

## WEBSITE ACCESSIBILITY GUIDELINES GET UPDATE; CALIFORNIA COURT LIMITS PENALTIES TO ONE VISIT

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An update has been published to the Web Content Accessibility Guidelines (WCAG) 2.0, the standards that have been applied by many courts in the absence of website accessibility regulations by the Department of Justice.

The new version, named WCAG 2.1, was published on June 5 by the World Wide Web Consortium (W3C), an industry group of website accessibility experts.

WCAG 2.1 amends the prior standards, which were issued in 2008, by adding 17 additional criteria to address accessibility barriers. The updates are mainly related to mobile devices and disabilities that affect vision and cognitive function.

For example, WCAG 2.0 did not expressly address mobile applications, although many of the same criteria for website accessibility was also applicable to mobile apps. WCAG 2.1 provides additional guidance concerning accessibility of mobile apps, including:

- user interactions using touch,
- handling more complex gestures, and
- avoiding unintended activation of an interface.

For users with low vision, WCAG 2.1 also extends content requirements to graphics, and introduces new requirements for text and layout customization. For users with cognitive, language, and learning disabilities, the WCAG 2.1 updates include a requirement to provide information about the specific use of input controls, and additional requirements to support timeouts due to inactivity.

Although the Department of Justice has not issued regulations concerning website accessibility, and has removed the issue from rulemaking, many courts have applied WCAG 2.0 as the standard for website accessibility. All criteria included in WCAG 2.0 are included in WCAG 2.1.

**California court holds phone, email are not alternatives to compliant website, limits statutory penalties to one visit**

In other website accessibility news, a California court has granted summary judgment to a visually impaired plaintiff, ruling that “auxiliary aids” in the form of phone calls or email replies do not satisfy the ADA’s requirement of providing “full and equal enjoyment of ... any place of public accommodation.”

In *Thurston v. Midvale Corp.*, Los Angeles Superior Court Case No. BC663214, the defendants, who operate the Whisper Lounge restaurant and website, argued in part that the plaintiff could have called or emailed the restaurant to obtain information, instead of accessing the information on the website.

Judge Samantha Jessner held that email and telephone options do not provide “equal enjoyment of the website,” as the ADA requires, but instead impose a burden on the visually impaired to wait for a response via email or call during business hours rather than have immediate website access. Thus, the court held that email and telephone alternatives do not provide effective communication “in a timely manner” or protect the independence of the visually impaired. The court’s ruling left open the question of whether a toll-free number staffed 24 hours a day would produce a different outcome.

The court rejected defendants’ arguments that their website is not “a place of public accommodation” under the ADA and that the case violated defendants’ Due Process rights because the court should wait until the Department of Justice issues regulations regarding website accessibility. In rejecting the defendants’ argument regarding the WCAG guidelines, the court found that the complaint merely referenced the guidelines and didn’t seek to hold defendants liable for violating the guidelines.

The court also rejected their argument that a redesign of the website rendered the case moot, holding that the restaurant did not establish that “subsequent events make it absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.”

In the only aspect of the ruling favorable to defendants, the court held that the plaintiff was entitled to only \$4,000 in damages under the Unruh Act, which provides for a minimum of \$4,000 in statutory damages for each incident of discrimination. The court held that plaintiff’s repeated visits to the same inaccessible website did not establish separate offenses for purposes of calculating damages.

For questions or additional information, contact the authors, or any member of our [Retail](#) team.

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