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COURT DISMISSES ADA CHALLENGE TO WEBSITE AND MOBILE APP

A California district court has dismissed a case on due process grounds that alleged that a website and mobile application were not accessible to blind or visually-impaired people in violation of the federal Americans with Disabilities Act ("ADA") and California civil rights statutes. *Robles v. Dominos Pizza LLC*, No. 16-06599 (C.D. Cal. Mar. 20, 2017).

The defendant operates a website and mobile application through which users can order food from brick-and-mortar pizza stores. The plaintiff alleged that defendant's website and mobile application did not permit a visually-impaired user to complete a purchase using a particular screen-reading software program. According to the plaintiff, the website and mobile application did not comply with version 2.0 of W3C's Web Content Accessibility Guidelines ("WCAG"), which has three different compliance levels or success criteria, in violation of the ADA.

The court noted that the Department of Justice ("DOJ") issued a notice of proposed rulemaking in July 26, 2010 indicating that the DOJ was considering establishing standards under the ADA to make websites accessible to individuals with disabilities. See ALERT of Aug. 5, 2015. The notice discussed (and solicited comments regarding) existing industry website accessibility standards, including the WCAG. The DOJ has yet to issue a final rule on website accessibility.

Imposing a requirement that website operators comply with the WCAG without specifying a particular level of success criteria and without the DOJ offering meaningful guidance on the topic "flies in the face of due process," according to the court.

The plaintiff attempted to argue that the defendant's due process rights are not violated because the DOJ has issued several Statements of Interest in various cases and has entered into consent decrees and settlements that have obligated entities to follow particular WCAG success criteria. Based on Ninth Circuit precedent, the court declined to give deference to the DOJ's proposed regulation or documents filed by the DOJ in the course of litigation.

Even if the court gave deference to these DOJ documents, the court concluded that the documents proffered by the plaintiff did not provide meaningful guidance on website accessibility. The DOJ

issued the Statements of Interest in cases that were materially different from the present case. The decrees and settlements highlight the court's due process concerns insofar as the consent decrees and settlements each required the particular website operator to comply with a different level of WCAG success criteria.

The court ended its opinion by (i) acknowledging website operator's precarious position of having to speculate on which accessibility criteria to follow without formal guidance from the DOJ and (ii) calling on Congress, the U.S. Attorney General and the DOJ to establish appropriate minimum website accessibility standards.

This case should provide some relief to website operators caught up in the flurry of website accessibility challenges being filed under the ADA. Nonetheless, website operators should be sensitive to website accessibility concerns and take reasonable steps to enable individuals with disabilities to access the goods and services available on a website. We can assist with website review and suggestions for improvement. □

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