

# **Inclusion and the Internet - Applying ADA Regulations to Retail Websites and Mobile Apps**

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As courts determine the applicability of the Americans with Disabilities Act (ADA) in the digital landscape, litigation involving the accessibility of online services is continuing to evolve. Recently, the U.S. Court of Appeals for the Ninth Circuit ruled that Domino's Pizza must comply with the ADA to make online services—namely, their website and mobile application—fully accessible to people with visual impairments.

In *Robles v. Domino's LLC*, a visually impaired man filed suit in federal court against Domino's, claiming that Domino's failed to construct, design, maintain, and operate its website and mobile application in a manner that made them accessible to him. The pizza chain's website, he claimed, precluded him from ordering a customized pizza and did not allow him to use online coupons.

The District Court dismissed the complaint on the basis that imposing liability on Domino's before the United States Department of Justice (DOJ) promulgated regulatory standards for online accessibility would violate Domino's right to due process.

The Ninth Circuit reversed, finding (among other things) that even though the DOJ's regulatory standards had not been implemented, 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 products and services under the ADA. The Ninth Circuit added that a lack of specific DOJ regulations did not eliminate the company's clear statutory duty under the ADA, and nothing in the Constitution requires the DOJ to spell out exactly how Domino's should fulfill its obligations under the ADA.

Finally, the Ninth Circuit found that the ADA applies to Domino's website and mobile app (not just its physical stores) because the ADA applies to services of a place of public accommodation, not just services in a place of public accommodation.

Consumer demand for website and mobile app accessibility continues to grow. The National Retail Federation found that more than 1,000 website accessibility lawsuits were filed in the first half of 2018 alone. For comparison, only 57 lawsuits were filed in 2015.

Retailers that offer products and services via e-commerce solutions should ensure that their digital

platforms are ADA compliant. Although the DOJ has not issued guidance on ADA compliance for websites, Robles makes clear that websites must be accessible to people with disabilities. Retailers can bring their websites into accessibility compliance in a variety of ways. Robles suggests that websites comply with the widely used Web Content Accessibility Guidelines (WCAG). WCAG are private standards developed by technology and accessibility experts that have been widely adopted, including by federal agencies. Retailers should consider implementing periodic WCAG compliance audits and work with legal counsel trained in accessibility guidelines to design and implement ADA policies that address inclusion in website and mobile applications.

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