

Practice Update

The Supreme Court Deals a Blow to Businesses Regarding Accessibility of Their Websites and Mobile Applications

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This week, the U.S. Supreme Court declined a petition for certiorari in *Domino's Pizza v. Guillermo Robles*, letting stand the Ninth Circuit's decision holding that Title III of the Americans with Disabilities Act (ADA) applied to websites and mobile applications for businesses with physical locations.

The case involved a blind plaintiff who claimed he could not order a custom pizza from Domino's website or mobile application, even while using screen reading software. This past January, the Ninth Circuit held that the ADA applied to Domino's website and mobile application because the ADA mandates that places of public accommodation provide auxiliary aids and services to disabled individuals. In so doing, the Ninth Circuit emphasized that "Domino's website and app facilitate access to the goods and services of a place of public accommodation – Domino's physical restaurants."

In June, Domino's petitioned the Supreme Court, arguing that the Ninth Circuit's decision exacerbated a circuit split over whether Title III of the ADA applied to websites. Specifically, Domino's argued that "circuits have divided over whether Title III extends to enterprises that solely exist online, and whether Title III mandates discrete accessibility

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requirements for web-sites maintained by brick-and-mortar enterprises.” This “lack of clarity,” Domino’s claimed, has become untenable for organizations “which face different rules in different jurisdictions depending on their web presence.”

As a takeaway, companies that operate websites and mobile applications for their businesses are encouraged to conduct audits of their websites and mobile applications to assess the level of accessibility for persons with disabilities. This is advisable even for companies that already have provided the ability to use screen reader software, which is not necessarily in and of itself a guarantee of total accessibility. To provide some guidance to companies, the Department of Justice recently took the position that voluntary compliance with the Web Content Accessibility Guidelines (WCAG 2.0 and the newly implemented WCAG 2.1) is a helpful – though not necessarily decisive – indication of compliance.

For further information on website accessibility, [see our recent post](#) on manual and automated testing to ensure website compliance with the ADA.

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