STATEMENT IN SUPPORT OF MANDATORY COMPREHENSIVE DIGITAL ACCESSIBILITY REGULATIONS

The ACM US Technology Policy Committee (USTPC)[1] notes and underscores these fundamental facts concerning access to computing technologies for people with disabilities:

- Computing technologies, and the access to information, programs, and services that they afford (including the web), are foundational in contemporary society, impacting how we work, learn, and interact;
- Looking forward, the continuing evolution of computing technologies will impact the world in ever broader and more profound ways;
- Such access is consequently an essential prerequisite to every person's ability to participate fully in society and modern life;
- Accordingly, access to information, programs, and services provided through computing technologies has been established under U.S. law and policy as a civil right of people with disabilities; the denial of such access constitutes discrimination on the basis of disability;[2]
- 1 in 4 (27%) of adults in the United States[3] and up to 25.7% of U.S. households[4] are the direct beneficiaries of disability non-discrimination laws and policies, including digital accessibility requirements;

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[1] The Association for Computing Machinery (ACM), with more than 100,000 members worldwide, is the world's largest educational and scientific computing society. ACM's U.S. Technology Policy Committee (USTPC) serves as the focal point for ACM's interaction with all branches of the U.S. government, the computing community, and the public on policy matters related to information technology. This statement's principal authors for USTPC are Accessibility Subcommittee members Sarah Horton and Mark Greenfield with the contributions of Subcommittee Chair John Murray and subcommittee members Jacob Abbott, Vint Cerf, Shiri Dori-Hacohen, Ari Schlesinger, and Peter Smith. The Committee also thanks subject matter experts David Sloan, Vicki Hanson, and Kristen Shinohara for their reviews and input.

[2] "This guidance describes how state and local governments and businesses open to the public can make sure that their websites are accessible to people with disabilities as required by the Americans with Disabilities Act (ADA)." United States Department of Justice, Civil Rights Division (2022). *Guidance on Web Accessibility and the ADA*, https://www.ada.gov/resources/web-guidance

[3] Centers for Disease Control & Prevention (2023). *Disability Impacts Us All*. https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html

[4] U.S. Census Bureau (2023). *The Demographics of Disability in the Family: Prevalence, Characteristics, and Implications for Financial Well-Being*. https://www.census.gov/library/working-papers/2023/demo/SEHSD-WP2023-22.html

- Currently, sufficiently detailed digital accessibility requirements are not statutorily mandated across all entities and sectors;
- Where digital accessibility is regulated, the required standards and procedures are not harmonized, leading to inconsistent application; and
- As a result, current laws and policies are inherently inadequate in scope and enforceability to fully meet the needs and assure the rights of Americans with disabilities in the digital environment.

On April 24, 2024, final rules updating Title II of the Americans with Disabilities Act (ADA)[5] were published by the U.S. Department of Justice. They specify requirements for the accessibility of web content and mobile applications with the aim of ensuring that services, programs, and activities provided by state and local governments online and through mobile apps are accessible to people with disabilities.[6]

USTPC recommends the extension of such requirements to all entities—public and private sector alike. Doing so, as detailed below, will both immediately help protect the rights of disabled people to access information, programs, and services and assure that such access will continue to improve in the future. Importantly, mandatory digital accessibility regulations will help accomplish the latter by firmly establishing digital accessibility as core to professional accreditation and practice for computer science educators, digital design practitioners, computer engineers, and other technology professionals.

Digital accessibility is essential to ensuring equal rights for disabled people

People with disabilities make up a significant portion of the U.S. population. According to Centers for Disease Control and Prevention data from 2021, approximately 66 million adults, comprising 27% of America's population, experience disability.[7] Types of disability include cognitive (serious difficulty concentrating, remembering or making decisions), hearing (serious difficulty hearing or deafness), mobility (serious difficulty walking or climbing stairs), vision (serious difficulty seeing or blindness), self-care (difficulty dressing or bathing), and independent living (difficulty doing errands alone).[8]

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[5] United States Department of Justice, Civil Rights Division. *Americans with Disabilities Act of 1990, As Amended.* https://www.ada.gov/

[6] U.S. Department of Justice. *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities.* 28 CFR Part 35, CRT Docket No. 144; AG Order No., RIN 1190-AA79. https://www.federalregister.gov/d/2024-07758

[7] Centers for Disease Control and Prevention (2021). *Disability and Health Data System (DHDS).* http://dhds.cdc.gov

[8] Centers for Disease Control and Prevention (2020). *Disability and Health Data System (DHDS) Overview.* https://www.cdc.gov/ncbddd/disabilityandhealth/dhds/overview.html

Accessibility is a civil right for people with disabilities.[9] The purpose of laws like the Americans with Disabilities Act (ADA) and Sections 504 and 508 of the Rehabilitation Act[10] is to protect civil rights of and prevent discrimination against people with disabilities. In the context of the digital environment, this means addressing accessibility requirements in technology design and development to ensure that people with disabilities are able to fully and equally enjoy goods, services, facilities, and accommodations provided using computing technologies. Mandatory and comprehensive digital accessibility regulations are essential to meet the ADA's objectives for multiple reasons.

Current standards and procedures are inconsistently applied

The professional practice of designing and developing computing technologies is not sufficiently influenced by accessibility standards and proactive accessibility-first practices, and accessibility is not addressed consistently across all social and economic sectors. For example, an automated accessibility evaluation of one million homepages in 2024 found an average of 56.8 technical conformance errors *per homepage*, a 13.6% increase from 2023.[11]

While the ADA provides a regulatory framework,[12] including technical standards,[13] for the architects, designers, and builders of the physical built environment, it only partially provides specific requirements and standards to guide accessibility efforts in the digital environment. In the absence of a comprehensive regulatory framework, designers and developers of computing technologies have been left to subjectively and thus inconsistently determine when and how to address accessibility in order to meet the requirements of the ADA.

This gap is not due to an absence of technical standards. Internationally recognized standards have long been established that can be used as a baseline for producing accessible computing technologies. These standards can and should be explicitly referenced in law. For example, Section 508 of the Rehabilitation Act[14] incorporates the Web Content Accessibility Guidelines

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[9] United Nations (2006). *Convention on the Rights of Persons with Disabilities: Article 9—Accessibility.* https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html

[10] U.S. Government Publishing Office. *Rehabilitation Act of 1973.* https://www.govinfo.gov/app/details/COMPS-799

[11] WebAIM (2024). *The WebAIM Million: An Annual Accessibility Analysis of the Top 1,000,000 Home Pages.* https://webaim.org/projects/million/

[12] ADA.gov. *Law, Regulations, and Standards.* https://www.ada.gov/law-and-regs/

[13] United States (2010). *ADA Standards for Accessible Design.* https://www.ada.gov/law-and-regs/design-standards/2010-stds

[14] U.S. Access Board (2018). *Revised 508 Standards and 255 Guidelines.* https://www.access-board.gov/ict

(WCAG)[15] by reference, as do ADA Title II regulations for web content and mobile apps.[16] WCAG 2.0 is also an ISO standard: ISO/IEC 40500:2012.[17]

Moreover, the Web Content Accessibility Guidelines are routinely referenced by the Department of Justice in its formal settlement agreements in both public and private sectors, as both a definition of digital accessibility[18] and a standard for ADA conformance.[19]

USTPC welcomes the publication of rules for Title II of the ADA that require conformance with WCAG 2.1 Level AA. However, the new Title II rules are inconsistent with the older requirements of Section 508 of the Rehabilitation Act, which require conformance with WCAG 2.0 AA. The approach to exceptions to regulations also differs between Section 508 and the ADA Title II rules.[20] Additionally, many states have created their own accessibility laws and regulations that reference different versions of WCAG or directly reference Section 508 as the technical standard. These inconsistencies create undue confusion as to which technical standards should be followed, especially for entities that operate across sectors and states.

USTPC thus recommends harmonizing the technical standards for digital accessibility referenced in legislation and regulation. Using a single, consistent standard will provide clarity and reduce misunderstandings about what is required to provide an inclusive digital experience. Regulating the same technical standard across entities and sectors would provide a consistent baseline specification for making all computing technologies accessible to people with disabilities.

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[15] World Wide Web Consortium (2023). *Web Content Accessibility Guidelines.* http://www.w3.org/TR/WCAG

[16] U.S. Department of Justice. *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities.* 28 CFR Part 35, CRT Docket No. 144; AG Order No., RIN 1190-AA79. https://www.federalregister.gov/d/2024-07758

[17] International Organization for Standardization (2012). I*nformation technology — W3C Web Content Accessibility Guidelines (WCAG) 2.0 (ISO Standard No. ISO/IEC 40500:2012).* https://www.iso.org/standard/58625.html

[18] "'Web Accessible' is defined to mean conforming with the Web Content Accessibility Guidelines 2.1, Level AA (June 5, 2018), published by the World Wide Web Consortium, available at www.w3.org/TR/WCAG/ ('WCAG 2.1 AA')." Department of Justice (2022). *Settlement Agreement US vs Uber*. https://www.justice.gov/crt/case-document/file/1520271/dl

[19] For example, an ADA Title III settlement agreement with CVS stated, "as of the Effective Date, CVS shall ensure that the Vaccine Registration Portal, all information contained on the Vaccine Registration Portal, any direct links from the Website leading to the Vaccine Registration Portal, and any other information about the COVID-19 vaccine on the Website (collectively, Vaccine Content), conform to the Web Content Accessibility Guidelines 2.1, Level AA (June 5, 2018), published by the World Wide Web Consortium, available at www.w3.org/TR/WCAG/ (WCAG 2.1 AA)." Department of Justice (2022). *Settlement Agreement Under the Americans With Disabilities Act Between the United States of America and CVS Pharmacy, Inc.* https://archive.ada.gov/cvs_sa.pdf https://www.justice.gov/opa/pr/justice-department-secures-agreement-cvs-pharmacy-inc-make-online-covid-19-vaccine

[20] For example, ADA Title II has different exceptions based on type of content, whereas Section 508 excepts legacy ICT by date altered.

Proactive practices are inadequately required or incentivized by current regulations

In addition to the lack of consistency in specified technical standards across sectors, current regulations disproportionately and deleteriously encourage reactive rather than proactive practices to prevent barriers in the digital environment.

In the built environment, the ADA Standards for Accessible Design take a proactive approach, expressly requiring that "newly designed and constructed or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities."[21] Crucially, this establishes "accessibility-first" as a governmentally-endorsed best practice for new construction, drawing a distinction with the separate challenge of retrofitting existing environments to meet accessibility requirements.

While Department of Justice and Department of Education settlement agreements regularly apply this approach—separating remediation requirements for existing resources from requirements for new digital content and functionality to be built to be accessible to people with disabilities[22,23]—it is not part of the regulatory framework for the digital environment. As a result, accessibility efforts are often addressed *ad hoc*, with attention to accessibility coming late in the development process and focused on remediating technical conformance errors rather than optimizing products and services to meet user accessibility needs. Regulating proactive practices is essential to shifting the focus of accessibility efforts from remediation to inclusive design.

Mandatory regulations are required to assure accessibility throughout everyday life

Current regulations lack the scope of coverage to adequately address the role of computing technologies in all aspects of everyday life, which in turn minimizes the importance of digital accessibility in education and professional development programs for computing professionals.

In the built environment, the ADA Standards for Accessible Design set requirements for "state and local government facilities, public accommodations, and commercial facilities."[24] This broad scope acknowledges the importance of the built environment to all individuals' ability to participate equally in society and all facets of everyday life. As a result, architects, designers, and builders must apply accessibility requirements in all new construction and renovation projects. Consequently, these required standards necessarily have become formal components of all related education programs, professional accreditation examinations, and governmental licensing regimes.

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[21] United States (2010). *ADA Standards for Accessible Design*. https://www.ada.gov/law-and-regs/design-standards/2010-stds/

[22] University of Washington Accessible Technology. *Resolution agreements and lawsuits*. https://www.washington.edu/accesstech/policy-resources/resolution-agreements-and-lawsuits/

[23] PEAT (2023). *DOJ Settlements and Website Accessibility*. https://www.peatworks.org/policy-workforce-development/doj-settlements-and-website-accessibility/

[24] United States (2010). *ADA Standards for Accessible Design*. https://www.ada.gov/law-and-regs/design-standards/2010-stds/

In the digital environment, Section 508 applies to computing technologies "developed, procured, maintained, or used by federal agencies"[25] to ensure that all people have equal access to federally funded programs and services provided using computing technologies. While the Department of Justice takes the position that "the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web,"[26] the legal scope of its rulemaking activity thus far has been limited to Title II of the ADA, which covers only the accessibility of state and local government services, programs, and activities.

Though the DoJ's April 2024 Title II regulations are an important step forward, litigation filed makes clear that equally mandatory standards under Title III of the ADA also are essential for the private sector. In 2023, 4,605 plaintiffs filed ADA digital accessibility lawsuits: 82% related to e-commerce, 7% to food service, 4% to education, and 2% to healthcare.[27] Open to the public, and thus "public accommodations," these entities are covered by Title III of the ADA and are unaffected by the Title II regulations. Until businesses are also covered by digital accessibility regulations, the degree to which people with disabilities are able to participate in programs and services will be left to the designers and developers of computing technologies with predictably inconsistent and inequitable results.

Mandatory Title III regulations will foster digital accessibility professionalism

Encompassing the full range of everyday life within the nation's accessibility regulatory framework would help make digital accessibility core to computing professionalism. ACM's central mission is to promote the highest professional and ethical standards within the computing community. Our core values include striving for technical excellence, encouraging the deployment of technology for positive impact, and strengthening the support for diversity, equity, and inclusion, not only within our community but across all humanity.

In the context of disability inclusion, we work toward our mission and values through fostering a practice of digital accessibility. For example, the jointly developed ACM/IEEE/AAAI Computer Science Curricula (CS2023) incorporates accessibility and disability inclusion in its competency framework, with units on accessibility requirements and standards and inclusive design practices.[28]

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[25] US Access Board (2018). *ICT Accessibility 508 Standards and 255 Guidelines.* https://www.access-board.gov/ict/

[26] US Department of Justice (2022). *Guidance on Web Accessibility and the ADA.* https://www.ada.gov/resources/web-guidance/

[27] UsableNet (2024). *2023 Year End Report: ADA Digital Accessibility Lawsuits.* https://blog.usablenet.com/decoding-digital-accessibility-lawsuits-in-2023-key-trends-strategic-insights

[28] See Joint Task Force on Computing Curricula Association for Computing Machinery (ACM), IEEE-Computer Society (IEEE-CS), Association for the Advancement of Artificial Intelligence (AAAI) (2024). *Computer Science Curricula 2023.* https://csed.acm.org/

Without mandatory and comprehensive regulations and the licensing and credentialing require-ments to which they necessarily give rise, however, our accessibility professionalism efforts must rely largely on voluntary standards and codes of conduct, such as the ACM Code of Ethics, to succeed.[29]

Mandatory standards under Title III of the ADA would effectively require educators to reflect accessibility regulations and guidance throughout educational programs, mitigating—and eventually eliminating—the current *ad hoc* and consequently inconsistent approach to addres-sing accessibility in education programs available to technology professionals. In turn, consistency in how accessibility is addressed in education programs will help to professionalize accessibility in technology design and development.

Clear, consistent, and enforceable digital accessibility regulations and investment in accompany-ing educational resources are the necessary foundations for designing and achieving a more equitable and inclusive digital future for everyone. Universal accessibility empowers people, fosters innovation, and ensures that technology serves as a tool for progress, rather than as a barrier to participation and equality.

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[29] ACM (2018). *Code of Ethics and Professional Conduct.* https://www.acm.org/code-of-ethics