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Pre-trained Machine Learning Intelligent Agent MVP

## #AudioEye Will Get You Sued

February 26, 2023; [0 Comments](#)

This post was written in early 2022 and sat in a corner of my site, hidden from the world, after [AudioEye sent me a legal threat](#)<sup>1</sup> over a handful of tweets in April 2022. I opted not to poke this well-funded bully as a self-employed consultant.

As such, the videos and assessments within this post are from early to mid 2022. I opted not to update them because:

- AudioEye made problematic (verifiably false) claims at the time, so it is fair to assume its prior behavior is good predictor of its current behavior (false claims); and
- I have no interest in giving AudioEye free consulting.

None of the content in this post is appearing for the first time, however. I have shared it on Twitter, Mastodon, and conference talks repeatedly over the last year and AudioEye has not issued follow-up threats.

AudioEye is [one of many vendors](#)<sup>2</sup> that claims its accessibility overlay product can make your site “accessible”. Like the other overlay vendors, AudioEye’s overlay does not. If you have been lead to believe that AudioEye’s overlay will protect you from complaints, whether via AudioEye advertising or sales efforts, then it is important to know that may not be true.

In fact, using AudioEye’s overlay can add demonstrable WCAG failures and in some cases have no impact for users. I outline a few examples in this post. It is not an exhaustive collection, however. As with my other posts about overlays, I have no interest in providing free QA.

## Human Testing

It is important to note that AudioEye also offers human testing and remediation. AudioEye is adamant about this point, going so far as to call it out in its Cease & Desist letter to me, while distancing itself from its overlay (a term it considers “pejorative”).

This point is bolstered by AudioEye’s recent acquisition of Bureau of Internet Accessibility (the company that owns a trademark on *a11y*, registration #4824150 per [USPTO search](#)<sup>3</sup>) and the [announced launch](#)<sup>4</sup> of its [Alliance Team](#)<sup>5</sup> (pronounced “A eleven eye-ance” by JAWS). My only experience with this team was when I pointed out the following code on the accessibility statement of a site that AudioEye implied had been tested with AudioEye’s manual testers:

*Disclaimer:* This post and the headline is my opinion. I provide verifiable facts throughout to inform that opinion. I am also not a lawyer and this post does not constitute legal advice. The content reflects my genuinely held beliefs and opinions.

```
<span class="feedback-link" data-ae-client-feedback-link="true" onclick="...">
  <u>please submit your feedback.</u>
</span>
```

For context, that code fails WCAG Success Criterion 2.1.1 Keyboard because it cannot be operated via keyboard. [AudioEye's attorneys acknowledged this](#)<sup>6</sup> to me.

One of AudioEye's manual testers pointed out there were other places to submit feedback, but [assured me the control was fixed](#)<sup>7</sup>, which was done with this still-2.1.1-failing code:

```
<a class="feedback-link" data-ae-client-feedback-link="true" onclick="...">
  <u>please submit your feedback.</u>
</a>
```

Another one of AudioEye's manual testers then [came back to assure me it was fixed](#)<sup>8</sup>. It wasn't. I [made a video](#)<sup>9</sup> to show how it was broken. I later confirmed that the AudioEye team fixed the issue — [by removing the code](#)<sup>10</sup>.

This has been my only interaction with AudioEye's manual testers, which comprises two-thirds of the currently listed *Alliance* team.

## Overlay

My concern with AudioEye has consistently been its overlay product. That AudioEye considers the word “pejorative” is news to me, but it is the word that industry settled on as a whole (I used the term [“add-on” back in 2015 when I first raised concerns](#)<sup>11</sup> about these products).

## Legal Activity

I am not a bird lawyer. None of this is legal advice.

AudioEye is no stranger to legal actions. In 2017 AudioEye settled a class action securities fraud suit for \$1,525,000 USD. If you want more details, there was a [dedicated AudioEye securities litigation web site](#)<sup>12</sup>, long since decommissioned. You can also read an [untagged PDF of the settlement \(PDF\)](#)<sup>13</sup>.

In 2020, [AudioEye sued accessiBe \(PDF\)](#)<sup>14</sup> for infringing AudioEye's patents titled *Systems, Devices, and Methods for Automated and Programmatic Creation and Deployment of Remediations to Non-Compliant Web Pages or User Interfaces, Modular Systems and Methods for Selectively Enabling Cloud-Based Assistive Technologies*, and *Systems, Devices, and Methods for Facilitating Website Remediation and Promoting Assistive Technologies*. Collectively or individually, these are often commonly referred to as an overlay product.

In December 2021, accessiBe tried to move the case to New York and in the [court order \(PDF\)](#)<sup>15</sup> more detail on the complaint by AudioEye was revealed:

AudioEye brought this suit in the Western District of Texas against accessiBe, asserting patent infringement claims, Lanham Act claims of false advertising and product disparagement, and New York state law claims of product disparagement, slander/defamation, tortious interference with prospective economic advantage, deceptive business practices, and unjust enrichment. AudioEye's complaint alleges, among other things, that accessiBe made false, misleading, and disparaging statements regarding AudioEye's products and services to two companies located in the Western District of New York and an unnamed 'consumer in New York.'

As far as I know, this case has not been resolved. A LexisNexis subscription is expensive.

Also in December 2021, [Lighthouse and ADP entered a settlement agreement \(PDF\)](#)<sup>17</sup> to resolve a [lawsuit filed in September 2020 \(PDF\)](#)<sup>18</sup>. As covered in Tech Times:

Despite working for a long time with AudioEye for website remediation, ADP, the human resources management software and resources giant, was sued due to consistent failures in AudioEye services and products to be used by blind people.

[...]

However, ADP relied on AudioEye to implement the correct accessibility adjustments that would make their products accessible to screen reader users. Unfortunately, the lawsuit clarified that AudioEye's software did not ensure accessibility for these people.

— [AudioEye's Customer Sued By San Francisco Lighthouse for the Blind for Web Accessibility Failures](#)<sup>19</sup>

The article goes on to cite example issues, such as form fields that are not correctly conveyed, visual-only information, lack of programmatic state, and insufficient or absent accessible names. The implication so far has been that AudioEye's overlay product was not fit for purpose, but this statement from the settlement agreement drives that point home:

For the purpose of this Agreement, “overlay” solutions such as those currently provided by companies such as AudioEye and AccessiBe will not suffice to achieve Accessibility.

— [Lighthouse and ADP settlement agreement \(PDF\)](#)<sup>20</sup>, bottom of page 1.

Note the use of the word “overlay” in the settlement agreement. I am not sure if that is pejorative or not, but it seems fair to keep using that word given its use in legal filings. To AudioEye's credit, or ADP's misfortune depending on your perspective, AudioEye asserts it continues to work with ADP.

In April of this year (2022), [AudioEye threatened me with a cease & desist](#)<sup>21</sup> letter for what it claimed was “defamation or tortious interference-related” actions. You can read my response. The recurring theme from AudioEye's lawsuit against accessiBe is defamation and tortious actions.

Most recently, Karl Groves, who maintains [Overlay False Claims](#)<sup>22</sup> and [Overlay Fact Sheet](#)<sup>23</sup>, tweeted that [others have been threatened by AudioEye](#)<sup>24</sup>; that I was simply the first to come forward. If true, this sounds similar to [FACIL'iti's practice of engaging in frivolous lawsuits](#)<sup>25</sup>, even if all AudioEye is doing is sending cease & desist letters.

## Questionable Claims

AudioEye's Twitter account is not prolific, but it does make some assertions about how you can be protected from lawsuits *on day one*. Here are some example tweets with the implied promises emphasized.

Don't wait until an accessibility lawsuit comes your way.

With AudioEye, you're *protected from day one*. Try AudioEye today with a free trial: [bit.ly/37V8BwX](https://bit.ly/37V8BwX)<sup>26</sup> [#FreeTrial](#)<sup>27</sup>  
[#AccessWithAudioEye](#)<sup>28</sup>

— [AudioEye \(@audioeyeinc\) January 20, 2021](#)<sup>29</sup>

Hey Drupal users! Did you know that with AudioEye Managed, you're *protected from day one* with certified digital accessibility compliance?

Learn more: [bit.ly/3o58uF1](https://bit.ly/3o58uF1)<sup>30</sup> [#Integrations](#)<sup>31</sup> [#AccessWithAudioEye](#)<sup>32</sup>

— AudioEye (@audioeyeinc) January 27, 2021<sup>33</sup>

If you're looking for the *only partner that will get you compliant on day one*, it's AudioEye.

Find the best plan for your business at [bit.ly/2Y2geNG](https://bit.ly/2Y2geNG)<sup>34</sup> [#AccessWithAudioEye](#)<sup>35</sup> [#SMB](#)<sup>36</sup>

— AudioEye (@audioeyeinc) February 4, 2021<sup>37</sup>

Start your web Accessibility Journey today!

AudioEye delivers the new standard in Digital Accessibility with *guaranteed compliance on day one*. [#AccessWithAudioEye](#)<sup>38</sup>  
[pic.twitter.com/WiBfw3gVPb](https://pic.twitter.com/WiBfw3gVPb)<sup>39</sup>

— AudioEye (@audioeyeinc) February 9, 2021<sup>40</sup>

I am unaware of any reputable accessibility consultancy who has *guaranteed* to resolve your accessibility risks on day one. Broadly, accessibility is an ongoing process, which is why those claims are generally only used by overlay vendors selling quick-fix products. AudioEye's own attorneys seem to agree:

...as any accessibility expert knows, the process of achieving maximum accessibility is iterative—it contemplates audits, troubleshooting, and deeper fixes.

— [My Cease & Desist from AudioEye](#)<sup>41</sup>, linking this phrase

I could talk about how marketing comes from actions as much as words, and reference specific actions from AudioEye that demonstrate its ability and stewardship of accessible experiences, but then it would devolve into me being petty and embedding [examples](#)<sup>42</sup> of AudioEye [failing](#)<sup>43</sup> to [include](#)<sup>44</sup> [alternative text](#)<sup>45</sup> on [images](#)<sup>46</sup> in its [tweets](#)<sup>47</sup>, something its overlay product can do nothing to fix.

Separately from AudioEye's Twitter presence, AudioEye has made strong claims elsewhere as well. [Overlay False Claims](#)<sup>48</sup>, a site that still exists despite AudioEye insisting to me the site mis-represents its client list, has tracked some examples of search engine ads:

**ADA Site Regulation Compliance | Is Your Website ADA Compliant?**  
<http://audioeye.com/>

Quick, Cost-Effective Solutions Compliant with ADA & WCAG Laws on Day 1 of Implementation. Make Your Website Accessible Fast - Get Started Now with a Free Accessibility Analysis. Avoid Legal Action. F

Ad Position: 2    Date: December 2019

**ADA & WCAG Digital Compliance | WCAG 2.1 Compliance Solutions**  
<http://audioeye.com/>

Make Your Website Accessible Fast. Get Started Now with a Free Analysis from an Expert. Quick, Cost-Effective Solutions Compliant with ADA & WCAG Laws on Day 1 of Implementation. Free Accessibility Au

Ad Position: 2    Date: May 2020

**Become Compliant With WCAG - Is Your Website ADA Compliant?**<http://audioeye.com/>

Quick, Cost-Effective Solutions Compliant with ADA & WCAG Laws on Day 1 of Implementation. Don't Wait to be Served - Make Your Website Accessible Today. Contact an Expert Now. Manual & Automatic Fixes

Ad Position: 6 Date: July 2020

50

51

**#1 Accessibility Solution - ADA & WCAG Compliance**<http://audioeye.com/>

Remove accessibility barriers for more than 60 million US adults living with a disability. No need to redesign your website or change your source code. Get started in 2 minutes. Day 1 Protection. Cont

Ad Position: 1 Date: November 2020

53

**WCAG Website Compliance - Website Accessibility Solved**<http://audioeye.com/>

Are You at Risk of a Lawsuit? Understand What ADA & WCAG Laws Mean For Your Business. Contact an Accessibility Expert for a Free Analysis & Get Certified ADA Compliance. Types: Accessibility Testing,

Ad Position: 1 Date: July 2021

52

The recurring theme is the AudioEye's *day one* implication of compliance.

If we loop back around to the AudioEye's frustration at the term "overlay", something about which AudioEye felt strongly enough to argue<sup>54</sup> "toolbars" are not overlays but not strongly enough to set up a 301 redirect to its new location<sup>55</sup>, it is no surprise it would purge uses of the term from companies it buys up. As I mentioned earlier in this post, AudioEye acquired Bureau of Internet Accessibility. Bureau of Internet Accessibility posted in October, Why Accessibility Overlays On Your Website Can Make Things Worse<sup>56</sup>. That post is now gone.

Other posts from Bureau of Internet Accessibility critical of overlays are still there, such as Understanding the W3C's Accessibility Conformance Testing (ACT) Requirements<sup>57</sup> and If Your Accessibility Solution Can be Turned On and Off, You've Still Got an Accessibility Problem<sup>58</sup>. The latter includes this nugget worth considering for any claim that your accessibility issues can be fixed *on day one*:

- If accessibility could be achieved in 24 hours, the companies that specialize in accessibility would turn projects around in 24 hours. Why wouldn't they?
- If automated solutions could find and fix every accessibility issue, the companies that specialize in accessibility would save themselves a lot of time and use them. Why wouldn't they?
- If the intended experience of a website could be automatically detected for an optimized assistive technology experience, the companies that specialize in assistive technology would do that for their users. Why wouldn't they?

— If Your Accessibility Solution Can be Turned On and Off, You've Still Got an Accessibility Problem<sup>59</sup>, Bureau of Internet Accessibility

## Remediation

The overlay product offers a series of controls that ostensibly let the user modify the display of the underlying page.

The following videos represent a single run-through of some of the AudioEye overlay features labeled "Visual Toolkit". Which implies they will all have a visual effect. I broke it up into multiple videos.

I chose the AudioEye-generated accessibility statement of one of its customers on the premise that this should represent AudioEye's best work. I did my best to redact the site. The only reason I am aware of the site is because an AudioEye sock-puppet Twitter account was promoting it.



The button is there, but will not launch the AudioEye overlay. No script errors (at least no obvious ones). AudioEye's customer name, injected by script, is absent on the page.

# Activating the AudioEye Overlay on [Redacted]

▶ 0:00 / 0:11



About a half hour and two clicks later, the overlay launched. Which provided an opportunity to see the tool-tip-like message that does not persist when trying to move the cursor into it. That is a WCAG SC 1.4.13 error.

# Using the AudioEye Overlay 'Focus'

▶ 0:00 / 0:22



The *Focus* control seems to have no impact on the focus styles of links or buttons in the page content. Whether active or not, the focus style appears to be a black outline.



# Using the AudioEye Overlay 'Cursor'

▶ 0:00 / 0:06



Activating *Cursor* seems to have no effect. Neither for the default mouse cursor nor the pointer.

# Using the AudioEye Overlay 'Highlight'

▶ 0:00 / 1:07



The *Highlight* button cycles among headings, links, buttons, and all of them at once. It conveys which is highlighted by changing its accessible name. In the video I confirm each element type in the page and show nothing happens.

# Using the AudioEye Overlay 'Text Size'

▶ 0:00 / 0:17



*Text Size* also cycles through three options, also by changing its accessible name. And it also has no effect on the page content. However, it does scale the navigation and footer.

# Using the AudioEye Overlay ‘Spacing’

▶ 0:00 / 0:05



*Spacing* only affects the letter spacing in the navigation and footer, having no effect on the page content. The page content for the accessibility statement. Which AudioEye provides.

# Using the AudioEye Overlay 'Font'

▶ 0:00 / 0:07



*Font* behaves as *Text Size*, cycling through three options, also by changing its accessible name. It also has no effect on the page content, only the navigation and footer. One of the fonts is a dyslexia-specific typeface, which perform no better than any other.

# Using the AudioEye Overlay 'Images'

▶ 0:00 / 0:32



*Image* has no effect on the single image in the page content. It is not clear what its purpose is.

## Users

Users, by which I mean humans, do not like AudioEye's solution. More broadly, they do not like any overlay product. Because they do not work.

In the interests of full disclosure, I was interviewed for this article.

But it's not working out that way. Users like Mr. Perdue say the software offers little help, and some of the clients that use AudioEye, accessiBe and UserWay are facing legal action anyway. Last year, more than 400 companies with an accessibility widget or overlay on their website were sued over accessibility, according to [data collected by a digital accessibility provider \(PDF\)](#)<sup>69</sup>.

"I've not yet found a single one that makes my life better," said Mr. Perdue, 38, who lives in Queens. He added, "I spend more time working around these overlays than I actually do navigating the website."

[...]

Mr. Moore said he had experienced trouble completing tasks like buying a laptop, claiming his employee benefits, booking transportation and completing banking transactions on websites that had overlays.

“If the object is to make it more accessible, and you can’t fix the basic issues, what value are you adding?” he said.

— [For Blind Internet Users, the Fix Can Be Worse Than the Flaws](#)<sup>70</sup>, NYTimes, July 13, 2022

AudioEye’s chief executive says in the article that his company recommends its customers use accessibility experts to fix errors the overlay cannot. Bear in mind AudioEye’s advertising guaranteeing day one compliance as well as its own experts’ inability to fix even the most minor technical issue, as cited above.

## Market Performance

I am not a financial analyst. I should never give financial advice, and nobody should ever listen to it. I can, however, read a chart. I can see that on February 12, 2021 AudioEye ([AEYE](#)<sup>71</sup>) had a common stock value of \$42.25. On April 5, 2022 when AudioEye sent me its cease & desist, it had a value of \$6.37, cratering at \$3.50 on May 17, 2022 (which may lead to [Zaks recommending folks sell](#)<sup>72</sup>).

To its credit, AudioEye stock was back up to \$6.50 by February 13, 2023, two years after its high (after bottoming out at \$3.49 on December 29, 2022) but still down 85%.



AEYE stock performance<sup>73</sup> from early March 2020 to late February 2023.

What does its loss of market value in just one year (from which it has not recovered over the following year) mean for the scope of this post? Perhaps not much, other than a reminder that AudioEye, like most businesses, needs to show investors it can make money. And then do so. AudioEye may be under pressure to show revenue by assorted problematic marketing tactics, including over-promising and under-delivering. For the lawyers reading this, this is obviously speculation on my part.

Sadly, other than the public marketing tactics I have cited, I have no insight into its direct marketing messages. For example, I am curious how AudioEye got its name into this Orange County bid: Bid #IFB 017-2358301-OCIT-TS – AudioEye Web Content Accessibility and Compliance<sup>74</sup> (three year contract). I am sure it wasn't by arguing that using AudioEye would lend credibility<sup>75</sup> to the developers.

### Class Action Settlement

Speaking of financial challenges, in May 2017 AudioEye opted to settle a class action (which does not mean it is guilty) “on behalf of all persons who purchased or otherwise acquired any common stock of AudioEye during the period from May 14, 2014



through and including April 1, 2015, and who were allegedly damaged thereby (the ‘Settlement Class’),” as recounted in the U.S. District Court of Arizona [order and final judgment \(PDF\)](#) <sup>76</sup>.

You can read a bit more in this untagged PDF of the [class action settlement notice \(PDF\)](#) <sup>77</sup>:

On July 1, 2015, the Honorable Judge David C. Bury consolidated the *Nykaza* Action and the *Saczawa* Action under the Master File and caption *In re AudioEye, Inc. Sec. Litig.*, No. CV-15-00163-TUC-DCB.

[...]

On November 30, 2015, the Lead Plaintiffs filed the operative Consolidated Amended Complaint alleging against all Defendants: (Count 1) violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”); and (Count 2) violations of Section 20(a) of the Exchange Act.

United States Court District of Arizona, No. 4:15-cv-00163-DCB Class Action, *In re AudioEye, Inc. Securities Litigation Notice of Pendency and Proposed Settlement of Class Action*

You can visit the archived version of [AudioEyeSecuritiesLitigation.com](#) <sup>78</sup> for more details. You can see the original filing timelines (but not the filings) at [Nykaza v. AudioEye Incorporated et al](#) <sup>79</sup> and [In re AudioEye, Inc. Sec. Litig.](#) <sup>80</sup> Edward O’Donnell, named in the suits, [resigned as AudioEye’s CFO in May 2015](#) <sup>81</sup>, and Nathaniel Bradley (also named, and AudioEye founder) [resigned as Treasurer and CIO in September 2015](#) <sup>82</sup> (he now runs a data mining company).

The financial challenge here was that AudioEye spent \$1.5 million USD to settle a class action securities fraud suit that was likely the outcome of actions by its CFO and its Treasurer/founder. Not being an investor, I cannot say if that put additional pressure on the firm nor do I have insight into how it updated its financial controls.

## Wrap-up

I want to stress that I am not trying to sell my services here. AudioEye and I do not compete. I have no overlay product. I do not do remediation.

Do not hire me if you think AudioEye is a good fit for you. Probably don’t waste either of our time contacting me, in fact.

I focus on outcomes for users, not conformance. I focus on empowering teams, not setting up recurring monthly fees. I focus on making organizations self-sustaining, not helping them avoid lawsuits.

What I have tried to show here instead is a pattern of problematic claims, technical failures, possible motivations on the part of AudioEye, and the ongoing evidence from users that overlays, including AudioEye’s, do not work.

## Related

Other problematic overlay vendors:

- [#accessiBe Will Get You Sued](#) <sup>83</sup>, June 29, 2020
- [#UserWay Will Get You Sued](#) <sup>84</sup>, September 13, 2021
- [#FACILiti Will Get You Sued](#) <sup>85</sup>, March 9, 2022

Talks:

- [Overlays Underwhelm: Web Directions AAA 2021](#)<sup>86</sup>, November 4, 2021
- [Overlays Underwhelm: a11y NYC](#)<sup>87</sup>, March 1, 2022
- [Overlays Underwhelm at ID24](#)<sup>88</sup>, September 21, 2022
- [Overlays Underwhelm at WordPress A11y Day](#)<sup>89</sup>, November 3, 2022

## Tactics:

- [Sub- \$\\$\$ 1,000 Web Accessibility Solution](#)<sup>90</sup>, January 12, 2021
- [Free Feedback for #accessiBe](#)<sup>91</sup>, February 14, 2021
- [My Cease & Desist from AudioEye](#)<sup>92</sup>, April 15, 2022
- [FTC, Commercial Surveillance, and Overlays](#)<sup>93</sup>, August 12, 2022
- [‘Accessibility at the Edge’ W3C CG Is an Overlay Smoke Screen](#)<sup>94</sup>, September 1, 2022

## No comments? Be the first!

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### Links in This Page

1. [adrianroselli.com/2022/04/my-cease-desist-from-audioeye.html](https://adrianroselli.com/2022/04/my-cease-desist-from-audioeye.html)
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