May 18, 2022

Delivered Electronically

Hon. Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
601 D St, NW
Washington, DC  20579

Re:  Imperative of Codifying Detailed Regulations for ADA-Compliant Websites

Dear Assistant Attorney General Clarke:

The Association for Computing Machinery, founded in 1947 as a non-profit and non-lobbying organization, is the world's largest and longest-established society of individual professionals involved in virtually every aspect of computing. Our over 50,000 members in the United States and 100,000 world-wide serve in government, industry, academia, and the public sector. Many have pioneered and continue to pursue work on the cutting edge of computing, including human-computer interaction. Through its U.S. Technology Policy Committee (USTPC), ACM strives to provide apolitical technical expertise and analysis to Congress, the Executive Branch, and policymakers throughout our government to inform technology policy.

On behalf of USTPC, we write to you today for two reasons:

● To commend the Department of Justice and the Civil Rights Division for the March 18 release of its "Guidance on Web Accessibility and the ADA" (March Guidance), which puts to rest questions of the ADA's applicability to websites, and whether the web is considered a place of public accommodation, by stating that businesses "must ensure that the programs, services, and goods that they provide to the public—including those provided online—are accessible to people with disabilities"; and

● To associate USTPC with the February 28, 2022 Joint Letter to Enforce Accessibility Standards, signed by one hundred and eighty one leading state and national disability rights organizations, calling for the adoption and codification of detailed binding regulations to assure that individuals with a disability are never excluded from "digital spaces covered by the ADA."

We make this request as technologists for technical reasons. Architects and engineers design and build physical structures to make the physical world accessible to people with disabilities with the benefit of detailed regulatory standards for ADA compliance through the ADA Standards for Accessible Design. Computing professionals, however, have no such detailed regulatory standards for ADA compliance for web design and implementation in the digital world, despite the availability of robust and widely adopted digital accessibility standards. This creates a design, implementation, and oversight gap for digital accessibility that we believe is illogical, unjustifiable, and harmful.

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Without publicly considered, defined, and enforceable agency rules, the online world will continue to comprise a patchwork of websites that are designed based on inconsistent and sometimes unsuccessful interpretations of what accessibility means in digital contexts. This impediment to universal online accessibility can and should be removed as promptly as possible by means of formal agency processes.

We also note that, while constructive, the Department's recently issued Guidance could inadvertently prove counterproductive. Truly accessible websites require much more than elimination of the six "Website Accessibility Barriers" highlighted by the Guidance. The Guidance thus risks creating the inaccurate impression that addressing those six barriers alone will constitute compliance with the ADA's requirements for fully accessible websites. By contrast, we note that Level AA of the [Web Content Accessibility Guidelines 2.1](#) routinely referenced by the Department in its formal settlement agreements are composed of four principles, 13 guidelines, and 50 enumerated success criteria. It is precisely this level of specificity and enforceability that deserves codification in the web design and development context.

For instance, accurate programmatic names for controls (*e.g.*, links and buttons) are among the most critical digital accessibility features. Without them, people who depend upon assistive technologies like screen readers or speech input simply cannot reliably access web content. The 2022 [WebAIM Million](#) evaluation of 1 million homepages reports empty links and buttons among the most common WCAG conformance failures that users with disabilities are likely to encounter. Omitting accessibility requirements for links and buttons from the March Guidance would be as if accessibility requirements for operable parts and signs had been omitted from the ADA Standards for Accessible Design: egregious and counterproductive. This omission is also puzzling given that accessibility needs and requirements for links and buttons are explicitly defined in the WCAG and are codified at Section 508 of the Rehabilitation Act [(29 U.S.C. §794d)](#).

The March Guidance, however, also fails to adequately address many more technical but critical web features vital to web accessibility, including (but not limited to) restrictions on flashing content, audio description, and status messages. Together, these serious flaws in the March Guidance create substantial risks that well-intentioned technologists in compliance with the March Guidance nonetheless will inadvertently create barriers to information access, and cause harm to people with disabilities, that would be precluded by formal regulation.

ACM's USTPC includes members with specific expertise in technological accessibility who stand ready to provide additional advice to the Department of Justice to further its work to define and adopt standards for digital accessibility. We look forward to participating in a formal proceeding to develop such standards in the near future. Thank you for your consideration.

Respectfully submitted,

John Murray
Chair, USTPC Accessibility Subcommittee

Alec Yasinsac
USTPC Vice Chair

cc: The Hon. Jennifer Mathis
Deputy Assistant AG, Civil Rights Division

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