

Ninth Circuit: Domino's Website Required to Comply With ADA

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Litigation surrounding the accessibility of online services continues to evolve. On January 15, 2019, the U.S. Court of Appeals for the Ninth Circuit ruled that the website and mobile app of Domino's Pizza must comply with the Americans with Disabilities Act (ADA) to make these online services fully accessible to the visually impaired.

In [*Robles v. Domino's LLC*](#), Guillermo Robles—who is visually impaired—brought suit in 2016 claiming the pizza chain's website not only precluded him from ordering a customized pizza, but also made online coupons inaccessible. Mr. Robles sought an order requiring compliance with the [Web Content Accessibility Guidelines 2.0](#) (WCAG 2.0), an international voluntary standard for making online content accessible.

His case initially was dismissed in 2017 by a district court judge who held that while the ADA covered the company's website, imposing liability on Domino's would violate the company's 14th Amendment right to due process because the Department of Justice (DOJ) had not yet promulgated regulatory standards for online accessibility. In doing so, the court invoked the doctrine of primary jurisdiction, which allows courts to stay proceedings or dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency.

The Ninth Circuit's three-judge panel reversed, writing that Domino's had "been on notice that its online offerings must effectively communicate with its disabled customers and facilitate 'full and equal enjoyment' of Domino's goods and services." The Court added that a lack of specific regulations did not eliminate the company's clear statutory duty, and the Constitution does not require the DOJ to "spell out exactly how Domino's should fulfill [its] obligation." The court also held that the district court had erred in invoking primary jurisdiction because the DOJ's withdrawal of its Advanced Notice of Proposed Rulemaking meant that undue delay in a resolution was inevitable, and such a delay was unnecessary because the application of the ADA was within the district court's competence.

The court additionally found that the ADA applied to Domino's website and mobile app because their inaccessibility "impedes access to goods and services of its physical pizza franchises—which are places of public accommodation." The court added that the statute applies to services *of* a place of public accommodation, not services *in* a place of public accommodation.

As a result, the Ninth Circuit remanded the case to the district court to determine, after discovery, if the "Domino's website and app provide the blind with effective communication and full and equal enjoyment of its products and services as the ADA mandates."

While the Ninth Circuit has indicated its position, the legal landscape regarding online accessibility remains uncertain. The 11th Circuit heard oral arguments in the noteworthy [Winn-Dixie](#) case on October 4, 2018, but has yet to issue a ruling. In that case, a plaintiff similarly claims that a grocery store's website is inaccessible to blind individuals.

As some courts have required companies' websites to be ADA compliant—and in light of DOJ's indefinite inaction—businesses are encouraged to review their policies to ensure online accessibility is being addressed.

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