

United States Senate

WASHINGTON, DC 20510

July 30, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Barr:

Last year, we wrote to the Department of Justice urging it to help resolve regulatory uncertainty for those seeking to comply with the Americans with Disabilities Act (ADA) with respect to their websites.¹ We write today seeking an update on the Department's work in this area and to urge further action to promote greater clarity, compliance, and accessibility.

In its October response to our letter, the Department reiterated its position that the ADA applies to public accommodations' websites but did not indicate any concrete, further steps it intends to take to provide guidance on what that specifically means for those working to ensure website accessibility for customers with disabilities. Rather, the Department stated:

“[A]bsent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication. Accordingly, noncompliance with a specific voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA.”²

While this statement acknowledges flexibility in compliance, it does not clear up remaining uncertainty or even foreclose the possibility that *compliance* with a voluntary standard might not necessarily be viewed as compliance with the ADA. We therefore urge the Department to provide further clarity, especially given that the issue of whether the ADA applies to private websites at all—or the scope of such application—continues to be subject to conflicting judicial opinions. Absent further guidance, compliance will remain a matter of increasing litigation and inconsistent outcomes. Regulation through litigation should not be the standard.

¹ Letter from Senators Grassley, Rounds, Tillis, Crapo, Cornyn, and Ernst to the Honorable Jeff Sessions, Attorney General, U.S. Department of Justice (Sept. 4, 2018) *available at* <https://www.judiciary.senate.gov/imo/media/doc/2018-10-04%20Grassley,%20Rounds,%20Tillis,%20Crapo,%20Cornyn,%20Ernst%20to%20Justice%20Dept.%20-%20ADA%20Website%20Accessibility.pdf>.

² Letter from Stephen E. Boyd, Assistant Attorney General, U.S. Department of Justice, to Senator Grassley (Oct. 11, 2018).

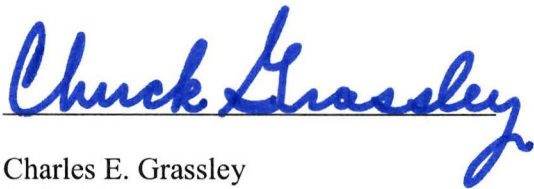
As you may know, there are already provisions of federal law governing website accessibility that may be instructive. For example, rules issued under Section 508 of the Rehabilitation Act of 1973, which govern website accessibility for the federal government's own websites, use the Web Content Accessibility Guidelines 2.0 standard (WCAG 2.0). Such rules also contain certain detailed exceptions so that strict compliance does not unduly burden federal agency resources. If the government benefits from such clear guidance in complying with a specific website accessibility standard, it seems only appropriate that the public should benefit from similar guidance or clarity.

Finally, we note that during your confirmation hearing before the Senate Judiciary Committee, you committed to "study[ing] this issue in greater detail and consult[ing] with [Congress] on these issues."³ Accordingly, we ask that you provide numbered, written answers to the following questions by no later than August 30, 2019:

1. Since our letter of September 4, 2018, what specific steps has the Department taken to help resolve uncertainty regarding website accessibility requirements under the ADA? What additional steps does the Department intend to take, and by what date?
2. Does the Department consider WCAG 2.0 an acceptable compliance standard for the public under Title III of the ADA? Why or why not?
3. As with the regulations implementing Section 508, does the Department agree that consideration should be given to the resources available to a business or member of the public seeking to ensure website accessibility? Why or why not?
4. Has the Department considered intervening in pending litigation to provide clarity on these issues, or to push back against any identified litigation abuses? Why or why not?

Thank you for your attention to this matter, and we look forward to your response.

Respectfully,

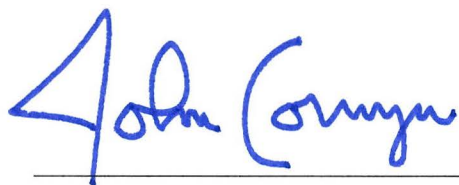


Charles E. Grassley
United States Senator



Thom Tillis
United States Senator

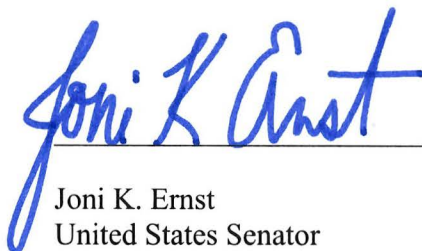
³ Responses to Questions for the Record, William P. Barr, Nominee to be United States Attorney General, 10 (Jan. 27, 2019) *available at* <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20QFRs.pdf>.



John Cornyn
United States Senator



Mike Crapo
United States Senator



Joni K. Ernst
United States Senator



Marsha Blackburn
United States Senator



M. Michael Rounds
United States Senator

cc: The Honorable Jeffrey A. Rosen
Deputy Attorney General
U.S. Department of Justice

The Honorable Eric S. Dreiband
Assistant Attorney General, Civil Rights Division
U.S. Department of Justice