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Justice Department Issues ADA Web Accessibility Guidance



On March 18, 2022, the U.S. Department of Justice (DOJ) issued new [guidance](#) (Web Accessibility Guidance) advising state and local governments and businesses open to the public on how to make their websites accessible to people with disabilities, based on the understanding that the Americans with Disabilities Act (ADA) applies to web content.

The Web Accessibility Guidance represents the latest articulation of the DOJ's position on this issue, and it may portend future regulatory enforcement and rulemaking activity in the web accessibility space. **History of DOJ's Position on Web Accessibility** The ADA was enacted in 1990 with the purpose of prohibiting discrimination on the basis of disability in a variety of contexts. Of particular relevance, Title II of the ADA prohibits such discrimination in all state and local government services, while Title III of the ADA prohibits such discrimination in all "places of public accommodation," a term that refers to private businesses that are open to the public. The ADA by its terms expressly covers physical locations such as hotels, restaurants, and schools, but it does not address whether or to what extent its requirements apply beyond physical locations. Since 1996, the DOJ has taken the position that the ADA applies to the websites of places of public accommodation. In a [rulemaking that commenced in 2010](#), the DOJ proposed rules that would have formally adopted accessibility requirements for websites of places of public accommodation. However, seven years later, the DOJ [abandoned these efforts](#), leaving unresolved the question of whether the ADA extends to web content. **New Web Accessibility Guidance** The Web Accessibility Guidance states that the DOJ "has consistently taken the position that the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web," and "all the services, programs, or activities of state and local governments, including those offered on the web." In addition, the DOJ acknowledged that businesses and state and local governments have flexibility in terms of how they may make their websites accessible to people with disabilities. Nonetheless, the Web Accessibility Guidance recommends that these entities follow existing technical standards that provide guidance on how to ensure the accessibility of web features, such as the [Web Content Accessibility Guidelines](#) or the [standards applicable under Section 508 of the Rehabilitation Act](#). **Potential Future Regulatory Activity** The DOJ's publication of the Web Accessibility Guidance suggests that

increased enforcement activity may be on the horizon after several years of relative dormancy. The Web Accessibility Guidance expressly identifies web accessibility as a DOJ enforcement priority, and it cites several settlement agreements that the DOJ has recently entered into with various companies concerning web accessibility. The DOJ's recent actions may also foreshadow the revival of the agency's prior rulemaking in this space, which could provide much-needed clarity—but also lead to greater legal risk—for government entities and businesses.

Authors

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