

Ninth Circuit Holds That ADA Is Applicable Only to “Actual, Physical Place”

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The decision in *Earll v. eBay* finds that a website business not connected to any physical place is not a “place of public accommodation” for purposes of Title III of the ADA.

In a decision of significant importance to all businesses that engage in Internet commerce, in *Earll v. eBay*, the US Court of Appeals for the Ninth Circuit held that eBay.com, a website not connected to any physical place, is not a “place of public accommodation” subject to the accessibility requirements of Title III of the ***Americans with Disabilities Act (ADA)***. The decision is welcome news for web-based companies. An individual with a hearing impairment sued eBay Inc. and alleged that an eBay voice-based verification process prevented her from registering as a seller, in violation of the ADA. Although the Ninth Circuit’s decision is groundbreaking for Internet-only companies, it builds on prior cases that interpreted the ADA to apply only to “actual, physical place[s].” The same court reached a similar conclusion on the same day in *Cullen v. Netflix*, a case concerning closed-captioning for online video content.

Federal district courts in other circuits have decided the question differently, which may cause a split between circuits. Ultimately, this issue may be headed for Supreme Court review. In an example of a contrary view, last month, a District of Vermont federal judge held that the web-only business Scribd is subject to suit under Title III of the ADA because its digital library subscription services are alleged to not be accessible to people with vision impairments (*National Federation of the Blind v. Scribd*).

In related activity, the US Department of Justice (DOJ) is expected this summer to accelerate its role in making and enforcing rules regarding Internet accessibility with a notice of proposed rulemaking on the subject. The DOJ is widely expected to propose the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA, as the standard required under the ADA.

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