

Update: Supreme Court Declines to Review Web Content Accessibility Suit Against Domino's Pizza

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In the fall of 2018, Microsoft released its Xbox Adaptive Controller, which is made for those with limited mobility. As Microsoft artfully put it in a television commercial advertising the new product, "When everyone plays, we all win."

Commercials like that one are welcome reminders that accessibility is important to consumers, and companies that make accessibility a priority win consumers' hearts - and their business.

Over the years, you've likely addressed accessibility issues under the Americans with Disabilities Act related to your brick-and-mortar locations. But did you know that the Department of Justice (DOJ) and some courts have interpreted the ADA to require that disabled users be provided with equal access to the products, services, and information offered through your website and mobile application?

Though accessibility appears to be required, there are no statutes or regulations telling businesses how to comply. Instead, the DOJ has indicated that businesses have flexibility in determining how to ensure accessibility. This flexibility has created uncertainty, which has led to a surge in the number of court cases in which disabled plaintiffs allege that they were not able to access businesses' websites.

In June, Domino's Pizza filed a petition with the United States Supreme Court asking it to overturn the lower court's decision allowing a web content accessibility suit to proceed against the company. But in October, the Supreme Court declined to review the decision, returning the case to the lower court to be decided on its merits. Because the court declined to weigh-in on the issue and provide much-needed clarity to businesses, the number of website accessibility lawsuits filed by private plaintiffs will likely continue to rise.

In the absence of clear standards and regulations, what should lenders do to evaluate the accessibility of their web content? Courts and regulators typically have required businesses to measure and improve the accessibility of their websites by following the Web Content Accessibility Guidelines (WCAG) 2.0 (now currently in version 2.1), designed to make web content more accessible to people with various accessibility challenges, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities. The WCAG is broken down into 12 guidelines, organized under

four overarching design principles: Perceivable, operable, understandable, and robust. For each guideline, the WCAG gives users testable criteria to determine which of the three levels of conformity has been attained: Level A (Lowest), Level AA or Level AAA.

In its enforcement actions, the DOJ has generally mandated compliance with Level AA, suggesting that companies should strive to meet that level of conformity. As a result, these guidelines appear to provide the best means of fixing existing accessibility barriers and ensuring that future web content does not contain those barriers.

The path to accessibility begins with a check-up using a third-party tool or auditor to review your website and mobile applications. Next, you should develop a plan to implement any recommended updates or improvements. You also should develop web content accessibility policies and procedures that provide for employee training, in addition to regular audits and corrective measures to ensure ongoing accessibility, as technology changes and new content is added or deleted. You should also consider developing a "help desk" mechanism to provide an alternate means of accessing any inadvertently inaccessible features in your web content.

The Internet has become an indispensable source of information, goods, and services for most individuals. Make sure consumers know that you're committed to accessibility for all - not just at your brick-and-mortar locations, but also on your website. Failure to do so opens the door for private plaintiffs and federal regulators to pursue claims against your company for lack of compliance, including claims for damages and reimbursement of attorneys' fees.

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