

United States Senate

WASHINGTON, DC 20510

June 10, 2022

VIA ELECTRONIC DELIVERY

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

We write to express our support for the recent Guidance on Web Accessibility and the Americans with Disabilities Act (ADA) issued by the Department of Justice (DOJ or the Department). While this is a welcome initial step, we urge DOJ to expeditiously pursue regulatory and additional subregulatory initiatives under Titles II and III of the ADA to ensure that State and local governments and public accommodations procure, design, maintain and use websites, mobile applications, online systems and other forms of information and communication technology (ICT) that are accessible to, and usable by, the widest range of people with disabilities possible.

The Department has long recognized that, as former Principal Deputy Assistant Attorney General for Civil Rights, Samuel Bagenstos, stated before the House Committee on the Judiciary Subcommittee on the Constitution in 2010, “access to information and electronic technologies is increasingly becoming the gateway civil rights issue for individuals with disabilities.” We agree with the Department’s assessment. Businesses, employers and Federal, State and local governments are increasingly dependent on ICT to provide goods and services. For people with disabilities, website accessibility and other forms of accessible ICT are necessities—not luxuries or conveniences—that foster independence, economic self-sufficiency and active, meaningful participation in civic life.

Although the Department has clearly stated that the ADA applies to such digital spaces, the lack of specific requirements or technical compliance standards incorporated in regulation has led to a widespread lack of meaningful digital accessibility for people with disabilities. It is past time for the Department to issue robust clarifications and remedy this exclusionary *status quo*. In fact, in 2010, the Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) that explicitly recognized the need for greater clarity in the ADA regulations. However, a proposed rule was never issued, despite rigorous engagement from the disability community.

The ANPRM was withdrawn entirely in 2017 by the Trump administration, and the recently issued guidance is the first action regarding DOJ’s view on ICT from the Biden administration. Therefore, we urge the Department to work diligently to ensure accessibility of websites, online systems, mobile applications and other forms of ICT for people with disabilities by taking the following actions:

- (1) Promulgate updated regulations implementing Titles II and III of the ADA that include clear and enforceable accessibility and usability standards that align with current requirements under Section 508 of the Rehabilitation Act, including the incorporation by reference of internationally accepted Web Content Accessibility Guidelines (WCAG) 2.1 Levels A and AA;
- (2) Clarify that the regulations implementing Title III of the ADA apply to websites, online systems, mobile applications and other forms of ICT, regardless of whether a covered entity also owns or operates a physical location offering the same or similar goods, services or information. This will ensure uniform and consistent implementation of the ADA across the country;
- (3) Update existing subregulatory guidance regarding accessibility of websites, online systems, mobile applications and other forms of ICT, such as the technical assistance guidelines on “Accessibility of State and Local Government Websites to People with Disabilities,” which were last updated in 2003; and
- (4) Pursue additional focused settlement agreements through Project Civic Access, highlighting website accessibility, as well as online systems, mobile applications and other ICT, which can be used not only to advance accessibility under the specific settlement parties, but also to provide clear policy guidance for all covered entities.

Regulatory action by DOJ in this area is critical: there is a virtual flood of new and emerging technologies entering the marketplace and being incorporated into our daily lives. If these technologies are inaccessible, they will leave behind many people with disabilities. In keeping with the mission of President Biden’s Executive Orders 13895, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” and 14035, “Diversity, Equity, Inclusion and Accessibility in the Federal Workforce,” the Department should take the aforementioned actions to demonstrate its continued commitment to the goals of the ADA and the advancement of equity for people with disabilities.

We appreciate your attention to this important matter and look forward to working with you in our shared goal of achieving equity and inclusion for all Americans.

Sincerely,



Tammy Duckworth
United States Senator



Richard J. Durbin
United States Senator



Robert P. Casey, Jr.
United States Senator



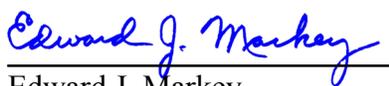
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Edward J. Markey
United States Senator



Chris Van Hollen
United States Senator



Elizabeth Warren
United States Senator



Margaret Wood Hassan
United States Senator

CC:

The Honorable Kristen Clarke, Assistant Attorney General for Civil Rights