

Deep Dive into ADA Title II Rule: Part 2

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Intent of exceptions

- Concern that final rule actions would likely result in fundamental alterations or undue burdens, which could lead to fewer impactful improvements.
- Could result in public entities prioritizing accessibility of content that is “easy” to make accessible, rather than content that is essential.

Rule p. 146

Exceptions focus

- Content that would be
 - Less commonly used by members of the public
 - Particularly difficult for public entities to make accessible quickly

Rule p. 146

Accessible version

- Archived town meeting minutes from 2011
- Might be covered by an exception
- If a person with low vision, for example, requests an accessible version, then the town would still need to address the person's request
- The way that the town does this could vary based on the facts (e.g., large print, electronic version)

Rule p. 8

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Exception: Archived web content

- Web content or reproductions of paper documents/ physical media created before compliance date
- Retained for reference, research, or recordkeeping
- Not altered or updated after date of archiving
- Organized and stored in dedicated area(s) clearly identified as being archived.

[Rule p. 50](#)

Archived content: reproductions

- Reproduces paper documents or other physical media
 - Examples of paper documents: printed, typed, handwritten, drawn, painted, or otherwise marked on paper.
 - Examples of physical media: videotapes, audiotapes, film negatives, CD-ROMs, and DVDs

Rule p. 58

Ex: reproductions

- Discover a box containing hundreds of
- paper files and photo negatives from 1975
- Agency reproduced the documents and photos
 - By scanning the documents and film negatives and
 - Saving the scans as PDF documents that are made available online
- Meets first part of archived web content definition

Rule p. 59

Archived content: creation date

- Minor adjustments are allowed after date
 - Ex: Redacting personally identifying information
- Substantial changes are not allowed after date
 - Adding, updating, rearranging

Rule p. 59

Ex: archived web content

- A town might create a web page for its annual parade
- The web page contains
 - Current information about the time and place of the parade
 - A separate archived section with several photos or videos from the parade in past years
- The images and videos would likely be covered by the exception (if it meets all other requirements).

Rule p. 148

Ex: archived web content (2)

- A municipal court has a web page that includes
 - Links to download PDF documents
 - PDFs contain a photo and short biography of past judges who are retired

Rule p. 149

Archived areas

- DOJ does not identify specific requirements about the structure of an archived area, or how to clearly identify an area as being archived.
- Provides greater flexibility when complying with this rule.

Rule p. 64

Ex: designated archived area(s)

- A public entity may wish to
 - Create separate web pages or websites to store archived web content.
 - Clearly identify that a specific section on a specific web page contains archived web content, even if the web page also contains non-archived content in other separate sections.
- The label or other identification for archived area(s) must be clear.

Rule p. 65

Scenario A

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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

[Rule p. 54](#)

Pre-existing documents

- Public entities will not have to immediately focus their time and resources on remediating or archiving less significant pre-existing documents that are covered by the exception.
- Instead, public entities can focus their time and resources elsewhere and attend to these documents in the future as their resources permit, such as by adding them to an archive.

Rule p. 157

Clarification

- The Department recognizes that there may be some overlap between archived / pre-existing docs exceptions.
- DOJ believes both exceptions are warranted because they play different roles in freeing up public entities' personnel and financial resources to make accessible the most significant content that they provide or make available.

Rule p. 157

Ex: pre-existing documents

- After the compliance start date, a university's athletics website
 - Includes PDF documents
 - Containing the schedules for sports teams from academic year 2017-2018
 - They were posted in non-archived areas of the website in the summer of 2017.
- Those PDFs may be covered because they were available on the website prior to the compliance start date.

Rule p. 157

Ex: moving content

- A public entity moved all of its web content, including pre-existing conventional electronic documents, to a new content management system
- They did not change or revise any of the preexisting documents when doing so
- The documents would likely still be covered by the exception.

Rule p. 160

Ex: moving content and updating

- A public entity edited the content of certain pre-existing documents in the process of moving them to the new content management system.
- Updates included: the header of a benefits application form to reflect the public entity's new mailing address
- The updated documents would no longer be preexisting for the purposes of the exception.

Rule p. 161

Ex: pre-existing docs open for editing

- A town maintains an editable Google Doc that lists the dates on which the town held town hall meetings.
- The town posts a link to the document on its website.
- The town updates the contents of the document over time after additional meetings take place.
- Exception would not cover documents that are open for editing if they are changed or revised after compliance start date.

Rule p. 161

Scenario B

Scenario C

Exception: Some third-party content

- Content posted by a third party
- UNLESS third party is posting due to contractual, licensing, or other arrangements with a public entity.

[Rule p. 171](#)

“Provides or makes available”

- Not intended to mean that it only applies when the public entity creates or owns the web content or mobile app.
- Plain meaning of “make available” includes situations where a public entity relies on a third party to operate or furnish content.

Rule p. 85

Third-party content: ADA language

- Existing title II regulation says that “a public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability” engage in various forms of discrimination.
- Same phrasing used in this rule.

Rule p. 84

Third-party content

- Examples: calendars, scheduling tools, maps, reservations systems, and payment systems developed by an outside tech company; website template on the public entity's behalf.
- Must select third-party content that meets the rule requirements.
- A public entity may not delegate away its obligations under the ADA.

Rule p. 174

Ex: third-party content

- A city does not design, create, or own a mobile app allowing the public to pay for public parking.
- A contractual, licensing, or other arrangement exists between the city and the mobile app.
- The mobile app is covered under the rule, because it provides access to the public entity's service, program, or activity (i.e., public parking) using a mobile app.
- This is consistent with the existing framework in title II of the ADA.

Rule p. 85

Third-party responsibility

- Concerns noted
 - Public entities lack control over third-party content, even where they contract with third parties.
 - In theory this type of content could be controlled by procurement, but not been realized in practice.
- DOJ expects that options for accessible third-party services will grow in response to this rule.
- Public entities will be able to rely on the fundamental alteration and undue burdens limitations.

Rule p. 87

Third-party content: public posts

- Public entity's online message boards, wikis, social media, or other web forums.
- Many are unmonitored, interactive spaces.
- Public entities often lack control over this third-party content, it may be challenging (or impossible) for them to make it accessible.
- *Tools and platforms* will likely need to comply.

Rule p. 172

Administrative, judicial, legal

- This exception applies to documents filed by independent third parties in administrative, judicial, and other legal proceedings that are available on a public entity's web content or mobile apps.
- Many public entities have implemented/are developing an automated process for electronic filing in order to improve efficiency in the collection and management of these documents.

Rule p. 173

Independent content

- DOJ sometimes refers to the content covered by this exception as “independent” or “unaffiliated” content
- Emphasizes that this exception only applies to content that the public entity has not contracted, licensed, or otherwise arranged with the third party to post.

Rule p. 177

Links to third-party web content

- Linked content that has been provided by the public entity, directly or through contractual, licensing, or other arrangements must be accessible.
- Other links to third-party websites are not covered by title II of the ADA, because they are not services, programs, or activities provided or made available by public entities.
- Still need to ensure the links themselves are accessible, but not the unaffiliated linked third-party content.

Rule p. 184

Ex: third-party website

- A public entity allows the public to pay for highway tolls using a third-party website.
- That website would be a service that the public entity provides through arrangements with a third party.
- The toll payment website would need to be made accessible consistent with this rule.

Rule p. 185

Scenario D

Scenario E

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.

[Rule p. 218](#)

Scenario F

Exception: Pre-existing social media posts

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

[Rule p. 228](#)

Social media platforms

- Widely used social media platforms are available separate and apart from any arrangements with public entities.
- Public entities are not required to ensure that such platforms themselves conform.
- Posts made by public entities generally must conform to WCAG 2.1 Level AA.
- Use accessibility features available (e.g., alt text)

Rule p. 133

Internal, non-public content

- This rule includes requirements for the web content and mobile apps within the scope of title II.
- It is not promulgated under title I of the ADA.
- This rule will not relieve title II entities of their distinct employment-related obligations under title I of the ADA.

Rule p. 82

Getting started

- Establish accessibility team
- Self-assess and make a plan
- Template: Digital Content Inventory and Audit
- 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](#)

Open

Discussion