

October 7, 2016

Disability Rights Section, Civil Rights Division
U.S. Department of Justice
P.O. Box 2885
Fairfax, VA 22031-0885

Re: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities– DOJ-CRT-2016-0009

Dear Department of Justice:

Thank you for the opportunity to comment on this Supplemental Advance Notice of Proposed Rulemaking on issues relating to nondiscrimination on the basis of disability and accessibility of web information and services of State and local government entities, 81 Fed. Reg. 28657 (May 9, 2016), CRT Docket No. 128. We appreciate the chance to comment on various issues relating to the potential application of technical accessibility requirements for title II entities covered by the Americans with Disabilities Act (ADA). Similar to our comments on the proposed updated federal accessibility standards and guidelines,¹ we encourage policy approaches that foster digital inclusiveness, accessibility, and usability.

With more than 100,000 members, ACM (Association for Computing Machinery) is the world's largest educational and scientific computing society, uniting computing educators, researchers, and professionals to inspire dialogue, share resources, and address the field's challenges. These comments were developed by the ACM U.S. Public Policy Council (USACM), which serves as the focal point for ACM's interaction with the U.S. government in all matters of U.S. public policy related to information technology. The membership of the ACM U.S. Public Policy Council is comprised of computer scientists, educators, researchers, and other technology professionals. ACM U.S. Public Policy Council statements represent the views of the Council and do not necessarily represent the views of the Association.

Responses to Specific Questions

The Meaning of "Web Content"

Question 1: Although the definition of "Web content" that the Department is considering proposing is based on the "Web Content" definition in WCAG 2.0, it is a less technical definition. Is the Department's definition under consideration in harmony with and does it capture accurately all that is contained in WCAG 2.0's "Web content" definition?

¹ USACM Comments to the U.S. Access Board on the ICT NPRM (May 28, 2015),
http://usacm.acm.org/images/documents/USACM_Comments_ICTProposedRule_May2015.pdf

We agree with the Department that WCAG 2.0 provides flexibility, clarity, consistency, and objectivity. The Department should mirror the consistency offered by WCAG 2.0. Adopting a less technical definition could limit the ability of state and local government entities to appropriately implement and comply with the accessibility guidelines due to lack of clarity and uncertainty about the applicability of various freely available tools. Additionally, adopting a less technical definition could potentially omit elements necessary to comply with other W3C guidelines and interrupt their cohesiveness. This may also limit the ability of these guidelines to supplement WCAG 2.0. This phenomenon could apply to mobile software applications, which the Department is considering (See Questions 53, 54, and 55).

We encourage the Department to maintain the definition of “Web content” provided by WCAG 2.0. Since the Department’s intention is to provide a definition that could be more easily understood by the public generally, we encourage the Department to play a role in informing and training State and local government entities on best practices of information, architecture, and design so they can better understand and incorporate technologies and methods of implementation. The Department can provide adequate guidance and supplementary information on the definition and related technical terms, while maintaining the integrity of the WCAG 2.0 definition of “Web content.”

WCAG 2.0 is supported by extensive resources to help public entities, developers, interface designers, and manufacturers understand how to make and implement accessible products. Online resources include the full text of WCAG 2.0, and links to several compliance testing tools. To facilitate ease of use and understanding, the full-text of the standard contains hyperlinks with various sections to additional supporting guidance materials on how to comply with or further understand a specific requirement, as applicable. Other online supporting materials include detailed reference guides, instructions and customizable reference guide for designers and developers, sample scenarios, and test procedures.

Standards for Web Access

Question 2: Are there other issues or concerns that the Department should consider regarding the accessibility standard—WCAG 2.0 Level A and Level AA Success Criteria and Conformance Requirements—the Department is considering applying to Web sites and Web content of public entities? Please provide as much detail as possible in your response.

We support the incorporation by reference of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0, an international standard, and its Success Criteria and Conformance Requirements. We agree that harmonization with international standards and guidelines will increase the commercial availability of accessible products through larger marketplaces for accessible ICT.

We encourage the Department to consider WCAG 2.0 Level AA Success Criteria and Conformance Requirements. With level AA conformance, Web pages are required to satisfy all the Level A and Level AA Success Criteria, or to provide a Level AA conforming alternate version.²

² Understanding Conformance Requirements, <https://www.w3.org/TR/UNDERSTANDING-WCAG20/conformance.html>

Timeframe for Compliance

Question 3: Does an effective date of two years after the publication of a final rule strike an appropriate balance of stakeholder interests? Why or why not? Should the Department consider a shorter or longer effective date? If so, what should those timeframes be and why? Please provide support for your view. Should the Department consider different approaches for phasing in compliance? For example, should the Department consider permitting public entities to make certain Web pages (e.g., most frequently used or necessary to participate in the public entity's service, program, or activity) compliant by an initial deadline, and other Web pages compliant by a later deadline? If so, how should the Department define the Web pages that would be made accessible first, and what timeframes should the Department consider? Please provide support for your view.

Two years might be very reasonable in some cases and very long in others. Functionality and services that are necessary for citizens and potentially unavailable through other means should be made accessible. We urge the Department to consider shorter time frames when users are at significant disadvantage. We support different approaches for phasing in compliance according to how essential the product or service is for users.

Question 4: Some 2010 ANPRM commenters expressed concern that there is likely to be a shortage of professionals who are proficient in Web accessibility to assist covered entities in bringing their Web sites into compliance. Please provide any data that the Department should consider that supports your view.

There are several resources that can assist covered entities in bringing their websites into compliance. These resources provide information about implementation, tools, and audit resources that will help covered entities achieve compliance. Ongoing assistance could include updates on best practices, case studies, and examples of successful implementations, developer and authoring toolkits, testing and evaluation tools, training opportunities, and relevant online resources. A few of these resources include:

- The General Services Administration's (GSA) [section508.gov](https://www.section508.gov). Section508.gov was created for stakeholders to find guidance, tools, and resources to ensure ICT accessibility. GSA also includes other resources on international standards that may be able to assist.
- Compliance evaluation tools listed by the W3C.³ These tools are flexible, usable, and several are free of cost.
- CSS toolkits. Using CSS toolkits would reduce cost and complexity of web design in general. These tools have been designed considering accessibility.⁴ The accessible design can help meet other goals such as suitability for mobile usage and might encourage both device portability and accessibility.

³ W3C's Web Accessibility Evaluation Tools List, <https://www.w3.org/WAI/ER/tools/>

⁴ CSS Design Principles, <https://www.w3.org/TR/CSS2/intro.html#design-principles>

Archived Web Content

Question 20: Is the definition the Department is considering for archived Web content appropriate?

We urge the Department to consider a definition that encourages making content accessible and discourages entities from removing inaccessible content. For more details, see Question 21.

Question 21: Does the archived Web content definition and exception under consideration take into account how public entities manage outdated content on their Web sites? How often do individuals seek access to such documents and how long would it take public entities to provide these documents in an accessible format? Are there other issues that the Department should consider in formulating an archived Web content definition or an exception for archived materials on Web sites of public entities?

In formulating a definition for archived Web content or an exception for archived materials, the Department should consider an approach that incentivizes the creation of documents in accessible formats. We caution against incentivizing the removal of inaccessible content and encourage the Department to consider a regulatory course that strikes a balance between these circumstances. The definition proposed by the Department should take into account the historical integrity and significance of content.

Furthermore, we support the Department's statement that despite any approach, individual requests for access to these documents would still need to be addressed on a case-by-case basis in order to ensure that individuals with disabilities are able to receive the benefits or services of archived Web content through other effective means.

An additional issue for the Department to consider is the long-term maintenance of websites and the intersection of web and mobile content delivery. Important information should be accessible and discoverable over time, even when website redesigns and updates are made. It is important to consider this issue as some essential content housed within State and local entities' websites is used by reference websites that point to these government resources. For usability and continuity, the Department should consider and encourage architectural technical solutions that help facilitate seamless transitions between web interfaces and mobile applications. The ability of these current and emergent technical approaches to redirect users seamlessly to the appropriate location within websites and across their web and mobile interfaces can help public entities deliver information more effectively to the public over time.

Providing Access to Conventional Electronic Documents

Question 50: Are there any issues or considerations the Department should take into account regarding its proposal to permit the use of conforming alternate versions of Web pages or Web content only where it is not possible to make Web pages and Web content directly accessible to persons with disabilities due to technical or legal limitations? Are there any additional issues or information regarding conforming alternate versions of a Web page or Web content that the Department should consider? Please provide as much detail as possible in your response.

The Department has made clear the two circumstances under which conforming alternate versions of web pages or web content would be permissible. However, further restricting or prohibiting conforming alternate versions beyond those already identified in WCAG 2.0 could potentially preclude the evolution and adoption of more effective or emergent modes of information delivery and exchange. Old content is already covered as being archived. Word Documents and PDFs might be converted to be accessible easily, if they are used. Additionally, with the emergence of CSS toolkits, accessible content that does not require alternative versions is arguably easier to create than ever before. Furthermore, the Department should clarify the “technical limitations” described in the first circumstance.

We encourage the Department to work with W3C to amend or provide additional guidance, rather than introduce exceptions or impose new requirements domestically that could undermine the purpose and benefits of global harmonization.

Mobile Applications

Question 53: Should the Department consider adopting accessibility requirements for mobile software applications to ensure that services, programs, and activities offered by public entities via mobile apps are accessible? Please provide any information or issues the Department should consider regarding accessibility requirements for mobile apps provided by public entities.

For mobile and other non-web ICT, the Department should consider identifying additional guidance references issued by the W3C or other competent international authorities to help entities comply with WCAG accessibility compliance and to ensure mobile and other non-web ICT is both accessible and usable for people with disabilities. The Department also should consider requiring that websites, mobile apps, and software not block or interfere with content provided in widely accepted accessible formats. See Question 55 for a list of suggested standards and guidelines. We encourage the Department to consider the W3C Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT), adopted in 2013, along with other interrelated accessibility standards and guidance published by the W3C and other competent international authorities.

A flexible approach to accessibility and usability compliance for mobile and other non-web ICT through functional performance criteria will allow the providers of information and services, as well as developers, to focus on achieving compliance with user needs, rather than trying to innovate within narrow technical constraints that might not be appropriate to that technical element. Accessibility and usability conformance can be informed by widely accepted international standards, guidelines, and formats.

By promoting solid principles of functional design, rather than a specific mandatory implementation standard for mobile and other non-web ICT conformance, regulations will be more durable and provide the necessary flexibility for developers and manufacturers to build accessibility features at reasonable costs that account for the wide range of mobile and other non-web ICT technologies. Such an approach also would support ongoing evolution to improve making non-web content, applications, and interfaces accessible to people with visual, auditory, motor, or cognitive impairments.

Question 54: The Department is seeking public comment regarding the use of WCAG 2.0, UAAG 2.0, ATAG 2.0, or ANSI/HFES 200 as accessibility requirements for mobile apps. Are there any issues the Department should consider in applying WCAG 2.0, UAAG 2.0, ATAG 2.0, or ANSI/HFES 200 as accessibility requirements for mobile apps? Is there a difference in compliance burdens and costs between the standards? Please provide as much detail as possible in your response.

The WCAG 2.0, its principles, guidelines, and success criteria can be applied to mobile web content, mobile web apps, native apps, and hybrid apps using web components inside native apps. We support the recommendation of the Mobile A11Y Task Force to supplement WCAG 2.0 with other W3C guidelines such as the UAAG 2.0 and the ATAG 2.0. These resources can help provide informative standards and guidelines to assist State and local government entities with accessibility conformance and usability as consistent with accessibility requirements and in the context of different technical components. Recently developed UAAG 2.0 and ATAG 2.0 are free to the public and on their way to becoming commonly accepted and distributed. WCAG 2.0 is an international consensus standard that is available for free and is widely accepted and distributed.

Question 55: Are there any other accessibility standards or effective and feasible alternatives to making the mobile apps of public entities accessible that the Department should consider? If so, please provide as much detail as possible about these alternatives, including information regarding their costs and effectiveness, in your response.

The following widely accepted standards and guidelines can assist the technical community with conformance with WCAG 2.0 for non-web ICT and with evolving accessibility questions. This list is not intended to be comprehensive:

- W3C Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT). <http://www.w3.org/TR/wcag2ict/>
- W3C Authoring Tool Accessibility Guidelines (ATAG). <https://www.w3.org/TR/ATAG20/>
- W3C User Agent Accessibility Guidelines (UAAG). <http://www.w3.org/TR/UAAG20/>
- Mobile Accessibility: How WCAG 2.0 and Other W3C/WAI Guidelines Apply to Mobile (Draft, Feb. 26, 2015). <http://www.w3.org/TR/2015/WD-mobile-accessibility-mapping-20150226/>
- Guidance published by the W3C Web Accessibility Initiative (WAI). <http://www.w3.org/WAI/>
- Guidance published by the W3C Mobility Accessibility Task Force (Mobile A11Y TF). <http://www.w3.org/WAI/GL/mobile-a11y-tf/>

Providers should ensure that implementations do not block or interfere with, at minimum, the following accessibility features and formats:

- W3C Accessible Rich Internet Applications (WAI-ARIA) and WAI-ARIA User Agent Implementation Guide (published as W3C recommendations in March 2016).



<https://www.w3.org/TR/wai-aria-1.1/>

- Digital Accessibility Information System (DAISY) Standard, officially ANSI/NISO Z39.86-2005, for digital publications and documents. <http://www.daisy.org>
- EPUB, published by the International Digital Publishing Forum, for digital publications and documents. <http://idpf.org/epub>
- W3C Mathematical Markup Language (published as a W3C recommendation in April 2014). <http://www.w3.org/TR/MathML3/>

Thank you again for the opportunity to comment on this Supplemental Advance Notice of Proposed Rulemaking on title II of the ADA, which applies to State and local government entities. We thank the Department for its continued efforts in promoting innovation in technology to empower the full participation of people with disabilities and limitations in all aspects of society. We reaffirm our commitment to working with U.S. policy leaders, the computing community, and across all sectors of society to ensure a disability-inclusive policy agenda that expands access, promotes innovation, enables research and development, and continues efforts to fully implement the ADA. The staff and members of the ACM U.S. Public Policy Council are available if you have questions or would like additional information about the issues raised in this public comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Shapiro".

Stuart S. Shapiro, Ph.D.
Chair, ACM U.S. Public Policy Council
Association for Computing Machinery

A handwritten signature in black ink, appearing to read "Harry Hochheiser".

Harry Hochheiser, Ph.D.
Chair, Accessibility Committee
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