



September 29, 2024

Rebecca B. Bond
Chief
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M St. NE, 9th Floor
Washington, DC 20002

RE: RIN 1190-AA79/Docket ID No. 144

Dear Ms. Bond:

On behalf of the Association of Assistive Technology Act Programs (ATAP), we are pleased to submit comments and recommendations in support of the U.S. Department of Justice (DOJ) proposed regulation implementing Title II of the Americans with Disabilities Act to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by State and local Government entities to the public through the web and mobile apps.

ATAP represents State and Territory Assistive Technology Act Programs formula funded under Section 4 of the Assistive Technology (AT) Act. State and Territory AT Act Programs operate in all 50 states, the District of Columbia, Puerto Rico and four territories and are available for persons with all types of disabilities, all ages, in all environments (education, employment, community living, , and information technology). State and Territory AT Act Programs are able to best match the proper assistive technology (AT) with individuals' needs, provide a device demonstration, loan a device, and provide training and support for the use of the device. Assistive technology and/or adaptive equipment can facilitate, support, and improve functionality so every individual with disability can obtain an education, gain and maintain employment, and live independently in their community.

As Congress noted on February 28, 2023 in a resolution agreed to in the Senate¹:

- Assistive technology is any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of an individual with a disability or an older adult;
- Assistive technology service is any service that directly assists an individual with a disability or an older adult in the selection, acquisition, or use of an assistive technology device.
- In 2022, the Centers for Disease Control and Prevention reported that 1 in 4 individuals in the United States, or almost 61,000,000 individuals, has a disability;
- In the 2020–2021 school year, the Department of Education reported that there were more than 7,200,000 children with disabilities;

¹ See: S. Res. 85, *Designating March 1, 2023 as "National Assistive Technology Awareness Day"* at: <https://www.congress.gov/bill/118th-congress/senate-resolution/85/text>

- The Centers for Disease Control and Prevention reported that, among adults 65 years of age and older, 2 in 5 have a disability;
- Assistive technology enables individuals with disabilities and older adults to be included in their communities and in inclusive classrooms and workplaces;
- Assistive technology devices and services are necessities, not luxury items, for millions of individuals with disabilities and older adults, without which they would be unable to live in their communities, access education, or obtain, retain, and advance gainful, competitive, and integrated employment;
- The availability of assistive technology in the workplace promotes economic self-sufficiency, enhances work participation, and is critical to the employment of individuals with disabilities and older adults;
- State assistive technology programs support a continuum of services² vital and necessary to the disabled population.

As key stakeholders and experts in supporting and creating access to AT for individuals with disabilities and in support of the millions of individuals with disabilities, we remind the DOJ of the clear need to assure the much-needed regulation will ensure every public website, app and information and communication technology (ICT) is accessible, usable and interoperable with assistive technology.

In that vein, we first urge DOJ to adopt the recommendations made by the Consortium for Constituents with Disabilities (CCD). We also offer the following recommendations that relate directly to the accessibility, usability and interoperability of websites and apps for the thousands of individuals with disabilities AT Act Programs serve each year:

General Recommendations

I. DOJ must make all public entity websites and mobile apps, and all forms of ICT, accessible to people with disabilities, without exception.

DOJ Question 48: Which provisions of this rule, including any exceptions (e.g., the exceptions for individualized, password-protected conventional electronic documents and content posted by a third party), should apply to mobile apps?

This rule will make a significant impact on the lives of millions of people with disabilities in the United States by covering websites and mobile apps. As such, we strongly urge the DOJ to apply the rule broadly to mobile apps. Mobile apps are widely used across every setting and impact access to education, employment, community living, recreation and more. Additionally, we also propose that the rule should cover Information and Communications Technologies (ICT) to fully ensure that people with disabilities can use the web, mobile applications, software, or telephones directly with access features “built into” the product or they can use their assistive technology “added onto” those products to provide access as required by Section 508³. Millions of Americans have visual, auditory, physical, speech, cognitive, and neurological disabilities that impact their ability to use the web, software, smart phones, and other ICT. Ensuring accessibility is critical for these Americans to learn, work, and live independently.

Finally, ATAP does not support ANY of the exceptions as proposed by DOJ in § 35.201. (See: Consortium for Constituents with Disabilities (CCD) Letter to DOJ for full explanation and rationale).

² See: P.L. 117-263, the 21st Century Assistive Technology Act as included in Title LIV of the National Defense Authorization Act of 2023 (pages 866-895), at: <https://www.congress.gov/117/bills/hr/7776/BILLS-117hr7776enr.pdf>

³ See: 29 U.S.C. 794d(a)(2)(A), (B).

II. DOJ should adopt WCAG 2.2. as the standard.

DOJ Question 3: Are there technical standards or performance standards other than WCAG 2.1 that the Department should consider? For example, if WCAG 2.2 is finalized before the Department issues a final rule, should the Department consider adopting that standard? If so, what is a reasonable time frame for State and local compliance with WCAG 2.2 and why? Is there any other standard that the Department should consider, especially in light of the rapid pace at which technology changes?

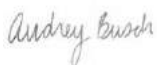
Rationale: As noted by DOJ, WCAG 2.1, Level AA, is the most recent standard and would be sufficient. However, because WCAG 2.2 is already available and is expected to be adopted as a recommendation before the end of the year, it makes sense to adopt WCAG 2.2 in the final rule. We also encourage DOJ to acknowledge that the technical standard may adjust as [expected] updates to WCAG are made and agreed to. It is imperative that this regulation does not become outdated as technical advancements are made and the access needs of individuals with disabilities concurrently change.

III. DOJ must plan to fund and provide technical assistance to public entities to ensure every public website, app and information and communication technology (ICT) is accessible, usable, and interoperable with assistive technology.

Rationale: We know that access to and use of public websites through the use of assistive technology and/or adaptive equipment can facilitate, support, and improve functionality so that every individual with disability can obtain an education, gain, and maintain employment, and live independently in their community. In order to accelerate access to essential information through accessible and usable websites, apps and ICT that are also interoperable with AT, the DOJ must plan now to fund and provide technical assistance to public entities. For example, DOJ could jointly fund grants with and through existing federal agency TA centers that would allow partners, such as the AT Act Programs which have the expertise and knowledge to help state and local public entities test websites and apps for accessibility, functionality, and interoperability with AT. This and a myriad of other tools and resources can be provided to public entities to ensure all new and updated platforms and hosted content do not include design flaws or other barriers that limit equal access to the public information individuals with disabilities need in all aspects of their lives.

ATAP appreciates the opportunity to comment. Please let me know if we can provide any additional information. I can be reached at (202) 344-5674 or audrey.busch@ataporg.org.

Sincerely,



Audrey Busch
Executive Director
Association of Assistive Technology Act Programs (ATAP)