

Unpacking the DOJ A11y Rule

A11y CoP

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Cross-tenant Teams problems...

- We are aware of the cross-tenant pain points and access issues, and we continue to seek alternative avenues.

A Deep Dive Into the DOJ Rule

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Deep Dive into ADA Title II Rule

Accessibility of Web Content and Mobile Apps Provided
by State and Local Governments

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Note

Content in this presentation is for informational purposes only and should not be considered legal advice.

(and the rule)



ADA

- Americans with Disabilities Act
- Law as of July 26, 1990
- Clarified in 1996 that ADA includes digital resources
- Title II applies to state/local governments (regardless of whether they receive Federal financial assistance)
- Extends prohibition of discrimination established by Section 504 of the Rehabilitation Act of 1973



Title II of ADA

- Requires state and local governments to make sure that their services, programs, and activities are accessible to people with disabilities
- Includes services offered online and through mobile apps



Regulation/Rule

- Rule revising the regulation implementing title II of the ADA
- Applies to web content and mobile applications (“apps”)
- To establish specific requirements
- Includes a technical standard
- Provide clarity about ADA compliance

Who has to follow this rule?

- Same as title II of ADA
 - All state and local governments (includes any agencies or departments)
 - Includes public schools, community colleges, and public universities
 - Contracted entities of state/local govt.



Web content definition

“The information and sensory experience communicated to the user by means of a user agent (e.g., a web browser), including code or markup that defines the content’s structure, presentation, and interactions.”

Examples: text, images, sounds, videos, controls, animations, and conventional electronic documents.



Compliance start dates

Based on census data for county or city:

Total population $\geq 50,000$ = 2 years from effective date

Date: April 24, 2026

Total population $< 50,000$ = 3 years from effective date

Date: April 26, 2027

Requirement: Technical Standard

- The [Web Content Accessibility Guidelines \(WCAG\) Version 2.1, Level AA](#)
- Applies to web content and apps
- Includes when a state or local govt. has an arrangement with someone else who provides or makes available web content for them.

Limited exceptions

- Archived web content
- Some third-party content
- Pre-existing conventional electronic documents
- Individualized documents that are password-protected
- Pre-existing social media posts
- Fundamental alteration or undue burden

What exceptions do not change

- Must provide individuals with disabilities with
 - Effective communication
 - Reasonable modifications
 - An equal opportunity to participate/benefit
- Providing accessible formats to a user who needs them

Exception: Archived web content

(1)

- Web content created before compliance date,
- Reproduces paper documents created before compliance date,
or
- Reproduces the contents of other physical media created before compliance date

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Scenario A:

An agency discovers some historic paper documents from 1985 that they wish to scan, save as PDFs, and post in an online archive after their compliance start date.

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Explanation A:

The PDFs would meet the first part of the definition of “archived web content” because the underlying paper documents were created in 1985.

Exception: Archived web content, cont'd.

- (2) Is retained exclusively for reference, research, or recordkeeping;
- (3) Is not altered or updated after the date of archiving; and
- (4) Is organized and stored in a dedicated area or areas clearly identified as being archived.

Scenario B:

A town created a web page for its annual parade. In addition to providing current information about the time and place of the parade, the web page contains several photos and videos from the parade in past years.

Explanation B:

This scenario does not meet all requirements for archived web content.

The content was created prior to compliance start date, is used for reference, and has not been updated/altered.

However, the content is not in a clearly labeled archive area.

Exception: Pre-existing conventional electronic documents

- PDFs; word processor, presentation, spreadsheet files
- Available before compliance date
- Unless currently used to apply for, gain access to, or participate in services, programs, or activities

Scenario C:

A state government agency has a webpage with a collection of annual reports in PDF format, detailing financial summaries and departmental achievements. These reports date back to the early 2000s. They are not currently used in any active administrative processes or programs.

Explanation C:

This content qualifies for the exception as the PDFs were available before the compliance date and are not used to apply for, gain access to, or participate in any services, programs, or activities.

Exception: Content posted by third party

Content posted by a third party where the third party is not posting due to contractual, licensing, or other arrangements with a public entity.

Third-party content that is *not* included in exception

- Third-party content posted *by* the state or local government.
- Content posted by contractor or vendor.
- Tools and platforms that allow third parties to post content.

Scenario D:

The state government hosts an open forum on its website where members of the public can post comments and share information. The forum is moderated for appropriate content, but users post their comments independently.

Explanation D:

This content meets the exception as the public comments are posted by third parties without any contractual, licensing, or other arrangements with the state government. The platform allows for third-party content but does not control what is posted.

(Note that the forum platform itself must be accessible.)

Scenario E:

The state government has posted a series of educational videos produced by a third-party organization on its official YouTube channel. The third party has licensed the videos to the state for distribution.

Explanation E:

This content does not meet the exception as the state government itself has posted the third-party content under a licensing agreement.

Exception: Individualized documents that are password-protected

- Word processing, presentation, spreadsheet, PDF files, AND
- Documents about a specific person, property, or account, AND
- Documents are password-protected or otherwise secured.

Scenario F:

The county tax office provides annual property tax statements in PDF format for each property owner. These statements include detailed tax information for the specific property and are available through a password-protected portal.

Explanation F:

This content meets the exception as the PDFs are individualized documents about specific properties and are password-protected.

Exception: Pre-existing social media posts

Social media posts made by a state or local government before the compliance date.

Scenario G:

The state government's official Facebook page contains posts made before the compliance date, detailing past events, announcements, and public service information from 2010 to 2015. These posts have not been edited or updated since their original posting date.

Explanation G:

This content meets the exception as the social media posts were made by the state government before the compliance date and have remained unchanged.

Exception: Fundamental alteration or undue burden

- Determination different from entity to entity and sometimes from one year to the next.
- Burden of proof that compliance would result in such alterations or burdens.
- Decision must be made by head of public entity or their designee.
- Must be accompanied by a written statement of reasons.

Scenario H:

The state public safety department uses VR technology to provide immersive training programs for emergency responders, simulating real-life scenarios in a highly interactive environment. The department determines that an alternative/accessible version would be a fundamental alteration.

Explanation H:

This may qualify as a fundamental alteration. Converting VR training programs into accessible formats might involve creating videos or text-based scenarios, fundamentally changing the immersive and interactive nature of the training that is essential for its effectiveness.

Conforming alternate version

- Separate version of web content that is
 - Accessible
 - Up to date
 - Contains the same information and functionality
- Limited circumstances
 - Only when it is not possible to make web content directly accessible due to technical or legal limitations

Noncompliance with minimal impact on access

- Not in full compliance
- Limited circumstances
- Must not affect ability of users with disabilities to use content/app

Rule language about minimal impact

“... would not affect the ability of individuals with disabilities to use the public entity’s web content or mobile app to access the same information, engage in the same interactions, conduct the same transactions, and otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities, in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use.”

Access needs beyond WCAG 2.1

Level AA

- If WCAG 2.1, Level AA does not provide access
- Not required to make more changes to web content/apps
- Must still satisfy obligations under the ADA to provide individuals with disabilities with
 - effective communication,
 - reasonable modifications,
 - equal opportunity

Equivalent facilitation

- Can go above and beyond WCAG 2.1 Level AA
- Can use methods or techniques that provide equal or greater accessibility than what the rule requires
- Encourages flexibility and innovation

Getting started

- Establish accessibility team
- [Self-assess](#) and [make a plan](#))
- [Audit digital content](#)
- Create accessible templates
- [Address accessibility in contracts](#)
- Learn more about [WCAG 2.1 AA](#)

Resources

- [Fact Sheet: New ADA Title II rule](#)
- [NCDPI Digital Accessibility website](#)
 - [Creating accessible digital content](#)
 - [Procuring accessible digital content](#)
- [X: A11y Awareness](#)

Designed with accessibility in mind

Perceivable

- Alt text on images
- High color contrast
- Readable font
- Video with closed captions
- Slides with live captioning

Operable

- Distinct slide titles
- Descriptive links

Understandable

- Clear structure and layout
- Consistent formatting
- Effective use of images

Robust

- Accessibility check

Accessibility Crossword Puzzle Challenge

<https://bit.ly/a11y-crossword>



Open Discussion