

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendants.

Civil Action No. 15-30024-KAR

CONSENT DECREE

This action arose out of a complaint seeking injunctive relief filed by Plaintiffs National Association of the Deaf (“NAD”), C. Wayne Dore, Christy Smith, and Lee Nettles (“Plaintiffs”) alleging that Defendant Massachusetts Institute of Technology (“MIT” or “Defendant”) violated Title III of the Americans with Disabilities Act (“ADA”) and section 504 of the Rehabilitation Act of 1973 (“Section 504”) by failing to provide captioning for all online audio and video content on MIT domains and third-party web platforms.

MIT denies these allegations.

Plaintiffs and Defendant (the “Parties”) have determined that there is no further need to litigate this action. With the mutual intent of increasing access to MIT’s online audio and video content for deaf and hard of hearing people, the Parties have jointly agreed to the final disposition of this action in its entirety by Consent Decree, the terms of which are as follows:

1. Jurisdiction and Venue

This Court has jurisdiction over the above-captioned action pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391 because MIT is located in the District of Massachusetts and because the alleged events, acts, and omissions giving rise to Plaintiffs’ claims occurred in the District of Massachusetts.

2. Definitions

- a. “Caption” or “Captioning” means:
 - i. in the case of video files, in conformance with WCAG 2.1 AA, to the extent it incorporates the captioning requirements of WCAG 2.0, to overlay or externally embed synchronized visual text for speech and provide non-dialogue audio information needed to understand the program content, including speaker identification, sound effects, and music description, on a digital media file at an accuracy rate equal to that offered by a vendor captioning service such as 3PlayMedia and in a manner consistent with industry standards regarding synchronicity, completeness, and proper placement; and
 - ii. in the case of “audio-only” files or video files for which overlaid or externally embedded captioning is not technically feasible (including Content for which MIT lacks the access required to add captions, or Content that falls within section 4(c)), to prepare and provide a text-only transcript or link to such transcript.
- b. “Class Counsel” means the Civil Rights Education and Enforcement Center (“CREEC”), Cohen Milstein Sellers & Toll PLLC, the Disability Law Center (“DLC”), the Disability Rights Education and Defense Fund (“DREDF”), and the National Association of the Deaf Law and Advocacy Center (“NAD”).
- c. “Content” means audio or video files that are posted online for general public access.
- d. “Covered MIT Webpages” means public webpages within the MIT.edu domain and corresponding public platforms such as YouTube, Vimeo, and Soundcloud channels operated by MIT, with the exception of websites described in Section 4.d. This also includes all MIT Massive Online Open Courses that are posted going forward through MITx and MIT OpenCourseWare (“OCW”).
- e. “Cure Process” means the process described in Section 5.a.i of this Consent Decree.
- f. “MIT Content” means audio or video content that appears on Covered MIT Webpages and:

- i. is created or developed in whole or in part by any faculty or employee of MIT acting within the scope of his or her employment;
 - ii. is created by any MIT Sponsored Student Group (as defined by MIT's Association of Student Activities) acting within the scope of its organizational mission; or
 - iii. is created for one of the webpages listed in Section 4.d and is subsequently reposted to a Covered MIT Webpage by any faculty or employee of MIT acting within the scope of his or her employment.
- g. "Effective Date" means the date on which the Court completes all actions listed in Section 3 of this Consent Decree.
- h. "Lawsuit" means *National Association of the Deaf v. Massachusetts Institute of Technology*, Civil Action No. 15-30024-KAR (D. Mass.).
- i. "Settlement Class" means all persons (other than students of MIT) who, at any time between February 11, 2012, and the date of preliminary approval of this settlement, have claimed or could have claimed to assert a claim under Title III of the ADA, the Rehabilitation Act, and/or other federal, state or local statutes or regulations that set forth standards or obligations coterminous with or equivalent to Title III of the Americans with Disabilities Act and the rules and regulations promulgated thereunder, alleging that they are deaf or hard of hearing and that MIT has failed to make accessible to persons who are deaf or hard of hearing online content posted and available for the general public that is produced, created, hosted, linked to or embedded by MIT.
- j. "Public Request Process" means the process described in Section 5.a.ii of this Consent Decree.

3. Conditions Precedent of this Consent Decree

This Consent Decree is conditioned upon, and will be effective only upon the occurrence of all of the following events:

- a. **Motion for Preliminary Approval.** Plaintiffs move for, and the Court grants, an order approving this Consent Decree and provisional certification of the Settlement Class for settlement purposes only.
- b. **Fairness Hearing.** A Fairness Hearing is held in accordance with Section 13 of this Consent Decree.

- c. **Court Approval.** The Court grants final approval of the Consent Decree, certification of the Settlement Class for settlement purposes only, and entry of judgment in accordance with the terms set forth herein following a Fairness Hearing. The Judgment will resolve finally all issues raised in this proceeding.

4. Agreement to Caption

- a. Subject to Sections 4.b, 4.c, and 4.d, captioning of MIT Content will begin as soon as possible but no later than the following schedule:
 - i. 60 days after the Effective Date, all MIT Content will include Captioning when posted.
 - ii. For content that was posted on or after January 1, 2019, but before 60 days after the Effective Date, MIT shall ensure that such MIT Content is Captioned (or removed from public view) as soon as practicable, but no later than one year from the Effective Date or, for content that is the subject of a Cure Request consistent with Section 5.a.i or a Public Request consistent with Section 5.a.ii, within 7 business days of receiving the Cure Request or Public Request.
 - iii. MIT Content posted before January 1, 2019 will be Captioned (or removed from public view) within 7 business days upon request by an individual member of the public who submits a Public Request consistent with Section 5.a.ii.
- b. NAD commits that the organization, its agents, and attorneys will not engage with, instruct, or encourage any group or individual to submit requests for captioning of content that they are not personally interested in viewing.
- c. MIT shall have no obligation to Caption any MIT Content for which Captioning is not technically feasible. The Captioning is not “technically feasible” if captions cannot be prepared by a third-party captioning vendor using services generally available to commercial customers.
- d. The following webpages and channels will not be considered Covered MIT Webpages:
 - i. Webpages or channels of students on an individual and personal basis;
 - ii. Webpages or channels of fraternities, sororities, and independent living groups;
 - iii. Webpages or channels of residence halls and any sub-groups;
 - iv. Webpages or channels of cultural Houses;

- v. Webpages of MIT student groups that are not MIT Sponsored Student Groups;
 - vi. Webpages or channels of alumni on a personal or group basis except for the MIT Alumni Association;
 - vii. Webpages of religious organizations; and
 - viii. Webpages for classes in which MIT students are enrolled, which are handled separately through the student accommodation process.
- e. Live captioning:
- i. MIT will provide industry-standard live captioning for events that are live-streamed publicly by MIT Institute Events.
 - ii. MIT will give due consideration to requests to provide live captioning on Covered MIT Webpages for publicly live-streamed events that do not fall within Section 4.e.i.
 - iii. If MIT posts live-streamed events or “breaking news” on a Covered MIT Webpage in a form that can be viewed by the public after the event is over, then it will Caption the Content as soon as possible, but no later than 7 business days after its posting.
- f. Beginning as soon as possible but no later than 90 days after the Effective Date, MIT will ensure that there are links to the MIT Accessibility webpage (<https://web.mit.edu/accessibility/> or equivalent) on all Covered MIT Webpages.
- The Accessibility page shall include links to:
- i. the announcement referred to in Section 4.g;
 - ii. an online method by which a member of the public may report a Covered MIT Webpage that does not comply with Section 4.f;
 - iii. an online method by which members of the public may submit Public Requests under Section 5.a.ii. (and may indicate whether the request is for the captioning of live-streamed content, as governed by Section 4.e);
 - iv. If practicable, the same method may be used for items (ii) and (iii) above.
- g. Within 30 days of the Effective Date, MIT will announce its commitment to caption MIT Content in the same manner that it announces other university commitments, policies, and procedures that are of high importance to the Institute.

5. Cure Process and Public Request Process

- a. As soon as practicable, but no later than 90 days after the Effective Date, MIT will establish, implement, and make available to the public processes by which:
 - i. any individual member of the public, including any individual Plaintiff, may inform MIT in writing that MIT Content covered by Sections 4.a.i, 4.a.ii, 4.e.i, or 4.e.iii has not been Captioned or that any Captioning of such MIT Content contains material errors (“Cure Request”).
 - ii. any deaf or hard-of-hearing individual member of the public, including any individual Plaintiff, may request that MIT Caption MIT Content covered by Section 4.a.iii. either in writing or via a form designed by MIT (and shared with Plaintiffs prior to launch) through which users may electronically complete and submit such requests or other accessibility concerns about MIT Content (“Public Request”). MIT shall place a link to the form on the Accessibility page.
- b. MIT will not be liable for violation of this Consent Decree if, within 7 business days of receiving a Cure Request identifying specific MIT Content, MIT either Captions, corrects errors in the Captioning of, or removes from public view the specified MIT Content. MIT will not rely on the Cure Process to circumvent the requirements of Section 4 of this Consent Decree. MIT will not be liable for violation of this Consent Decree if, within 7 business days of receiving a Public Request identifying specific MIT Content, MIT either Captions or removes from public view the specified MIT Content. In response to either a Cure Request or a Public Request, MIT will engage in a good-faith effort to Caption the MIT Content before removing it.

If a member of the public reports that a Covered MIT Webpage is non-compliant with Section 4.f of this Agreement, MIT will not be liable for a violation of this Consent Decree if, within 20 business days of receiving a request pursuant to Section 4.f.ii, MIT brings the Covered MIT Webpage into compliance with the requirements of Section 4.f or removes the Covered MIT Webpage from public access.

- c. MIT will maintain records of all requests it receives as part of either the Cure Process or the Public Request Process, and will document the steps it takes to respond to those requests, including the MIT Content and the Covered MIT Webpages at issue, the steps taken to resolve requests made as part of the Cure Process, and the dates on which the request was received, Captioning or other measures were taken, and a response was provided to the individual making the request.
- d. If MIT has reason to believe that a Cure Request or Public Request has been made in bad faith, MIT shall first meet and confer with Plaintiffs’ Counsel as soon as

possible. If the Parties cannot informally resolve the disputed Request, the Parties shall present the dispute in accordance with Section 9.a.iv below. If the Parties are unable to reach a resolution in that manner, MIT may seek relief in accordance with Section 9.b below.

6. Denial of Liability

MIT has denied and continues to deny any liability to the named Plaintiffs, the Settlement Class, or Class Counsel. MIT has denied and continues to deny that it violated any laws relating to persons with disabilities or otherwise through posting or making available any online Content. Neither this Consent Decree, nor any actions taken by MIT in satisfaction of this Consent Decree, constitutes, or may be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any allegations of fact or law made by Plaintiffs in this action, or in any other action or proceeding. This Consent Decree, any statements, discussions, or negotiations made in connection with this Consent Decree, and any actions taken by MIT pursuant to this Consent Decree, may not be offered or be admissible as evidence or in any other fashion against MIT in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Consent Decree.

7. Release

- a. Effective on the date of Final Approval of this Consent Decree, Plaintiffs, individually and on behalf of all members of the Settlement Class, and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do, to the fullest extent permitted by law, fully and finally release, acquit and discharge MIT, its affiliates and their present, former or future directors, officers, corporation members, managers, supervisors, faculty, employees, attorneys, insurers, agents, and representatives (the "Releasees") from any and all actions, causes of action, claims, charges, demands, losses, judgments, liens, indebtedness and liabilities for injunctive relief, declaratory relief, and any attendant costs and attorneys' fees (except those provided in Section 10 hereof), whether known or unknown, suspected or unsuspected, based upon Title III of the ADA, the Rehabilitation Act of 1973, and/or other federal, state, or local laws or regulations regarding accessibility, for the lack of captioning or accurate captioning of online audio or video content for the general public that is produced, created, hosted, linked to, or embedded by the Releasees, that were asserted or could have been asserted in this action.
- b. Plaintiffs hereby expressly and knowingly waive and relinquish any and all rights that they have or might have relating to the Released Claims under California Civil Code § 1542 (and under any and all other statutes or common law principles of similar effect), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By signing this Agreement, Plaintiffs acknowledge the following: (i) they are represented by counsel of their own choosing; (ii) they have read and fully understand the provisions of California Civil Code § 1542; and (iii) they have been specifically advised by counsel of the consequences of the above waiver and this Agreement generally.

- c. In addition, for the Term of this Consent Decree, Plaintiffs agree not to assert, and further agree not to aid or assist anyone else in asserting, any claim against MIT or the Releasees concerning the provision of Captioning of MIT Content, unless, and only to the extent that, NAD notifies MIT of an alleged breach of the Consent Decree and the Parties are unable to resolve the issue after engaging in the Dispute Resolution Process under Section 9.

8. Term

The term (“Term”) of this Consent Decree is three years and six months from the Effective Date. During that Term, this Court shall retain jurisdiction over this action for the purpose of ensuring compliance and enforcing the provisions of this Consent Decree. After the term of this Consent Decree has elapsed, this Consent Decree will automatically expire by its own terms except as expressly provided.

9. Dispute Resolution Process

a. Informal Dispute Resolution

- i. If either Party or a member of the Settlement Class believes that a dispute exists relating to the performance or interpretation of this Consent Decree, it shall notify the other Party in writing, describing the dispute and clearly identifying that they are invoking the dispute resolution process.
- ii. The other Party shall respond in writing to such notice within 10 business days of receipt of the notice.
- iii. Within 10 business days of receipt of the response described in the previous paragraph, counsel for both Parties shall meet and confer by telephone or in person and attempt to resolve the issue informally.
- iv. The Parties will engage in good faith discussions to resolve the dispute. If, after 60 days from the initial written notification, the Parties are not successful in their efforts to resolve the dispute, they will engage in a telephonic conference with the Hon. Judith A. Dein, United States Magistrate Judge, or another mediator mutually agreeable to the Parties, for no longer than two hours in an effort to resolve the dispute.

b. Resolution by the Court

- i. If, after completing the steps in Section 9.a, either Party believes that a dispute still exists relating to the performance or interpretation of this Consent Decree, either Party may seek further relief from the Court. Should any matter proceed to Court under this Section, attorneys’ fees and costs shall be awarded in accordance with 42 U.S.C. § 12205, including the fee-shifting standards in *Christiansburg Garment Co. v. Equal Employment Opportunity Comm’n*, 434 U.S. 412, 422 (1978).
- c. To the extent that any dispute related to this Consent Decree involves the Captioning of any particular content, the Parties will engage in and complete the Cure Process set forth in this Consent Decree prior to engaging in the Dispute Resolution Process set forth here.

10. Attorneys' Fees and Costs

The Parties agree that as part of this Consent Decree, and subject to approval by the Court, MIT shall not oppose Class Counsel's motion for reasonable attorneys' fees and costs in an amount not to exceed \$1,050,000 for work performed through Final Approval. The Court's reduction, if any, of the attorneys' fees and costs agreed upon by the Parties shall not be cause to rescind this Consent Decree. Class Counsel shall accept and shall not appeal the amount awarded by the Court in the Final Judgment and Order Granting Final Approval of this Consent Decree.

11. Enforcement

- a. The Court may grant declaratory and all other relief necessary to enforce this Consent Decree pursuant to 28 U.S.C. §§ 2201 and 2202.
- b. Failure by any Party to seek enforcement of this Consent Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
- c. The Parties to this action, including but not limited to members of the Settlement Class, and no one else shall have standing to seek enforcement of this Consent Decree.

12. Modification.

Any Party that wishes to propose changes to this Consent Decree after the Effective Date shall meet and confer with the other Parties before filing a motion with the Court.

13. Judgment, Final Approval, Dismissal

- a. **Initial Motions.** Within 10 days after execution of this Consent Decree, Plaintiffs will move for an Order seeking:
 - i. preliminary approval of this Consent Decree;
 - ii. certification of the Settlement Class for settlement purposes only;
 - iii. approval of a joint notice plan and establishment of a deadline to post the Class Notice as ordered ("Class Notice Deadline");
 - iv. approval of procedures and a deadline for objections; and
 - v. a date for the Final Fairness Hearing.
- b. **Consultation.** Plaintiffs shall provide MIT with a draft of the motion not less than 5 days before filing.

- c. **Motion for Attorneys' Fees and Costs.** No later than 15 days prior to the Objection Deadline, Class Counsel shall file a motion requesting an award of reasonable attorneys' fees and costs as provided in Section 10.
- d. **Judgment, Final Approval, and Dismissal.** At the Fairness Hearing, Plaintiffs will request that the Court enter a Final Judgment and Order Granting Final Approval of this Consent Decree and certifying the Settlement Class for settlement purposes only. This action shall be dismissed with prejudice, under Federal Rule of Civil Procedure 41, within 30 days after expiration of the Term of this Consent Decree as provided in Section 8 above.

14. Training and Reporting

- a. MIT shall provide training on captioning audio and video content as necessary and appropriate to support its good-faith efforts to comply in full with this Consent Decree.
- b. In addition to the announcement required by section 4.g, MIT will encourage its students, faculty, and employees to (1) caption all videos they create at the time they are produced; (2) caption all videos they post on third-party platforms; and (3) post content only on accessible third-party platforms.
- c. Throughout the Term of this Consent Decree, MIT shall submit confidential written reports to NAD, as follows:
 - i. On June 1, 2020: A report containing a description of the steps taken to comply with the provision of Captions pursuant to the Consent Decree, including but not limited to a description of training provided consistent with Section 14.a; and
 - ii. Every 6 months beginning June 1, 2020, a report including the following information, for the six-month period preceding the report:
 - 1. The number of requests for Captioning received through the Public Request Process;
 - 2. The number of minutes of video and audio content Captioned through the Public Request Process; and
 - 3. A summary report of the information required to be maintained by Section 5.c. The summary report shall not include any personally identifiable information about a requester, including, without limitation, the name of the requester.

15. Publicity

The Parties agree that they may speak with the media about the settlement of this action. The Parties and their respective counsel may report on websites and other public communications as to why they believe the terms of the settlement are fair and reasonable and in the best interests of the parties. Public communications by the Parties will recognize the cooperation of MIT in this settlement and will not make any misrepresentations of facts. The Plaintiffs and Class Counsel may make any disclosures necessary to seek Court approval of the settlement and to communicate with members of the Settlement Class.

16. Deadlines

The Parties recognize that unforeseen events, such as exigent business circumstances, high volume requests, labor disputes, natural disasters, personnel issues, and negotiations with third parties, may cause unavoidable delays. Accordingly, with regard to the provisions of this Agreement that require that certain acts be taken within specified periods, the Parties understand and agree that Court approval shall not be required for reasonable extensions of deadlines, pursuant to the Parties' agreement. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party shall promptly notify the other Parties that it anticipates a delay, the reasons for the delay and a proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party does not agree to the proposed delay, the Parties shall submit the matter to Dispute Resolution.

17. Miscellaneous

a. Binding Effect

This Consent Decree is final and binding on the Parties and the Settlement Class, including their principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, and assigns.

b. Integration

This Consent Decree embodies in full the terms of the agreement and understanding between the Parties related to the subject matter of this action or this Consent Decree.

c. Notices

Notices under this Consent Decree shall be effective when physically delivered by certified mail, overnight mail, or some other method of providing evidence of actual delivery, to the addresses set forth in this Consent Decree, which may be updated by the Parties from time to time without formal amendment of this Consent Decree by written notice to all Parties and the Court. Notice shall also be provided by attachment to email to outside counsel, but the notice shall not be effective until physically delivered.

If to MIT:

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d. Severability.

If any provision or any part of this Consent Decree shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, then this Court shall have the power to modify such provision so that it will be valid, enforceable, and as close to the intent of the language of the provision as is permitted by law, and that whether or not the Court modifies such provision, the remaining provisions of this Consent Decree shall remain effective and enforceable.

e. Execution In Counterparts.

This Consent Decree may be signed in counterpart and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts.

f. Duty to Support and Defend Consent Decree.

Plaintiffs and MIT, by their signatures below, each agree to abide by all of the terms of this Consent Decree in good faith and to support it fully, and shall use their best efforts to defend this Consent Decree from any legal challenge, whether by appeal or collateral attack. Nothing in this Consent Decree shall either require MIT to remove or prevent MIT from removing any Content from public view on any of its websites or web platforms.

g. Entire Agreement.

This Consent Decree contains all the agreements, conditions, promises and covenants among Plaintiffs, the Settlement Class, and MIT regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Consent Decree.

ACCEPTED AND AGREED:

Dated: February 6, 2020

DEFENDANT:

By: 

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SO ORDERED and DECREED.

BY THE COURT:

/s/ Katherine A. Robertson
KATHERINE A. ROBERTSON
United States Magistrate Judge