

# Locke Lord QuickStudy: DOJ March 2022 Guidance on Website Accessibility ?

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On March 18, 2022, the Department of Justice [published guidance](#) on website accessibility (“DOJ Guidance”) required by the Americans with Disabilities Act (“ADA”). The DOJ Guidance provides high level, plain language guidance of existing standards, rather than providing new details or clarifying content, and covers these topics: the importance of website accessibility, common accessibility barriers, when web content must be accessible, and how to make web content accessible. While the DOJ Guidance does not provide the level of detail many had hoped for, and certainly will not curtail the many website accessibility demand letters and lawsuits, website and mobile application owners and operators should take note of the Guidance’s breadth of application and emphasis on flexibility.

## Biggest Takeaways – Flexibility and Broad Application:

Notably, the DOJ Guidance states that businesses have “flexibility” when choosing how to make their websites accessible under the ADA’s generally applicable nondiscrimination and effective communication provisions. Although, the DOJ typically incorporates the strenuous [Web Content Accessibility Guidelines](#) (“WCAG”) Level A or AA standards into its own settlement agreements with private businesses, and the Guidance references WCAG as “existing technical standards [that] provide helpful guidance concerning how to ensure accessibility of website features,” the DOJ Guidance stops short of equating ADA compliance with strict 100% WCAG adherence. While the DOJ or other applicable courts or authorities ultimately may require meeting WCAG at Level A or AA for certain web content, the DOJ Guidance provides support for alternative methods of providing accessible goods and services, in at least some situations.

The “flexible” approach to website accessibility is not new to the DOJ, and the DOJ publicly stated the same in the [DOJ letter to Congress](#) on September 25, 2018, among other statements. However, the examples and details seen in the facility design standards and the effective communication standards of the ADA remain lacking. Although “choices” and “flexibility” are desirable to account for different types of web content, such a standard will be subject to interpretation, and does not provide the clarity of a more defined safe harbor. More detailed regulations have been demanded by [disability advocacy groups](#) and [businesses](#) alike, and may come at some point in the future. But for now, the March 2022 DOJ Guidance will join the mix of issues debated in website accessibility litigation.

Also of significance, the DOJ Guidance references website accessibility for “businesses open to the public,” rather than the more specific list of businesses included in the definition of “public accommodations” covered by the ADA. Without stating such explicitly, the DOJ appears to re-affirm its position that online-only businesses are subject to the same website accessibility requirements as businesses with a nexus to a physical location. Although this approach deviates from several federal circuit court opinions, the DOJ has taken this position before, including in its website accessibility [settlements](#) with online-only businesses.

### **Reviewing for Accessibility Compliance:**

Businesses may consider implementing various measures to evaluate their web content’s accessibility, including: (1) an automated accessibility checker, (2) a manual review to replicate the user experience, and (3) a means for the public to report accessibility problems. The DOJ Guidance suggests that none of these methods alone will flag all accessibility issues, and that automated checking may identify false “errors” which do not impact accessibility. Per the DOJ Guidance, businesses have flexibility to determine an appropriate accessibility review process for their web content, and should do so or ask their third party website operators and developers to do so. Businesses should document all efforts undertaken to review accessibility and to make web content more accessible.

### **Conclusion:**

Although the DOJ Guidance did not provide the detailed safe harbor many had hoped for, any guidance is better than none. If nothing else, at least the DOJ Guidance has consistently reinforced the DOJ’s approach of flexibility in determining website accessibility and that the ADA applies “to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web.”

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