July 19, 2018

SENT VIA US MAIL

The Honorable Jefferson B. Sessions, III
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Web Accessibility Standards under the Americans with Disabilities Act

Dear Mr. Attorney General:

We, the undersigned Attorneys General, respectfully request that the United States Department of Justice (DOJ) draft and promulgate regulations pertaining to web accessibility standards under Title III of the Americans with Disabilities Act (ADA).\(^1\) The ADA has been instrumental throughout the years in providing protection for individuals with disabilities. However, when it comes to web accessibility standards, the ADA does not provide clear guidance to the public or regulated entities. This void in the law has led to unnecessary lawsuits in an effort to exploit the law’s ambiguity for financial gain with little or no corresponding benefit to consumers.

Unfortunately, these lawsuits target a number of industries, including credit unions, community banks, retailers, and other small to large businesses, with questionable legal theories. In addition, law firms are sending demand letters asserting violations of the ADA based on alleged improper web accessibility. Given the uncertainty in the law, these businesses are often forced to pay the demand letter or settle the case. This drives up the cost of doing business, while providing no clear benefit to individuals the ADA is meant to protect.

The ADA does not provide clear guidance regarding web accessibility, yet businesses are attempting to provide high levels of website access for customers with disabilities. For example, many businesses are beginning to meet, or are already meeting, the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA. In addition, some businesses are providing services to individuals who are blind or visually impaired, such as 24-hour phone services. Yet these steps do not protect from lawsuits or demand letters.

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\(^1\) 42 U.S.C. § 12101.
A clear indicator of the lack of guidance under the ADA regarding web accessibility is the significant split among the courts over the proper standard for web accessibility, including whether websites should even be considered places of accommodation.\(^2\)

The United States Department of Justice is the proper agency with legal authority to issue regulations under the ADA and to provide needed clarity. In July 2010, DOJ issued an Advanced Notice of Proposed Rulemaking titled, “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations,”\(^3\) to regulate website accessibility. However, DOJ withdrew this proposed regulation on December 26, 2017, and no other proposed rule regulation has been issued.

Based on the current legal uncertainty surrounding ADA web accessibility, the undersigned Attorneys General respectfully request that DOJ issue a proposed rule to provide exact standards for web accessibility, and provide any guidance in the interim. Such a regulation will provide much needed legal certainty and predictability, which in turn will benefit consumers and businesses alike.


\(^3\) 75 Fed. Reg. 43460 (July 26, 2010).
Thank you for your consideration.

Sincerely,

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