

# United States Senate

WASHINGTON, DC 20510

June 22, 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:

We are writing to you to urge the Department of Justice to restart the rulemaking process under Titles II and III of the American with Disabilities Act (ADA) and ensure that it includes protections to stop the persistent exclusion of people with disabilities from the Internet. The United States has invested billions of dollars to develop technology and provide connectivity to all parts of the country, but it is of little value to the Americans who are unable to access the online services that the rest of us so heavily rely on.

The ADA is landmark civil rights legislation that guarantees people with disabilities have an equal right to employment, commerce, and government services. Unfortunately, the digital world has not granted these protections consistent with the physical world. An analysis of the top one million visited web sites found that the overwhelming majority are inaccessible in some way.<sup>1</sup> Even the largest and most successful online companies have failed to incorporate basic features, such as alt text, to make their products accessible.<sup>2</sup>

The Department of Justice has the authority and ability to initiate a rulemaking and establish rules that make it clear that the ADA applies to the Internet. We appreciate the Department's stated position on the issue and the recently published guidelines on "Web Accessibility and the ADA".<sup>3</sup> However, without rules from the Department, courts have had differing interpretations on when and how the ADA should apply to the Internet.<sup>4</sup> Over 4,000 cases were filed in federal and state courts referencing ADA compliance in 2021, but their verdicts are uncertain without the Department's regulations.<sup>5</sup>

As you are aware, a similar rulemaking to the one we are urging you to prepare was initiated in 2010 under the Obama administration, but rules were never issued and the Trump administration withdrew the proposed rulemaking.<sup>6</sup> It is critical that the Department restart the rulemaking and

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<sup>1</sup> "WebAIM: The WebAIM Million - an Annual Accessibility Analysis of the Top 1,000,000 Home Pages." <https://webaim.org/projects/million/>

<sup>2</sup> Miller, Meg, and Ilaria Parogni. "The Hidden Image Descriptions Making the Internet Accessible." The New York Times, February 18, 2022. <https://www.nytimes.com/interactive/2022/02/18/arts/alt-text-images-descriptions.html>.

<sup>3</sup> US Department of Justice Civil Rights Division. "Guidance on Web Accessibility and the ADA." Beta.ADA.gov, March 18, 2022. <https://beta.ada.gov/web-guidance/>

<sup>4</sup> Lynn McDonough. "Federal Courts Disagree over Accessibility Online." The Regulatory Review, June 16, 2021. <https://www.theregreview.org/2021/06/16/mcdonough-federal-courts-disagree-accessibility-online/>

<sup>5</sup> Review of ADA Digital Accessibility Lawsuits. n.d. UsableNet.

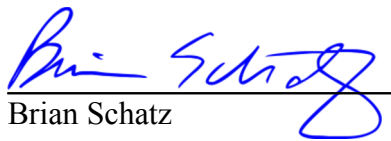
<https://f.hubspotusercontent30.net/hubfs/3280432/Remediated-2021-Year-End-Report-FINAL.pdf>.

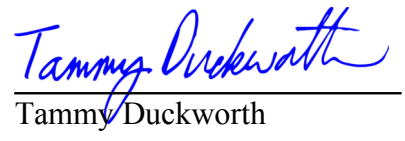
include strong protections clarifying the applicability of the ADA to the Internet. Individuals with disabilities cannot afford to wait any longer for the Department to affirm their civil rights.

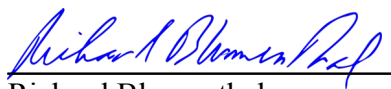
When Congress enacted the Americans with Disabilities Act in 1990, the Internet and digital technologies were at a nascent stage. More than thirty years later, these technologies are now ubiquitous and we rely on them for daily activities—such as communicating with friends and family, conducting business, accessing government resources, and obtaining health care. New rules are necessary so that individuals with disabilities are provided equal access to the digital world.

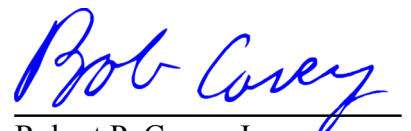
Thank you for your attention to this important matter.

Sincerely,

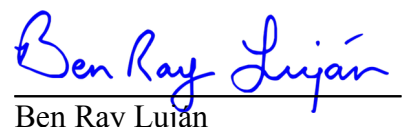
  
Brian Schatz  
United States Senator

  
Tammy Duckworth  
United States Senator

  
Richard Blumenthal  
United States Senator

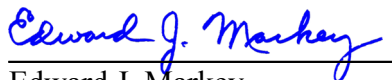
  
Robert P. Casey, Jr.  
United States Senator  
Chairman, Special Committee  
on Aging

  
Patty Murray  
United States Senator

  
Ben Ray Lujan  
United States Senator

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<sup>6</sup> Department of Justice. “Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions.” Federal Register 82, no. 246 (December 26, 2017)



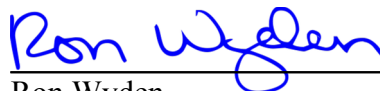
Edward J. Markey  
United States Senator



Richard J. Durbin  
United States Senator



Jeffrey A. Merkley  
United States Senator



Ron Wyden  
United States Senator



Sheldon Whitehouse  
United States Senator



Elizabeth Warren  
United States Senator