

2010 - Department of Justice Request for Information

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations

Question 1

Should the Department adopt the WCAG 2.0's "Level AA Success Criteria" as its standard for website accessibility for entities covered by titles II and III of the ADA? Is there any reason why the Department should consider adopting another success criteria level of the WCAG 2.0? Please explain your answer.

Adopting the Level AA Success Criteria is acceptable and attainable in a reasonable time frame for website developers. Level AA Success Criteria uses existing technology and best practices recommended by the W3C.

Many AAA Success Criteria, 1.2.6 – 1.2.9 in particular, do provide a better and enriched user experience but may not be attainable due to technological and budget restraints. Level AAA Success Criteria should be reexamined in the future when more advanced technology has been developed to determine if Level AAA Success Criteria can be attained.

Question 2

Should the Department adopt the section 508 standards instead of the WCAG guidelines as its standard for website accessibility under titles II and III of the ADA? Is there a difference in compliance burdens and costs between the two standards? Please explain your answer.

The WCAG 2.0 guidelines have been updated and modernized and provide an abundance of helpful examples that demonstrate how to use the guidelines. The WCAG 2.0 guidelines include the different Levels of Success Criteria that 508 Web Standards (1194.22) do not contain. Level AA Success Criteria set necessary Web accessibility requirements while Level AAA Success Criteria go one more step and provide guidelines for an ideal user experience. 508 Web Standards are not as detailed as WCAG2.0 Guidelines. To avoid redundancy and conflicts, 508 Standards should be retired, and WCAG 2.0 Guidelines should be adopted as the industry standard.

The level of effort needed to comply with both Level AA of WCAG 2.0 Guidelines and 508 Web Standards are comparable, so developers familiar with one standard should be able to transition to another with relative ease. However, Success Criteria Level AAA of WCAG 2.0 Guidelines requires a higher level of Web accessibility than 508 Web Standards. Compared to 508 Web Standards, Level AAA Success Criteria would cost

more to implement and be more of a burden to developers. Many AAA Criteria, like adding sign language to video, are attainable, however, the costs of a sign language interpreter, the development effort to embed the interpreter in the video, and the video editing, would be a burden to developers and Web agencies and be an added expense to clients.

Question 3

How should the Department address the ongoing changes to WCAG and section 508 standards? Should covered entities be given the option to comply with the latest requirements?

If there are changes to WCAG and Section 508, covered entities should comply within 18-24 months. If new guidelines remain optional, they will be implemented inconsistently just as Web accessibility guidelines are implemented inconsistently now.

The inconsistent execution of guidelines hinders disabled users because accessibility features may not be available. New guidelines must be enforced to give disabled users an optimal online experience.

Question 4

Given the ever-changing nature of many websites, should the Department adopt performance standards instead of any set of specific technical standards for website accessibility? Please explain your support for or opposition to this option. If you support performance standards, please provide specific information on how such performance standards should be framed.

The department should not adopt performance standards. Besides monitoring user testing in person, it is very difficult to study the behaviors of individuals using a website. The performance of an accessibility feature can only be tracked in a limited fashion. Current Web tracking tools only allow general information collection such as page views, length of time spent on a page or whether a feature or tool was used. Web tracking tools can't track the frustration or delight a user may experience.

In addition, the vast and ever-growing number of end user devices makes it impossible to test every single device to determine how each performs with accessibility features on a website.

Question 5

The Department seeks specific feedback on the limitations for coverage that it is considering. Should the Department adopt any specific parameters regarding its proposed coverage limitations? How should the Department distinguish, in the context

of an online marketplace, between informal or occasional trading, selling, or bartering of goods or services by private individuals and activities that are formal and more than occasional? Are there other areas or matters regarding which the Department should consider adopting additional coverage limitations? Please provide as much detail as possible in your response.

The proposed coverage limitations are acceptable when applied to websites with user-generated content.

An informal or occasional trading, selling or bartering website could be defined as a site that doesn't specifically provide a structured interface for bartering or selling of goods. A website like Craigslist provides a uniform functionality site-wide--a plain message board that allows users to post and read messages, nothing more or less. People sell and trade products and services using the message board but its sole purpose isn't for selling and trading, and there is no interface for such included. Craigslist should not be required to implement an accessible person-to-person online payment system and accessible online store features.

An online market place could be defined as a website such as EBay, which provides an interface, workflow and user experience specifically for selling goods and services. If an interface is built to facilitate and automate the selling of products, accessibility features should be built in a way that require users to post accessible content (e.g., requiring a product description or alt text for a product image). The online market place cannot be held accountable for the quality of the user generated content (e.g., product description or alt text for a product image may not be optimal).

Question 6

What resources and services are available to public accommodations and public entities to make their websites accessible? What is the ability of covered entities to make their websites accessible with in-house staff? What technical assistance should the Department make available to public entities and public accommodations to assist them with complying with this rule?

There are a number of online resources and tools:

Accessibility Evaluation Tools

W3C

<http://www.w3.org/>

WAVE

<http://wave.webaim.org/>

Colour Contrast Analyser for Web Pages

<http://www.visionaustralia.org.au/info.aspx?page=628>

Colour Contrast Check

http://www.snook.ca/technical/colour_contrast/colour.html

Sim Daltonism

<http://michelf.com/projects/sim-daltonism/>

Lighthouse International

<http://www.lighthouse.org/accessibility/design/accessible-print-design/effective-color-contrast>

CSS, Markup and Web Standards

A List Apart

<http://www.alistapart.com/>

Jeffery Zeldman Presents

<http://www.zeldman.com/>

MeyerWeb

<http://meyerweb.com/eric/css/>

SimpleBits

<http://www.simplebits.com/>

W3C CSS Validation Service

<http://jigsaw.w3.org/css-validator/>

W3C Markup Validation Service

<http://validator.w3.org/>

Web Developer Firefox Toolbar

<https://addons.mozilla.org/en-US/firefox/addon/60/>

Screen Readers

Introduction to Screen Readers

<http://www.doit.wisc.edu/accessibility/video/intro.asp>

JAWS 40 Minute Mode Free Download

<http://www.freedomscientific.com/downloads/jaws/jaws-downloads.asp>

Web Accessibility Basics

Web Accessibility Initiative

<http://www.w3.org/WAI/intro/components.php>

How People with Disabilities Use the Web

<http://www.w3.org/WAI/EO/Drafts/PWD-Use-Web/>

Print publications about Web Accessibility:

Web Accessibility: Web Standards and Regulatory Compliance

Just Ask: Integrating Accessibility Throughout Design

If the in-house staff of entities consists of Web developers and designers, covered entities should be able to make their websites accessible. Developers and designers can educate themselves with the references above. If entities used an outside agency to develop websites, that agency should be able to make the websites accessible as part of their Web design services. The ability to comply with any applicable accessibility standards should be a requirement when selecting an outside development vendor.

The Department of Justice should provide resource lists containing organizations that specialize in disabilities that could aid with accessibility testing of websites. Providing a resource list will give entities the opportunity to enlist people with disabilities to do accessibility testing. User testing, more than anything, will prove whether a website is truly accessible.

Question 7

Are there distinct or specialized features used on websites that render compliance with accessibility requirements difficult or impossible?

There are specific multimedia experiences that may exclude people with certain disabilities. A visually impaired person may not be able to play a Flash video game or see a music visualizer because the sole purpose of the experience is meant to be visual.

Question 8

Given that most websites today provide significant amounts of services and information in a dynamic, evolving setting that would be difficult, if not impossible, to replicate through alternative, accessible means, to what extent can accessible alternatives

still be provided? Might viable accessible alternatives still exist for simple, non-dynamic websites?

The best alternative to an inaccessible website would be an accessible website. www.acmemarkets.com provides an additional website that is accessible to visually impaired users. Besides creating another website that is accessible, there is no accessible alternative for inaccessible websites.

Question 9

The Department seeks comment on the proposed time frames for compliance. Are the proposed effective dates for the regulations reasonable or should the Department adopt shorter or longer periods for compliance? Please provide as much detail as possible in support of your view.

Requiring new pages of a website to be accessible while old pages are inaccessible doesn't provide a seamless user experience. A disabled user would have an inconsistent user experience jumping from accessible pages to inaccessible pages. To implement new accessibility standards effectively, entire websites should be made accessible in a period of 36 months after accessibility guidelines become law. This time period will give adequate time for large websites to be retrofitted or redesigned to be accessible, providing a consistent user experience to the disabled.

Question 10

The Department seeks comment regarding whether such a requirement would cause some businesses to remove older material rather than change the content into an accessible format. Should the Department adopt a safe harbor for such content so long as it is not updated or modified?

The department shouldn't adopt a safe harbor for older useful materials, even if those materials will simply be removed. If content is on a website it should be considered useful accessible content.

Converting digital content to an accessible format wouldn't be a time consuming task like painstakingly scanning in a microfiche film library to be converted to an accessible digital format. Video, audio or text on websites already exists in a digital format that can easily be made accessible.

Question 11

Should the Department take an incremental approach in adopting accessibility regulations applicable to websites and adopt a different effective date for covered entities based on certain criteria? For instance, should the Department's regulation

initially apply to entities of a certain size (e.g., entities with 15 or more employees or earning a certain amount of revenue) or certain categories of entities (e.g., retail websites)? Please provide as much detail and information as possible in support of your view.

The department should not take an incremental approach in adopting Level AA accessibility guidelines. Smaller agencies could be more agile and work quickly to make websites accessible, while larger companies can get bogged down with bureaucracy and move slower. There really is no overall rule that says bigger companies can work faster and absorb the cost of making websites accessible better than small companies.

Question 12

What data source do you recommend to assist the Department in estimating the number of public accommodations (i.e., entities whose operations affect commerce and that fall within at least one of the 12 categories of public accommodations listed above) and State and local governments to be covered by any website accessibility regulations adopted by the Department under the ADA? Please include any data or information regarding entities the Department might consider limiting coverage of, as discussed in the "coverage limitations" section above.

Cannot Answer Question

Question 13

What are the annual costs generally associated with creating, maintaining, operating, and updating a website? What additional costs are associated with creating and maintaining an accessible website? Please include estimates of specific compliance and maintenance costs (software, hardware, contracting, employee time, etc.). What, if any, unquantifiable costs can be anticipated from amendments to the ADA regulations regarding website access?

In general, the cost of making a website accessible is not great if a website was built with Web Standards. There is an upfront cost to learn about Web Accessibility. The costs below are based on a designer or developer who is familiar with Web Standards and HTML and CSS.

Costs for Maintaining an Accessible Web site

The costs to maintain an accessible website are not great. Once a website is designed to be accessible, it can be maintained like any other website. Some costs may appear when accessibility testing is needed for upgrades or changes to a website or if a separate accessible website is created to complement an inaccessible website. The one exception to low cost maintenance is closed captioning. The costs to transcribe video for closed captioning can add up quickly, especially if there is a lot of video.

Known Costs

- Accessibility Books: \$100-\$120
- Time spent learning about Web accessibility: 160-240 hours.
- Screen Reader for testing: \$1,000 (JAWS 40 Minute Demo is free and very useful)
- Closed Captioning: \$10 per video minute plus 2-3 hours of man time to review, edit, post closed-captioning and/or transcripts.

Unknown Costs

The costs below are unknown because the cost and time breakdown depend on the size of a website. Plus, a website may be 95% accessible and need small modifications while other websites may need a complete overhaul to become accessible.

- User Testing
- Upgrade Video Players to handle Closed Captioning
- Modification of Web site templates to become accessible
- Upgrade multimedia to be accessible

Question 14

What are the benefits that can be anticipated from action by the Department to amend the ADA regulations to address website accessibility? Please include anticipated benefits for individuals with disabilities, businesses, and other affected parties, including benefits that cannot be fully monetized or otherwise quantified.

Making websites accessible will give people with disabilities more independence. The cost of care or assistance for people with disabilities could be reduced. Online food shopping at an accessible website, such as AcmeMarkets.com, could reduce the amount of time an aide would spend shopping with someone who is disabled. Additionally, a more usable website would help lower business's customer support costs by reducing support calls.

Question 15

What, if any, are the likely or potential unintended consequences (positive or negative) of website accessibility requirements? For example, would the costs of a requirement to provide captioning to videos cause covered entities to provide fewer videos on their websites?

Benefits

There are some initial payoffs to companies who maintain accessible websites:

- An Accessible website can be easier to update.
 - o Image text, which is difficult to update, is converted to easily editable HTML text for screen readers.
 - o Site structure will be optimized for screen readers leading to more organized HTML that is less time consuming to update or modify.

- Accessible websites work better with Search Engines.
 - o HTML Headers added to websites for screen readers increase search optimization.
 - o HTML sites without layers and hidden content are better for search engine optimization and screen readers that have difficulty reading layers.
 - o Video transcripts that are created during the closed captioning process can be placed on a video page providing searchable text to search engines.
 - o Transcripts allow nondisabled users who don't have video and audio capabilities to read about a video.

Costs

Requiring closed captioning and transcripts may not reduce the amount of videos posted online. However, it may slow down the process of posting videos because creating closed captioning for the Web can be time consuming. It may be wise to require closed captioning be added to a video 2-4 weeks after the original posting date. Larger entities, like news websites, may have in-house resources to handle closed captioning. Smaller agencies will need to send out video for transcription and closed-captioning, which could take 2-4 weeks.

A requirement for closed captioning on live broadcasts (WCAG 2.0 Level AAA) could be an issue for smaller companies that may not have the staff, technology or resources to transcribe live video.

Additionally, companies will need an ongoing approach for developing content for new devices (smartphones, e-readers, tablets, etc.) that might not support established Web standards. Some of these devices have functions that can be leveraged for accessibility (e.g.,. The Amazon Kindle has a built-in text-to-speech function), but also often use proprietary code.

Question 16

Are there any other effective and reasonably feasible alternatives to making the websites of public accommodations accessible that the Department should consider? If

so, please provide as much detail about these alternatives, including information regarding their costs and effectiveness in your answer.

None.

Question 17

The Department seeks input regarding the impact the measures being contemplated by the Department with regard to Web accessibility will have on small entities if adopted by the Department. The Department encourages you to include any cost data on the potential economic impact on small entities with your response. Please provide information on capital costs for equipment, such as hardware and software needed to meet the regulatory requirements; costs of modifying existing processes and procedures; any affects to sales and profits, including increases in business due to tapping markets not previously reached; changes in market competition as a result of the rule; and cost for hiring web professionals for to assistance in making existing websites accessible.

Please refer to the answer to Question 13.

Question 18

Are there alternatives that the Department can adopt, which were not previously discussed in response to Questions 11 or 16, that will alleviate the burden on small entities? Should there be different compliance requirements or timetables for small entities that take into account the resources available to small entities or should the Department adopt an exemption for certain or all small entities from coverage of the rule, in whole or in part. Please provide as much detail as possible in your response.

New ADA requirements on accessibility could benefit small design agencies. As long as small agencies educate themselves about Web accessibility, they would be able to enjoy the benefits of accessible websites listed in the answer to Question 15.

Question 19

The Department is interested in gathering other information or data relating to the Department's objective to provide requirements for Web accessibility under titles II and III of the ADA. Are there additional issues or information not addressed by the Department's questions that are important for the Department to consider? Please provide as much detail as possible in your response.

Web accessibility guidelines should encompass smart phone apps related to websites, with a focus on apps for highly popular online destinations such as Google, Facebook

and Twitter. If Facebook.com is required to be accessible, the Facebook smart phone app should be required to be accessible as well. E-readers represent another class of device that may benefit from accessibility guidelines, especially as the market is beginning to coalesce around a few leaders, and as many models access the Web via Wi-Fi and 3G connections and serve as *de facto* browsers.

Web accessibility guidelines should also cover mission-critical internal websites and Web based application such as employee intranets or employee timesheet software. Even though these websites may be private, an internal community of over 10,000 employees could use them.

Guideline **1.4.4 Resize Text** should not be a required guideline of WCAG 2.0. This guideline requires text resizing functionality to be present on a website. All modern browsers provide magnification tools that are more effective than website specific text resizing tools. The browser based magnification tools resize a web page, including image text. Magnification tools on a browser are a consistent tool that a disabled person can use regardless of the website being visited. In contrast, text resizing tools on different websites will be in different locations on a page and will function differently. A disabled person will have to find and learn how to use the text resize tool when he/she visits a new website.