



October 2, 2023

Rebecca B. Bond, Chief
Disability Rights Section
Civil Rights Division
US Department of Justice
150 M St. NE, 9th Floor
Washington, DC 20002

Re: Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities, RIN 1190-AA79

The Association of Research Libraries (ARL) is pleased to submit these comments to the US Department of Justice (DOJ) in response to its Notice of Proposed Rulemaking (NPRM) on Title II of the Americans with Disabilities Act (ADA). ARL supports the federal government codifying the Web Content Accessibility Guidelines (WCAG) into federal law for the first time. Achieving accessibility is a shared goal with many complexities, and we hope that this process results in ensuring that people with disabilities have full access to digital content and platforms.

ARL is a membership association of 127 research libraries in the US and Canada. Our members acquire most of their new content in digital form to support research, teaching, and learning within their institutions. Access to information and accessibility of digital content are core values of research libraries, and of our Association.

We focus the following comments primarily on strategies our member libraries are using to accelerate the adoption of born-accessible publishing, and the proposed exception for password-protected web content.

Libraries are working to accelerate the adoption of born-accessible publishing standards

Libraries license much of the digital course and class content used in colleges and universities, and libraries and disability services offices are often responsible for converting analog, digitally locked, or flat image materials into accessible formats. Research shows that designing digital content with the needs of people with disabilities in mind is more efficient, cost-effective, and higher quality than remediating content on request. In the higher education context, a born accessible

approach would ensure that students with disabilities receive access to materials required for classes or coursework at the same time as their peers.¹

Libraries are working with the scholarly publishing industry to move toward adoption of born accessible standards through institutional and consortial negotiation strategies. A few prominent examples follow.

UC Berkeley Library has successfully proactively shifted the responsibility of producing accessible materials to vendors and publishers through its e-resources licensing process. In accordance with the University of California’s Information Technology Accessibility Policy,² UC Berkeley Library negotiates with vendors for better accessibility of licensed resources from the start.³ In addition to requesting a current Voluntary Product Accessibility Template (VPAT), the library asks vendors to warrant in license agreements that they comply with applicable Federal and state accessibility laws, as well as WCAG 2.0 AA guidelines, in license agreements for digital content. The library also includes language in the warranty disclaimer section of the contract that prohibits the vendor from disclaiming the express warranty that they just gave regarding accessibility, and seeks indemnification for any breaches of that warranty. This ensures that the materials that vendors provide are accessible. Making clear that the responsibility of vendors and publishers is to make sure their resources are accessible when the library receives them will improve the availability and timeliness of accessible content. It further helps the libraries avoid liability by establishing that providing the library with accessible materials is first and foremost the vendors’ responsibility. UC Berkeley Library also asks vendors to work quickly to resolve any complaints about accessibility, and to provide the library with accessible versions of materials on demand once issues are resolved.

University of Washington (UW) Libraries has elevated accessibility to a “deal-breaker” in its licensing requirements, and does not allow automatic renewal of subscriptions of inaccessible products.⁴ UW Libraries requires that licensors comply with the Americans with Disabilities Act (ADA) and supporting assistive technology in a manner consistent with the Web Accessibility Initiative Web Content Accessibility Guidelines (WCAG) 2.1 AA. UW Libraries holds vendors accountable by assessing third-party subscription resources for accessibility, and assessing Voluntary Product Accessibility

¹ Lazar, Jonathan. 2023. Review of *A Framework for Born-Accessible Development of Software and Digital Content* Keynote address. Presented at the Interact 2023, September 1.

² https://www.google.com/url?q=https://policy.ucop.edu/doc/7000611/IMT-1300&sa=D&source=docs&ust=1696257090713441&usg=AOvVaw1eUgl1KAVIf0-6c7_aC1o5.

³ “Digital Accessibility of Library Collections | UC Berkeley Library.” n.d. www.lib.berkeley.edu. Accessed October 2, 2023. <https://www.lib.berkeley.edu/help/digital-accessibility>.

⁴ “UW Libraries’ Principles in Licensing Scholarly Resources – UW Libraries.” n.d. www.lib.washington.edu. <https://www.lib.washington.edu/cas/uw-libraries-principles-in-licensing-scholarly-resources>.

Templates (VPATs) from library vendors before adopting or renewing digital resources. UW Libraries published the results of its testing efforts to support vendors and the library community in better understanding accessibility.⁵ The Library Accessibility Alliance used this resource to conduct testing among its 100 member libraries.

The Iowa State University Library's Access and Acquisitions Department requests strong accessibility language in all new e-resources license agreements, in accordance with the University's Digital Accessibility Policy.⁶ The Library has instituted a process to review the accessibility of e-resources at renewal, and test electronic resources to different levels of scrutiny depending on their cost and outcomes of previous testing. The results support the library in negotiating for better compliance with vendors.

University of Michigan Libraries requests that vendors provide a VPAT, and agree to include language about accessibility into the signed agreement. The Library uses the BTAA Standardized License Language on accessibility compliance, which identifies Web Content Accessibility Guidelines (WCAG) 2.1 AA as its preferred standard.⁷ The University of Michigan Library recently made the decision not to proceed with the purchase of a digital resource because the vendor did not adequately respond to accessibility concerns that the Digital Accessibility Team identified during an accessibility evaluation.

Not only are research libraries working with publishers, they are also committed to these practices themselves and making a difference in born accessible digital content. Research libraries that operate publishing programs, or have a strong relationship with their university press, are leading in born accessible publishing. At the University of Michigan, where the Press and the library are integrated, the University of Michigan Press uses the Fulcrum platform to take a born accessible approach to all its new scholarly books.⁸ In 2021, U-M Press was the first academic publisher to have its workflows Global Certified Accessible by Benetech,⁹ and has twice been a finalist for the Accessible Book Consortium (ABC) International Excellence Award for Accessible Publishing. The Press is now seeking ways to make scanned copies of its deep backlist accessible, a more expensive undertaking than producing accessible works at the outset.

⁵ "Library E-Resource Accessibility Testing – UW Libraries." n.d. www.lib.uw.edu. Accessed October 2, 2023. <https://www.lib.washington.edu/services/accessibility/e-resource-testing>.

⁶ "Digital Accessibility | Policy Library." n.d. www.policy.iastate.edu. Accessed October 2, 2023. https://www.policy.iastate.edu/policy/digital_accessibility.

⁷ https://btaa.org/docs/default-source/library/standardized-agreement-language.pdf?sfvrsn=9fda8695_13.

⁸ <https://www.fulcrum.org/accessibility/>.

⁹ <https://bornaccessible.benetech.org/certified-publishers/>.

The University of Michigan Library and Press developed a toolkit to support authors in improving their accessibility practices, such as better describing visual resources for readers with print disabilities.¹⁰ One-third of university presses in the US report to libraries, and many of these are leaders in accessible ebooks. The Big Ten Academic Alliance (BTAA) libraries recently used Fulcrum to make their backlist titles from BTAA member university presses open access, with a core commitment to accessibility.¹¹

Exception 5: Course Content on a Public Entity’s Password-Protected or Otherwise Secured Website for Admitted Students Enrolled in a Specific Course Offered by a Public Postsecondary Institution

Question 26: Are there particular issues relating to the accessibility of digital books and textbooks that the Department should consider in finalizing this rule? Are there particular issues that the Department should consider regarding the impact of this rule on libraries?

The DOJ is proposing an exception to the requirement that web content adhere to the WCAG 2.1 Level AA standards for “course content on a public entity’s password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution.” One potential, unintended consequence of this exception is that it decreases incentives for vendors to produce accessible works.

It is unclear how this exception would support students with disabilities. Libraries work to make online learning content accessible, usable, and available for all students. It often takes more than the proposed five days to create accessible versions of works—particularly if the works include charts or graphics, musical scores, or require video captioning—and student learning is compromised if they receive their course materials weeks or even days after the rest of their classmates.

Most licensed digital higher education course content is behind a password wall, e.g. Learning Management Systems (LMS) like Canvas, eReserves, single sign on, proxy service, or a VPN for off-campus access. It is unclear why digital content should be

¹⁰ “Describing Visual Resources Toolkit – Describing Visual Resources for Accessibility in Arts & Humanities Publications.” n.d. Accessed October 2, 2023. <https://describingvisualresources.org/>.

¹¹ “What Does ‘Access for Everyone’ Mean for Big Ten Open Books?” n.d. Bigtenopenbooks.org. Accessed October 2, 2023. <https://bigtenopenbooks.org/stories/2023-05-17-what-does-access-for-everyone-mean-for-big-ten-open-books/>.

exempt from compliance with web accessibility standards simply because it is behind a password.

We request that the DOJ consider an approach that supports libraries and institutions of higher education in meeting the needs of students with disabilities, with consideration for the real variation in institutional size, funding sources, and geographic location, not to mention shifts in educational technology and learning styles. This could mean giving institutions time to develop plans to meet the WCAG standards, and allowing for variation in compliance periods.

Libraries have a longstanding commitment to accessibility

Research libraries have institutional missions—and legal obligations—to make collections and services accessible to their patrons. In prioritizing accessibility, many research libraries designate liaison librarians to provide or coordinate library support for users with disabilities, often in partnership with disability services offices. Some libraries offer standard training in accessibility service awareness to all staff. In partnership with disability rights organizations, research libraries advocate for regulations that allow users to circumvent digital rights management measures in order to access ebooks with screen readers and other assistive technologies. Research libraries have made significant investments in staffing, training, and equipment to respond to requests for accessible materials, which often involves scanning print materials and modifying digital files to meet the individual needs of each student.

Libraries' commitment to equity of access and education for people with disabilities began long before the rise of the Internet and the ubiquity of digital formats. The Library of Congress' reading room for the blind opened in 1897. Public libraries have provided materials in alternative formats since the early 1900s. Most academic libraries have statements articulating their commitment to equal access and services for all patrons, which explicitly include people with disabilities. Libraries' commitment to acquiring new assistive technologies—such as Braille materials, large print materials, talking books, reading machines, video enlargement, screen readers, e-books, and screen magnifiers—have resulted in considerable increases in the overall accessibility of library websites and other electronic materials.¹²

Today, research libraries operate under the assumption that a student or researcher might need accessible content at any time, and many libraries go beyond adhering to web accessibility standards, as illustrated in the examples below.

¹² Jaeger, Paul T., Brian Wentz, and John Carlo Bertot. 2015. "Accessibility, Inclusion, and the Roles of Libraries." *Advances in Librarianship*, December, 1–8. <https://doi.org/10.1108/s0065-283020150000040008>.

Libraries dedicate resources to testing.

The Big Ten Academic Alliance hosts the Library Accessibility Alliance, composed of six other large academic library consortia.¹³ The Alliance funds third-party testing of library electronic resources for accessibility, shares information on that testing, and promotes model licensing terms for libraries to acquire digital content that is as accessible as possible. Some BTAA members, like the University of Maryland, have committed additional funding to retrospective testing, conversion, captioning, and audio description in order to transition from “accommodation” to proactive testing—a more expensive but responsive method.¹⁴

Libraries support accessible course materials.

The University of Virginia Libraries is leading an initiative to enable faster, better service for those needing accessible learning materials by reducing duplication of effort in creating remediated digitized texts. Educational Materials Made Accessible (EMMA) is creating a digital repository of remediated instructional texts which can be accessed by authorized university officials in order to provide these texts to students qualified to receive these materials under relevant copyright laws.¹⁵ Project leaders found that approximately two-thirds of course materials that universities remediate for students with print disabilities have already been reformatted elsewhere. A shareable repository like EMMA will constitute a massive reduction of effort and better, faster service to students. The repository’s unified search tools return different formats in which works are available, including Braille reader, DAISY audio, EPub, and MS Word.

Participating libraries in the EMMA project contributed extensive technical, workflow, and metadata documentation, along with repository services. Early in the project, ARL worked with disability services offices to understand their work, processes, and practices around sharing materials. In collaboration with other copyright experts, ARL produced the white paper “The Law and Accessible Texts: Reconciling Civil Rights and Copyrights,” which provides expert guidance on copyright provisions that enable both remediation and sharing of such materials for authorized users.¹⁶ The metadata model developed for EMMA is now under consideration as a national standard by the National Information Standards Organization (NISO). As part of the project, the University of Illinois Urbana Champaign School of Information Sciences developed a new course on providing information services to people with disabilities.

¹³ <https://www.libraryaccessibility.org/resources>.

¹⁴ <https://www.libraryaccessibility.org/testing>.

¹⁵ <https://emma.lib.virginia.edu/home/welcome>.

¹⁶ Butler, Brandon, Prue Adler, and Krista Cox. 2019. “The Law and Accessible Texts: Reconciling Civil Rights and Copyrights.” <https://www.arl.org/wp-content/uploads/2019/08/2019.07.15-white-paper-law-and-accessible-texts.pdf>.

Many research libraries have embraced universal design, and have increasingly understood accessibility to be a core component of inclusion.

At Georgia Tech University Libraries, accessibility is one of the top priorities for the Engagement and Inclusion Librarian.¹⁷ Accessibility concerns factor into physical space planning, acquisition of content, instructions, human resources, and hiring. Georgia Tech librarians who work with content and platform vendors incorporate accessibility concerns into licensing negotiations. Georgia Tech’s Center for Inclusive Design and Innovation is a recognized campus leader for services in research and accessibility. The Center has collaborated across campus, including with Human Resources, to ensure that content is accessible to job seekers; and worked extensively with instructional librarians to ensure that instructional content is accessible.

University of Florida Libraries recognizes that libraries can use accessibility standards like the Web Content Accessibility Guidelines to inform and evaluate accessible design, but that the standards themselves do not guarantee accessibility or usability for all users. The Library took an essential step toward improving online accessibility by conducting an accessible user experience study of a library research guide to ensure the technical and functional accessibility of the guide for all students, specifically centering students with disabilities. The study revealed that not all content on the library research guide was fully accessible.¹⁸ The Library concluded that at a large university with thousands of students with disabilities, online learning content must be accessible and usable.

The University of North Texas (UNT) Libraries works to make universal design and accessibility part of the core pillars of development and content delivery for its in-house built Digital Library systems and other associated projects. The sites, which include the UNT Digital Library, The Gateway to Oklahoma History, and The Portal to Texas History currently host 3.7 million items from partnering organizations and individuals both at UNT and across several states.¹⁹ Each site contains an accessibility statement, written in plain language, describing the repository so that the user may understand its technical capabilities and accommodative features, be notified of the

¹⁷ <https://cidi.gatech.edu/services/digital-accessibility>.

¹⁸ Campbell, L. B. & Kester, B., (2023) “Centering Students with Disabilities: An Accessible User Experience Study of a Library Research Guide,” *Weave: Journal of Library User Experience* 6(1). doi: <https://doi.org/10.3998/weaveux.1067>.

¹⁹ <https://digital.library.unt.edu/>; UNT Libraries’ Digital Projects. n.d. “The Gateway to Oklahoma History – a Gateway to Rare, Historical, and Primary Source Materials from or about Oklahoma.” The Gateway to Oklahoma History. <https://gateway.okhistory.org/>; UNT Libraries’ Digital Projects Unit. 2019. “The Portal to Texas History – a Gateway to Rare, Historical, and Primary Source Materials from or about Texas.” The Portal to Texas History. April 29, 2019. <https://texashistory.unt.edu/>.

challenges they may face when attempting to access various types of historical content, and give them clear instructions for remediation requests.²⁰

Virginia Commonwealth University Libraries will engage in archival processing of the papers of Jean E. Lokerson, a scholar and advocate who advanced knowledge and policy around learning disabilities. VCU libraries will make available primary sources that will be of potential value to researchers and policymakers who focus on learning disabilities. The Lokerson Collection will be accessible in multiple modalities, including closed captioning, transcripts, and alt tags and text for screen readability.

ARL urges the Department of Justice to adopt the WCAG standard, and to work with libraries and institutions of higher education on achieving the shared goal of ensuring that students with disabilities have full access to digital content and platforms.

²⁰ “Accessibility Information.” 2023. UNT Digital Library. September 28, 2023. <https://digital.library.unt.edu/accessibility/>.