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Robles v. Dominos Pizza LLC

U.S. District Court for the Central District Court of California, CV 16-06599 SJO (SPx), 20 March 2017

In another case to look at the requirements for website operators under the Americans with Disabilities Act, the Court found that website operators do not currently have to offer the specific accommodations identified by the plaintiff in this case - although some form of accommodation was required.

In *Robles v. Dominos Pizza LLC*¹ a federal court in California dismissed a class action lawsuit, which asserted that Domino's Pizza discriminated against Americans with disabilities on its web and mobile sites. Specifically, the plaintiff complained that the company failed to make its website and mobile app accessible to blind or visually-impaired people who utilise screen reader software to use the internet. The Court sided with the company and held that website operators do not currently have to offer the specific accommodations identified by the plaintiff - although some form of accommodation was required.

The Americans with Disabilities Act

The Americans with Disabilities Act ('ADA') was signed into law on 26 July 1990, by President George H.W. Bush². The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. It seeks to ensure that people with disabilities have the same opportunities as everyone else to participate in employment opportunities, to purchase goods and services, and to participate in Government programmes and services. The ADA was modeled after the Civil Rights Act 1964, which prohibits discrimination on the basis of race, colour, religion, sex, or national origin. To be protected by the ADA, one must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

Courts are split on whether website operators have to comply with the ADA

The ADA does not specifically reference websites or mobile sites and US courts have been split on the question of whether online services are covered. The issue has been one of much debate in recent years, with hundreds of cases filed - driven primarily by one plaintiff's law firm that claims to have more than 100 clients in 40 states³. With his decision in *Robles v. Dominos Pizza LLC*, on 20 March 2017, Judge Otero of the U.S. District Court for the Central District of California strengthened this split and the defences available to defendant companies. Judge Otero reinforced the position of the courts in the Ninth Circuit⁴ that have narrowly construed the ADA to apply to only websites with a nexus to brick-and-mortar stores. But the decision goes even further, giving website and mobile app owners the additional, broader defence that, to require them to revise existing websites to comply with industry standard guidelines - guidelines not yet approved by any federal agency - would be a violation of their right to due process.

ADA requirements applied to web and mobile sites

Title III of the ADA requires all businesses offering products and services to ensure that people with disabilities have equal access. The ADA prohibits discrimination in the full and equal enjoyment of goods and services against individuals with disabilities by anyone who owns or operates a 'place of public accommodation⁵'. The ADA defines 'public accommodation' to include a 'sales or rental establishment' such as a clothing store or shopping centre⁶. Some US courts, as well as the

U.S. Department of Justice ('DOJ'), the agency responsible for enforcing the law, have in various opinions held that these provisions of the ADA are applicable to websites. For example, they have required retailers to revise their websites to afford screen reading and voice over software programs the ability to interpret websites audibly for the visually impaired. In fact, the DOJ has dedicated increasing attention to reviewing websites' compliance under Title III of the ADA⁷.

Notwithstanding these opinions, the DOJ has delayed for many years the anticipated rulemaking for website accessibility under the ADA. In the meantime, the agency has insisted that websites comply with the Web Content Accessibility Guidelines ('WCAG') 2.0AA or AAA, developed by the World Wide Web Consortium ('W3C'), a third party international consortium that develops web standards.

Prior to the *Robles* decision, the circuit courts were split on the issue of whether the ADA applies to all websites and mobile apps as 'places of public accommodation' or whether the ADA should apply only to websites and apps with a nexus to physical, brick-and-mortar stores for which the ADA was originally designed. In summary, courts in some circuits⁸ have held that online and mobile retail platforms are subject to scrutiny under the ADA even for retailers that do not operate physical stores, while courts in other circuits have narrowly construed the ADA to limit its application to retailers with physical stores and, thus, places of physical public accommodation⁹.

Robles's complaint

In the *Robles* case, the Plaintiff consumer



Image: Sam Edwards / OJO Images / Getty Images

1. Case No. 42 CV 16-06599 SJO (C.D. Cal. Mar. 20, 2017).
2. See, www.ada.gov/ada_intro.htm
3. See, https://www.washingtonpost.com/realestate/advocates-for-the-disabled-find-fault-in-many-realty-websites/2016/05/10/06361aac-1613-11e6-aa55-670cabe46e0_story.html?utm_term=.572a414b822d
4. The Ninth Circuit includes the states of Arizona, California, Idaho, Montana, Nevada, Oregon and Washington.
5. 42 U.S.C. § 12182.
6. 42 U.S.C. § 12181(7)(E).
7. See https://www.ada.gov/peapod_sa.htm for an example of the settlement of one such action.
8. See e.g., *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, (D. Mass. June 19, 2012);
9. See, e.g., *Anderson v. Macy's Inc.*, 2012 U.S. Dist. LEXIS 108569 (W.D. Pa. Aug. 2, 2012); *Young v. Facebook, Inc.*, 790 F. Supp. 2d. 1110 (N.D. Cal. 2011).
10. See, https://www.washingtonpost.com/graphics/politics/trump-presidential-budget-2018-proposal/?utm_term=.4c980fc3cad7#dept-11
11. See, <https://www.law360.com/articles/902836/trump-s-proposed-doj-budget-could-cut-civil-rights-funding>

complained that Domino's Pizza failed "to design, construct, maintain, and operate its website [and mobile application] to be fully accessible to and independently usable by [himself] and other blind or visually-impaired people" using screen readers pursuant to version 2.0 of W3C's Guidelines, thereby preventing him from completing purchases. Domino's filed a motion for summary judgment, requesting the Court either dismiss the case with prejudice, or in the alternative, dismiss or stay the case pending the DOJ's final rulemaking on the applicable Guidelines.

In his order granting Domino's motion to dismiss, Judge Otero first framed the question presented as "whether and to what extent the ADA, a statute enacted before the widespread adoption of the Internet, regulates the manner in which companies can permissibly engage in e-commerce." For purposes of the analysis, the Court assumed the applicability of Title III of the ADA, and rejected Domino's argument that the suit should be dismissed because the ADA was not drafted with the specific regulation of virtual spaces in mind and noting the nexus between Domino's websites and its brick-and-mortar pizza stores.

Domino's also challenged the suit on due process grounds, arguing that "the DOJ has not promulgated concrete guidance regarding the accessibility standards an e-commerce webpage must meet, much less required that companies operating such webpages comply with the specific standards Plaintiff references in his Complaint." The Court found merit in Domino's due process challenge and rejected the plaintiff's attempt to impose specific technical

requirements on all regulated entities without specifying a particular level of technical compliance and without the DOJ offering meaningful guidance on the topic. The Court held such a request "flies in the face of due process." The Court also rejected plaintiff's reliance on DOJ Statements of Interest, consent decrees, and settlements from other ADA cases, as cited above, as insufficiently similar to the facts of the instant case.

The Court gave particular weight to the fact that the DOJ has yet to issue regulatory guidance, despite a formal rule making process that began in 2010. The Court noted "the vagueness concern that forms the basis of Defendant's Motion, and demonstrate[s] why a lack of formal guidance in this complex regulatory arena places those subject to Title III in the precarious position of having to speculate which accessibility criteria their websites and mobile applications must meet." After granting summary judgment and dismissing all of the Plaintiff's causes of action, the Court called upon the DOJ to issue implementing regulations on web accessibility under Title III.

Practical takeaways

In the short term, operators of websites and mobile sites should try to comply with ADA requirements to the extent practicable, to mitigate legal risk and render their online services available to a larger audience. This is particularly true for any operator whose products or services are related to physical stores open to the public, which the courts agree are required to provide accessible web and mobile sites. For detailed instructions, companies can look to the WCAG 2.0AA or AAA, developed

by the W3C, for guidance. But, when faced with a class action lawsuit or other controversies, companies can take some comfort in the fact that these stringent and potentially burdensome standards have not yet been adopted as the governing standard, and other, less onerous ways of accommodating the disabled may provide some defence. For example, in the *Robles* case, the Court noted that the website at issue provided a toll-free number on every page legible to a screen reader, which phone number was manned around the clock by an operator who would take the customers' orders or questions individually. While this may not be practicable for all companies, accommodate all disabilities, or be approved by courts in all jurisdictions, it was nevertheless a defensible accommodation employed successfully in that case and courts continue to have a practical, rather than purely technical, perspective of such attempts to accommodate.

In the long term, companies should monitor new legislation or pronouncements from the DOJ as to which set of standards will be applied to websites and mobile apps. However, these pronouncements may not be made yet for quite some time since the Trump Administration has reduced the budget of the DOJ, and hopes to focus the agency on immigration and violent crime¹⁰. Analysts have opined that civil rights initiatives may therefore take a back seat to other DOJ activities¹¹, meaning the adoption of specific ADA guidelines will not likely be a top priority in the next four years.