

February 28, 2022

The Honorable Kristen Clarke
United States Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Assistant Attorney General Clarke:

The 181 undersigned disability organizations believe that there is an urgent need for digital accessibility regulations. We urge the Department of Justice to maintain this rulemaking process as a priority and finalize a rule by the end of the current administration.

The US Department of Justice has long held that the Americans with Disabilities Act (ADA) includes websites and other technologies that are critical to accessing a business's or agency's services or facilities but has failed to define when and how they should be accessible. In 2018, the Department reconfirmed its position that the ADA applies to the internetⁱ but never completed rulemakings that were begun in 2010 under Titles II and III of the ADA and withdrawn in 2017.ⁱⁱ Meanwhile, courts have diverged in interpreting when and how the ADA should apply to the internet, and business groups are on the record seeking clear standards that clarify their obligations under the ADA.

In 2016, the National Council on Disability (NCD) recommended that the Department of Justice issue a notice of proposed rulemaking that reinforces that the ADA applies to the internet. NCD also recommended that multiple agencies complete existing rulemakings and initiate new rulemakings on accessibility of various types of information and communication technology (ICT), including web content, applications, hardware, and software. The absence of digital accessibility regulations in the intervening time period has resulted in persistent exclusion of people with disabilities from digital spaces covered by the ADA.

Recent research has shown the breadth of barriers that people with disabilities face. Several studies find persistent barriers in telehealth accessibility. A study of 74 Deaf participants who had recently used telehealth found that 65% of participants experienced communications accessibility barriers. Deaf patients frequently experience the inability to connect remote medical interpreters or real-time captioners through the secure telehealth platform, the inability to see the provider on video, and other technical issues, including poor audio quality.ⁱⁱⁱ Another study found that of 285 blind and low vision participants who had used telehealth to meet with their healthcare provider, 21% reported the telehealth platform was not accessible with their assistive technology, and preliminary data from a forthcoming study suggests that the number could exceed 50% a year later.^{iv} Moreover, while there are no studies directly examining the telehealth experiences of DeafBlind people, anecdotal reports suggest that the vast majority of DeafBlind people are completely unable to utilize telehealth as it currently exists.

The challenges are present in every sector of society. Nearly 60% of the educators surveyed in a Fall 2020 study reported their blind and low vision students could not access one or more of the digital learning tools they were expected to use in class.^v A 2022 study found that about 50% of survey respondents experienced accessibility challenges when filling out electronic onboarding paperwork.^{vi} Moreover, an annual automated analysis demonstrates how common inaccessibility barriers are, finding that of one million webpages reviewed in 2021, 97% had accessibility issues, and an average of 50 errors appeared on every page.^{vii}

These findings are neither exhaustive of all website-related issues nor comprehensive of the entire disability community. The disability community is large and diverse, facing access issues that continue to grow and evolve with the ever-changing landscape of websites and applications. While the studies cited primarily explored the experiences of people with sensory disabilities, accessibility issues are pervasive, frequent, and harmful for people with other disabilities as well.

The scale of inaccessibility and its impact on access to nearly every type of web or application-based activity necessitates regulatory action. As the COVID-19 pandemic has made abundantly clear, we live in a society that increasingly lives and works through digital tools and online spaces. When websites and applications are inaccessible, people with disabilities cannot apply for jobs, work efficiently, attend school, access healthcare, schedule a ride, shop, find public health information, apply for public benefits, and more.

We remind you that Congress intends the ADA to cover the internet and applications. We urge you to continue the rulemaking process at a pace that ensures a rule can be finalized by the end of the current administration. Thank you for your consideration and work on behalf of people with disabilities.

Sincerely,

American Council of the Blind, Clark Rachfal, CRachfal@acb.org
American Foundation for the Blind, Stephanie Enyart, SEnyart@afb.org
National Disability Rights Network, Claire Stanley, Claire.Stanley@ndrn.org
National Federation of the Blind, John Pare, JPare@nfb.org

ACB Diabetics In Action
ACB Government Employees
ACB Radio Amateurs
ACBT
Access Living of Metropolitan Chicago
Access Ready
Accessible Avenue
Accessible Pharmacy Services for the Blind
Alabama Disabilities Advocacy Program
Alabama Institute for the Deaf and Blind
Alliance for Aging Research
Alliance on Aging and Vision Loss
Alphapointe
American Association of People with Disabilities
American Association on Health and Disability
American Association of Kidney Patients (AAKP)

American Council of Blind Families
American Council of Blind Students (ACBS)
American Council of the Blind of Indiana
American Council of the Blind of Maryland
American Council of the Blind of Ohio
American Council of the Blind-Texas
American Printing House for the Blind (APH)
American Samoa Protection and Advocacy for the Disabled
Arizona Center for Disability Law
Arkansas Council of the Blind
Assistive Technology Industry Association
Association for Education and Rehabilitation of the Blind and Visually Impaired
Association for the Blind and Visually Impaired South Carolina
Association for Vision Rehabilitation and Employment, Inc.
Association of Assistive Technology Act Program
Association of Late-Deafened Adults, Inc. (ALDA)
Association of University Centers on Disabilities
Atlantis Community, Inc.
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Axis Advocacy
Bay State Council of the Blind
Bazelon Center for Mental Health Law
Bender Consulting Services
Bestwork Industries for the Blind Inc
Beyond Vision
Blind & Vision Rehabilitation Services
Blind Early Services of Tennessee (BEST)
Blue Water League of the Blind
Bosma Enterprises
CAST
CCABVI (Chester County Association for the Blind and Visually Impaired)
Center for Independence of the Disabled, NY
Center for Public Representation
Colorado Cross-Disability Coalition
CommunicationFIRST
Cure SMA
Davis Phinney Foundation for Parkinson's
Deaf In Government (DIG)
Deaf Seniors of America
Disability Community Resource Center
Disability Law Center of Alaska
Disability Law Center of Massachusetts
Disability Law Center of Utah
Disability Policy Consortium
Disability Rights Advocates
Disability Rights Arkansas
Disability Rights California
Disability Rights Center - NH
Disability Rights Center of the Virgin Islands

Disability Rights Education and Defense Fund
Disability Rights Florida
Disability Rights Iowa
Disability Rights Maryland
Disability Rights Michigan
Disability Rights New Jersey
Disability Rights North Carolina
Disability Rights Ohio
Disability Rights Pennsylvania
Disability Rights South Carolina
Disability Rights TN
Disability Rights Vermont
Enight Skills Center, Inc for visual rehabilitation
Envision Workforce Innovation Center
Epilepsy Foundation of America
Equip for Equality
Family Voices
Florida Council of the Blind
Golden Triangle Council of the Blind
Goodwill of the Finger Lakes - ABVI Goodwill
Guide Dog Users, Inc.
Guide Dogs for the Blind
Hawaii Association of the Blind
Hawaii Disability Rights Center
Hearing Loss Association of America
Helen Keller Services
Hypertrophic Cardiomyopathy Association
IBVI
IFB Solutions
Illinois Council of the Blind
Indiana Disability Rights
IN-SIGHT
International Foundation for Autoimmune & Autoinflammatory Arthritis (AiArthritis)
International Pemphigus Pemphigoid Foundation
Iowa Council of the United Blind
iYellow Access
Justice in Aging
Kentucky Council of the Blind Next Generation
Kentucky Council of the Blind
Kentucky Protection and Advocacy
Knowbility
Lakeshore Foundation
Lift Vision Services
LightHouse for the Blind and Visually Impaired
Lighthouse Louisiana
Lilac Services for the Blind
Lions Industries for the Blind, Inc.
Livpact
Mental Health America
Michigan Council of the Blind and Visually Impaired

Mid-Minnesota Legal Aid - Minnesota Disability Law Center
Missouri Council of the Blind
MitoAction
Mountain State Council of the Blind
National Association of Councils on Developmental Disabilities
National Association of Employment for People Who are Blind
National Association of the Deaf
National Black Deaf Advocates, Inc
National Council on Independent Living
National Disability Institute
National Industries for the Blind
Native American Disability Law Center
NBIA Disorders Association
Nevada Disability Advocacy and Law Center
New Jersey Council of the Blind
New York Association of Psychiatric Rehabilitation Services
New York Vision Rehabilitation Association
NewView Oklahoma
North Carolina Council of the Blind
North Central Sight Services, Inc.
North Dakota Association of the Blind Inc.
North Dakota Protection & Advocacy Project
Not Dead Yet
Oklahoma Council of the Blind
Oklahoma Disability Law Center
Organic Acidemia Association
Paralyzed Veterans of America
Partnership to Improve Patient Care
Pennsylvania Council of the Blind
Perkins School for the Blind
Prevent Blindness
Randolph Sheppard Vendors of America
RespectAbility
San Antonio Lighthouse for the Blind
South Central Kentucky Council of the Blind
South Dakota Association of the Blind
Southern Indiana Center for Independent Living, INC dba The Solutions Center
St. Louis Lighthouse for the Blind
Syngap1 Foundation
Teach Access
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
The Advocacy Institute
The Arc of the United States
The Coelho Center for Disability Law, Policy and Innovation
The Lighthouse for the Blind, Inc.
The Michael J. Fox Foundation for Parkinson's Research
The National Research & Training Center on Blindness & Low Vision
The New York Institute for Special Education
The Partnership for Inclusive Disaster Strategies
The Seeing Eye, Inc

Travis Association for the Blind
United Cerebral Palsy
United Spinal Association
VHL Alliance
VIA Visually Impaired Advancement
VisionCorps
VISIONS/Services for the Blind and Visually Impaired
Visually Impaired Preschool Services (VIPS)
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Wayfinder Family Services
World Institute on Disability

cc: Attorney General Merrick B. Garland, U.S. Department of Justice

ⁱ Boyd, Stephen E. (2018, September 25) [Letter from Assistant Attorney General Boyd to Congressman Ted Budd] Published on Lainey Feingold Legal Blog, accessed February 9, 2022: <https://www.lflegal.com/2018/09/doj-cut/>

ⁱⁱ Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932 (December 26, 2017).

ⁱⁱⁱ Mussallem, A., Panko, T. L., Contreras, J. M., Plegue, M. A., Dannels, W. A., Roman, G., Hauser, P. C., & McKee, M. M. (2022). Making virtual health care accessible to the deaf community: Findings from the telehealth survey. *Journal of Telemedicine and Telecare*. <https://doi.org/10.1177/1357633X221074863>. See also, Annaswamy, T.M., Verduzco-Gutierrez, M., & Frieden, L. (2020). Telemedicine barriers and challenges for persons with disabilities: COVID-19 and beyond. *Disability and Health Journal*. <https://doi.org/10.1016/j.dhjo.2020.100973>

^{iv} Rosenblum, L. P., Chanes-Mora, P., McBride, C. R., Flewellen, J., Nagarajan, N., Nave Stawaz, R., & Swenor, B. (2020). Flatten Inaccessibility: Impact of COVID-19 on Adults Who Are Blind or Have Low Vision in the United States. American Foundation for the Blind. www.afb.org/FlattenInaccessibility. Forthcoming research was conducted in summer 2021 and will be published in 2022. See www.afb.org/JourneyForward.

^v Rosenblum, L. P., Chanes-Mora, P., Fast, D., Kaiser, J. T., Wild, T., Herzberg, T. S., Rhoads, C. R., Botsford, K. D., DeGrant, J. N., Hicks, M. A. C., Cook, L. K., & Welch-Grenier, S. (2021). Access and Engagement II: An Examination of How the COVID-19 Pandemic Continued to Impact Students with Visual Impairments, Their Families, and Professionals Nine Months Later, American Foundation for the Blind. www.afb.org/AccessEngagement

^{vi} Silverman, A. M., Rosenblum, L. P., Bolander, E. C., Rhoads, C. R., & Bleach, K. (2022). Technology and Accommodations: Employment Experiences of U.S. Adults Who Are Blind, Have Low Vision, or Are Deafblind. American Foundation for the Blind. www.afb.org/WorkplaceTech

^{vii} WebAIM (2021). The WebAIM Million. <https://webaim.org/projects/million>