

Surprise!? DOJ Delays Web Accessibility Rulemaking (Yet Again)

Gonzalo E. Mon

May 10, 2016



Website accessibility seems to be the Wild, Wild, West of the World Wide Web, and it is not going to get tamer anytime soon. Since July 2010, the DOJ has sought to issue a proposed rulemaking setting standards for website accessibility under the Americans with Disabilities Act (“ADA”). After numerous delays, we thought we had an end in sight [late last year](#) when the DOJ announced it would issue web accessibility regulations applicable to State and local government entities under Title II – as a precursor to Title III regulations that would apply to businesses.

But on April 28th, the DOJ took a step back when it [withdrew](#) the Notice of Proposed Rulemaking under Title II, which had been sitting with OMB since July 2014. Yesterday, the DOJ followed up with a [Supplemental Advance Notice of Proposed Rulemaking](#) (SANPRM) soliciting additional public comment on various website accessibility issues and asking for related cost information for preparing a regulatory impact analysis.

The DOJ indicated that it is particularly interested in receiving comments from all those who have a stake in ensuring that websites of public entities are accessible to people with disabilities or “who would otherwise be affected by a regulation requiring that websites be accessible” (**hint...hint...it’s asking for public comment from all businesses with websites out there that could potentially be considered public accommodations under Title III**).

The SANPRM poses more than 120 questions for public comment. Here are some of the highlights:

- *Are there any issues or concerns the DOJ should consider before proposing WCAG 2.0 Level AA*

as the accessibility standard?

- *Are there any existing designs, products, or technologies that would result in accessibility and usability that is either substantially equivalent to or greater than WCAG 2.0 Level AA?*
- *Should the DOJ address the accessibility of mobile apps and, if so, what standard it should consider adopting?*
- *Should a lower compliance standard or longer timeline be applied to smaller entities?*
- *Should the DOJ consider exempting archived content from the accessibility standards and, if so, how should “archived content” be defined?*
- *To what extent should covered entities be responsible for ensuring that third-party web content (either linked from the site or posted to the site) is accessible?*
- *Does an effective date of two years after the publication of a final rule strike an appropriate balance of stakeholder interests, or should the DOJ consider different approaches for phasing in compliance?*
- *Is there technology available now that would allow public entities to efficiently and effectively provide captioning of live-audio content in synchronized media in compliance with WCAG 2.0 Level AA conformance? What are the costs and availability of doing so?*

This rulemaking is particularly important for businesses subject to Title III as “public accommodations” as the Title II rulemaking will inform the agency of how it should move forward with its Title III website accessibility rule. Comments on the SANPRM must be submitted by **August 8, 2016**.

So what does this “step back” mean for the DOJ in issuing a proposed rule to provide Title III businesses with the much needed clarity on website accessibility? Most likely another delay. The DOJ most recently stated that the Title III rule would be released in 2018, but... we're not going to hold our breath in the meantime.