

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 of 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.

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.

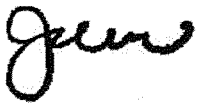
² See *Nat’l Ass’n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012) (ADA applies to websites); *Carparts Distribution Ctr., Inc. v. Auto. Wholesaler’s Ass’n of New England, Inc.*, 37 F.3d 12 (1st Cir. 1994) (ADA not limited to physical structures); *Access Now, Inc. v. Blue Apron, LLC*, No. 17-CV-116-JL, 2017 WL 5186354 (D.N.H. Nov. 8, 2017) (ADA applies to websites); *Andrews v. Blick Art Materials, LLC*, 268 F. Supp. 3d 381 (E.D.N.Y. 2017) (ADA applies to websites); *Markett v. Five Guys Enters. LLC*, No. 17-CV-788, 2017 WL 5054568 (S.D.N.Y. July 21, 2017) (ADA applies to websites); *Nat’l Fed’n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565 (D. Vt. 2015) (ADA applies to websites); *Griffin v. Dep’t of Labor Fed. Credit Union*, 293 F. Supp. 3d 576 (E.D. Va. 2018) (plaintiff wasn’t injured as a result of being denied access to the website); *Carroll v. ABNB Fed. Credit Union*, No. 2:17CV521, 2018 WL 1180317 (E.D. Va. Mar. 5, 2018) (plaintiff lacked standing to bring a claim); *Carroll v. Nw. Fed. Credit Union*, No. 1:17-cv-01205, 2018 WL 2933407, at *2 (E.D. Va. Jan. 26, 2018) (plaintiff did not suffer an injury in fact because “he has not established that he is entitled, or would ever be entitled, to utilize any services provided by Northwest [Federal Credit Union].”); *Magee v. Coca-Cola Refreshments USA, Inc.*, 833 F.3d 530 (5th Cir. 2016) (ADA only applies to physical locations), *cert. denied*, 138 S. Ct. 55 (2017); *Steger v. Franco, Inc.*, 228 F.3d 889 (8th Cir. 2000) (to bring an ADA violation, plaintiff must visit place); *Ouellette v. Viacom*, No. CV 10-133-M-DWM-JCL, 2011 WL 1882780 (D. Mont. Mar. 31, 2011) (website must have nexus with physical location for ADA to apply); *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110 (N.D. Cal. 2011) (website must have nexus with physical location for ADA to apply); *Earll v. eBay, Inc.*, No. 5:11-CV-00262-JF, 2011 WL 3955485 (N.D. Cal. Sept. 7, 2011) (websites are not places of public accommodation); *Access Now, Inc. v. Sw. Airlines, Co.*, 227 F. Supp. 2d 1312 (S.D. Fla. 2002) (nexus required between website and physical location); *Gomez v. Bang & Olufsen Am., Inc.*, No. 1:16-CV-23801, 2017 WL 1957182 (S.D. Fla. Feb. 2, 2017) (ADA does not apply to websites).

³ 75 Fed. Reg. 43460 (July 26, 2010).

The Honorable Jefferson B. Sessions, III
July 19, 2018
Page 3

Thank you for your consideration.

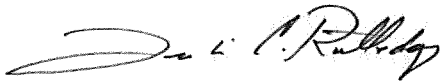
Sincerely,



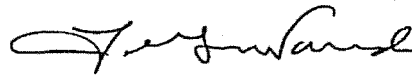
Jahna Lindemuth
Attorney General of Alaska




Christopher M. Carr
Attorney General of Georgia



Leslie Rutledge
Attorney General of Arkansas



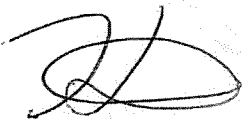
Lawrence G. Wasden
Attorney General of Idaho



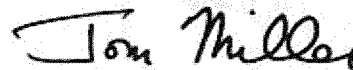
Cynthia H. Coffman
Attorney General of Colorado



Curtis T. Hill, Jr.
Attorney General of Indiana



Karl A. Racine
Attorney General of
The District of Columbia



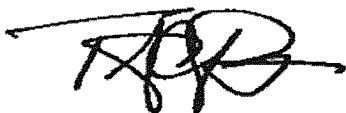
Thomas J. Miller
Attorney General of Iowa



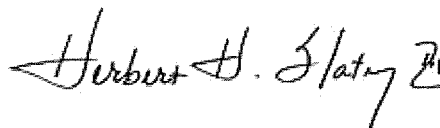
Pamela J. Bondi
Attorney General of Florida



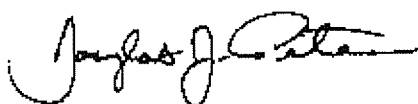
Jeffrey M. Landry
Attorney General of Louisiana



Timothy C. Fox
Attorney General of Montana



Herbert H. Slatery III
Attorney General of Tennessee



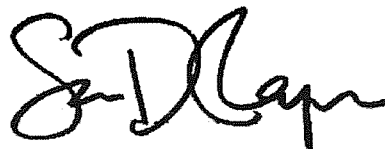
Douglas J. Peterson
Attorney General of Nebraska



W. Kenneth Paxton, Jr.
Attorney General of Texas



Adam P. Laxalt
Attorney General of Nevada



Sean D. Reyes
Attorney General of Utah



Wayne Stenehjem
Attorney General of North Dakota



Brad D. Schimel
Attorney General of Wisconsin



Alan M. Wilson
Attorney General of South Carolina