

US

Relevant Acts

The Americans with Disabilities Act (ADA) is the legislation that states both 'state and local government entities' (Title II) and private/business entities that are open to the public (Title III) cannot discriminate against those with a disability. Title II states that disabled individuals must be able to access and use web content through compliance with WCAG 2.1 AA.

Section 508 within the Rehabilitation Act is the legislation that applies to all electronic and information technology from federal agencies. To be compliant you have to meet the Web Content Accessibility Guidelines (WCAG) 2.0 AA accessibility standard, and this will be updated to require the Web Content Accessibility Guidelines (WCAG) 2.1 AA standard from 24th April 2026.

The Office of Management and Budget (OMB) memorandum on "Strengthening Digital Accessibility and the Management of Section 508 of the Rehabilitation Act" (M-24-08) requires federal agencies to maintain an accessibility statement on their websites.

The Nelson Memo also states that peer reviewed scholarly content should be available in such a format so that it is, "...enabling broad accessibility through assistive devices."

Intepretation of whether these acts apply to small diamond open access publishers

Title II applies to all services, programs, and activities provided or made available by public entities, which are defined as: (A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49). Title II also specifically includes a section on web and mobile accessibility, which applies to all 'web content'.

Most diamond OA publishers can be considered public entities, especially if the publisher is part of a public body i.e. a university, but also if the publisher has received public funding to start up, or if any content has received public funding at any part of its creation, for example, it has received public money to fund the research, or the publication of the monograph. Where this is unclear it

would be advisable to consider the legislation as applicable anyway to avoid problems. Section508 similarly applies only to federal agencies.

Title III applies to all private entities offering services to the public, which all open content can be considered to be, and alongside the Nelson Memo means that accessibility needs to be considered in general (both Title III and the Nelson Memo do not specify a digital accessibility standard).

More information about legislative requirements:

[ADA.gov](https://www.ada.gov)

[ADA National Network - What is the Americans with Disabilities Act \(ADA\)?](#)

[ADA.gov Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments](#)

[Section508.gov](https://www.section508.gov)

Standards referenced in these acts and how they are audited

[Web Content Accessibility Guidelines \(WCAG\) 2.0 AA](#)

[Web Content Accessibility Guidelines \(WCAG\) 2.1 AA](#)

Agencies subject to Section 508 are required to report on the implementation of Section 508 to the Office of Management and Budget (OMB) and the General Services Administration (GSA) through the Annual Section 508 Assessment. A primary point of contact will be appointed, and this person will receive details of access to an online assessment reporting tool.

More information about auditing:

[Section508.gov Government-wide Section 508 Assessment](#)

Accessibility Statements

An accessibility statement should be published on the organisational website, which needs to include the following:

1. The accessibility standard applied to the website and any known limitations or alternative versions, as appropriate.
2. The contact information for the Section 508 program manager (name and email address).
3. A public feedback mechanism that allows members of the public to report accessibility problems with agency websites and digital services to the agency's Section 508 program as well as relevant implementation teams.
4. Instructions for filing a complaint alleging a violation of Section 508.
5. Information about the agency's reasonable accommodations procedures for Federal employees and job applicants, consistent with Section 501 of the Rehabilitation Act.
6. Instructions on the use of the telecommunications relay service.
7. Links to any relevant, publicly available organizational policies or procedures on digital accessibility.
8. Date that the digital accessibility statement was last updated or reviewed.

The statement should be linked to from the footer at the bottom of every web page.

More information about accessibility statements:

[Section508.gov Developing a Website Accessibility Statement](#)

[W3C Developing an Accessibility Statement](#)

Examples of accessibility statements:

[General Services Administration \(GSA\) Accessibility Statement](#)

[U.S. Nuclear Regulatory Commission \(NRC\) Accessibility Statement](#)

[US Department of Commerce](#)

Exemptions

ADA and Title III

This legislation does not apply to private clubs or to religious organisations or entities controlled by religious organisations, including places of worship or schools.

Title II Web and Mobile Accessibility

The requirements do not apply to the following:

- Archived web content
- Preexisting conventional electronic documents, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities.
- Content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity.
- Individualised, password-protected or otherwise secured conventional electronic documents.
- Preexisting social media posts.

Section 508

The requirements do not apply to the following

- Legacy ICT: Agencies may claim a "Safe Harbor" for existing ICT that was accessible and compliant with the earlier standard on or before January 18, 2018 and has not been subsequently changed to affect interoperability, the user interface, or access to information or data.
- National Security Systems: This exception applies to ICT operated by agencies as part of a national security system.
- Federal Contracts: This exception applies to ICT acquired by a contractor incidental to a contract. This exception does not apply, if: The ICT will revert to government ownership; The government directly procures the ICT; or Members of the public or government employees use the ICT.
- Functions Located in Maintenance or Monitoring Spaces: This exception applies to ICT functions located in spaces that are frequented only by service personnel for maintenance, repair, or occasional equipment monitoring.
- Undue Burden or Fundamental Alteration: Conformance to the Revised 508 Standards is required only when it does not impose an undue burden, or result in a fundamental alteration in the nature of the ICT.
- Best Meets: For when no ICT is commercially available that fully conforms to the Revised 508 Standards.

There is no mention of micro-organisations in US legislation.

More information about exemptions:

[accessible.org Web Content Exceptions Under New Title II Rule](https://www.accessible.org/web-content-exceptions-under-new-title-ii-rule)

[Section 508.gov Determine ICT Exceptions](https://www.section508.gov/determine-ict-exceptions)

How to evidence undue burden

The undue burden exception applies only to the specific features or functions of the ICT that cannot be made to conform without imposing an undue burden on the agency or component. The federal agency or component that owns (or will own) the ICT product or service must:

- Decide that conformance to the Standards would impose an undue burden;
- Assess costs relative to resources if claiming the exception based on expense; and
- Assess the difficulties in achieving conformance to claim the exception based on difficulty.

If the answer to all questions is "yes", your ICT may warrant this exception.

1. Have you determined that conformance for some or all features and functions of the ICT item would result in an undue burden on your agency or component?
2. Have you quantified the resources available to the program or component for which the ICT is to be procured, developed, maintained, or used?
3. Has the responsible agency official documented in writing how the difficulty or expense is significant, relative to the resources available? For example:
 1. What % of the expense equals total budget available?
 2. Explain exactly what is significantly difficult, and why.
4. Does your documentation address whether the exception is being claimed for the entire ICT Item, or only specific features and functions?
5. Will the agency provide an alternative means for users with disabilities for the features and functions for which you are claiming this exception?

Undue Burden Assessments

What Makes a 'Good' Undue Burden Assessment?

More information about undue burden:

[Section 508.gov Determine ICT Exceptions](#)

[convergeaccessibility.com How to Comply with DOJ's Seemingly Impossible Web Accessibility Regulation](#)

Examples of undue burden claims:

Copyright Legislation

Copyright in the US is covered by chapters 1 through 8 and 10 through 12 of Title 17 of the United States Code. Exceptions to copyright are required under international legislation covered by the Marrakesh Treaty for print disabled/visually impaired people. This international law does not cover other impairments, such as dyslexia, but the US's Section 121 (Chafee Amendment) does. This permits 'authorised entities' to make accessible copies for 'eligible persons'.

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