

April 15, 2022

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Mr. de Leeuw,

I received your April 1 cease & desist letter sent on behalf of AudioEye, Inc. I also received your April 13 letter threatening legal action.

For electronic communication, the email addresses you have on file are not correct. I am not sure where you found them, but only one of them was ever mine and that was as an employee for a job I left in 1997. The address from which I sent this is my current email address. You do not have my permission to re-sell it.

Your letter identifies my tweets to JDPower as the cause of your client's request, which I have identified as having the following URLs:

1. <https://twitter.com/aardrian/status/1508898713976119309>
2. <https://twitter.com/aardrian/status/1508898715624484870>
3. <https://twitter.com/aardrian/status/1508898717121794062>

In the interests of being an independent, self-employed, sole-practitioner business who does not have the financial resources of AudioEye, let alone legal counsel, I have deleted the tweets to satisfy your client's request.

Deleting the tweets should in no way be taken as a sign that I agree with your client's assertions as laid out in the letter. It is still my genuine opinion and sincerely held belief that the tweets were accurate.

When you visit those URLs, you can confirm the tweets are gone. You can also confirm those were the correct URLs since the tweets have been archived at the Internet Archive at the following URLs, which match from the "/https" forward:

1. <https://web.archive.org/web/20220329200832/https://twitter.com/aardrian/status/1508898713976119309>
2. <https://web.archive.org/web/20220329201044/https://twitter.com/aardrian/status/1508898715624484870>
3. <https://web.archive.org/web/20220329200749/https://twitter.com/aardrian/status/1508898717121794062>

Now I want to address points in your letter with which I disagree or think are demonstrably false. It is a non-exhaustive list.

You claim my tweets “spread materially false and disparaging information intended to injure AudioEye's reputation, malign its products, and destroy its consumer relationships.” This is not my intent at all. My intent is to help end users, something I know AudioEye also claims. My tweets cite sources, demonstrate failures, and give historical context. My opinions are my own, and are informed by this information. I have no intent to injure AudioEye's reputation, though I point out historical statements and actions from AudioEye that others can use to form their own opinions. I am not maligning AudioEye's products, I am identifying and documenting gaps. And I am in no position to affect AudioEye's consumer relationships—partly because I am one person have no contact with any of its customers.

Your letter seems to make some assumptions about my relationship with AudioEye. You say “... it would be far better to compete based on the merits of your product ...”, which implies that AudioEye and I are competitors. This could not be further from the truth. I do not offer web accessibility remediation services. I have no overlay nor remediation product, either. I am a consultant. I train, I test, I coach.

It also states, “You may dislike the idea of what you pejoratively refer to as ‘overlays,’” but I want to point out that is not my term. That is the term the industry landed on, and I had no hand in it. It is also the term used in the ADP / San Francisco LightHouse settlement agreement.

You go on to say, “Moreover, your public statements ignore the fact that AudioEye provides far more than just automated solutions.” This is irrelevant. Prior to that tweet, I had no insight into its non-automated solutions. I have consistently addressed the overlay product itself and where it fails to work effectively.

Regarding my JDPower tweet, you assert “two significant distortions”:

“First, your claim that AudioEye ‘doesn't work’ is wrong. ... The minor error you found stands in marked contrast to the remainder of J.D. Power's web presence...” My initial statement (“doesn't work”), brief due to Tweet character limitations, is my sincerely held belief based on working with end users and evaluating screens. That you acknowledge I found an issue outside of AudioEye's overlay product, which self-identified AudioEye testers did not fix after two tries and finally addressed by completely deleting the control, seems to validate my sincerely held belief.

You go on to say “Perhaps if we engage in litigation, we can point out some errors on your clients' web pages.” I can assure you do not need to pursue litigation to find errors on my client sites. You can do that for free. The difference is that I have never claimed to get my clients “compliant on day one” (AudioEye tweet at <https://twitter.com/audioeyeinc/status/1357340661041623044>) or asserted they would be “protected [from accessibility lawsuits] from day one” (AudioEye tweet at <https://twitter.com/audioeyeinc/status/1351955182326841346>).

You continue, “In any event, suggesting that one minor issue on a complex, enormous website means that AudioEye's product ‘doesn't work’ is knowingly false and, therefore, defamatory.” Again, my assertion about AudioEye's overlay product being ineffective is my sincerely held belief based on working with end users and evaluating screens. It is not false when I can demonstrate it. Which I am happy to do.

For your second asserted “significant distortion”:

“Second, your mischaracterization of the ADP settlement agreement ... statement that AudioEye is ‘also banned for ADP settlement’ suggests-falsely-that AudioEye is somehow generally banned because of the resolution of a lawsuit between ADP and San Francisco Lighthouse for the Blind.” This strikes me as intentionally mis-reading my character-constrained tweet. When I refer to “AudioEye” in my tweets, I am generally referring to its overlay product, barring exceptions for referencing its marketing messages, stock price, or its securities fraud settlement (as examples). I think a reasonable reader would understand that.

You acknowledge that I link to the site with the language from the settlement, which acts as the citation for my statement. I opted to share the link, as evidence for my sincerely held belief, as opposed to selectively quoting it.

You then go on to say, “your link leads to a site that includes the actual language of the settlement agreement in large font, which says ‘overlay solutions ... will not suffice to achieve Accessibility.’” That ellipsis in the statement you quote is excluding an important phrase, which I am including in bold italic as I include the entirety of the phrase: “‘overlay’ solutions ***such as those currently provided by companies such as AudioEye and AccessiBe*** will not suffice to achieve Accessibility.”

You continue to assert I made false or disparaging comments. You reference four tweets but do not link them, so I am doing so in the interest of completeness:

1. <https://twitter.com/aardrian/status/1508898717121794062> — this is the third tweet in my tweet to JDPower and is both my opinion and my sincerely held belief. Regardless, I have deleted it as your client demanded.
2. <https://twitter.com/aardrian/status/1508909066118119432> — this is a response to an anonymous account who claimed that AudioEye’s 2015 class action securities fraud settlement for ~\$1.5 million USD is old news, to which my response was my genuinely held belief that when a company settles a fraud case for that much money it can taint public perception of them for years to come. There is nothing false or disparaging here.
3. <https://twitter.com/aardrian/status/1508898713976119309> — the original JDPower tweet, which I have deleted as your client demanded.
4. <https://twitter.com/aardrian/status/1490787825503068164> — genuinely an older tweet, and one which links to the settlement language cited above. Also my sincerely held belief that WPEngine made a disappointing decision.

None of those is false. None of those is disparaging. They are a combination of my opinion, my sincerely held belief, and referenced court cases.

You continue by asserting that linking to Overlay Fact Sheet and Overlay False Claims is somehow false or disparaging. It is my understanding linking to a widely-referenced site is itself not disparaging, and certainly not false since those sites exist. If your client genuinely disagrees with the content at either of those sites, I am confident you will be asked to send them Cease & Desist letters as well.

Your letter starts to wrap up by asking me to “preserve all documents (including emails, texts, tweets, and other social media posts or comments) relating in any way to any statements you have made about AudioEye, whether on the Internet, in public statements, or privately with prospective or current AudioEye clients or collaborators.” This is easy since I strive to keep all my criticisms and

interactions with overlay vendors public. Which is why I have published the two letters you sent me, and this response, to my personal web site.

To my knowledge, I have had no interactions with AudioEye clients or collaborators. If you can provide me a current and complete list of all AudioEye clients or collaborators I am happy to review it.

Finally, you close with this statement: “Moreover, AudioEye is concerned your tortious conduct was coordinated with other AudioEye competitors. We demand, therefore, that you preserve all communications with others in the accessibility industry concerning or relating in any way to AudioEye.” I want to take this chance to re-assert that I am not an AudioEye competitor. Not only that, I have not coordinated with any other overlay vendors. I am happy to preserve any communications because there aren’t any.

I appreciate that there are people at AudioEye who genuinely want to make the web more accessible. We are fighting the same fight. AudioEye spending any money to threaten me with legal action is taking money away from AudioEye’s effort to improve the web and my time to do the same. Moreover, threatening genuine criticisms with expensive legal action is not in the best interests of those we both claim to want to help —users with varying needs, challenged by the state of the web today. Instead AudioEye’s legal threats can have a chilling effect on the kind of open discourse and de facto peer review on which our industry has grown to affect real change. I encourage AudioEye to embrace valid criticism in the spirit it is intended — generating better outcomes for users.

Annoyedly,  
Adrian Roselli  
Independent Digital Accessibility Consultant  
Not a Bird Lawyer