

# Ensuring Digital Accessibility

## What the New Title II Rule Means for Public Libraries

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# Roadmap

- We will discuss the library's obligations under Title II of the ADA, including the new rule, which requires state and local governments' web content and mobile apps to adhere to specific accessibility guidelines
  - Requirements
  - Explanation
  - Examples
  - Exceptions & conforming alternate versions
  - Compliance dates
  - Audit & remediation
  - Noncompliance
  - Resources

# General Requirement

- **Title II of the ADA** requires state/local governments (including public libraries) to give people with disabilities an **equal opportunity** to benefit from all their programs, services, and activities.
- Department of Justice has authority to adopt rules for Title II.

# Pre-Rule Regulations

- The ADA requires libraries to make its websites and mobile apps accessible to people with disabilities. The Department of Justice first applied the ADA to websites in 1996.
- Prior to June 24, 2024, public entities were left to determine how their websites become accessible.

# Pre-Rule Regulations

- Many websites and mobile apps provide information visually without features that allow screen readers or similar technology to access the information.
- The rule acknowledged that lack of accessibility can lead to a lack of privacy.
- The DOJ concluded that 21.3% of adults have hearing, cognitive, or dexterity disabilities, or a combination of these disabilities.
- DOJ determined that public bodies were not accomplishing the accessibility goals.

# Why a New Rule?

Many state and local government services, programs, and activities are now being offered online:

Registering to vote	Paying tickets or fines	Filing tax documents	Applying for state benefits programs	Renewing state-issued identification
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When websites and mobile apps are inaccessible, there is a disproportionate impact on the ability of people with disabilities to access healthcare, education, and employment.

This is a violation of Title II of the ADA.

# New Rule

- The new rule adopts technical standards for the web content and mobile accessibility.
- The purpose is to provide clarity in exactly how to comply with the ADA.
- “By allowing individuals with disabilities to engage more fully with their governments, accessible web content and mobile apps also promote the equal enjoyment of fundamental constitutional rights, such as rights with respect to speech, assembly, association, petitioning, voting, and due process of law.”



# Applicability

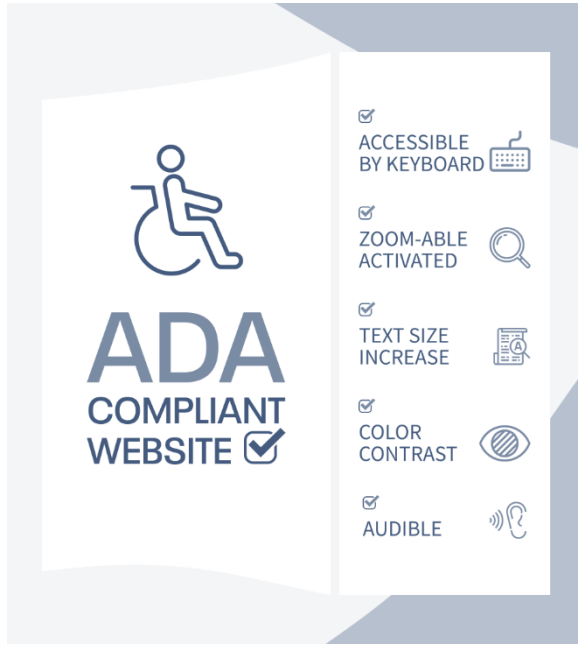
- The Rule applies to web content or mobile apps that a state or local government provides or makes available.
- “Web content” is defined as the information and experiences available on the web, like text, images, sound, videos, and documents.



# Applicability

- This also applies when a library contracts with an entity that provides or makes available web content.
- This is true even if the mobile app is run by a private company. The example given by the DOJ is “ParkMobile” must comply if that app is used by a city to pay for city parking.
- This includes social media sites used by libraries. The Library is not required to ensure that the “platforms” comply, only that individual posts comply. For example, if the Library has a Facebook page, the Library is not responsible for all of Facebook being compliant. But the Library’s posts must be compliant.
- As an example, the Library is required to use the features offered by social media sites such as adding captions.

# Specific Requirement



- **28 CFR 35.200: Web and Mobile Accessibility**
  - Web content and mobile apps must adhere to a specific technical standard under the **Web Content Accessibility Guidelines (“WCAG”) Version 2.1, Level AA**.
  - The Rule states in a footnote that Level AA requires satisfying the success criteria labeled A as well as AA

# General Areas of Compliance

- Perceivable – sight, hearing and touch (senses)
  - Text alternatives for images
  - Captions; descriptive transcripts
  - Adaptable – example orientation
  - Distinguishable – color is not the only way to convey information, independent audio controls, contrast, ability to resize text
  - Audio controls

# General Areas of Compliance

- Operable – Interface components and navigation must be operable
  - Functionality using keyboard only (some exceptions)
  - Enough time – ability to pause, stop, hide
  - Restriction on flashes to prevent seizures
  - Navigation aids such as a descriptive and informative title page; and the purpose of the link is determined from the link text alone; multiple ways to find webpages such as table of contents
  - Input modalities – single pointer activation if possible (not swiping or dragging)

# General Areas of Compliance

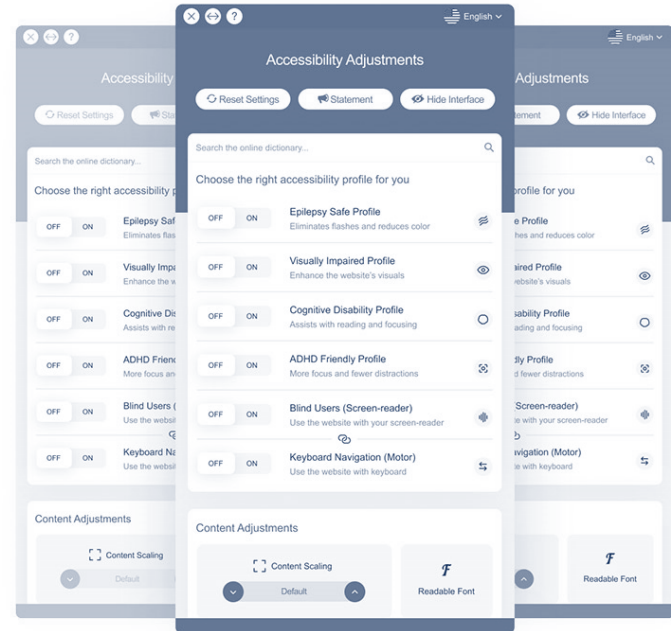
- Understandable – information and operation must be understandable
  - Readable -- Indicate when words are in different language and the predominate language
  - Predictable -- Address change of context issues, such a providing a warning or limiting pop up windows. Order of the navigation is consistent across multiple pages
  - Input Assistance -- Provide descriptive notification of errors. Provide labels or instructions – users know how to respond to prompts for information.

# General Areas of Compliance

- Robust
  - Content must be robust enough that it can be interpreted by a wide variety of user agents, including assistive technologies.
  - Assistive technology notifies users about status changes but do not take the focus

# Examples of WCAG 2.1, Level AA

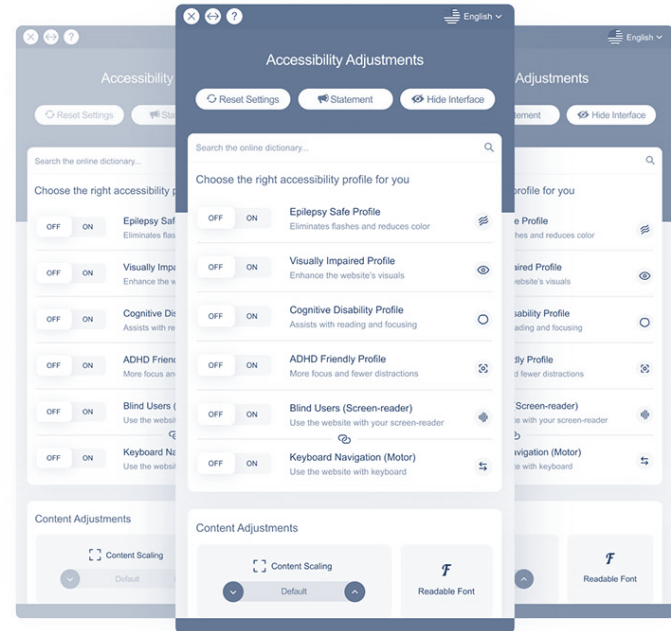
- **Technical Standard:** Captions are provided for all live audio content in synchronized media. (1.2.4 – Captions (live))
  - **Benefit:** It allows users who cannot hear the ability to access real time media broadcasts.
  - Captions should not be confused with subtitles. Subtitles provide only the text and not important sounds.
  - Indicate who is speaking and note sound effects.





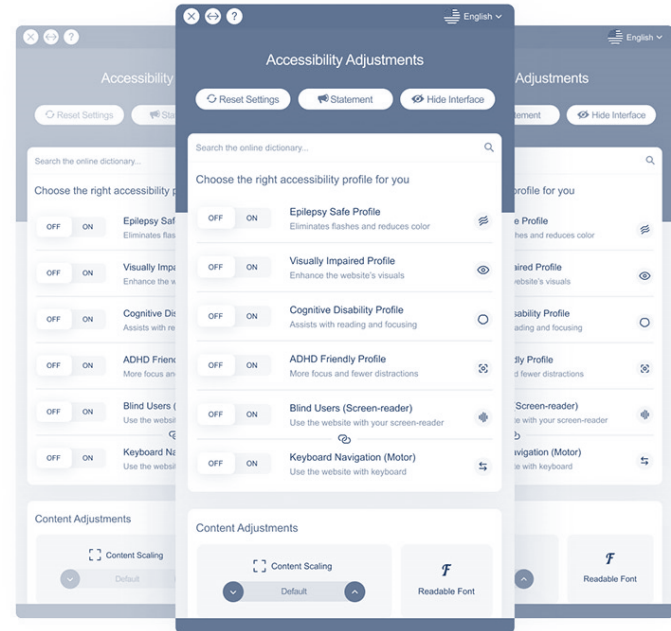
# Examples of WCAG 2.1, Level AA

- **Technical Standard:** page orientation (i.e., portrait or landscape) must not be restricted to just one orientation (1.3.4 – Orientation)
  - **Benefit:** if web content or mobile apps only work in one orientation, they will not always work for an individual who uses a wheelchair with a non-rotating tablet
  - **Benefit:** A person can use an e-reader laying down.
  - **Benefit:** Person with low vision may be able to increase the text size by view in landscape mode
  - **Benefit:** Some apps, like check deposits, require landscape orientation.



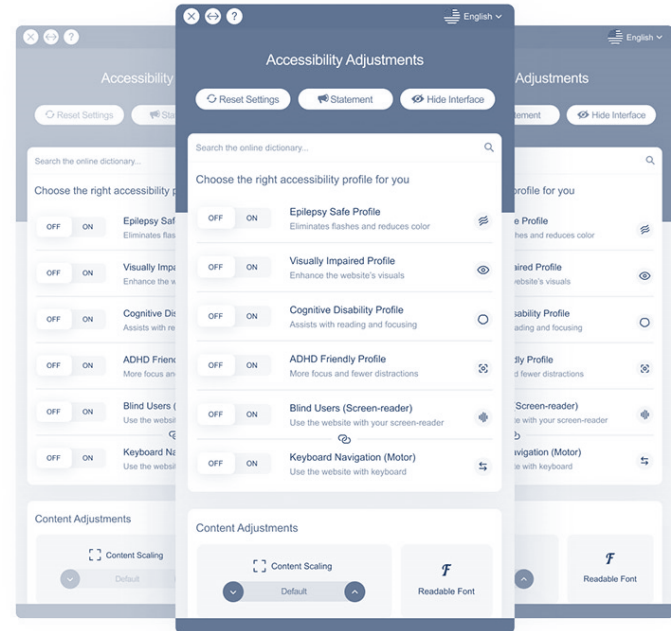
# Examples of WCAG 2.1, Level AA

- **Technical Standard:** there must be an option to turn off motion sensitivity if a function in an app can be operated by motion (i.e., shaking the device to undo typing) (2.5.4 -- Motion Actuation)
  - **Benefit:** a person who has tremors will not accidentally undo their typing
  - **Example:** An app that allows a person to tilt the phone to move to the next page should also have a button that has the same function.



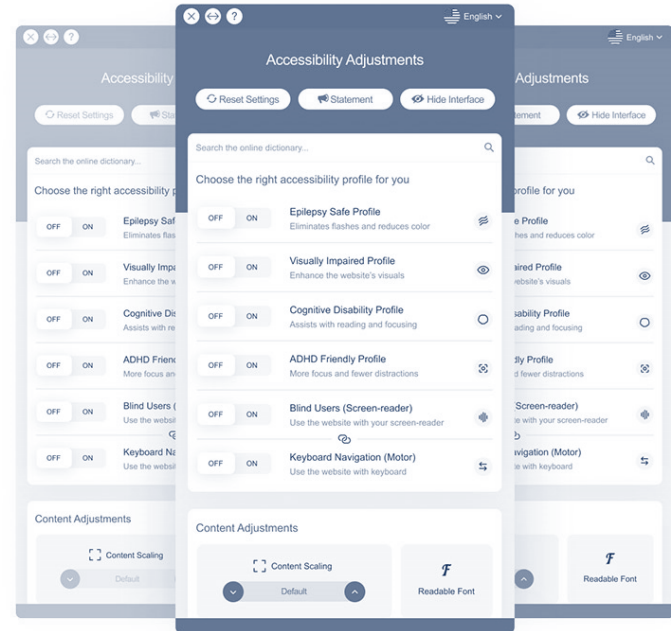
# Examples of WCAG 2.1, Level AA

- **Technical Standard:** text must be formatted so that it is easier to read when magnified (1.4.4 – Resize text)
  - **Benefit:** without this formatting, a person magnifying the text may find reading disorienting, as they may have to scroll horizontally on every line.



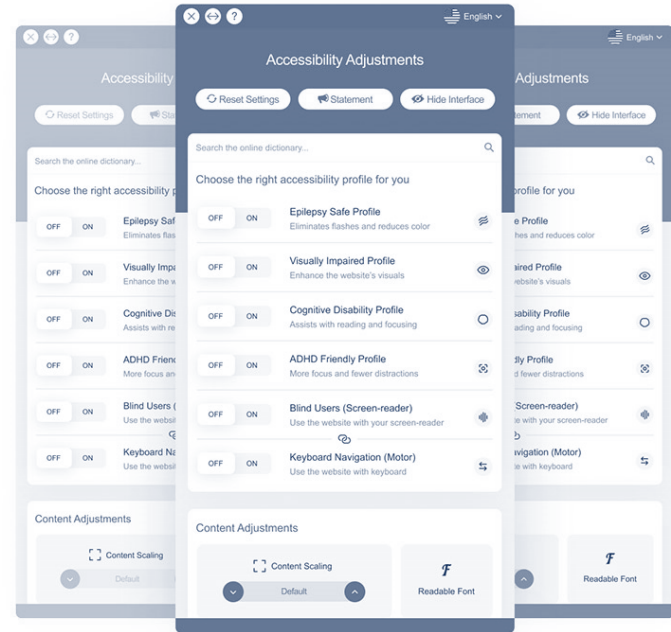
# Examples of WCAG 2.1, Level AA

- **Technical Standard:** Ensuring that a contrast ratio of at least 4.5:1 exists between text (and images of text) and background behind the text (1.4.3 – minimum contrast)
  - Have enough contrast to be read by people with moderately low vision.



# Examples of WCAG 2.1, Level AA

- **Technical Standard:** Pause, stop, or hide any moving, blinking or scrolling information that (1) starts automatically, (2) lasts more than five seconds, and (3) is presented in parallel with other content, unless the movement, blinking, or scrolling is part of an activity where it is essential (2.2.2 – Pause, stop, hide)
  - **Benefit:** Certain individuals, particularly those with attention deficit disorders, find blinking content distracting, making it difficult for them to concentrate.



# Exceptions\*

- It is not necessary to change some content that is not frequently used or may be difficult to address right away, such as:
  - Archived web content; Archived web content means web content that-
    - Was created before the date the public entity is required to comply with the new rules, reproduces paper documents created before the date the public entity is required to comply, or reproduces the contents of other physical media created before the date the public entity is required to comply;
    - Is retained exclusively for reference, research, or recordkeeping;
    - Is not altered or updated after the date of archiving; **and**
    - Is organized and stored in a dedicated area or areas clearly identified as being archived.

# Exceptions\*

- Archived Web Content
  - The Rule will not prevent the library from making minor changes, such as redacting a document before it is posted.
  - However, if the library adds, updates, or rearranges content, then it will no longer meet this exception.
  - Web content that reproduces paper or physical media would meet the definition as long as the original document was created before the required date.
    - For example, if the library finds a box of old historic pictures of the library, the library can scan and place those online and consider those “archived web content.”

# Exceptions\*

- Preexisting conventional documents
  - Conventional electronic documents that are available as part of a public entity's web content or mobile apps before the date the public entity is required to comply with this subpart, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities.
  - Example – PDFs, MS Word files, Excel Spreadsheets.
  - But not a PDF application, such as an application for a library card because it is still being used.
  - Example, library policies that were created before the compliance date but are the current policies of the library would **not** be included.



# Exceptions\*

- Content posted by a third party where the third party is not posting due to contractual, licensing, or other arrangements with a public entity
  - Example(i.e., a message posted by a private citizen on a public message board or social media site);
  - Links to outside resources or information. Links themselves must comply.



# Exceptions\*

- Individualized, password-protected or otherwise secured conventional electronic documents. Conventional electronic documents that are:
  - About a specific individual, their property, or their account; and
  - Password-protected or otherwise secured.




# Exceptions\*

- Preexisting social media posts. A public entity's social media posts that were posted before the date the public entity is required to comply with the new Rule



# Exceptions\*

\*A public entity must take other steps to enable a disabled person to access programs or services if they are unable to access the content despite regulatory compliance.



This is currently the case – obtain modifications



For example, provide a captioned archived video file

# Conforming Alternate Versions

- i.e., when there are two versions of the same web or mobile app content:
  - One version is accessible;
  - One version is not accessible
- May only be used in very limited circumstances when there is a technical or legal limitation that prevents inaccessible web content or mobile apps from being made accessible.
- A public entity must show that disabled and non-disabled persons would have **substantially equivalent** ease of use and could otherwise participate in the entity's services or benefits to the same extent.

# Equivalent Facilitation

The final rule allows a library flexibility to show that its use of other designs, methods or techniques as an alternative to WCAG 2.1 Level AA provides substantially equivalent or greater access.

A library can always go above and beyond the required standards as well.

# Duties -- Fundamental Alteration



Section 35.204 provides that in meeting the accessibility requirements set out in subpart H (the new Rule), a public entity is not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens.



All a public entity's resources available for use in the funding and operation of the service, program, or activity should be considered.



Even if all the requirements would cause a fundamental operation, the library must determine what actions it could take.

# Duties -- Fundamental Alteration

- Very Fact specific – One Example by DOJ
  - A county library might hold an art contest in which elementary school students submit alternative covers for their favorite books and library goes view and vote on the submissions on the library website. It would likely be a fundamental alteration to require the library to modify each piece of artwork so that any text drawn on the alternative covers, such as the title of the book or the author's name, satisfies the color contrast requirements in the technical standard. Even so, the library would still be required to take any other action that would not result in such an alteration but would nevertheless ensure that individuals with disabilities could participate in the contest to the maximum extent possible.



# Compliance Dates

- Public entities with a total population of **50,000 or more** must begin complying with the rule by **April 24, 2026**.
- Public entities with a total population of **less than 50,000** must begin complying with the rule by **April 26, 2027**.

State and local government size	Compliance date
0 to 49,999 persons	April 26, 2027
Special district governments	April 26, 2027
50,000 or more persons	April 24, 2026

# Where to Begin

- An **audit** will identify barriers to access online programs, services, and activities
  - This includes URLs, social media, manual testing, and video hosting services
- Manual testing should be done on all pages and associated electronic documents and videos to identify barriers for people with disabilities
- Once the audit is complete, barriers are **remediated** through a vendor or third party

# Where to Begin

- We recommend attorney review of vendor contract for the auditing and remediation services.
- Ensure that the vendor understands Title II.
- They should include the necessary protections for the library and concrete deliverables.
- Should address Michigan library specific issues, such as
  - Library Privacy Act issues to the extent the vendor has access to “library records.”
  - Address Michigan FOIA requirements for “confidential information.” Under Michigan FOIA, there is very little protection for vendors trying to protect their trade secret, confidential, or financial information.

# What Does Remediation Look Like?

- Users can access all functions and content and complete all tasks independently using only the keyboard and arrow keys;
- Keyboard navigation follows a logical, predictable order;
- All important images and graphics are labeled with meaningful text (“alt text”);
- Links are well-named and unambiguous;
- A contrast ratio of 4.5:1 for normal size text and 3:1 for large scale text;
- Captioning is present or a transcript is available for videos

# Noncompliance

- There are currently no specific penalties for noncompliance; however, legal action may still be taken:
  - Individuals with disabilities have the right to sue government entities for inaccessible websites and mobile apps
  - US Department of Education, Office of Civil Rights – addresses complaints.
  - Courts are empowered to order website modifications and payment of monetary damages and attorney fees for ADA violations

# Noncompliance

A public entity that is not in full compliance with the requirements of § 35.200(b) will be deemed to have met the requirements of § 35.200 in the limited circumstance in which the public entity can demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

- Access the same information as individuals without disabilities;
- Engage in the same interactions as individuals without disabilities;
- Conduct the same transactions as individuals without disabilities; and
- Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities.

# More Information

- ADA Fact Sheet: [www.ada.gov/resources/2024-03-08-web-rule/](https://www.ada.gov/resources/2024-03-08-web-rule/)
- Full Rule: [www.ada.gov/assets/pdfs/web-rule.pdf](https://www.ada.gov/assets/pdfs/web-rule.pdf)
- Web Content Accessibility Guidelines, 2.1: <http://www.w3.org/TR/WCAG21>