

Ninth Circuit Rules That Lack of Web Accessibility Regulations Does Not Bar ADA Suits

The U.S. Court of Appeals for the Ninth Circuit issued a decision on January 15, 2019 in a closely followed web accessibility case, [Robles v. Domino's Pizza, LLC](#), reaffirming Ninth Circuit precedent holding that companies whose online activities share a nexus with physical places of public accommodation may be held liable under the Americans with Disabilities Act for failing to make their websites and apps accessible to persons with disabilities. Most notably, however, the decision expressly rejected the argument that the lack of regulatory clarity on the ADA's application to web content violates due process rights. *Robles* may have ramifications for how other courts consider due process arguments under the ADA in the online context and for other regulatory areas where statutory obligations have not been clarified by federal agencies.

Background on Web Accessibility Under the ADA

Title III of the ADA prohibits discrimination on the basis of disability in "places of public accommodation," which include, among other locations, restaurants and other establishments serving food and drink. However, the ADA—which was signed into law in 1990, well before the advent of digital platforms and media—does not address whether websites and other online fora are considered "places of public accommodation" for purposes of Title III. The Ninth Circuit has held that the ADA applies to online activity only insofar as there is a sufficient nexus between the allegedly discriminatory goods or services and an actual, physical location. Other courts have rejected the nexus requirement or have not explicitly decided the issue of whether and how the ADA applies to websites.

The U.S. Department of Justice, which is responsible for implementing regulations for the ADA, has taken the view that the ADA applies to websites and mobile apps. In 2010, the DOJ released a proposal to extend accessibility requirements to internet content. But seven years later, the DOJ withdrew the proposal, concluding that it needed to conduct further analysis before determining whether specific technical standards for web accessibility were necessary and appropriate.

Due to the DOJ's inaction, there remain no generally applicable web accessibility requirements in the United States. However, guidelines developed by the World Wide Web Consortium—known as the Web Content Accessibility Guidelines 2.0 ("WCAG 2.0")—include voluntary best practices and technical criteria that have been widely adopted by members of industry and certain government agencies as the prevailing standard for web accessibility.

Decision and Analysis

In *Robles*, a man who is blind filed suit against the pizza delivery chain Domino's Pizza in federal district court in California, alleging that the company had violated the ADA by failing to make its website and app accessible to blind and visually impaired persons who use screen-reading software. The district court determined that Domino's website and app—which connect customers to the goods and services available in the company's physical restaurants—constituted places of public accommodation under the ADA and acknowledged that the ADA mandates the provision of auxiliary aids and services to persons with disabilities. But the district court

ultimately dismissed the plaintiff's complaint, concluding that requiring Domino's to abide by the WCAG 2.0 guidelines, absent formal guidance from the DOJ on the appropriateness of such guidelines, violated the company's Fourteenth Amendment right to due process. The district court also invoked the doctrine of "primary jurisdiction," dismissing the case while DOJ continued to consider whether implementing regulations should issue.

On appeal, the Ninth Circuit reversed and remanded the district court's decision. The court agreed with the district court's conclusion concerning the application of the ADA to Domino's website and app. But the court held that imposing liability on Domino's under the ADA would not raise due process concerns because the ADA's existing requirements concerning auxiliary aids and services, coupled with the DOJ's longstanding position that the Act applies to the websites of covered entities, provided Domino's with sufficient notice that its website and app must be made accessible. Further, the court determined that the lack of specific regulations from the DOJ did not eliminate Domino's continuing duty to ensure that persons with disabilities have full and equal access to the company's goods and services, and that reference to specific WCAG 2.0 standards might be an appropriate form of relief, but the court did not seek to impose liability on Domino's under this standard. The court also rejected the application of the primary jurisdiction doctrine because application of the ADA was within the court's competence, and deferral to the DOJ would inevitably mean that relief for the plaintiff would be significantly delayed.

Impact on Other Suits

The decision in *Robles* is likely to influence how courts in other jurisdictions consider due process arguments made by defendants in web accessibility suits. A case to watch is *Gil v. Winn-Dixie Stores, Inc.*, which raises similar accessibility issues and is currently pending before the U.S. Court of Appeals for the Eleventh Circuit. The Eleventh Circuit heard oral arguments in the case in October 2018, but has not yet issued a ruling. Regardless of how *Gil* is resolved, *Robles* will likely diminish the force of commonly-invoked arguments that the absence of formal web accessibility rules exempts defendants from ADA liability online. The reasoning in *Robles* also may be relied on in other contexts where statutory obligations are left relatively undefined but where voluntary standards have come to be seen as the prevailing metric for compliance with such obligations.

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