The Ability Center

October 3rd, 2023

To: Civil Rights Division, Department of Justice

Re: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Entities.

Thank you for the opportunity to provide public comment. The Ability Center is a Center for Independent Living (CIL) serving seven counties in Northwest Ohio. Our mission is to make our community the most disability friendly in the nation by increasing independence for people with disabilities, discovering true passions, and changing the community's perception of disability.

1. **The Ability Center is supportive of the Department of Justice issuing regulations to require that websites and other internet-based technology meet defined accessibility standards.**

While the accessibility of websites and other internet-based technology become more and more important to people with disabilities' ability to access our community and live independently, there is currently no uniform requirement to ensure that websites and other internet- based technologies are accessible. Thus, it is imperative that the Department of Justice issue regulations clarifying that websites must be accessible and giving a set standard of what that means.

Currently, the Americans with Disabilities Act (ADA) does not specifically list websites as services, programs, and activities of a public entity.[1] Because many state and local governments fail to prioritize updates to their web platforms for accessibility, individuals with disabilities continue to experience barriers to accessing web-based information.

Discrimination on the basis of disability can come in many forms. As the internet has developed over the years and technologies such as smart phones have emerged, the lack of accessible web information has resulted in discriminatory practices on the basis of disability because people with disabilities cannot readily access web information in the same manner that those without disabilities can.

Individuals who are deaf, hard of hearing, blind, or of low vision experience the greatest barriers to accessing web-based information, as the majority of information consumed on the internet is not made in accessible formats for these populations. Some of the most common barriers that individuals who are deaf, hard of hearing, blind, or of low vision experience are as follows:[2]

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[1] 28 C.F.R. 35.

[2] Claus, C. (n.d.-b). *The major obstacles to Digital Inclusion & accessibility faced by the D/Deaf Community*. InclusionHub Digital Inclusion Resources. https://www.inclusionhub.com/articles/obstacles-to-digital-inclusion-deaf-community#:~:text=The%20most%20common%20barriers%20include,non%2Dinclusive%20social%20media%20platforms.

- Media without captions;
- Audio without transcripts;
- Lack of sign language interpretations;
- And non-inclusive social media platforms and mobile apps.

"Web Content"

Q1: **Conventional Electronic Documents**

2. **The Department of Justice should change the proposed definition of "conventional electronic documents" to include all file types as documents covered under title II of The ADA to ensure all formats used to consume, create, and share web-based information are made accessible to people with disabilities.**

Inaccessible web content means that people with disabilities are denied equal access to information. Inaccessible files/documents can exclude people just as much as steps at an entrance to a physical location.[3] File types and documents with inaccessible features can limit the ability of people with disabilities to access a public entity's programs, services, and activities through the website. Therefore, it is imperative the Department of Justice not only ensure that the most commonly used file types and documents are accessible, but that they account for as many forms of documents and file types as possible to ensure whatever form a person with a disability can utilize to access a public entity's programs and services are made accessible.

Additionally, one of the current issues with enforcement of web accessibility rules is that the original version of the Americans with Disabilities Act did not anticipate the technology that would be readily available today. It is likely that technology will continue to change and evolve, and it is important that the definitions included in these regulations apply to new and emerging technologies.

Q2: **WCAG 2.1 Definition of Web Content**

3. **The U.S Department of Justice should alter the definition of web content defined in the WCAG Standards and adopt this variation: "Information, *sensory or otherwise,* to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions."**

The definition of web content as stated in the WCAG Standards separates the perception and retrieval of content by the user agent into two categories: "Information and sensory experience(s)." This definition is problematic because web content is conveyed in a variety of forms, and that information that is perceived and retrieved by the user requires sensory input and output at every stage of the process. In addition, it seems to highlight "sensory experiences" as something *other* than a type of information, which is inherently inaccurate. Therefore, we

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[3] *Guidance on web accessibility and the ada*. ADA.gov. (2023, September 29). https://www.ada.gov/resources/web-guidance/

recommend adopting a variation of the standard which is more easily understood: "Information, *sensory or otherwise,* to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions."

Q3: **Technical Standards or Performance Standards other than WCAG 2.1**

The Department of Justice should reference the U.S Access Board's Section 508 standards, alongside requirements outlined by WCAG 2.1, to ensure that all web content is accessible and usable by people with disabilities.

The U.S Access Board's Section 508 standards include additional requirements applicable to mobile apps that are not in WCAG 2.1.[4] The U.S Access Board's Section 508 standards ensure that ICT they develop, procure, maintain, or use allows employees and individuals with disabilities who are members of the public to have access to and use of information and data.[5] Referencing the U.S Access Board's Section 508 Standards will ensure that Department of Justice is accounting for all changes to web-based content that evolves alongside technology. The rapid pace at which technology changes presents unique challenges because as technology changes so must the formats used in those technologies. Therefore, including standards such as Section 508, will enable the U.S Department of Justice to ensure that accessibility remains a top priority as technology increases and advances within the public sector.

Additionally, the DOJ relies on the U.S. Access Board to update other ADA regulations. Tying web compliance to Section 508 will ensure that the U.S. has one national standard created by the agency given the authority to assist the DOJ with regulating state and local governments ADA compliance.

Q4: **How Accessible are Small Public Entities' Web Content and Mobile Apps Currently?**

There are two major reasons why public entities' websites are inaccessible to people with disabilities. First, awareness of standards and regulations encouraged or required by the ADA is still limited, despite it now being 33 years since it became law. Second, most businesses are concerned with the "cost" of accessibility features; and thus, just do not comply. There are in deed instances where small public entities may be experiencing a true financial burden to make their website accessible, such as rural community business owners with limited internet access and limited funds. However, on average it will cost a company between $1500 to $5000 to make a website fully compliant with the WCAG Standards from the ground up.[6] Most small public

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[4] *Section 508 home page*. Civil Rights Division. (2023, February 27). https://www.justice.gov/crt/section-508-home-page-0#:~:text=Specifically%2C%20Section%20508%20requires%20federal,use%20of%20information%20and%20data.

[5] *Section 508 home page*. Civil Rights Division. (2023, February 27). https://www.justice.gov/crt/section-508-home-page-0#:~:text=Specifically%2C%20Section%20508%20requires%20federal,use%20of%20information%20and%20data.

[6] *ADA/508 compliance pricing*. WebFX. (2023, March 6). https://www.webfx.com/web-development/pricing/ada-compliance/#:~:text=On%20average%2C%20ADA%20compliance%20services,website%20is%20now%2C%20and%20more.

entities will have far fewer complex websites that do not require that level of work, and so those estimates only pertain to large public entities with very complex websites.

The smaller the public entity and the smaller the pool of users engaging with their apps and social media means less feedback on accessibility issues of the web-based content. Not surprisingly then, small businesses have found themselves sued at an unprecedented rate in the last several years over their websites, social media, and apps being inaccessible to people with disabilities.[7]

A respondent's answer to this notice for comment stated that "The Department has heard that when these small entities develop or maintain their own websites, they often do so with staff or volunteers who have only cursory knowledge of web design and use manufactured web templates or software, which may create inaccessible web pages." Though this cannot be confirmed or denied, it begs the question if issues to accessibility in web content begin with templates that are not made accessible to begin with, distributed across the internet as sufficient, and because ADA Standards and guidelines are still not widely taught as essential to the development of a website; are then utilized by small entities without a second thought.

Small entities are a hub for local community members, and so are their web pages, social media accounts, etc,. It is very likely that most small entities have web content, apps, and social media applications that are inaccessible but easier to fix than large entities for these reasons.

Q5: WCAG Version or Conformance Level for Small Entities or a Subset of Small Entities

Small Government entities should comply with WCAG 2.1 standards in the same manner that other larger governmental entities comply with the standards. In order to do so, funding sources to alleviate financial burdens for small government entity web content should be made more readily available for accessibility improvements.

Small Government entities may experience some financial burdens due to lack of overall funding available to update web content for accessibility. Though small Government entities may experience greater difficulty when it comes to the financial side of updating for accessibility, they must still conform to the WCAG 2.1 standards, as would a large Government entity, to ensure that all people with disabilities can access their web content. That being said, it is important to take into account the financial expenditures of small Government entities, since they historically have less access to funds than larger entities. The Department of Justice should consider financial incentives for these small entities earmarked for accessibility improvements to web content, to alleviate monetary burdens and ensure that both small and large entities have the funding available to perform the necessary accessibility improvements.

Q6: Public Entities and Social Media Platforms

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[7] Elizur, I. (2019, August 20). *How to make your website Ada compliant and avoid accessibility lawsuits*. Small Business Trends. https://smallbiztrends.com/2019/08/make-your-website-ada-compliant.html

The U.S Department of Justice should adopt the Federal Social Media Accessibility Toolkit to better understand how to address the barriers to access that individuals with disabilities experience while attempting to access or use social media.

Government entities are increasingly using social media to engage with citizens, share information and deliver services more quickly and effectively than ever before. But as social content, data and platforms become more diverse, agencies have a responsibility to ensure these digital services are accessible to all citizens, including people with disabilities.

Members of the public use information provided by public Government entities to gain knowledge on programs and services available to them, and to share the information with their social media contacts. If the content is not accessible, individuals with disabilities ability to share the content with their social media contacts is severely limited, leading to less awareness of services that the Government entity provides. Specific barriers that people with disabilities encounter when attempting to access public entities' services via social media varies greatly. Some of the most common barriers experienced are as follows:[8]

- Lack of closed captioning;
- Lack of alt-text;
- Lack of headings;
- Font size, contrast, and choice to change font and contrast;
- No keyboard-only access;
- Moving targets;
- Animations;
- Pop-ups;
- Button size;
- And captchas.

The U.S Department of Labor's Office of Disability Employment Policy created a *Federal Social Media Accessibility Toolkit* that explores the barriers previously stated, and provides entities with guidelines on how to ensure their social media platforms are accessible to people with disabilities.[9] The Department of Justice should reference and adopt this toolkit as it continues to gather data on what barriers people with disabilities encounter on social media relating to access and usability.

Link to Resource

https://digital.gov/resources/federal-social-media-accessibility-toolkit-hackpad/.

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[8] Albee, T. (2023, July 6). *Most frustrating digital accessibility issues for people with disabilities*. Equidox. https://equidox.co/blog/most-frustrating-digital-accessibility-issues-for-people-with-disabilities/

[9] *Federal Social Media Accessibility Toolkit hackpad*. Digital.gov. (2014, June 30). https://digital.gov/resources/federal-social-media-accessibility-toolkit-hackpad/

Q7: **Mobile Apps**

One way the government is working to improve the way they relay information to citizens is by developing mobile apps. With mobile apps, government agencies can relay important information such as emergency alerts or special news bulletins quickly and easily.

Locally, our government has an app available for everything related to its customer service department. So a local app will send out emergency alerts or bulletins, but it is also being used to upload pictures and report issues with sidewalks or other government services. In the future, apps will like be used to pay for government services, like a water bill, and watch hearings or other local government action. Mobile apps need to contain accessible text, photos, procedures for uploading, and also accessibility in streaming video.

According to a survey conducted by Diamond, only 35% of iOS and 29% of android apps, that require payment, exhibited basic accessibility compliance. Because paid apps likely have fewer users, they receive less feedback on how to improve accessibility. Therefore, many of the apps that require subscriptions or in app payments, are likely to be in some way not accessible to individuals with disabilities. The Diamond report revealed four common failures and oversights that developers of mobile apps should be wary of in app design. They are as follows:[10]

- **Phone Orientation:**

Being able to switch phone orientations from portrait to landscape easily is crucial for all mobile app users, especially those with disabilities.[11] If a person with a disability cannot orient their phone to the most comfortable position for them, they likely will experience issues to accessing the app.

- **Text Re-sizing**

Users with disabilities generally have their phones set in the precise accessibility settings needed individually. A genuinely accessible app would transfer users' preferred visual settings to app usage.

- **Alternative Text for Images**

According to Diamond's report, about 50% of paid iOS and 75% of paid Android apps lacked alt text features.[12] For an app to be truly accessible, it must label images with image descriptions so that users who are blind or of low vision can comprehend the content. The same goes for adding captions and descriptions to videos found in-app

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[10] Wester, D. (n.d.). *Common accessibility features missing from mobile apps*. Accessibility.com: Empowering digital accessibility for businesses. https://www.accessibility.com/blog/common-accessibility-features-missing-from-mobile-apps

[11] Wester, D. (n.d.). *Common accessibility features missing from mobile apps*. Accessibility.com: Empowering digital accessibility for businesses. https://www.accessibility.com/blog/common-accessibility-features-missing-from-mobile-apps

[12] Wester, D. (n.d.). *Common accessibility features missing from mobile apps*. Accessibility.com: Empowering digital accessibility for businesses. https://www.accessibility.com/blog/common-accessibility-features-missing-from-mobile-apps

- **Headings for Screen Readers**

According to Diamond's report, only 50% of paid iOS apps and 10% of paid Android apps had accessible headers.[13] A screen reader is an assistive device used by users with visual impairments to access the internet. It processes and reads information aloud to the user. For screen readers to know what they're reading, they rely on website and app coding cues. Therefore, when there is no heading available, the individual using a screen reader may lose out on important information needed to understand the web content.

Q8: **Appropriate Accessibility Standards for Mobile Apps**

The U.S Department of Justice should adopt The U.S Access Board's Section 508 requirements alongside WCAG 2.1 Level AA Standards to ensure that mobile apps are accurately improved for accessibility.

The U.S Access Board's Section 508 requirements includes additional requirements applicable to mobile apps that are not in WCAG 2.1.[14]

When technology changes, accessibility features will need to be updated. Therefore, the U.S Department of Justice can adopt the U.S Access Board's Section 508 requirements alongside the WCAG Standards to ensure accessibility issues are accounted for as technology advances. This will streamline the process by including requirements for mobile applications that WCAG Standards lack and catch accessibility issues that can be avoided when new technology and software emerges.

Q9: **Compliance Date and Small Public Entities**

Small and Large Public Entities Have Had Over 30 Years to Comply with the ADA; and Therefore, the U.S Government Should Make Funds Available to Small Public Entities to Come into Compliance Alongside Large Public Entities.

From their own admission, public entities are concerned about costs because they think they will need to hire a web specialist on accessibility to make their website accessible. However, form their comments, they are already using web developers or a template to create a website.[15] They simply need to use a web developer or template that knows how to make a website accessible. Hopefully, one of the effects of the new regulations will be that every web developer knows how to make web content accessible, and every template is also accessible. Accessibility does not require more talent or specialty than simply creating a website – web developers just need to educate themselves on the accessibility standards. State and local governments will simply need to do their regular website maintenance with developers that know about accessibility.

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[13] Wester, D. (n.d.). *Common accessibility features missing from mobile apps*. Accessibility.com: Empowering digital accessibility for businesses. https://www.accessibility.com/blog/common-accessibility-features-missing-from-mobile-apps

[14] *Section 508 home page*. Civil Rights Division. (2023, February 27). https://www.justice.gov/crt/section-508-home-page-0#:~:text=Specifically%2C%20Section%20508%20requires%20federal,use%20of%20information%20and%20data.

[15] Section 35.200(B)(2).

Q10: **Compliance Date and People with Disabilities in Rural Communities**

The Department of Justice Should Adopt the Proposal of Three Years for Compliance of Rural Communities and Create Financial Incentives to Alleviate Costs

As a Center for Independent Living, we understand the unique barriers that individuals living in rural communities encounter in comparison to their urban counterparts. However, we also realize that 33 years have passed since the ADA became law, and people with disabilities in rural communities, due to lack of resources and funding, experience greater barriers to accessing their communities than non-rural communities; including web-based content about local programs and services. Three years, as proposed, would give rural communities enough time to gather resources and organize systems in order to come into compliance; however, we urge the Department of Justice to create financial incentives for rural communities in an effort to ensure that when updates to accessibility are complete, both large and small entities will not have been financially burdened by the process.

Q13: **Compliance Date and Live-Audio Content**

The U.S Department of Justice should require all small and large entities to have live-audio content on all web content to be streamed via the internet one year after issuing the rule.

Technology to enable live-audio content/captions comes in many forms. The two most common forms are through automated devices and software (AI) and by the use of a live captioner. This technology is readily available, comes in different forms of cost, and is even utilized by media applications such as zoom every time live captions are enabled. For these reasons, three years to come into compliance with live audio content is too long of a time frame. Individuals with disabilities experience barriers to participating in online government sessions and in receiving news related information when public and governmental entities continue to not comply with live-audio content/captions.

In Ohio, our General Assembly sessions continue to not have live-audio content/captions despite numerous efforts by our organization to ask them to do so. Especially since COVID moved things in a virtual direction, The Ability Center has heard from multiple disability consumers who want to watch the Ohio channel but cannot understand what is going on without live captioning.

One year should be enough time for most entities to enable services that provide live-audio content. In cases of rural communities that are incredibly isolated and in need of longer preparation times, the Department of Justice could allow for an extension.

Q14: **Types of Live-Audio Content**

All forms of information to be live streamed by small and large public entities must have live-audio content/caption options for individuals who are blind, of low vision, deaf, or hard of hearing regardless of the type of content.

The types of live-audio content that large and small entities post can vary greatly. Some areas where live-audio content should always be available are as follows:

- News blasts;
- On the ground reports;
- Government sessions,
- Court hearings;
- Notices of sales, availability of product, availability of services, and changes to rules, regulations, standards, of an entity;
- Notices of public comment via virtual sessions;
- And all other media content used for the purpose of live streaming.

The inability of entities to provide live-audio captions when live streaming media/web content continues to be a major barrier for individuals with disabilities who want access to real time information as it comes in like the rest of the public. For example, the State of Ohio broadcasts the hearings and committee meetings of the General Assembly members but does not have live-audio content enabled. Instead, they add captions after the fact. Therefore, individuals who are blind, of low vision, deaf, or hard of hearing cannot watch ANY of the sessions live as the rest of the general public does, or at least cannot do so without great difficulty.

There are many forms of technology that provide live-audio content/captions. The technology ranges in price, depending on what is needed to enable the content and what technology the user is engaging with. Ai powered closed captioning software can be embedded in a software such as zoom, or it could be purchased separately for use in broadcasts. In addition, most webcasting and live video streaming platforms provide a method for streaming a real-time captioning feed within the platform's user interface.[16] Any of these methods could be utilized by both small and public entities to ensure they always have live-audio content/captions on all web-based information they share, create, or procure.

Conclusion

whether they are small local municipalities or large federal agencies, government entities have a responsibility to ensure their websites, mobile applications, and social media platforms are accessible to people with disabilities. Doing so not only aligns with legal requirements and ethical principles but also promotes transparency and inclusivity. By prioritizing web-based accessibility, government entities can better serve their constituents and set an example for the broader community, ultimately working towards a more inclusive and equitable society for all.

On behalf of The Ability Center of Greater Toledo, thank you for this opportunity to submit comments.

Sincerely,

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[16] What is the best way to stream real-time captions to end-users? (n.d.-d). https://support.automaticsync.com/hc/en-us/articles/360001188166-What-is-the-best-way-to-stream-real-time-captions-to-end-users-

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