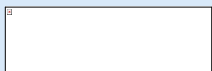


ADA Title II Deadlines and Legal Risks: Leadership Steps for 2026

Presented September 24, 2025



UsableNet



About UsableNet

GLOBAL ENGAGEMENTS

1,000+

FULLSERVICE OFFICES

New York, Austin, Italy

CLIENT INDUSTRIES

Retail, travel & hospitality, technology, education, government, financial services, and healthcare

INDUSTRY RECOGNITION



- 20+ years of experience in accessibility
- Launched first in-authoring accessibility testing with Macromedia Dreamweaver (now Adobe)
- Initiated partnerships with leading disability community organizations such as the American Foundation for the Blind, Access Works, and Helen Keller Services for the Blind
- Recognized as an industry leader in diversity, inclusion and accessibility



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Dedicated ADA
Title III Team in
US**



900+

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Your Presenters



John W. Egan
Seyfarth Shaw LLP

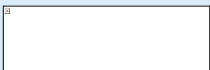


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Agenda

- New Requirements under ADA Title II and Deadlines
- Existing Requirements for Effective Communication
- What is Covered?
- General and Specific Exceptions
- What to Do Now
- Q&A



New Requirements and Deadlines

Final Rule Issued in April 2024

April 24, 2026 (for a public entity other than a special district government with a population of 50,000 or more)

April 26, 2027 (for a public entity with a population of 50,000 or less or a special district government entity)



General Non-Discrimination Mandate under ADA Title II

- Provide programs, services, and activities that are accessible to individuals with disabilities
- Applies to state and local governments and their agencies and departments.
- Existing requirements for Effective Communication



What is Covered?

Web and mobile app content that a public entity makes available, directly or through contractual, licensing, or other arrangements (see 35.200(a))

Covered Entity Examples

- State and local government offices that provide benefits and/or social services (food assistance, health insurance, and employment services;
- Public schools, community colleges, and public universities;
- State and local police departments, courts, and elections offices;
- Public hospitals and healthcare clinics; and
- Public parks and recreation programs, libraries, and transit agencies.



Focus on Contractual/Licensing/Other Arrangements

- Focus on content made available through “contractual, licensing or other arrangements”

Example:

If a city lets people park using a mobile app, that mobile app must meet WCAG 2.1 Level AA even if a private company runs the app



WCAG Conformance Standard (35.200)(b))

Covered content that the covered entity provides or makes available must comply with WCAG 2.1 and AA, unless it can demonstrate that compliance would be a “fundamental alteration” or cause “undue financial and administrative burdens.”

- Burden of proof on covered entity to establish general defenses
- Same general defenses under existing statute; application to WCAG unclear

If an Exception Applies

- If either general exception applies, the covered entity still must still comply to the “maximum extent possible” that would not cause either a fundamental alteration or undue burden



Recordkeeping Obligation for General Exception (35.205)

Head of entity or designee must do the following before relying on either exception:

1. Consider all resources available for use in the funding and operation of the service, program, or activity;
2. Produce a written statement of the reasons for reaching the conclusion; and
3. Ensure that individuals with disabilities receive the benefits or services provided by the entity to the maximum extent possible.





Specific Exceptions

Archived Web Content (35.104)

1. *Created before the compliance deadline;*
2. *Retained exclusively for reference, research, or recordkeeping;*
3. *Stored in an area for archived content*
4. *Not altered or updated post-archiving*

Exception Probably Applies:
1998 water quality report stored in the archived section, or handwritten notes/photos that go along with that report, which are scanned and posted on the website in that section.

Exception Does Not Apply:
City council meeting minutes created after the effective date.



Preexisting Conventional Documents

- PDFs, word processor documents (i.e., Word), spreadsheet files (i.e., Excel), and presentation files (i.e. PowerPoint) made available on the website before compliance deadline.
- Unless such documents are currently used for providing access to a public entity's services, programs, or activities.

Exception Probably Applies:

Thanksgiving Day parade flyer posted to the town website in 2018.

Exception Does Not Apply:

After the compliance deadline, the town posts a PowerPoint useful for the upcoming town council meeting.

Content Posted by a Third Party

- Unless due to contractual, licensing, or other arrangements with the public entity

Exception Probably Applies:

Message posted by a member of the public on a town's online message board

Exception Does Not Apply:

Calendars, scheduling tools, maps, reservation systems and payment systems

Individualized, Password-Protected or Otherwise Secured Conventional Electronic Documents

Three requirements:

1. *Conventional electronic documents* (Word, PowerPoint or Excel);
2. *About a specific individual, their property, or their account; and*
3. *Password-protected or otherwise secured*

Exception Probably Applies:

PDF version of water bill for a person's home that is available on the person's secure account on the city's website (but does not apply to the city's website itself)

Exception Does Not Apply:

Above example , except the content is HTML rather than PDF or other conventional electronic documents; PDF on a password-protected website about the rate increase for all customers.

Pre-Existing Social Media Posts

Exception Applies:

2017 social media post by a city's sanitation department that trash collection would be delayed due to a snowstorm



Potential ADA-Compliant Alternatives to WCAG-Conformant Digital Content

- Conforming Alternate Versions (as defined by W3C) (35.202(a))
 - Limited to where “it is not possible to make web content directly accessible due to technical or legal limitations”
- Equivalent Facilitation
 - Alternative designs, methods or techniques to what is prescribed, but only if it results in “substantially equivalent or greater accessibility and usability of the web content or mobile app”
 - Likely a difficult standard to meet compared to WCAG conformance.
 - Example (from DOJ Fact Sheet): “There may be new web accessibility standards that are developed in the future, such as WCAG 3.0. Under this rule, a state parks department would probably be allowed to create a new mobile app for campground reservations that meets a future standard if the standard provides the same or more accessibility and usability than WCAG 2.1 Level AA.”



Noncompliance That Has A Minimal Impact on Access

- The regulations refer to a “limited circumstance” where noncompliance with WCAG would have such a minimum 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 apply, content at issue must provide “substantially equivalent” experience in terms of “timeliness, privacy, independence, and ease of use:”
 - Access to the same information as non-disabled
 - Engage in same interactions as non-disabled
 - Conduct same transactions as non-disabled; and
 - Otherwise participate in or benefit from same services, programs and activities as non-disabled.



What to Do Now:

- Audit all public-facing digital services
- Include websites, mobile apps, vendor portals
- Identify high-traffic/high-priority services
- Map WCAG 2.1 AA conformance gaps



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Building an Internal Compliance Framework



Conduct gap analysis
& remediation
roadmap



Assign accessibility
ownership across
departments



Integrate accessibility
into procurement &
contracts



Establish internal
policies & training



Managing Vendor Contracts

- Require WCAG 2.1 AA conformance from vendors
- Include remediation clauses and timelines
- Request regular accessibility reports with manual and automated auditing
- Hold vendors accountable for ongoing compliance



Key Takeaways

- DOJ standards: WCAG 2.1 Level AA required
- Federal deadlines: April 2026 & April 2027
- Liability extends to vendor platforms
- Audit is just the start—remediation takes sustained effort
- Build a framework and monitor continuously





Q&A

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