# Litigation Alert: Supreme Court Review Sought in ADA Website Accessibility Case

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In the beginning of this year, we reported on a decision by Ninth Circuit Court of Appeals in *Roble v. Domino's Pizza, Inc.,* 913 F.3d 898 (9th Cir. 2019), holding that the Domino's website and mobile app, which are available for customers to use to order pizzas and other Domino's products, were required to comply with the requirements of the Americans With Disabilities Act. See "Litigation Alert: The ADA and Website Accessibility — The Latest Chapter", by Brian Dillon (January 18, 2019). There, the plaintiff, Robles, had a visual impairment and complained that the Domino's website and mobile app were not compatible with the screen-reading software that he used to access the Internet. The Ninth Circuit held that the website and app constituted "place of public accommodation" under the ADA and were therefore required to be usable by persons with impaired vision. On June 17, 2019, Domino's filed a petition with the United States Supreme Court seeking review of the decision.

In support of its petition for review, Domino's notes both the uncertain state of the law and the costs that result from that uncertainty. The ADA, passed in 1990 and amended in 2008, does not mention the Internet. The Department of Justice, which is the federal agency chiefly charged with enforcing the ADA, has stated generally that the ADA applies to websites but has yet to articulate clear guidance to enable companies to assure that their websites and mobile apps comply. DOJ announced in 2010 an intent to adopt rules regarding website accessibility but, in the face of technological and numerous other complicating factors, abandoned that plan in 2017. DOJ has not given any indication of when it might return to this task. It did, however, recently announce that the failure to comply with voluntary technical standards (such as Web Content Accessibility Standards or "WCAG") does not necessarily show noncompliance with the ADA.

Courts have struggled with these issues in a variety of contexts but they have failed to fashion a coherent set of principles to guide companies in their efforts to ensure that their websites and mobile apps comply with the ADA. Some courts have held that "standalone" websites, not associated with any "brick and mortar" physical location, are places of public accommodation that are required to be accessible to persons with disabilities. Other courts have reached exactly the opposite conclusion, finding that "web only" businesses do not meet the definition of a place of public accommodation under the ADA. In the view of those courts, in order for there to be a place of public accommodation subject to the ADA, there must be some physical place. Some courts have held that all modes of accessing the goods or services of a public accommodation

— physical or virtual — must be accessible while other courts have looked to the availability of alternatives for obtaining the good or services of a public accommodation in determining whether persons with disabilities enjoy equal access.

The Big Picture is this:  When it comes to legal requirements regarding website and mobile app accessibility, the law is very much a work in progress. There can be little doubt that this uncertainty has contributed to an explosion of litigation in the area of website accessibility. Over 2,250 such suits were filed in 2018, triple the number filed in the previous year. It is reasonable to expect more litigation of these issues in the future. It remains to be seen whether the Supreme Court will use the opportunity presented by the *Domino's* case to provide certainty that might alter this trend. So stay tuned.

For more information, reach out to a member of the Gray Plant Mooty Litigation Practice Group.

**Links**

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