly captioned, making it inaccessible for individuals who are deaf or hard of hearing. Just as buildings without ramps bar people who use wheelchairs, online content without captions excludes individuals who are deaf or hard of hearing.

3. MIT is fully aware that captioning is necessary to make online content accessible to deaf and hard of hearing people. Indeed, MIT, through its News Office, recognized years ago that “[c]losed captions make videos accessible to those who are deaf or hard of hearing . . . .”<sup>3</sup>

4. Plaintiffs the National Association of the Deaf (“NAD”), on behalf of its members, and C. Wayne Dore, Christy Smith, Lee Nettles, and Diane Nettles, all on behalf of

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<sup>2</sup> See, e.g., Resolution Letter in Case No. 15-13-6001 from U.S. Dep’t of Educ., Office for Civil Rights, Region XV, to Santa J. Ono, President, at 9-10 (Dec. 18, 2014), <http://www2.ed.gov/documents/press-releases/university-cincinnati-letter.pdf> (“Captioning for the audio portion of a video is important, as individuals who are deaf or hard of hearing may not be able to hear the auditory content. Synchronized captioning is also necessary so that a person reading captions can watch the speakers on a video and associate relevant body language and actions with the speech.”); World Wide Web Consortium (W3C)’s Web Content Accessibility Guidelines (“WCAG”) 2.0, Understanding Success Criterion 1.2.2, <http://www.w3.org/TR/UNDERSTANDING-WCAG20/media-equiv-captions.html> (documenting that captions enable people who are deaf or hard of hearing to watch media).

<sup>3</sup> Robyn Fizz, *With Move to Kaltura, MIT TechTV now supports closed captions*, MIT News (Dec. 2, 2010), <http://newsoffice.mit.edu/2010/techtv-captions> (accessed February 6, 2015).

themselves and a proposed class defined below, bring this civil rights action against Defendant MIT to enforce the requirement of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) that an educational institution receiving federal financial assistance -- such as the millions of dollars in federal financial assistance that MIT receives each year -- must not deny persons with disabilities the benefits of its programs and activities, an obligation that applies to “all of the operations of . . . a college, university, or other postsecondary institution . . . .” 29 U.S.C. § 794(b)(2)(A).

5. Plaintiffs also seek to enforce Title III of the Americans with Disabilities Act (“Title III”), which requires, among other things, that a public accommodation: (1) not deny persons with disabilities the benefits of its services, facilities, privileges and advantages; (2) not provide such persons with benefits that are unequal to those provided to nondisabled persons; (3) provide auxiliary aids and services -- including captioning -- where necessary to ensure effective communication with individuals with a disability, and to ensure that such persons are not excluded, denied services, segregated or otherwise treated differently than other individuals; and (4) utilize administrative methods, practices and policies that provide persons with disabilities equal access to its online content. Under Title III, places of accommodation include an “undergraduate, or postgraduate private school, or other place of education.” 42 U.S.C. § 12181(7)(J).

6. Because Defendant MIT receives federal financial assistance and is a place of public accommodation, it is subject to Section 504 and Title III.

7. By not providing captioning, MIT deprives deaf and hard of hearing individuals the benefits of its online content, benefits afforded to nondisabled individuals, thereby increasing the sense of isolation and stigma that Title III, as well as Section 504, were meant to redress for

individuals with disabilities. As the Department of Justice has stated, “[b]eing unable to access websites puts individuals at a great disadvantage in today’s society, which is driven by a dynamic electronic marketplace and unprecedented access to information.”<sup>4</sup>

8. Despite requests by the NAD to MIT to ensure that its online content has timely, accurate captioning, MIT has done so only with regard to a fraction of such content, and even then inadequately.

9. MIT’s denial of much of its publicly available online content to deaf and hard of hearing persons violates Section 504 and Title III. Remediating these violations is critical to these statutes’ goal of ensuring that people with disabilities have the same access that others take for granted.

10. Accordingly, Plaintiffs seek injunctive and declaratory relief to ensure that deaf and hard of hearing individuals have equal, effective, and timely access to MIT’s publicly available online content.

### **JURISDICTION AND VENUE**

11. The claims alleged arise under Section 504 and Title III such that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 65 of the Federal Rules of Civil Procedure.

12. Venue over Plaintiffs’ claims is proper in the District of Massachusetts because Defendant resides in the District of Massachusetts within the meaning of 28 U.S.C. § 1391, and

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<sup>4</sup> U.S. Dep’t of Justice, Statement of Eve L. Hill Before the Senate Comm. on Health, Educ., Labor & Pensions, at 3 (May 14, 2013), *available at* <http://www.justice.gov/iso/opa/ola/witness/05-14-13-crt-hill-testimony-re-the-americans-with-disabilities-act-and-entertain.201372314.pdf>.

because the events, acts, and omissions giving rise to Plaintiffs' claims occurred in the District of Massachusetts.

13. Assignment to the Western Division is appropriate pursuant to Rule 40.1(D) of the Local Rules of the United States District Court for the District of Massachusetts.

### **PARTIES**

14. Plaintiff the NAD is the nation's premier civil rights organization of, by, and for deaf and hard of hearing individuals. The NAD is organized as a non-profit corporation under the laws of the State of Maryland and has its national headquarters in Silver Spring, Maryland. The NAD's membership includes individuals and associations from all fifty states and Washington, D.C. The NAD is also the United States member of the World Federation of the Deaf, which comprises more than 120 national associations of deaf people.

15. The NAD's mission is to preserve, protect and promote the civil, human and linguistic rights of deaf and hard of hearing people in the United States of America. This mission includes ensuring that important tools of daily life -- such as websites conveying useful and educational information to the general public -- are accessible to deaf and hard of hearing people.

16. The NAD furthers this mission in a variety of ways. For example, the NAD provides guidance about effective captioning on its website and administers the Described and Captioned Media Program ("DCMP") through a cooperative agreement with the U.S. Department of Education. The DCMP promotes equal access to communication and learning through described and captioned educational media. The DCMP provides services designed to support and improve the academic achievement of students who are blind, visually impaired, deaf, hard of hearing, or deaf-blind. The DCMP has a library of more than 4,000 titles of

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