

Website accessibility: Does your company's website violate the ADA?

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On June 15, 2017, following the first trial conducted over website accessibility under the Americans with Disabilities Act (ADA), a federal district court found that supermarket chain Winn-Dixie's website violated the ADA and awarded injunctive relief and attorneys' fees against the company.¹ This is the first occasion where a judge has ordered compliance with the Wide Web Consortium Accessibility Guidelines (WCAG 2.0) under the ADA,² and the verdict has significant implications for other businesses.

Background: *Gil v. Winn-Dixie Stores, Inc.*

The plaintiff in *Gil v. Winn-Dixie Stores, Inc.* used computer access technology software, including screen reading software, to access various websites but found that Winn-Dixie's website was incompatible with the software. According to Gil, who is legally blind, 90 percent of the tabs on the website did not work with his software, and he could not obtain digital coupons, navigate the website's store locator tool, or refill his prescriptions online for in-store pickup or delivery. The plaintiff's expert testified that "all of the issues/problems found on the Winn-Dixie website" would have been addressed if WCAG 2.0 had been implemented.³

Under the ADA, a place of public accommodation must make reasonable modifications in policies, practices and procedures to accommodate people with disabilities.⁴ Without reaching the question of whether a website standing alone⁵ constitutes a place of public accommodation, the federal court held that "[w]here a website is heavily integrated with physical store locations and operates as a gateway to the physical store locations...the website is a service of a public accommodation..."⁶ The court noted that while customers cannot make purchases on Winn-Dixie's website, they can manage prescriptions, link coupons to the customer's rewards card and find physical store locations. As a result, the court held that Winn-Dixie's "website is heavily integrated with Winn-Dixie's physical store locations, operates as a gateway to the physical store locations," and is, therefore, subject to the ADA.⁷

The court orders Winn-Dixie to comply with WCAG 2.0

Upon finding that Winn-Dixie's website was inaccessible to individuals with disabilities, the court ordered Winn-Dixie to adopt an accessibility policy. And, although the WCAG 2.0 guidance has not been adopted as regulation or codified as law, the court required that Winn-Dixie's policy and website function comply with these standards established by the World Wide Web Consortium (W3C), an international nonprofit organization that sets internet standards.⁸ WCAG includes a wide range of guidelines for making web content more accessible to individuals with disabilities. The court also ordered the company to conduct mandatory testing and training going forward to ensure WCAG compliance. Significantly, Winn-Dixie is not only responsible for the content on its website but for ensuring that third-party vendor websites placed or linked on the company's website are accessible.

What can companies do now?

While the Winn-Dixie decision is not binding on other federal courts, it will likely be used as guidance by other jurisdictions and will spur more website accessibility lawsuits and demand letters. As the law on this issue continues to develop, companies can

act proactively by:

- Implementing website modifications that improve the accessibility of the company website and mobile apps for disabled individuals
- Developing a web accessibility policy
- Providing employee training on ADA and accommodations issues
- Becoming familiar with the WCAG 2.0 Level AA standards
- Confirming that the websites for vendors and other business partners that are linked on the company's site are accessible
- Drafting or revising contracts with vendors and other business partners to include indemnification provisions and other protection from website accessibility lawsuits

¹ Gil v. Winn-Dixie Stores, Inc., No. 16-23020-Civ-Scola (S.D. Fla. 2017).

² In recent years, there have been several legal challenges involving website accessibility at colleges or universities, resulting in settlement agreements which require adoption of WCAG 2.0, among other terms.

³ Id. at 13.

⁴ 42 U.S.C. § 12182(b)(2)(A)(ii) (2017).

⁵ Courts have reached different conclusions on this issue. See e.g., Oullette v. Viacom, No. CV 10-133-M-DWM-JCL (D. Mont. 2011) (finding that “neither a website nor its servers are ‘actual, physical places where goods or services are open to the public,’ putting them within the ambit of the ADA”); See contra National Ass’n of the Deaf v. Netflix, 869 F. Supp. 2d 196 (D. Mass. 2012) (holding that public accommodations do not require physical locations).

⁶ Winn-Dixie, No. 16-23020-Civ-Scola, at 19 (citations omitted).

⁷ Id. at 20.

⁸ The Winn-Dixie ruling conflicts with another recent federal court decision. Robles v. Domino’s Pizza, Inc., CV 16-06599 SJO (SPx) (C.D. Cal. 2017) (granting Domino’s motion to dismiss an ADA claim brought by a visually impaired individual and explaining that requiring compliance with standards that the Department of Justice (“DOJ”) has not adopted violates Domino’s constitutional right to due process). However, the DOJ has filed a Statement of Interest in another case urging the Court to reject the Domino’s Pizza ruling.

Authors
