

United States Senate

WASHINGTON, DC 20510

December 17, 2015

Shaun Donovan, Director
Office of Information and Regulatory Affairs
Office of Management and Budget
725 7th Street, N.W.
Washington, DC 20503

Dear Director Donovan:

We are writing to urge the Office of Management and Budget to complete its review of an Advance Notice of Proposed Rulemaking (ANPRM) issued by the Department of Justice (DOJ) more than five years ago, which clarifies the obligations of entities covered by Titles II and III of the Americans with Disabilities Act (ADA) to make their websites, online systems, and other forms of information and communication technology (ICT) accessible to and usable by individuals with disabilities.¹ Although current ADA regulations include general requirements regarding communications accessibility, they do not establish specific requirements or technical compliance standards for ICT.

An update of the ADA regulations to reflect the current role that ICT plays is past due. DOJ has correctly recognized that “access to information and electronic technologies is increasingly becoming the gateway civil rights issue for individuals with disabilities” and that “we must avoid the travesty that would occur if the doors that are opening to Americans from advancing technologies were closed for individuals with disabilities because we were not vigilant.”² Consistent with those views, in July 2010, DOJ issued an ANPRM in which it expressly recognized the need for greater clarity in the ADA regulations regarding website accessibility: “In order to improve and accelerate web accessibility, it is important to communicate the applicability of the Americans with Disabilities Act to the web more clearly, with updated guidance.”³

While review of the ANPRM has been pending, DOJ has entered into settlement agreements with particular institutions of higher education, state and local governments, and public accommodations (e.g., retailers and hospitality providers) requiring that their websites and online systems are accessible to and usable by individuals with disabilities in accordance with internationally recognized technical compliance standards.⁴ That strategy is laudable, but these

¹ http://www.ada.gov/anprm2010/web%20anprm_2010.htm; *see* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=1190-AA65>; <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=1190-AA61>

² <http://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-civil-rights-samuel-r-bagenstos-testifies>

³ http://www.ada.gov/anprm2010/web%20anprm_2010.htm

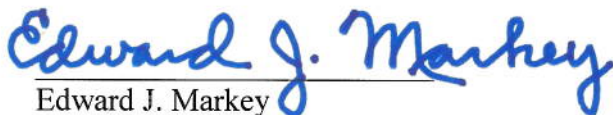
⁴ *See, e.g.*, <http://www.justice.gov/opa/pr/justice-department-enters-settlement-agreement-peapod-ensure-peapod-grocery-delivery-website>; <http://www.justice.gov/opa/pr/justice-department-enters-consent-decree-national-tax-preparer-hr-block-requiring>

settlements apply only to the parties to the agreements. Far too many entities covered by current ADA regulations are not taking appreciable actions to support ICT accessibility, exploiting the current lack of regulatory clarity.

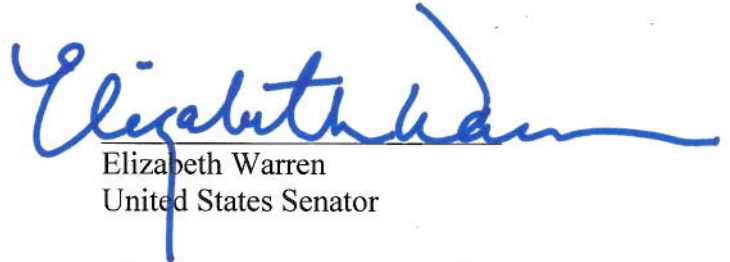
It is time for OMB swiftly to complete its review of the ANPRM and ensure that, under the proposed rules, ICT is accessible to and usable by individuals with disabilities in conformance with the Web Content Accessibility Guidelines 2.0 AA. Additionally, the proposed rules approved by OMB should include international accessibility technical standards, and when compliance with those standards does not provide a disabled individual an effective and meaningful opportunity to benefit from the ICT, the standards should require covered entities to make reasonable modifications on a case-by-case basis, unless the modification would impose an undue burden on the covered entity. Furthermore, consistent with the ANPRM, the proposed rules should clarify that public accommodations that provide goods and services only online are covered by and subject to the ICT accessibility requirements of ADA Title III, consistent with longstanding DOJ interpretations.⁵

By approving publication of DOJ's proposed ICT regulations, the Administration can demonstrate its commitment to the ADA and ensuring that individuals with disabilities are able to take full advantage of Twenty-First Century ICT. We urge you to do so promptly.

Sincerely,



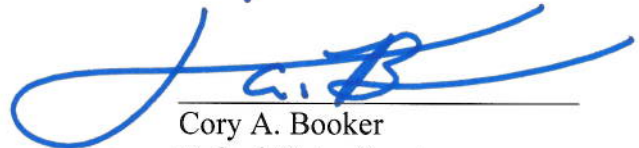
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United States Senator



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United States Senator



Sherrod Brown
United States Senator



Cory A. Booker
United States Senator



Barbara A. Mikulski
United States Senator



Richard Blumenthal
United States Senator

⁵ http://www.ada.gov/anprm2010/web%20anprm_2010.htm (citing *National Federation of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006) (finding in website-access case that “[t]o limit the ADA to discrimination in the provision of services occurring on the premises of a public accommodation would contradict the plain language of the statute”)).



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United States Senator



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