

ADA Compliance Now Applies to Websites and Apps

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Companies in all areas of work with websites or mobile applications should take note that the Ninth Circuit Court of Appeals recently ruled in [Robles v. Domino's Pizza](#) that the Americans with Disabilities Act ("ADA") is applicable to websites and mobile applications or "apps."

The underlying purpose of the ADA is to ensure disabled individuals are not subject to discrimination and have as full and equal enjoyment of those places as non-disabled individuals. Title III of the ADA generally creates an obligation on a location that meets its definition of a "place of public accommodation" to provide auxiliary aids and services to ensure that individuals with disabilities are not excluded from accessing the services of such locations. In *Robles*, the Ninth Circuit overruled Domino's procedural and substantive objections and found that Domino's website and app are places of public accommodation subject to the ADA.

Because the *Robles* decision is likely to provide further encouragement to the numerous plaintiffs' law firms who threaten litigation or make settlement demands upon businesses with allegedly non-compliant websites and applications, it is in the best interest of all businesses to ensure that their websites and applications are ADA compliant. To preserve attorney-client privilege, businesses are encouraged to work with a consultant or other vendor under the supervision of an attorney in analyzing and remediating ADA compliance issues.

In *Robles*, the Ninth Circuit concluded that the ADA places obligations upon the services *of* a public accommodation, rather than services *in* a place of accommodation. The court reasoned that although people do not physically visit a website as they would a brick and mortar store, the ADA does not require disabled consumers to be *in* the place of accommodation. Because the Domino's website and app facilitate its customers' ability to purchase and obtain goods from Domino's physical restaurants, the Ninth Circuit found that the ADA is applicable. Under the Ninth Circuit's reasoning, all websites and applications that provide consumers with access to goods and services must likewise comply with the ADA.

In reaching this decision, the Ninth Circuit overruled Domino's procedural defenses to the applicability of the ADA. For example, the court dismissed Domino's claim that its due process rights had been violated because the Department of Justice (DOJ) had failed to provide helpful guidance to comply with the ADA despite the DOJ's announcement that it intended to provide such guidance by 2010. The Court reasoned that despite the DOJ's failure to provide guidance, Domino's had had sufficient notice that its website and app needed to comply with the ADA because the ADA itself articulates "comprehensive standards" for compliance. The Ninth Circuit found that the ADA's requirements under 42 U.S.C. § 12181 had provided Domino's with sufficient notice that covered entities must provide "full and equal enjoyment of the[ir] goods, services, facilities, privileges, advantages, or accommodations" to people with disabilities, and that such entities must "ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services".

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The Ninth Circuit also rejected Domino’s invocation of the primary jurisdiction doctrine, which “allows courts to stay proceedings or to dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency.” *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008). The court reasoned that the primary jurisdiction doctrine did not apply because (i) the DOJ was aware of the issue but failed to express interest in the subject matter of the litigation; and (ii) referring the matter to the DOJ would significantly postpone a ruling that the Ninth Circuit was itself competent to make.

Although the *Robles* decision resolves the issue of whether websites and applications are “public accommodations” under the ADA, it does not articulate the measures that businesses need to undertake to comply with the statute. In comparison to physical locations, which may require installation of ramps or ADA compliant restrooms, it is not always clear how websites and applications can become compliant. We therefore recommended that businesses consult an expert advisor in this field. Given the interest of plaintiffs’ firms in ADA litigation against companies with websites and applications, ignoring compliance issues is not an option.

We encourage you to reach out to a member of the Intellectual Property Group with any questions or concerns regarding any of these issues.

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