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Federal Court in Los Angeles Dismisses Website Accessibility Claims

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On March 20, 2017, a federal district judge in Los Angeles granted Domino's Pizza's motion to dismiss a website accessibility lawsuit in a ruling that raises hopes for those battling the massive wave of web accessibility litigation and arguably makes it more difficult for businesses to decide between fight or flight. *Robles v. Domino's Pizza LLC*, No. CV 16-6599 SJO (SPx), U.S. District Court for the Central District of California.

The court's decision ratified the argument—which has been rejected by other courts—that the absence of clear regulation on what it means for a website to be "accessible" violated Domino's' due process rights. Grounded in the due process violation, the court dismissed the action without prejudice under the primary jurisdiction doctrine, holding that the case should not be prosecuted "pending the resolution of an issue within the special competence of an administrative agency," which, in this case, is the U.S. Department of Justice (DOJ).

In so ruling, the court was openly critical of the DOJ's failure to follow through on its July 26, 2010 Advanced Notice of Proposed Rulemaking (ANPRM), 75 Fed. Reg. 43460 (July 26, 2010), in which it first announced its intention to regulate in the area of website accessibility for public accommodations. Notably, despite this criticism, the court reaffirmed the DOJ's interpretation of Title III of the Americans with Disabilities Act (ADA), in that ANPRM and elsewhere, finding that the law requires at least those websites with a "nexus" to a place of public accommodation to make their websites accessible.

But deciding what it means to be "accessible" is where the court parted ways with the DOJ, several other courts, and the flood of website accessibility claimants encountered by our clients. The court repeatedly noted the DOJ's stated intention to regulate in this area and the resulting unfairness of the ambiguous legal obligations rendered by its repeated failure to do so. In this particular case, the plaintiff insisted on the legal enforceability of the Website Content Accessibility Guidelines 2.0 (WCAG 2.0)—private industry standards developed by the World Wide Web Consortium—which doomed his case. While this decision strengthens the hand of those website owners that want to fight against the flood of litigation in the area, it likewise strengthens the hands of vendors that have denied any obligation to website owners to comply with WCAG 2.0. It also leaves those that wish to improve the accessibility of their websites with continued uncertainty over just how to do that—an issue about which our clients are justifiably seeking guidance.

Perhaps in response to the decision's unintended contribution to this lingering uncertainty, the court made a direct plea to "Congress, the Attorney General, and the Department of Justice to take action to set minimum web accessibility standards for the benefit of the disabled community." We only hope that the Trump administration will recognize that this is an area where regulation will *help* the business community, not hurt it.

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