Litigation Alert: The ADA and Website Accessibility—The Latest Chapter

January 18, 2019

Over the last few years, private businesses have faced a flood of lawsuits under Title III of the Americans with Disabilities Act (ADA), alleging their websites and mobile applications are not fully accessible to the blind and visually impaired. The law in this area continues to evolve, but, in general, courts have not been friendly to defendants in the early stages of these cases.

Earlier this week, the Ninth Circuit Court of Appeals issued an opinion that will likely embolden the plaintiffs' lawyers who have been bringing these cases against unsuspecting defendants. In *Robles vs. Domino's Pizza*, No. 17-55504, __ F. 3d __ (9th Cir. Jan. 15, 2019), the Ninth Circuit held that:

- Domino's had fair notice that its website and mobile apps must comply with the ADA, even though the federal government has yet to promulgate regulations specifically defining what businesses must do to make their websites and mobile apps ADA compliant. On this issue, the Ninth Circuit reversed the district court, which held that Domino's due process rights would be violated by requiring it to comply with the ADA absent clear regulations or standards on website and mobile app accessibility.
- It would be improper to invoke the prudential doctrine of primary jurisdiction, which gives courts the discretion to stay or dismiss lawsuits pending the resolution of an issue within the special competence of an administrative agency. On this issue, the Ninth Circuit again reversed the district court, noting the Trump Administration recently terminated a rulemaking process intended to provide clarity in this area, and that a stay or dismissal of the case would improperly delay the resolution of the plaintiff's claims.

The *Robles* decision is one of the few appellate decisions to date on website and mobile app accessibility, and it provides another reason for private businesses to play it safe in this area. That is particularly true for businesses with highly interactive websites or apps designed to facilitate transactions that might otherwise be completed in a brick-and-mortar store.

Gray Plant Mooty has advised a number of clients in this area and regularly works with IT departments and independent accessibility consultants to identify accessibility strategies that make sense for the client's business, provide appropriate levels of accessibility for the blind and visually impaired, and minimize exposure under the ADA and analogous state laws. Those strategies may include:

- Making sure websites and mobile apps are designed to comply with private industry standards promulgated by the World Wide Web Consortium, a nonprofit organization dedicated to promoting international standards for website and mobile app accessibility.
- Adopting and publicly displaying an accessibility policy on a website or mobile app.
- Maintaining a telephone hotline that website and mobile app users can call if they encounter accessibility issues.

Please contact us if you or a business owner you know would like to discuss what you can do to maintain appropriate levels of accessibility and guard against ADA claims in this area.