LILY BOND: Welcome, everyone, and thank you for joining this webinar entitled "Online Video and the ADA: How a Landmark Case Changed the Legal Landscape of Closed Captioning". I'm Lily Bond from 3Play Media, and I'll be moderating today.

I'm honored today to be joined by Arlene B. Mayerson, the directing attorney of the Disability Rights Education and Defense Fund. Ms. Mayerson represented the National Association of the Deaf and presented the oral argument that secured a historic settlement regarding the application of the ADA to online commerce in the *National Association of the Deaf versus Netflix*.

She's one of the nation's leading experts in disability rights law and has been a key adviser to both Congress and the disability community on the major disability rights legislation for the past two decades. As for an agenda, Arlene will begin with her presentation. And then we'll have about 15 minutes for some prepared questions, followed by 15 minutes for audience Q&A. And with that, I'm going to hand it off to Arlene, who has a wonderful presentation prepared for you.

ARLENE B. MAYERSON: Hello, everyone. I want to start by thanking everyone who is on this webinar for tuning in. Because it means that you care about a very important issue, which is access for people with disabilities, and in this presentation particularly, people who are deaf and hard of hearing to the internet. As you all see from the slide, there are 48 million people in America who are deaf and hard of hearing. So we're talking about access for lots of people.

And interestingly, as many people as that is, many more people benefit from captions as well. In fact, there was a recent study showing that 80% of the people that use captions are not deaf and hard of hearing, but use it for a variety of other reasons, such as English language learners, parents who want to keep things quiet for their children at night, college students who are in loud environments and want to be able to get the written text along with the audio that they might be missing because of a loud noise.

So this is a very, very important topic affecting millions and millions of people. And again, just the fact that you're tuned in today means that it's something that you're interested in and that you want to learn more about. So I want to thank you.

Moving on. I want to tell you-- I'm going to tell you a little history of the ADA, which is just to

give you the background that I would be giving my class. I teach also at University of California Berkeley. The background of how we got to the whole issue of access by public accommodations. And the slides show in the beginning is particularly about Title III of the ADA, which covers public accommodations.

And while the ADA was modeled after its predecessor law Section 504 of the Rehabilitation Act, which covers recipients of federal financial assistance, Title III is brand new in the ADA, covering private businesses. I know many people on the phone are covered by both 504 and Title III of the ADA. As well as many on the phone might be covered by Title II, which covers state and local governments, and of course, state universities, county schools, et cetera.

So hopefully by the time we go through all the segments of this conversation, we will have covered issues in all of those laws. So first, the history-- the ADA, the concept-- well, backwards to the ADA concept. The concept, in 1988, when we started working on actual language for the Americans with Disabilities Act, there was no federal prohibition against discriminating against people with disabilities. Unless, like I said, under 504, the predecessor federal law, the entity involved received federal financial assistance.

And the whole strategy, and public relations, and really compelling moral story of the ADA was that disabled people were the only ones that were really left out of the nondiscrimination laws of our country and that disability rights is a civil rights issue. So from the get-go we were looking at other civil rights laws as a basis for protecting people with disabilities.

And so throughout the development, and passage, and negotiation of the ADA, we were talking about how we wanted to bring equity in the laws of our country that minorities had secured in 1964 with the 1964 Civil Rights Act, that women, particularly in education, had secured through Title IX in 1972. And that all these years later we needed to extend those same protections for people with disabilities.

So in doing that, in developing the actual language for the ADA, we looked to the laws for civil rights for people who were racial minorities, in particular. And when we looked at the public accommodations section of the 1964 Civil Rights Act, we saw that the categories of covered entity were primarily the places where people of color had a lot of problems having access. Travel was a big issue, because when you traveled you couldn't stay in any of the accommodations, inns, and hotels, and motels, et cetera. There was a big problem, of course, we all know, with restaurants, and cafeterias, and lunchrooms. And then there were also the

problems of public entertainment.

And so we looked at that definition. And we thought, well, that definition would not really do the trick. That it would not really give access, the kind of access that was required for people with disabilities. And so the original definition of the ADA was much broader. And it said that anyone, any business that was open to the public-- and by business it meant also non-profit businesses, universities, colleges, et cetera-- any place the public was invited would be covered by the ADA.

And the testimony before Congress was very compelling. Because we said, if we look to the '64 Act, people with disabilities would be able to get pastrami but not prescriptions. And so we really covered all the various ways and all the various entities in the community that people with disabilities could not have access to. And the definition became what we now find in the ADA, which is enumerated types of accommodations.

And I think that I will not read each of these, but as you'll see, there are 12 categories. Public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories. So the categories, of course, incorporate this 1964 act for racial minorities, but also add all the various kind of categories that would be important to have equal access.

And the thing I want to emphasize in our discussion today about the Netflix case is that the ones that are underlined in red-- and I hope you all can see that-- that, for instance, number three is a motion picture house, theater, concert hall, stadium, and then very importantly, or other place of exhibition and entertainment. And if you go to the next slide, you'll see service provider or other service establishment. And number nine, places-- a park, zoo, amusement park, or other places of recreation. So it's important to note in the definition of public accommodations, while it's somewhat specific in category, it includes these phrases that were very important in the Netflix case, which is "or other" to make it very clear that they were not exclusive categories.

The next slide-- so what was our biggest hurdle? Our biggest hurdle in the Netflix case, and I don't think at this point I needed to really tell anyone what Netflix was, but just briefly, when Netflix came onto the scene, it was a splash. It was a big, big, big deal. It was really a revolution in entertainment. And suddenly, you could watch entertainment at home through what was called streaming or downloading, but for the rest of the talk I'll call it streaming. And

you could have access to what you used to be able to have to go to a movie theater to get. You could, in your own home, watch movies and TV shows when you wanted.

So the big hurdle was internet only business. So in Netflix, there's no place you can go to rent a video, for instance. It's all online. And the other thing was that Netflix really brought out is-- what Netflix said was-- since we had to end up going to court, we had a couple motions to dismiss the case of what I'm going to be discussing with you right now. When I say the biggest hurdles, is the things that Netflix brought up as to why the court should dismiss the case.

And Netflix also raised the issue that, well, if you look at Title III of the ADA, it was all meant to be public type activities. So we had to really convince the court that what we wanted, which was access to all the entertainment that Netflix was offering that people were so excited about, that we also, we-- people with disabilities, and in particular, deaf and hard of hearing people-- wanted the same access.

So if you go back to that definition, you'll see it says you go to the very place of public accommodation. So going forward again-- Lily, thank you-- Netflix argued that, well, there isn't a place. A place means something that you can touch, bricks and mortar. They said, like I said, that ADA was intended for access to activities in the community and that there was no physical structure.

And this is what we did to counter that-- if you go to the next slide. First question, of course, well, the internet's not mentioned in the list of 12, even as a group, even as something that has a tag on other types of internet, any other type of digital. And why? Because in 1990, for all intents and purposes, there was no internet. There were certainly not personal computers. There were computers the size of rooms that were in the State Department, et cetera. But it just wasn't something that was happening in 1990.

But even with that, Congress was smart enough to put in the legislative history of the ADA, we know there's technological stuff happening, and we want the ADA to keep up with that. And that's been used in all the decisions that have been positive about access. Many of you, again, when you look back at that definition of public accommodation, you'll see that a lot of the activities that they mentioned now take place on the internet. We really wanted to emphasize that the ADA does not cover the internet, given how ubiquitous it is, given how much commerce takes place, that it would become an empty shell.

We also emphasized that unlike a video store, because the ADA says, a video store doesn't

have to have a copy of every video with another video that has captions. We were saying that the thing that Netflix, the thing online, in this case, entertainment, but we'll talk about other uses also-- the thing that it has is that it's not just the good, the film, the TV show, it's the service of streaming, which is what we want access to.

We said that integration is still implicated, even though the entertainment integration is still implicated, even though the entertainment is primarily private, because it's in the zeitgeist. It's in the community. There's a buzz about it. And not only that, but we pointed out that because it was such a big splash, people do it together.

We used primarily Netflix's own statement. And I think what you see on Netflix's statement here on the slide is applicable to almost everything on the internet. But Netflix really advertised, watch what you want, when you want by streaming instantly over the internet right on your TV. So suddenly, the characteristics of what we were asking for had very specific definitions and instantly became part of the equation of whether you got equal access.

What we also showed is that even as something that's primarily private-- we used Netflix's own, not only that statement I just read, but Netflix's own advertisements, showing like a family enjoy Netflix together. So that's the sociability of it. And in bringing the case, we had clients who had exactly this issue, which is a deaf family member who could not participate with their family in this family activity at home all cozied up on the couch.

The next slide shows how like college students or teenagers, they might be watching something together. Netflix and everything on the internet is, in fact, really not just a private activity often but often a shared activity. And we wanted to point out why that, because it was important. It is important to the integration mandate of the ADA.

Next, the Netflix decision-- Judge Ponsor-- this was in the Western District of Massachusetts-- denied all the various motions to dismiss, stating that it would be "irrational to conclude" that "places of public accommodation are limited to actual physical structures. In a society in which business is increasingly conducted online, excluding businesses that sell services through the internet from the ADA would run afoul of the purpose of the ADA. It would severely frustrate Congress's intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to other members of the general public."

He stated that the ADA, again, as we've discussed, does not include web-based services since such web-based services did not exist when the ADA was passed in 1990, but that the

legislative history makes it very clear that the ADA was intended to keep up with technological advances. So the Netflix decision-- it was a district court in Massachusetts. It's not the Supreme Court of the United States. And there is no decision from the Supreme Court of the United States, but it made a very, very big splash. The reason is it was really setting the gold standard. Netflix was the big deal at the time.

Since then, many, many, many, many companies have the same kind of streaming of entertainment, movies, and TV shows. We were able to collaboratively work with Apple to make sure iTunes, all the offerings on iTunes for their streaming, renting, and buying videos have captions. We were then able to work with Vudu, which is the Walmart streaming site.

We have another decision that's just minutes away from being announced of a very, very big streamer. It really set a gold standard. It set the appropriate standard, we believe, under the ADA, and we are very much keeping up with all the streamers. If you're a streamer of entertainment, chances are you'll get a letter from us, from the National Association for the Deaf, saying that captions should be provided.

We're also moving on, and I know it's important to many, many, many people on this call-- online education. There's a lot of health care implications more and more. There's a lot of health care videos on health care websites. Also when people go to the hospital-- we have one client who was having all of her delivery information when she was having a baby portrayed on the TV screen through the internet. Employment has gotten to be a big issue, because online training is becoming more and more and more popular. And I have the question mark others, but as you know, there is just really hardly an area of American life that doesn't have the issue of streaming videos.

So we are working on at my organization, Disability Rights Education and Defense Fund, in conjunction with National Association for the Deaf, on all of those various areas. Question number one on the screen brings up the oral argument that we just did last Friday again in the Western District of Massachusetts. We had brought a lawsuit again MIT and Harvard primarily about their MOOCs, Massive Online Education courses, because many of them do not have captions or have very, very inaccurate captions.

So we have brought a case, and again, Harvard and MIT brought a motion, two motions to dismiss. So there we were back on some of the same arguments, and some of them were different. It was interesting to me that Harvard and MIT's counsel repeatedly said, well, we're

not Netflix. And so there was a big difference, because Netflix was a commercial enterprise, and you paid money to use it, et cetera, and what they were offering was free.

And actually, the equities, I think, are more compelling for Harvard and MIT even than Netflix. Because unlike Netflix, Harvard and MIT are also covered by Section 504 of the Rehabilitation Act, because they receive millions and billions of dollars from the federal government. So there's two bases for covering Harvard and MIT-- both 504 of the Rehabilitation Act and the ADA. The provisions are very, very similar.

And we argued that Harvard and MIT need to provide equal access-- effective communication is the term in both laws-- to people who are deaf and hard of hearing. That if you look at the Harvard and MIT websites about their MOOCs and about their various offerings, you'll see that they are rightly so very, very proud of sharing this high level education, what has been always restricted to a very elite group with the public.

And while laudable, and it is very laudable, people who are deaf and hard of hearing want the benefit of it also. And so people who are deaf and hard of hearing and in our individual clients want to be part of all emerging technology that offers advancement. And many people take these courses just because they're interested, which is personal advancement. They offer certificates for certain courses, which you can use for perhaps your job, and just knowledge that can help you advance professionally.

So that's the answer to question number one, and I'm happy to take any followups on that. But to our mind, the same law applies from Netflix to Harvard and MIT. The basic premise of the ADA and 504, before you look to any of the specific provisions, is this full and equal access. Then you get to specific provisions, which is effective communication.

I'm going to go onto the next question.

LILY BOND: Great. Arlene, do you mind just reading the question aloud for anyone who might not be able to see the slide?

ARLENE B MAYERSON: Absolutely. The question I just answered was, "Harvard and MIT were recently sued for violating the ADA by not providing closed captions for their online video content. How do you think the Netflix case will impact a case like this one?" And that was the question I was just answering.

The next question, question number two. "There has been some confusion about conflicting

rulings, such as the case of *Donald Cullen versus Netflix,* where the 9th Circuit ruled that the ADA does not apply. How should people involved in publishing online video reconcile these rulings, and do you have any insight on when these issues will be resolved definitively?"

So as you might remember, the slide that I had on the Netflix decision when I said hurdles, I said the case law is mixed. And basically, I would say it falls into two main categories now. There were three categories. The one that I think is somewhat eliminated is that just internet's not covered no matter what. And there had been a decision that was the *Access Now versus Southwest Airlines* case in the Southern District of Florida, which had said that Southwest Airlines did not have to make its internet site acceptable. But that has since been overturned by Department of Transportation regulations.

I would say the two main trends is that of the 9th Circuit, which is set forth in what's called the *Target* case. It's *NAD versus Target*-- sorry. It's not NAD. It was a blind access case, *National Federation of the Blind versus Target.* And in that case, the court held-- based on previous precedent in the 9th Circuit-- that Target's website was accessible. It needed to be accessible, because there was a direct nexus between what Target was selling in the store and what Target was selling on the website. So it was an extension on the website of what they were doing in their bricks and mortar building.

So in the 9th Circuit, they still require a bricks and mortar building and a nexus to the internet. Is there a sufficient nexus by what's on the internet to what they're doing in their commercial bricks and mortar building? So that's called the nexus test, and that's one trend. The other trend is what we discussed in Netflix and what Judge Posner said-- what I read before that Judge Posner said.

Significantly, a very famous jurist, Judge Posner-- sorry. The Netflix is Ponsor, and the 7th Circuit Court of Appeals is Judge Posner in *Doe versus Mutual of Omaha Insurance Company.* He's a very famous jurist, a very conservative jurist. And what he said in that case is the core meaning of Title III and the nondiscrimination provision of Title III, plainly enough, is that the owner or operator of a store, or hotel, restaurant, dentist office, travel agency, theater, website, or other facility, and then specifically whether in physical space or in electronic space that is open to the public cannot exclude disabled persons from entering the facility, and once in, from using the facility in the same way that the non-disabled do.

So these two different trends explain why there are these two different rulings in question

number two. *Donald Cullen versus Netflix* was in the 9th Circuit, and the 9th Circuit has the nexus rule that you have to have bricks and mortar. And then the internet is covered if there's a nexus to what's happening in the internet site and what's happening in bricks and mortar.

Netflix does not have bricks and mortar. Netflix has an internet only business. And that's why there's a difference in the ruling. It's a difference. And some of you on the phone might not be familiar with the way the federal courts work. But the federal courts are divided into circuits, and they cover a certain region, a certain amount of states. And they do have decisions that are different than one another, and various circuits follow various circuits,

So for the purpose of this conversation, though, I wanted you to know because of question number two, that there are two major trends-- there needs to be a nexus and internet qua internet is covered. And in terms of when this might be resolved definitively, there's two different potential answers to that.

One is as the circuits start having more and more opinions on this, we'll start to have a buildup. And if there remains a conflict after other circuits have had a chance to rule on this, then it might go to the Supreme Court. And of course, that's always definitive. And then the other answer has to do with another question that we'll be addressing, which is there's a regulatory process happening also at the Department of Justice.

So question number three, "The ADA specifically calls out private places of education as places of public accommodation. To what extent does the ADA apply when it comes to the size and impact of the organization? For example, is a giant organization like University of Phoenix implicated more than a small e-learning website with 100 how-to videos or so? Or does payment matter, i.e., someone who pays for University of Phoenix versus someone who signs up for Khan Academy, which is free?"

So again, the answer is looking to the main overriding concept, which is full and equal access to a public accommodation. So if you're a place of public accommodation, you have to have full and equal access of what you offer. If you offer it free, you have to have full and equal access to everyone who can offer it. If you offer it for pay, full and equal access to anyone who wants to pay.

And then again-- effective communication. So effective communication is decided by whether the communication is as effective for someone who is deaf or hard of hearing as someone who is hearing. So is there any defense to that? Yes. The ADA across the board has defense,

which is, well, I'm a [? peon ?]. So for me, it would be an undue burden. And undue burden is one of the standards in the ADA which takes into consideration the size and resources of the facility. Or it's a fundamental alteration, which is pretty hard to meet, very hard to meet, because it really means we are asking you to do something that you don't do. You're an educational institution, and we're asking you to provide medical care. It's a very, very hard defense to meet.

So one would say that undue burden is easier to prove for a small entity than a big entity, but there's a flip side to that coin as well. And that's that if you only have 100 videos, it's going to cost a whole lot less, too. So you're not really comparing apples and apples. In this question, the larger entity, which has hundreds or thousands of videos would have a bigger burden in terms of cost than a smaller one.

So even though the defense takes into consideration resources, what is being required or asked of that entity is also very important, because for 100 videos, the cost would be pretty low. So yes, size matters but it matters on both sides of the equation.

Question number four, "One of the issues with captioning that comes up a lot has to do with quality and accuracy. For example, speech recognition can provide closed captions very inexpensively, but many people contend that the quality is inadequate. Last year the FCC put out a ruling that specifically defined the quality requirements. However, those only apply to content that's aired on television." And by this question, the question refers to the CVAA. That's the FCC rule that says that if something has been shown on television, and then you want to stream it, you must provide captions.

So the question is, how do these two interact-- the CVAA and the ADA? Well, let me step back a minute beyond this question to say that when we originally did Netflix, Netflix came to court and said, we comply with the CVAA, which is governed by the FCC. They're coming out with regulations. They should govern that whole field. The ADA really has nothing to do with it.

Judge Ponsor also rejected that argument. Because what we explained is that the CVAA only covers content that has been on television with captions. That if it's going to be streamed, it also must have captions. Whereas the metric for the ADA is not whether something's been on television. It's full and equal access to whatever you're offering. So whether it's been on television or not is irrelevant for the ADA. The ADA is there for broader and covers all content being offered. That's about the difference between the content issue.

As for the quality and accuracy-- again, to remind you that the ADA says effective communication. And I think that it's very helpful to read something that came out of the Department of Education, and this is a long time ago, almost a decade ago, explaining effective communication. And this is quoting from a letter from the Office of Civil Rights, US Department of Education, "The issue is not whether the student with the disability is merely provided access, but the issue is rather the extent to which a communication is actually as effective as that provided others."

So again, inaccurate captioning is not as effective as hearing what the person is actually saying. I personally think the FCC quality standards are a good guidepost. And in our ADA cases, we certainly argue that they can be used as a guidepost for measuring whether the communication is effective.

So now I would love to take your questions. And I believe-- and Lily might be able to say more about this-- that there's also a possibility of this will be online, and also that potentially more questions could be asked online as well. But I think right now I'll take the questions that have been compiled up until now.

LILY BOND: Thank you, Arlene. That was a fabulous presentation. Everyone has been sending in lots of questions. So as we're compiling them, I just want to mention that we have a few upcoming webinars this fall throughout October and November all on web accessibility in higher education. And you can register for those online at our website, 3playmedia.com/webinars.

So Arlene, I'm going to start out with a question that came in. "Do we still have to provide captioning in a class where the instructor knows that there are no deaf students?" OK. The next question--

ARLENE B MAYERSON: Actually, let me just clarify deaf and hard of hearing. For instance, I am doing this webinar. I can hear. I have my phone all the way-- the volume all the way up. I was able to go through school without captions. My hearing is worse now. I cannot watch TV without captions. So I just want to modify it to say deaf and hard of hearing.

LILY BOND: Great. There's another question here, which I believe you touched on. "Is there an exemption for large institutions who might have tens of thousands of videos to be captioned if it is an economic burden?"

ARLENE B. There are not in any exceptions, large or small, in the public accommodations section of the

MAYERSON: ADA. And usually large means more resources and therefore more obligation. There is, again, an undue burden defense. The undue burden defense does take into consideration the resources of the entity. It's a pretty hard defense for a large university to meet I would say.

LILY BOND: Thank you. The next question is, "Has the ruling of the internet as a place had impact beyond the ADA, and has it been used to drive other legislation?"

ARLENE B MAYERSON: Well, that's a great question. I don't think so. And I certainly don't know outside of the world of disability.

LILY BOND: That's fair. Someone is asking, "Our church has an online video archive of our pastor's teachings. Do these need to be captioned as well?" There could be thousands of teachings over all the years."

ARLENE B MAYERSON: The religious entity is actually-- and here you are, whoever you are, just making me contradict what I said. That is the only exception. In Title III, religious entities are exempted if there is a direct correlation to the purpose of the religious organization. So actually, I think that's a really tough one, and I would be happy to get back to everyone on that.

LILY BOND: Great. Thank you, Arlene. The next question here is, "Is there a group that certifies ADA compliance, or is it sufficient for our group to claim ADA compliance due to our subtitling?"

ARLENE B MAYERSON: I'm not sure what-- what did you say after the or?

LILY BOND: "Or is it sufficient for our group to claim ADA compliance rather than having the ADA compliance certified?"

ARLENE B MAYERSON: So there really isn't a way to have ADA, and particularly the way we're talking about it right now with captions, certified. There are a lot of entities that can help a lot, and there are guidelines, and particularly now with the FCC, guidelines to create pretty good measures for self-assessment.

I do want to mention also that this topic, this webinar was specifically intended to be for people who are deaf and hard of hearing, but as many of you, I'm sure, are very aware of, there's very detailed guidance for blind access. And that's the Web Content Access Guidelines 2.0 at www.w3.org/TR/wcag20/. So there are very, very detailed guidances for people to look to to do a self-assessment.

LILY BOND: Thank you, Arlene. The next question here is, "Clearly material posted by an instructor should and must be ADA compliant and accessible to all. Does material posted by a student into an online course, say a video posted to a discussion board, also need to be legally accessible?"

ARLENE B MAYERSON: Well, I'm not sure. I might need some help understanding the question. A good way to test it out is, is the deaf or hard of hearing student getting what the hearing student is getting? So if the video is shown online, it has to be captioned. I don't know to what extent video is used on Blackboards and et cetera, the new mechanisms that teachers use to post assignments. But anything that the teacher is requiring should have an accessible version.

LILY BOND: Thank you. Someone is asking, "Did Netflix's use of federally monitored bandwidth, a public resource, come up in the defense at all?"

ARLENE B MAYERSON: Actually, that's an excellent question. And that was not used, and we did not sue under 504. I assume the question has to do with whether that could be used as a federally financial assistant to bring in 504. We did not use that.

LILY BOND: Thank you. Someone is asking, "Do we still need to provide video captions if there is an alternative form of content like a textbook?"

ARLENE B MAYERSON: The interesting thing, again, is-- and this comes up a lot with the training. I was saying there's a lot of training by employers online. They say, oh, well, you know, you don't need to get that, because we can just give you the manual, et cetera. And the important thing that I always tell my students, and my law clerks, and et cetera, is the very first question before you get to any of the details about the ADA is, is the individual getting full and equal access?

So if there's a big move to have video training, one has to assume that someone's made the determination that it's more effective than just giving someone the manual. And so that's always the question. And everything in the ADA about effective communication relates to the context. So if you feel like there's a good argument that someone has the same as effective communication, then there's no requirement.

But if it's not as effective, and again, you have to ask the question, well, then why is there a video? And there's a case that, actually, my organization is starting to look into, which has to do with exactly that question. There's a lot of videos that actually help teachers, for instance, on how to use their textbook when they teach. You have to assume that the company wouldn't

have those unless they thought it was a very helpful tool.

LILY BOND: That's a great response. Thank you. Someone is asking, "You said religious entities are exempt, but what about religious colleges where chapel services are online for the public?"

ARLENE B MAYERSON: Well, again, I'm really sorry. I wasn't prepared on the religious question. It's not something I've done a lot of work in. I want to doubt that they're exempt on that if it's open to the public. But I don't know the actual answer, and I will have to get back. Religious entities are in a very, very particular position that no one who is not from a religious entity on this phone call needs to be concerned with. So I would doubt very much if it's exempted, but I would definitely be willing to post that-- an answer.

LILY BOND: That would be great. Thank you. Someone was asking, "Is there a case for requiring YouTube to caption all of their videos?"

ARLENE B MAYERSON: So YouTube-- that's a very excellent question. YouTube is an example of voice recognition. There are whole blogs on how hysterically funny and not funny for deaf and hard of hearing people that they can't understand. Voice recognition is so often wrong. YouTube is so often wrong.

YouTube receives an amount of content per second and minute that might very well fit into fundamental alteration. As I said before, fundamental alteration is a very, very specific and very difficult defense to reach. And I've actually been told this by YouTube people-- the amount that they get per second.

However, I'll just add that my opinion is starting to change about some of YouTube's content, because YouTube is now really launching a lot of entertainment that is serious studio endeavors. Even if they're start-up studios, many of their programs are being adopted by networks. And I think once you get into that type of level, it would be much more similar to the other streaming companies than it would be to the stuff that comes in en masse from individuals.

LILY BOND: That's a really great point. Someone else is asking, "Has the Harvard MIT case been closed? All I can find online is the court statement of interest as of June 23, 2015."

ARLENE B MAYERSON: That's not the court's statement of interest. That's the Department of Justice's statement of interest. Our case is, again, we brought in on behalf of NAD, National Association of the Deaf and Deaf Individuals. We were fortunate from our perspective to have the Department of

Justice come in to say, we're interested in this issue, and we think the plaintiffs are right. The case was argued last Friday. And the court took it under submission, which means that the court is now going to be studying the issue. And we do not know when the decision will be issued, but she guaranteed us that it wouldn't be this week.

LILY BOND: Fair enough. So someone else is asking, "Can you provide a transcript in lieu of captioning?"

ARLENE B MAYERSON: Again, the transcript is very similar to the answer I gave before, which is that if a transcript was the same as a video, everyone would get a transcript. But there may be cases-- and again, it's contextual. Effective communication differs depending on if you just have a transcript, and it's a very long lecture, and you have a great lecturer, or you have a lecture at all-- I shouldn't really say, because obviously people aren't going to make the cut that way.

Let's put it this way. We would have a very, very strong argument that it's not the same, and it's not equal access, and it's not as effective as. If it's a transcript for something that's like two minutes long, and someone can just like read it in a minute, or a few minutes, or something where the video really doesn't add a lot, anyone who's on what I would say defending themselves against the claim on the ADA would try to say it's equivalent.

I think that it's a hard argument.

LILY BOND: Thank you. I think we have time for probably one or two more questions. I'm going ask you, "If a university records a lecture, and there is no deaf or hard of hearing student in the class, but the university makes the video publicly available, does that have to be captioned?"

ARLENE B MAYERSON: That's the idea. If it's open to the public, it should be open to the public. So yeah.

LILY BOND: So the next question is, "Our company runs e-learning courses where the cost to accommodate closed captioning is about $15,000 per ADA student, while the revenue per student is around $3,000. When does the cost become an unreasonable accommodation?"

ARLENE B MAYERSON: Are you saying-- can you read the first part of that question again?

LILY BOND: "Our company runs e-learning courses where the cost to accommodate closed captioning is about $15,000 per ADA student."

ARLENE B MAYERSON: OK. UN courses?

LILY BOND: E-learning courses.

ARLENE B MAYERSON: OK, I'm missing that word.

LILY BOND: Like online learning courses.

ARLENE B MAYERSON: Oh, OK. So that is not how the test is done. This has come up a lot with streaming cases and by various negotiations. Just as in the streaming cases, it's not done film by film, whether there's an undue burden. Well, this film gets watched a lot. This film doesn't. So it's not done that way. If you look at the undue hardship analysis under the ADA, it's done based on the resources of the entity involved. There are several other factors as well, but they're more administrative and have to do with employees.

So that's not the way it's done. It's not done per student. Because the deaf student would have a hard time-- or a deaf person. People would have a hard time if it had to be based on what they pay versus what they get. But I will say that the number that you threw out there, I suppose it was a hypothetical. I do want to let people know that captioning is not that-- it's getting less and less and less expensive every day.

LILY BOND: Yeah, that makes a lot of sense. And I think that that's a great note to end on. We're at just about 3 o'clock, which is the time we had allotted. So Arlene, I just want to thank you so much for such an informative presentation. People were really, really eager for your information, and thank you for being on this webinar with us.

ARLENE B MAYERSON: And thank you so much, again, for inviting me to do the webinar. You're a great organization. But I also, again, want to just thank everyone in the audience for caring about this issue.

LILY BOND: Yeah, thank you to everyone who attended. Just a reminder that this has been recorded, and we will send out an email tomorrow with a link to view the webinar, the questions, and the slide deck. And thank you, everyone, for attending. Thank you to Arlene, and I hope everyone has a wonderful rest of the day.