



**COMMENTS OF THE US TECHNOLOGY POLICY COMMITTEE
OF THE ASSOCIATION FOR COMPUTING MACHINERY
DEPARTMENT OF JUSTICE DOCKET NO. 144:
“NONDISCRIMINATION ON THE BASIS OF DISABILITY; ACCESSIBILITY OF WEB
INFORMATION AND SERVICES OF STATE AND LOCAL GOVERNMENT ENTITIES”**

The Association for Computing Machinery (ACM), 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.

As noted in our [May 18, 2022 letter](#) to Assistant Attorney General Clarke underscoring the imperative of codifying detailed regulations for ADA-compliant websites, USTPC strongly reaffirms its convictions that digital spaces must be accessible to people with disabilities, and that detailed binding regulations are needed by technologists to guide computing education and professional practices to avoid creating barriers and causing harm to people with disabilities. Accordingly, we commend the Department of Justice (Department) for issuing its Notice of Proposed Rulemaking (NPRM) in the present proceeding¹ to codify digital accessibility requirements and standards for government websites and mobile apps, and are pleased — consistent with ACM’s mission and core values² — to submit the following comments and recommendations.³

¹ “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities,” 88 FR 51948 (August 4, 2023), RIN 1190–AA79.

² ACM is a global scientific and educational organization dedicated to advancing the art, science, engineering, and application of computing, serving both professional and public interests by fostering the open exchange of information and by promoting the highest professional and ethical standards. It’s core values are: technical excellence; education and technical advancement; ethical computing and technology for positive impact; and Diversity, Equity, and Inclusion. [<https://www.acm.org/about-acm/mission-vision-values-goals>]

³ These comments were principally drafted for by USTPC Accessibility Subcommittee members Sarah Horton and Mark Greenfield with the contribution of Subcommittee Chair John Murray.

1) Codify WCAG as a Digital Accessibility Standard, as Proposed

USTPC concurs that WCAG is an appropriate digital accessibility standard.⁴ We also agree that WCAG can apply to mobile apps and can be used to specify requirements for any digital interface, particularly for open systems. We also believe, however, that it would be beneficial to adopt additional standards (such as PDF/UA for PDFs) and functional performance criteria for when no technical standards apply. Also, we caution against specifying a version and conformance level for any particular standard as each new version is likely to expand to support more technologies and address additional accessibility needs.

Recommendations:

- Expressly reference the current WCAG standard in final rules adopted;
- Expressly require that the latest WCAG standard be met; and
- Codify timeframes for meeting new WCAG standards as they are adopted.

2) Broaden the Proposed Regulations and Proceeding

Technologies: The range of technology platforms that comprise today’s digital landscape include both open technologies like the web and closed systems, like kiosks, printers, and point-of-sale devices. The proposed regulations, however, address solely web and mobile technologies.

Recommendations:

- Expand the scope of the proposed regulations and associated standards to cover both open and closed systems; and
- anticipate and enable technology platforms, systems, and devices to come.

Content/Functionality: The proposed regulations’ focus on “web content” is potentially exclusionary. The regulations emphasize access to content, documents, and social media posts. However, participation in “services, programs, and activities” goes far beyond passive consumption of content. Indeed, people with disabilities must be able to engage, interact, and actively participate in technology-mediated services, programs, and activities. Accordingly, they must have legally assured access to both content and, perhaps more importantly, functionality.

Recommendation:

- Include standards requirements for closed systems in final regulations.⁵

Regulated Entities: USTPC recognizes that this proceeding is limited to Title II of the ADA. We are compelled to note, however, that the risk of disability discrimination in the digital world undeniably extends beyond state and local government entities. Binding standards and codified guidance are no less needed in the private and public sectors than they are in government.

⁴ The W3C Accessibility Guidelines (aka, Web Content Accessibility Guidelines or WCAG) is a global, freely available, open standard that is maintained. It is referenced in laws and regulations (e.g., Section 508 of the Rehabilitation Act and Section 255 of the Communications Act) and has served as a key driver for progress in digital accessibility around the world.

⁵ U.S. Access Board. *Revised 508 Standards and 255 Guidelines*. <https://www.access-board.gov/ict>

Recommendation:

- Expand the proposed regulations to cover Title III of the ADA.⁶

3) Require Technology Sector Entities and Professionals to Comply with the New Regulations

USTPC understands and agrees that, under the proposed regulations, covered entities will be responsible for assuring that members of the public who have disabilities are able to participate in and benefit from their services, programs, and activities. We also concur that third-parties influence whether the content, platforms, apps, and functionality used to provide services, programs, and activities is accessible. As an organization of computing professionals who likely comprise those third parties, our members are and will be instrumental in determining whether covered entities have technology options they can use to provide equitable access to services, programs, and activities.

We are thus deeply concerned that the proposed rule may be read to hold only public entities responsible for ensuring the accessibility of not only the content and functionality that they produce, but also that provided by third parties. The rule states, “A public entity may not delegate away its obligations under the ADA,” and instructs public entities to meet technical standards (i.e., conform to WCAG 2.1 Level AA) for third-party content, tools, platforms, as well as content and functionality provided by third-party contractors. This assumes that public entities have compliant options when choosing third-party content, tools, and platforms and that they have access to third-party contractors who are prepared to meet technical standards in their work. Unfortunately, that is not currently the case.

In reality, no digital resource fully conforms with WCAG 2.1 Level AA. Even if a product is produced that conforms to all applicable technical standards, the next update or release of that product will likely be non-compliant in at least some respects. Given the lack of accessible options for content, tools, and platforms – and the limited digital accessibility capacity in the technology ecosystem – covered entities, in our view, simply will be unable to comply with these regulations unless the technology sector is equally obligated by law to assure accessibility.

Recommendations:

- Revise the proposed regulations to assign responsibility for assuring accessibility to the entity that has the actual ability to achieve it;
- Given the reliance on computing professionals to meet technology standards, explicitly define in regulation the role and responsibilities of computing professionals; and
- Include businesses and other organizations and professionals in the technology sector as “covered entities” for regulatory compliance purposes.

4) Impose Both Reactive and Proactive Implementation Requirements

USTPC notes that technical standards have dual effects. They serve a proactive role as design and development requirements that provide the specifications needed by designers and engineers to produce accessible digital resources. They also, play a reactive role as verification criteria for determining if a digital resource is built in conformance to the standards. Throughout

⁶ Alternatively, as undertaken prior to and in this proceeding, publish the Department's intention to issue a Notice of Proposed Rulemaking for this purpose with a projected timetable for doing so.

the proposed rule, however, accessibility standards are referenced solely in a reactive manner: for bringing existing, noncompliant resources into compliance rather than articulating and requiring proactively designing and developing compliant resources process from the start.

For example, the proposed regulations appropriately dictate how much time responsible entities have to remediate their existing digital properties. They do not, however, incentivize or otherwise encourage or require covered entities to proactively build accessible digital resources from the start. While USTPC concurs that remediation is important and necessary, it should not be the primary focus of the regulations. Indeed, remediation is enormously costly and usually produces fewer benefits than building new accessible platforms, apps, and functionality.

One means of fostering a proactive approach is requiring regulatory compliance for all new digital resources as do, for example, the Plan for New Content and Functionality frequently included in the [Department of Education's Office of Civil Rights Digital Accessibility](#) settlement agreements and the Standards for New Construction and Alterations in the [ADA Standards for Accessible Design](#).

With such a requirement in place across the board, computing professionals could undertake capacity building activities, such as integrating accessibility and specific methodology for maximizing it as core requirements of [ACM's Computer Science Curriculum Guidelines](#), building on [ACM's Code of Ethics and Professional Conduct](#). With clear requirements for all new content and functionality, remediation activities and requirements for addressing known issues in all new design and development could be integrated into development practices. with.

Recommendations:

- Recognize and emphasize the proactive role of technical standards as a design specification and development requirements.
- Adapt the regulations to encourage and potentially incentivize a proactive approach to accessibility that encourages capacity building rather than remediation and repair to achieve regulatory compliance.⁷
- Require conformance with technical standards in all new technology development.

⁷ USTPC notes that compliance is a fleeting thing, happening at a moment in time. Regulations that encourage professionalism and best practices will help achieve and sustain accessibility in content, platforms, apps, functionality used to provide services, programs, and activities over time.