Section 504, ADA Title III, and the Architecture of Addictive Design

Recipient Liability, Public Accommodation Coverage, Disparate Impact, and the Civil Rights Remedy for Platform Design Harm

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April 17, 2026

ABSTRACT

In forty-eight hours on March 24 and 25, 2026, two juries returned verdicts against the major social media platforms on records establishing that addictive design was intentional, that internal research confirmed disproportionate harm to vulnerable minors, and that remediation was technically feasible but withheld. A Santa Fe jury assessed approximately $375 million in civil penalties against Meta in *New Mexico v. Meta Platforms, Inc.*; a Los Angeles jury found Meta and Google liable for negligent design in *KGM v. Meta & YouTube*. This Article argues that those records, though tried under negligence and consumer protection theories, establish the elements of federal civil rights claims that are categorically stronger and systemically more consequential. Two statutory frameworks reach the conduct in parallel. Section 504 of the Rehabilitation Act reaches the purpose-built education and health care verticals of Microsoft, Alphabet, Apple, and Amazon; ADA Title III, which requires no recipient status, reaches the general consumer platforms under *Robles v. Domino's Pizza*. Neither framework requires proof of discriminatory intent: *Alexander v. Choate* holds that Section 504 reaches thoughtlessness and indifference as well as animus, and the platforms' empty design record, containing no documented consideration of accessibility, disparate impact, or alternatives, is affirmative evidence of that standard rather than a defense. The Article maps recipient status under the four pathways of 29 U.S.C. § 794(b)(3), the correspondence between specific addictive design mechanisms and protected disability classes, the inaccessible consent gate as an

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independent violation, the *Sandoval*, *Cummings*, and Section 230 challenges, and enforcement pathways that do not depend on individual damages plaintiffs.

Keywords: Section 504, Rehabilitation Act; ADA Title III; disability civil rights; disparate impact; addictive design; platform accountability; public accommodations; *Alexander v. Choate*; *Robles v. Domino's Pizza*; methods of administration; injunctive class actions; protected disability classes.

Contents

I. Introduction

The *KGM* verdict was described in press accounts as the "tobacco moment" for social media. The comparison is apt. Industry executives testified under oath. Internal documents admitting knowledge of harm were entered into evidence. Expert testimony linked design choices to addictive mechanisms with comparisons to slot machines and controlled substances. A jury found both defendants liable and awarded compensatory and punitive damages. The verdict is under appeal, but its factual record is public and its evidentiary weight will persist regardless of appellate outcome.

The comparison to tobacco litigation is incomplete in one material respect. The transformation of tobacco regulation resulted not only from product liability litigation but from a convergence of enforcement mechanisms: individual tort suits, state attorneys general acting under state consumer protection statutes, federal regulatory action by the Food and Drug Administration, and ultimately the Master Settlement Agreement. No single theory was sufficient. A range of theories, operating in parallel, produced the legal and regulatory conditions for systemic change.

The social media litigation as currently configured rests primarily on negligence theory, with some state consumer protection and youth protection overlays. Multi-district litigation 3047 and the California Judicial Council Coordination Proceeding 5255 both operate under product liability and negligence frameworks.[*] State attorneys general actions against Meta and TikTok invoke consumer protection statutes, and one such action has now reached verdict: on March 24, 2026, a New Mexico jury found Meta liable under the state's Unfair Practices Act and assessed the statutory maximum of $5,000 per violation, totaling approximately $375 million in civil penalties.[†] The federal civil rights framework, however, has been absent. This Article argues that its absence is an oversight, that the framework is directly applicable, and that its application would substantially strengthen the systemic relief available against the platforms.

[*] *In re Social Media Adolescent Addiction/Personal Injury Prods. Liab. Litig.*, MDL No. 3047 (N.D. Cal.); JCCP 5255 (Cal. Super. Ct., L.A. County).

[†] *See, e.g.*, *New Mexico v. Meta Platforms, Inc.*, No. D-101-CV-2023-02838 (N.M. 1st Jud. Dist. Ct.) (jury verdict March 24, 2026, assessing $375 million in civil penalties; second phase bench trial on public nuisance and injunctive relief commencing May 4, 2026); multistate AG action against TikTok announced October 2024.

The *KGM* record establishes facts that satisfy the elements of federal disability-discrimination claims under two distinct statutory frameworks that this Article develops in parallel. The design features the jury condemned are mechanisms calibrated to exploit specific neurological vulnerabilities. Those vulnerabilities define protected disability classes under the Americans with Disabilities Act and Section 504. The platforms' own internal research, now public through the *KGM* trial, establishes their knowledge of the disparate impact. The platforms' own counsel admitted in open court that the challenged features can be disabled.

The framework structure this Article develops has two parallel tracks. Section 504 of the Rehabilitation Act reaches the platform operators' purpose-built vertical products in the enumerated service categories of education, health care, housing, social services, and parks and recreation. Major platform operators and their purpose-built vertical subsidiaries have documented recipient pathways through public records maintained by the United States Treasury, though coverage is defendant-specific and pathway-specific rather than uniform across all platforms. ADA Title III, which does not require recipient status, reaches the general consumer products that Section 504 does not reach under its revenue-weighted principal-engagement analysis. Title III's coverage of websites and mobile applications has been developed through *Robles v. Domino's Pizza*[‡] and subsequent cases, and the WCAG 2.1 AA technical standard has been adopted by federal courts as the prevailing benchmark for digital accessibility in Title III enforcement. The dual-framework structure is essential because the Section 504 pathway reaches Microsoft, Alphabet, Apple, and Amazon through documented recipient pathways that vary in strength and scope by defendant, while its application to Meta's consumer platforms requires contested recipient-pathway analysis. Title III reaches Meta's consumer products and the other defendants' consumer products directly on the terms of the statute, without the recipient-status fight.

The remedies available under the federal civil rights frameworks differ from those available under negligence in ways that matter for systemic impact. Negligence produces per-plaintiff damages. The civil rights frameworks produce injunctive relief reshaping product defaults, enforced through administrative action by the Office for Civil Rights (under Section 504), Department of Justice enforcement (under Title III), private injunctive class actions (under both statutes), Protection and Advocacy agency suits (under Section 504), and state attorney general enforcement under the parens patriae doctrine (under both statutes, as well as state disability-rights laws that incorporate or parallel federal standards). The injunctive remedy reaches every user of the redesigned product, not only the plaintiffs who sued.

[‡]*Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 122 (2019).

Part II examines the *KGM* record and its implications beyond negligence theory. Part III establishes the coverage analyses under both statutory frameworks, with Part III.A addressing Section 504 recipient status and the four pathways of 29 U.S.C. § 794(b)(3), including the principal engagement analysis under § 794(b)(3)(B) as applied to purpose-built vertical products, and Part III.B addressing ADA Title III public accommodation coverage for digital services under *Robles* and subsequent authority. Part IV conducts the disparate impact analysis under both statutes, identifying the mapping between addictive design mechanisms and protected disability classes, developing the *Alexander v. Choate* thoughtlessness-and-indifference framework as the doctrinal core of the analysis, addressing the inaccessible consent gate as an independent violation under both statutes, and situating the analysis within the parallel authority of the 2024 HHS final rule at 45 C.F.R. § 84.84. Part V engages the principal doctrinal challenges, distinguishing those that apply to the Section 504 framework (*Sandoval*, *Cummings*) from those that apply to both frameworks (Section 230) and from those specific to Title III. Part VI identifies the enforcement pathways available under each framework. Part VII concludes.

The independent contribution of this Article is the factual-predicate analysis of the *KGM* and *New Mexico v. Meta* verdicts as a civil rights enforcement record, the dual-framework Section 504 and Title III coverage map for the general-purpose social media platforms, and the proposed subsidiary-level and product-line-level application of § 794(b)(3)(B) principal engagement to purpose-built vertical products.

II. The KGM Factual Record and Its Legal Significance Beyond Negligence

A. The Verdict and the Trial Record

The plaintiff in *KGM v. Meta Platforms, Inc. & YouTube LLC* began using YouTube at age six and Instagram at age nine.[§] The lawsuit alleged that the design features of both platforms caused addictive use that contributed to depression, body dysmorphia, anxiety, and suicidal ideation.[¶] TikTok and Snap, initially co-defendants, settled out of court in

[§] *KGM v. Meta Platforms, Inc. & YouTube LLC*, JCCP 5255, bellwether trial (Cal. Super. Ct., L.A. County, verdict Mar. 25, 2026).

[¶] Plaintiff's trial brief, *KGM v. Meta & YouTube*, at 3-7 (on file with court).

December 2025 for undisclosed amounts. The trial proceeded against Meta and Google (as YouTube's parent).

On March 25, 2026, after more than forty hours of deliberation, the jury found both defendants liable for negligent design. The verdict awarded three million dollars in compensatory damages and three million dollars in punitive damages.[‖] The verdict is the first bellwether determination in a consolidated litigation pool of approximately 1,600 individual plaintiffs and 800 school district claims.[**]

The trial produced a substantial evidentiary record that is now public. Of particular salience for the civil rights analysis developed in this Article are the following items.

First, Meta's "Project Myst" study, which surveyed 1,000 teens and their parents. The study found that children who had experienced "adverse events" such as trauma and stress were particularly vulnerable to addictive use patterns on Meta platforms. The study also found that parental supervision and control settings had little impact on use patterns.[††]

Second, internal Google documents comparing YouTube's engagement mechanics to those of a casino.[‡‡] Internal Meta communications in which employees characterized Instagram as "like a drug" and themselves as "basically pushers."[§§]

Third, internal Meta strategy documents stating that eleven-year-olds were four times as likely to return to Instagram compared to competing platforms, despite the platform's stated thirteen-year-old minimum age requirement.[¶¶] Additional internal communications including the statement that "If we wanna win big with teens, we must bring them in as tweens."[***]

Fourth, testimony from Mark Zuckerberg, Adam Mosseri, and platform engineers regarding the design and operation of algorithmic recommendation systems, autoplay, infinite scroll, push notifications, and variable reward mechanics.[†††]

Fifth, expert testimony linking the design features to behavioral addiction mechanisms comparable to gambling disorder and substance use disorder.[‡‡‡]

[‖] Verdict sheet, *KGM v. Meta & YouTube* (Mar. 25, 2026).

[**] Status report, JCCP 5255 (Jan. 2026).

[††] Project Myst exhibit, admitted into evidence, *KGM v. Meta & YouTube*. See also coverage in CBS News, NPR, Al Jazeera, summarizing trial testimony.

[‡‡] Internal Google documents admitted in *KGM* trial.

[§§] Internal Meta communications admitted in *KGM* trial.

[¶¶] Meta strategic planning document admitted in *KGM* trial, referenced in press coverage.

[***] Internal Meta communication admitted in *KGM* trial.

[†††] Trial testimony, *KGM v. Meta & YouTube*, Feb.-Mar. 2026.

[‡‡‡] Expert witness testimony of plaintiffs' behavioral addiction experts in *KGM*.

Sixth, an open-court admission by Google's trial counsel that "all of the YouTube features Lanier challenged in his opening statement could be disabled and modified to match users' preferences."[§§§]

B. What Negligence Established

The jury finding established, for purposes of subsequent litigation and public policy, the following as matters of fact.

First, the design features of Instagram and YouTube, including infinite scroll, autoplay, push notifications, algorithmic recommendations, and variable reward mechanics, were a substantial factor in the harm to the plaintiff.

Second, the defendants knew or reasonably should have known of the potential for harm, based on their internal research.

Third, the features were deliberately engineered to maximize engagement, rather than being neutral design choices or emergent properties of technology.

Fourth, parental controls and user-side mitigations did not, as documented in the defendants' own research, meaningfully reduce the harm.

Fifth, the features were technically susceptible to modification or disablement by the companies.

These findings are dispositive under negligence doctrine for the plaintiff's individual claim. They do not automatically establish liability to other plaintiffs, though they will be cited in subsequent bellwether trials and in the broader MDL proceedings. Collateral estoppel operates asymmetrically in favor of subsequent plaintiffs in some jurisdictions, though not all.[¶¶¶]

C. What Negligence Does Not Establish

Negligence theory, even as developed in *KGM*, does not reach several aspects of the conduct at issue that civil rights analysis does reach.

First, negligence does not establish that the harm falls disproportionately on populations protected by federal civil rights statutes. The *KGM* record strongly suggests that the harm is disparate, because the harms identified in Project Myst cluster in children with

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[§§§] Opening statement of Luis Li, counsel for YouTube/Google, *KGM v. Meta & YouTube* (Feb. 2026), as reported by Associated Press and Los Angeles Times.

[¶¶¶] *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979) (permitting offensive collateral estoppel in some circumstances).

trauma, stress, and pre-existing vulnerability. But the jury was not asked to find disparate impact and did not do so.

Second, negligence does not establish that the harm is discriminatory in the civil rights sense. Negligence requires breach of duty and causation. Civil rights disparate impact requires that a facially neutral practice have the effect of discriminating against a protected class. These are adjacent but distinct analyses.

Third, negligence as a remedy produces per-plaintiff damages and does not reshape the defendant's conduct toward the population at large. The *KGM* verdict awards six million dollars to one plaintiff. It does not order Meta or Google to change Instagram or YouTube for any other user. An injunctive civil rights remedy, by contrast, can compel redesign of defaults that reach every user.

Fourth, negligence does not engage the mechanisms available under federal civil rights statutes for administrative enforcement, organizational plaintiff standing through Protection and Advocacy agencies, or the coordination of enforcement across jurisdictions through OCR investigative authority.

The *KGM* record, in other words, establishes the factual predicate for a civil rights claim that has not yet been made. The remainder of this Article develops that claim under the two statutory frameworks that together reach the conduct at issue: Section 504 of the Rehabilitation Act, which applies to recipients of federal financial assistance and reaches the platform defendants' purpose-built vertical products in the enumerated service categories; and ADA Title III, which does not require recipient status and reaches the defendants' consumer products as places of public accommodation under *Robles* and subsequent authority. Part III develops the Section 504 coverage analysis. Part IV develops the ADA Title III coverage analysis. Parts V through VII develop the disparate impact analysis, the doctrinal challenges, and the enforcement pathways under both frameworks in parallel.

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III. Section 504 Recipient Status of Major Platform Operators

A. The Statutory and Regulatory Framework

Section 504 of the Rehabilitation Act of 1973 provides that "no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."[17] The statute applies to every recipient of federal financial assistance, with implementing regulations promulgated by every federal agency that disburses such assistance.[18]

The definition of "recipient" is set forth at 45 C.F.R. § 84.10[19] and parallel regulations of other agencies:

> Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.[20]

The definition includes three categories of recipient status relevant to the analysis that follows. First, entities receiving federal financial assistance directly. Second, entities receiving federal financial assistance through another recipient, i.e., sub-recipients. Third, successors, assignees, or transferees of recipients.

The scope of Section 504 coverage was clarified by the Civil Rights Restoration Act of 1987, enacted in response to *Grove City College v. Bell*.[21] The CRRA added 29 U.S.C. § 794(b), which defines "program or activity" through four paragraphs distinguishing among categories of recipient.[22] For state and local government entities under § 794(b)(1), and for educational institutions under § 794(b)(2), CRRA extends Section 504 coverage to the entity's full operations where any part of the entity receives federal financial assistance. For private corporations, partnerships, and sole proprietorships, the CRRA rule is narrower and is set out in § 794(b)(3), which provides four distinct bases of coverage:

> (3) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—
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> (A) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

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[17] 29 U.S.C. § 794(a).

[18] *See, e.g.*, 45 C.F.R. Part 84 (HHS); 34 C.F.R. Part 104 (Education); 28 C.F.R. Part 41 (DOJ coordination regulations); 49 C.F.R. Part 27 (DOT); 24 C.F.R. Part 8 (HUD).

[19] The "recipient" definition, including the "successor, assignee, or transferee" language, was redesignated from former 45 C.F.R. § 84.3(f) to 45 C.F.R. § 84.10 by HHS final rule, 89 Fed. Reg. 40180 (May 9, 2024), effective July 8, 2024. The substantive text was preserved verbatim.

[20] 45 C.F.R. § 84.10.

[21] *Grove City Coll. v. Bell*, 465 U.S. 555 (1984).

[22] Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28; codified as 29 U.S.C. § 794(b).

> (B) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
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> (C) any other corporation, partnership, private organization, or sole proprietorship, to the extent that it receives federal financial assistance; or
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> (D) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship.[23]

The structure is material to the analysis that follows. Under § 794(b)(3)(A), corporation-wide coverage attaches where federal financial assistance is extended to the corporation as a whole, as with general-purpose corporate-level awards extended to the corporation as a whole. Under § 794(b)(3)(B), corporation-wide coverage attaches where the corporation is principally engaged in one of five enumerated service categories: education, health care, housing, social services, or parks and recreation. Under § 794(b)(3)(C), coverage for other corporations extends to the specific programs or operations that receive federal financial assistance. Under § 794(b)(3)(D), coverage extends to the specific plant or geographically separate facility to which assistance is extended.

A corporation that receives program-specific or facility-specific federal financial assistance, and whose principal business is not one of the § 794(b)(3)(B) service categories, obtains Section 504 coverage limited to the specific program or facility funded. The broad "all operations" rule from § 794(b)(1) does not extend to such a corporation. A different analysis governs where the corporation's assistance is extended at the entity level under § 794(b)(3)(A) or where the corporation's principal engagement qualifies under § 794(b)(3)(B). This Part examines each pathway for the platform defendants relevant to the *KGM* record.

The distinction between federal financial assistance (which triggers Section 504) and federal procurement contracts (which generally do not) was clarified by the Federal Grant and Cooperative Agreement Act of 1977.[24] Under the FGCAA, the principal-purpose test determines instrument selection. Procurement contracts are used when the federal government is acquiring goods or services for its own direct benefit. Grants and cooperative agreements are used when the federal government is providing assistance to a recipient for a public purpose. The FGCAA requires agencies to use the appropriate instrument and does not

[23] 29 U.S.C. § 794(b)(3).

[24] 31 U.S.C. §§ 6301-6308.

permit agencies to evade civil rights obligations by mislabeling assistance-flavored instruments as procurement.[25] Procurement contracts nonetheless remain relevant to the Section 504 analysis as evidence of the corporation's principal engagement, discussed below.

B. Direct Recipient Status and the Four Pathways of § 794(b)(3)

The United States Treasury maintains USAspending.gov as the official public database of federal award information, pursuant to the Digital Accountability and Transparency Act of 2014.[26] The database classifies awards by type using the Federal Assistance Awards Data System coding scheme, in which codes 02 through 11 (and the F-series prefixed codes) denote categories of financial assistance.[27] Procurement contracts are classified separately under code letters A through E and the IDV series.

Public records accessed via the USAspending API establish direct recipient status for major platform operators. The § 794(b)(3) analysis turns not on whether the corporation received any federal financial assistance but on which of the four pathways in § 794(b)(3) the particular award implicates. The pathway determines the scope of coverage.

Microsoft Corporation. Award ASST_NON_H982300830001_097 records a $6,488,500 cooperative agreement from the Department of Defense for research described as "TOPOLOGICAL QUANTUM COMPUTING."[28] Award ASST_NON_5830222032_012 records a $1,000,000 grant from the Department of Agriculture for research described as "BIO-HARDENED ENVIRONMENTS: INTEGRATING AI-BASED BIOTHREAT DETECTION NETWORKS INTO SITUATIONAL AWARENESS AND RAPID RESPONSE SYSTEMS."[29] These awards are program-specific assistance to discrete research programs at Microsoft. Under § 794(b)(3)(D), Section 504 coverage attaches to the geographically separate facilities receiving the assistance (the quantum computing and biothreat detection research operations) rather than to Microsoft's operations as a whole.

Google LLC. USAspending records identify Google LLC as direct recipient on multiple awards. The largest is Award 9000025833, a $46,000,000 political risk insurance

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[25] *See* 31 U.S.C. § 6303 (requiring agencies to use procurement contracts only where principal purpose is acquisition of goods or services for direct use of the government).

[26] Digital Accountability and Transparency Act of 2014, Pub. L. No. 113-101, 128 Stat. 1146.

[27] USAspending, "Data Dictionary" at www.usaspending.gov/data (defining FAADS assistance type codes).

[28] USAspending record ASST_NON_H982300830001_097.

[29] USAspending record ASST_NON_5830222032_012.

policy from the Overseas Private Investment Corporation (now the U.S. International Development Finance Corporation) for a 300-megawatt wind project in Kenya.[30] Whether this award triggers § 794(b)(3)(A) whole-corporation coverage or § 794(b)(3)(C)/(D) project-specific coverage is contestable, turning on whether the insurance was extended to Google LLC as the corporate policyholder or to the Kenya project as a specified facility. Google LLC also appears as direct recipient on multiple Affordable Connectivity Program payments from the Federal Communications Commission, totaling approximately $3 million across state-level program participations.[31] Those payments implicate § 794(b)(3)(C)/(D) program-specific coverage for Google's broadband operations participating in ACP.

Fitbit LLC. Fitbit LLC appears as sub-recipient on NIH Precision Medicine Initiative awards through Scripps Research Institute as pass-through, totaling approximately $8,780,002 across five sub-awards from 2017 through 2022.[32] The sub-awards establish Fitbit LLC as a sub-recipient of federal financial assistance under 45 C.F.R. § 84.10. The § 794(b)(3) analysis for Fitbit LLC, however, depends substantially on the § 794(b)(3)(B) principal engagement inquiry, addressed separately below.

These examples illustrate the § 794(b)(3) pathway analysis. Microsoft's quantum computing and biothreat grants are § 794(b)(3)(D) facility-specific coverage. Google's OPIC insurance is contested between (A) whole-corporation and (C)/(D) project-specific. Google's ACP payments are (C)/(D) program-specific. Fitbit's NIH sub-grants establish sub-recipient status and additionally trigger the (B) analysis. Table 1 summarizes the analysis.

None of these pathways, standing alone, establishes Section 504 coverage of the parent corporations' general consumer product operations. The pathway that does reach those operations is § 794(b)(3)(B), principal engagement in education, health care, housing, social services, or parks and recreation. That analysis is the subject of the next subsection.

C. Sub-Recipient Status

45 C.F.R. § 84.10 extends recipient status to entities receiving federal financial assistance "through another recipient." Sub-grant relationships, in which a prime recipient passes federal funds to a sub-recipient pursuant to the terms of the prime award, trigger Section 504 obligations at the sub-recipient entity.

[30] USAspending record ASST_NON_9000025833_071 (OPIC political risk insurance to Google LLC, CFDA 70.003 Foreign Investment Insurance).

[31] USAspending records reflecting ACP subsidy payments to Google LLC, FAADS code 06.

[32] USAspending sub-award records identifying Fitbit, LLC as sub-recipient under NIH prime awards to Scripps Research Institute, CFDA 93.310 and 93.368.

Table 1. Section 504 Federal Financial Assistance Pathways for Major Platform Operators

Entity	**Federal award**	**§ 794(b)(3) pathway**	**Coverage scope**
Microsoft Corp.	DoD cooperative agreement, $6,488,500 (topological quantum computing); USDA grant, $1,000,000 (AI biothreat detection)	§ 794(b)(3)(D)	Facility-specific: the funded research operations
Google LLC	OPIC political risk insurance, $46,000,000 (Kenya wind project)	§ 794(b)(3)(A), contested against (C)/(D)	Contested: whole-corporation versus project-specific
Google LLC	FCC Affordable Connectivity Program payments, approximately $3,000,000	§ 794(b)(3)(C)/(D)	Program-specific: ACP broadband operations
Fitbit LLC	NIH Precision Medicine sub-awards, approximately $8,780,002 (via Scripps Research Institute)	Sub-recipient under 45 C.F.R. § 84.10; triggers (b)(3)(B)	Sub-recipient; principal-engagement analysis

USAspending maintains a sub-award database that is searchable independently of the prime award database. Platform operators appear as sub-recipients in substantial numbers.

The National Center for Manufacturing Sciences, a 501(c)(3) research consortium headquartered in Ann Arbor, Michigan, serves as pass-through for Department of Defense commercial technology programs. NCMS sub-awards to Microsoft Corporation total approximately $910,000 across three awards covering cloud-based digital engineering for vehicle predictive maintenance, advanced real-time weld assessment, and data analytics and machine learning for inventory management.[33] Each of these sub-awards independently establishes Microsoft Corporation as a sub-recipient of federal financial assistance under 45 C.F.R. § 84.10.

Similar sub-recipient relationships are documented for other major platform operators through pass-through entities including academic consortia, national laboratories operating under Department of Energy contracts, and nonprofit research institutions.

D. Successor Liability

The regulatory definition of recipient includes "any successor, assignee, or transferee of a recipient." The provision has been largely unlitigated in the context of technology mergers

[33] USAspending sub-award records identifying Microsoft Corporation as sub-recipient under prime awards to National Center for Manufacturing Sciences, Ann Arbor, MI.

and acquisitions, but its text is unambiguous: when a Section 504 recipient is acquired, the acquirer inherits Section 504 recipient status.

Corporate successor liability under federal civil rights statutes is well-developed doctrine, though its application to Section 504 specifically has not yet been litigated; the analysis here proceeds by analogy from the Title VII, FMLA, and FLSA successor cases cited below. Under federal common law, successor liability for federal statutory claims attaches under a substantial-continuity test that considers continuity of workforce, management, physical facilities, product lines, and customer relationships.[34] The test applies to both stock purchases and asset purchases, though the threshold showing differs across circuits.[35] Stock purchases and statutory mergers generally result in automatic successor liability; asset purchases require the substantial-continuity analysis.

The technology mergers and acquisitions landscape provides numerous examples relevant to this analysis.

Google's acquisition of Fitbit, Inc. in January 2021 illustrates successor liability flowing from a documented sub-recipient of federal assistance. Fitbit LLC is a sub-recipient of NIH federal assistance and, as discussed in the next subsection, a candidate for § 794(b)(3)(B) principal engagement coverage. Google's acquisition of Fitbit was structured as a stock purchase with Fitbit LLC continuing to exist as a wholly owned subsidiary, which under 45 C.F.R. § 84.10 retains Section 504 obligations at Fitbit LLC with successor-liability implications reaching Google products that continue Fitbit's business (including Pixel Watch and the Google Health integrations that operate through Fitbit technology).

Smaller acquisitions that brought SBIR, STTR, or other entity-level federal assistance into large platform acquirers are subject to the same analysis. Each such acquisition requires award-specific verification followed by successor-liability analysis under the stock-purchase or substantial-continuity test appropriate to the transaction structure. This Article does not attempt a comprehensive audit of every such acquisition; that audit is a research project identified in Part VI.

[34] *See, e.g.*, *Rojas v. TK Commc'ns, Inc.*, 87 F.3d 745 (5th Cir. 1996); *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086 (6th Cir. 1974).

[35] *Cobb v. Contract Transp., Inc.*, 452 F.3d 543 (6th Cir. 2006) (applying substantial-continuity test in FMLA context); *Steinbach v. Hubbard*, 51 F.3d 843 (9th Cir. 1995) (FLSA context).

E. Principal Engagement Under § 794(b)(3)(B): Purpose-Built Vertical Products as Tailored Services

1. Why This Article Does Not Depend on Parent-Level Principal Engagement

Before developing the principal-engagement analysis that follows, the scope of the argument should be stated clearly. This Article does not argue, and does not need to argue, that the major platform corporations are "principally engaged" in health care, education, or any other enumerated § 794(b)(3)(B) category at the parent-corporation level. A skeptical reading of the statute would treat "principally engaged" as requiring that the enumerated service category be the corporation's dominant line of business by revenue or stated corporate purpose. Under that reading, Google LLC, Microsoft Corporation, Meta Platforms, Inc., Apple Inc., and Amazon.com, Inc. are principally engaged in advertising, cloud computing, consumer electronics, and enterprise software, respectively, not in any of the five enumerated categories. The analysis that follows does not contest that reading at the parent-corporation level.

The Article's principal-engagement claim is narrower and operates at the subsidiary and product-line level. The corporate structure of the major platform operators includes separately organized subsidiaries and product lines that are themselves purpose-built for one of the five enumerated categories: Fitbit LLC (health and fitness), Verily Life Sciences (health care research), One Medical (health care delivery), Nuance Communications (clinical documentation AI), Microsoft Cloud for Healthcare, Google Cloud for Healthcare, AWS Public Sector Healthcare, Microsoft Education, Google Workspace for Education, Apple School Manager, YouTube Health, and YouTube Learning, among others. The § 794(b)(3)(B) principal-engagement inquiry is best applied to these subsidiaries and product lines directly, where the purpose-built character of the offering is evident from its marketing, pricing, compliance regime, and sales organization. Where the subsidiary is separately incorporated, as with Fitbit LLC and Verily, the principal-engagement analysis is subsidiary-level and does not require reaching parent-level principal engagement. Where the offering is a product line rather than a separately incorporated entity, the § 794(b)(3)(B) inquiry at the product-line level is a proposed doctrinal extension discussed in the subsections that follow. The Article's core claims about § 794(b)(3)(A) whole-corporation coverage through direct assistance and successor liability, developed in the preceding subsections, do not depend on any § 794(b)(3)(B) principal-engagement argument at any level.

2. *The Parent-Level Principal Engagement Inquiry*

The § 794(b)(3)(B) pathway provides corporation-wide Section 504 coverage for entities "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation." Courts applying § 794(b)(3)(B) have typically examined the corporation's principal business by reference to revenue mix and stated corporate purpose.[36] Under a purely revenue-weighted analysis, the major platform operators are principally engaged in advertising, cloud services, consumer electronics, and enterprise software rather than in any of the five enumerated categories. That is the better reading of "principally engaged" as applied to the parent corporations, and this Article accepts it.

The balance of this subsection addresses the distinct subsidiary-level and product-line-level inquiry, framed as a proposed doctrinal extension rather than as a description of settled law.

3. *Subsidiary- and Product-Line-Level Principal Engagement: A Proposed Extension*

A revenue-weighted analysis at the parent level is well settled. A parallel doctrinal distinction between general-purpose infrastructure and purpose-built tailored services, applied at the subsidiary or product-line level, is proposed here as an extension. The Supreme Court's decision in *Cox Communications, Inc. v. Sony Music Entertainment* supplies an analogy for the distinction, not a doctrinal transfer.[37] *Cox*, decided March 25, 2026, held unanimously that an internet service provider is not liable for contributory copyright infringement absent intent demonstrated either through affirmative inducement or through provision of a service "tailored to" the infringing use.[38] *Cox* interprets common-law contributory liability in copyright and does not construe § 794(b). The connection drawn here is analogical: the *Cox* distinction between neutral infrastructure and tailored service illuminates a parallel distinction available under § 794(b)(3)(B), where the statutory question is similarly whether the corporation is principally engaged in the enumerated category or is merely providing general-purpose infrastructure that happens to be used in the category. The analogy supports the proposed extension. It does not supply binding doctrinal authority for it.

The statutory text of § 794(b)(3)(B) is compatible with the proposed extension. A subsidiary whose principal business is general-purpose infrastructure is not principally engaged in any of the five enumerated service categories, even when its infrastructure is used

[36] *See Doe v. Salvation Army*, 531 F.3d 355 (6th Cir. 2008) (analyzing principal engagement through organizational purpose and activities).

[37] *Cox Communications, Inc. v. Sony Music Entertainment*, 607 U.S. ___ (2026).

[38] *Id.*, slip op. at 5-7 (Thomas, J.).

by customers in those categories. A subsidiary or product line that builds, markets, and sells services tailored to one of the five categories is, on the proposed extension, principally engaged in that category with respect to those tailored services. Whether that reading prevails in litigation is an open question. This Article proposes the extension; it does not treat it as settled.

The same doctrinal distinction is consistent across the major technology-based infrastructure sectors. Electric utilities that provide general power are not principally engaged in health care; electric utilities that provide medical-grade hospital power services under purpose-built hospital-specific agreements are. Common carriers under Title II of the Communications Act are not principally engaged in health care or education; telecommunications providers offering telemedicine platforms or E-Rate school broadband services under purpose-built category-specific programs are subject to category-specific regulation. Financial services infrastructure providers are not principally engaged in any downstream industry generally; specialized medical billing services and educational financing platforms are regulated under category-specific rules because the financial infrastructure has been purpose-built for the category. The pattern is uniform. General-purpose infrastructure is not principal engagement in downstream categories. Purpose-built category-specific infrastructure is.

The platform defendants have built purpose-built vertical products in § 794(b)(3)(B) categories. A non-exhaustive inventory:

Microsoft Corporation. Microsoft Cloud for Healthcare is a purpose-built cloud platform with HIPAA-compliant infrastructure, FHIR data model support, Epic and Cerner integration, business associate agreements, health care industry sales teams, and health care-specific service level agreements.[39] Dragon Medical One is purpose-built clinical documentation software, acquired through Microsoft's $19.7 billion 2022 acquisition of Nuance Communications, a corporation whose principal business was and remains health care AI.[40] Microsoft 365 Education, Azure for Education, and Minecraft Education Edition are purpose-built educational products, each with FERPA compliance, student data privacy controls, and education-specific sales and support teams.[41]

[39] Microsoft, "Microsoft Cloud for Healthcare," at microsoft.com/en-us/industry/health.

[40] Microsoft Corporation, "Microsoft completes acquisition of Nuance, ushering in new era of outcomes-based AI" (Mar. 4, 2022).

[41] Microsoft, "Microsoft Education," at microsoft.com/en-us/education.

Alphabet Inc. and its subsidiaries. Google Cloud for Healthcare is a purpose-built healthcare cloud platform parallel to Microsoft's.[42] Google Workspace for Education and Google Classroom are purpose-built education products with FERPA compliance, school-specific identity management, and dedicated education sales.[43] Fitbit LLC, acquired by Google in 2021 for $2.1 billion, is a wholly owned subsidiary principally engaged in health and fitness technology; its federal financial assistance history consists exclusively of NIH health research sub-grants, and its federal procurement history consists exclusively of health-related device and research contracts with DoD, VA, NIH, and NASA.[44] Verily Life Sciences and Calico, each a separately operated Alphabet subsidiary, are principally engaged in health care research. YouTube Health and YouTube Learning are vertical product lines operated under YouTube LLC with health care content partnerships and education-specific features.

Apple Inc. Apple Health, HealthKit, ResearchKit, CareKit, and the Apple Watch health features are purpose-built health technology products integrated into iOS and watchOS.[45] Apple has made multiple health-technology acquisitions including Beddit (2017, sleep tracking), Gliimpse (2016, health records), and Tueo Health (2018, pediatric asthma monitoring), indicating sustained capital deployment into the health care category. Apple School Manager and Apple Education are purpose-built education products.

Amazon.com, Inc. Amazon's $3.9 billion 2023 acquisition of One Medical (legally 1Life Healthcare, Inc.) brought a corporation principally engaged in health care delivery into the Amazon corporate family. Amazon operates Amazon Pharmacy, Amazon Clinic, and PillPack (acquired 2018, $753 million), each a purpose-built health care service.[46] AWS Public Sector operates purpose-built vertical offerings for health care, education, and government customers, each with category-specific compliance and support.

Meta Platforms, Inc. Meta's vertical product portfolio in § 794(b)(3)(B) categories is less developed than the other defendants'. Meta does not operate purpose-built health

[42] Google Cloud, "Healthcare and Life Sciences" at cloud.google.com/solutions/healthcare-life-sciences.

[43] Google for Education, at edu.google.com.

[44] USAspending procurement records identifying Fitbit, LLC as vendor on Department of Defense, Department of Veterans Affairs, Department of Health and Human Services, and National Aeronautics and Space Administration contracts for Fitbit health-tracking devices and wearable health technology research.

[45] Apple, "Apple and your health," at apple.com/healthcare.

[46] Amazon, "Amazon Pharmacy," "Amazon Clinic," at amazon.com/pharmacy and health.amazon.com.

care, education, housing, social services, or parks and recreation vertical products comparable to those of Microsoft, Alphabet, Apple, or Amazon. The § 794(b)(3)(B) principal-engagement pathway accordingly reaches Meta less directly than it reaches the other defendants. Coverage of Meta's operations depends on other pathways, including whatever verifiable § 794(b)(3)(A) or (b)(3)(C)/(D) assistance Meta has received and any successor-liability flow from acquired entities.

The litigation-position consistency dimension of this analysis bears emphasis. Google LLC, Amazon.com, Inc., Microsoft Corporation, Mozilla Corporation, and Pinterest, Inc. filed a joint amicus brief in *Cox* supporting the position that their services are neutral general-purpose technology infrastructure that should not bear category-specific liability for downstream uses.[47] They prevailed. Those same corporations cannot credibly and simultaneously market Microsoft Cloud for Healthcare, Google Cloud for Healthcare, and AWS Public Sector Healthcare as purpose-built, HIPAA-compliant, healthcare-tailored offerings commanding premium pricing for their specialization, and then argue in Section 504 litigation that those purpose-built offerings are merely general-purpose infrastructure that happens to be used by health care customers. The contradiction is a credibility problem for the platform defendants and a persuasive litigation-position tension that should weigh on a court's analysis of the § 794(b)(3)(B) principal-engagement question.[48] A service that the corporation markets as tailored, prices as tailored, staffs with specialized sales teams for its tailoring, and certifies under category-specific compliance regimes because of its tailoring, is tailored in the sense relevant to § 794(b)(3)(B). The § 794(b)(3)(B) analysis follows.

Section 504 coverage under § 794(b)(3)(B) accordingly reaches the purpose-built vertical products identified above, regardless of the overall revenue mix of the parent corporation. The disparate impact framework developed in Part IV applies to these vertical products. The consent-gate theory addressed later in Part IV applies to these vertical products. The enforcement pathways identified in Part VI are available against these vertical products. Coverage does not reach general-purpose consumer products that are not tailored to a § 794(b)(3)(B)

[47] Brief of Amici Curiae Google LLC, Amazon.com, Inc., Microsoft Corporation, Mozilla Corporation, and Pinterest, Inc. in Support of Petitioners, *Cox Communications, Inc. v. Sony Music Entertainment*, No. 24-171 (filed Sept. 5, 2025).

[48] The doctrine of judicial estoppel under *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001), operates in this zone but its application as a formal bar is fact-specific and contested. The factors under *New Hampshire* require identity of positions, success in the prior proceeding, and unfair advantage from the position change. Whether the factors are satisfied as to each vertical product is a question for the merits in individual cases. This Article does not argue that judicial estoppel operates as a categorical bar; it argues that the inconsistency is a credibility problem and a persuasive litigation-position tension.

category, such as Instagram, Facebook, general YouTube, general Google Search, or general Microsoft Office. Coverage does reach Microsoft Cloud for Healthcare, Google Cloud for Healthcare, Fitbit's operations and their continuation into Pixel Watch and Google Health, Apple Health and related features, Amazon Pharmacy and One Medical, YouTube Health and YouTube Learning, Microsoft Education, Google Classroom, and the comparable vertical products across the platform defendants.

The § 794(b)(3)(B) pathway supplies whole-entity coverage only once the entity receives federal financial assistance, and for these health verticals the trigger is direct rather than incidental. Medicare and Medicaid reimbursement is itself federal financial assistance for Section 504 purposes.[49] The health verticals identified above operate inside the Medicare and Medicaid payment systems as a condition of doing business: One Medical bills Medicare for its primary-care patients, Amazon Pharmacy adjudicates Medicare Part D and Medicaid prescription claims, and the purpose-built health-cloud platforms are sold to providers whose own operations are saturated with the same federal money. A health vertical that receives Medicare or Medicaid reimbursement is a recipient of federal financial assistance, and under § 794(b)(3)(B) that assistance, taken together with the vertical's principal engagement in health care, reaches the operations of the vertical as a whole. This route depends on no entity-level award, grant, or loan to the parent corporation. It rests on the health vertical's own participation in the federal health-payment systems, which for these products is both ongoing and structural.

F. Meta Platforms and the Title III Pathway

Meta Platforms, Inc. presents a harder Section 504 case than the other platform operators addressed in this Article, because its documented federal-assistance pathways are weaker and its general-purpose consumer platforms are not tailored to a § 794(b)(3)(B) service category. Section 504 reaches Meta, if at all, only through principal-engagement coverage of any health or wellness vertical it operates.

The primary enforcement vehicle against Meta for the design conduct described in the *KGM* and *New Mexico v. Meta* records is ADA Title III, developed in Part IV. Title III's private right of action is uncontested. Title III reaches the consumer-facing platforms (Facebook, Instagram, WhatsApp) as places of public accommodation under 42 U.S.C. § 12181(7), directly in the First and Seventh Circuits and through the nexus theory in circuits that require

[49] *United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1042-46 (5th Cir. 1984) (Medicare and Medicaid payments to a hospital constitute federal financial assistance within the meaning of Section 504).

it. Meta's physical retail presence, including Reality Labs retail operations, supplies physical nexus in nexus-requiring circuits on the analysis developed in Part IV. The meaningful-access and reasonable-modifications analyses under Title III proceed against Meta without the recipient-status and successor-liability complications that attend the Section 504 pathway.

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IV. ADA Title III Public Accommodation Coverage

A. The Statutory Framework and Its Relationship to Section 504

Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."[50] The statute defines public accommodations through twelve enumerated categories at 42 U.S.C. § 12181(7), including "place[s] of exhibition or entertainment," "place[s] of public gathering," "sales or rental establishment[s]," "service establishment[s]," and "place[s] of public display or collection."[51] Title III's coverage does not depend on the defendant's receipt of federal financial assistance. The statute applies to any private entity that operates a qualifying public accommodation, which reaches platform corporations directly regardless of the recipient-pathway analyses that govern Section 504 coverage.

The doctrinal relationship between Section 504 and Title III is complementary rather than substitutive. Where Section 504 applies, it supplies methods-of-administration disparate impact regulations, OCR administrative enforcement authority, and Protection and Advocacy agency standing that Title III does not directly provide. Where Title III applies, it supplies public-accommodation coverage that does not require recipient status, which reaches consumer platforms that Section 504's revenue-weighted principal-engagement analysis does not reach. A comprehensive litigation strategy against the platform defendants deploys both statutes, with each statute targeting the defendants and products for which it is doctrinally cleanest.

[50] 42 U.S.C. § 12182(a).

[51] 42 U.S.C. § 12181(7).

B. Digital Services as Places of Public Accommodation

The central doctrinal question under Title III as applied to platform defendants is whether websites, mobile applications, and digital services qualify as "places of public accommodation." The answer across federal circuits is generally yes, with variation in the doctrinal pathway.

This Article's coverage premise is functional rather than architectural. The twelve categories enumerated in 42 U.S.C. § 12181(7), sales and rental establishments, service establishments, places of public gathering, places of public display, places of education, and the rest, describe functions, not building types. A facility or service falls within Title III when it is operated by a private entity whose operations affect commerce, when its function falls within one of the enumerated categories or their residual clauses, and when it completes the covered activity, whether transaction, service, display, or instruction, between the entity and members of the public. Coverage on this reading does not turn on whether the point of access is architectural, telephonic, digital, or automated. The First Circuit stated the controlling intuition in *Carparts*: it would be irrational to protect a person who enters an office to purchase a service while denying protection to a person who purchases the same service by telephone or by mail, and Congress cannot have intended that result.[52] On the functional reading the platform defendants' consumer services are covered directly, because each performs a function squarely within the enumerated categories. The circuit split described below concerns a narrower question, whether a digital service that performs a covered function must additionally be tethered to a physical place, and the analysis that follows establishes that on the present facts the platform defendants satisfy even the more demanding nexus formulation, so that the coverage result is the same under either reading.

The Ninth Circuit in *Robles v. Domino's Pizza, LLC*[53] held that a pizza chain's website and mobile app, through which customers could order food, were covered by Title III because of their connection to the physical places of public accommodation (the restaurants). The court rejected the argument that Title III reached only physical spaces, holding that the statute reaches "the services of a place of public accommodation" regardless of the medium through which the services are delivered. *Robles* has been followed in the First, Second, Third, Fourth, Seventh, and Ninth Circuits in various permutations.[54]

[52] *Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England*, 37 F.3d 12, 19 (1st Cir. 1994).

[53] Robles, 913 F.3d 898.

[54] *See, e.g.*, Carparts, 37 F.3d 12 (1st Cir. 1994) (public accommodation not limited to physical structures); *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999) (same, in insurance context); *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28 (2d Cir. 1999) (same).

The Ninth, First, Second, Third, and Seventh Circuits have permitted Title III claims against standalone digital services without a physical-nexus requirement, reasoning that the statutory text reaches the services themselves as public accommodations.[55] The Third, Sixth, Ninth, and Eleventh Circuits have applied a nexus requirement in some contexts, requiring that the digital service be connected to a physical place of public accommodation.[56]

The circuit split affects the Title III coverage analysis for platform defendants. Meta's integration with brick-and-mortar retail through Facebook Marketplace listings, Instagram shopping, WhatsApp Business connections to physical establishments, and Reality Labs' physical retail presence in Best Buy and other locations supply the physical nexus where required. Google's integration with physical services through Google Maps, Google Pay, YouTube's physical-venue advertising and ticket sales, and Google Store retail supplies similar nexus. Microsoft's physical stores and retail partnerships, Apple's retail store presence, and Amazon's physical retail operations including Whole Foods and Amazon Fresh supply analogous nexus under the nexus-requiring circuits. Title III coverage of digital services is supported directly in the First and Seventh Circuits, which do not require physical-place nexus, and through the nexus theory in the Third, Sixth, Ninth, and Eleventh Circuits under *Robles* and its predecessors. The question remains open in circuits that have not squarely addressed digital-public-accommodation coverage. Plaintiffs pleading Title III claims outside the First and Seventh Circuits should include factual allegations establishing the relevant nexus sufficient to survive motion to dismiss under the governing circuit's formulation.

For cases where a plaintiff's specific product and injury combination does not cleanly establish physical nexus, three additional doctrinal pathways foreclose the nexus-based dismissal. The first is forum allocation. Plaintiffs seeking to avoid the nexus question entirely can file in the First, Second, or Seventh Circuit, each of which has rejected the physical-nexus requirement outright and holds that digital platforms qualify as places of public accommodation regardless of any physical-place connection. *Carparts*, *Pallozzi*, and *Doe v. Mutual of Omaha* establish the rule in those circuits. The Seventh Circuit's *Mutual of Omaha* holding, however, is also the source of the access-versus-content limitation: Title III governs whether a disabled person can obtain a covered service, not the content or terms of the service itself. Claims that reach the behavior of the product rather than access to it should be anchored in the Second Circuit under *Pallozzi*, the one appellate authority that

[55] *See, e.g.*, *Morales v. Kavulich & Associates, P.C.*, 294 F. Supp. 3d 193 (S.D.N.Y. 2018); *National Federation of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565 (D. Vt. 2015) (digital service qualifies as place of public accommodation under Title III).

[56] *See Ford v. Schering-Plough Corp.*, 145 F.3d 601 (3d Cir. 1998); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997) (nexus-based analysis in the insurance context).

reaches the substance of what a covered service sells. The second is the Section 504 pathway for covered defendants, which imposes no physical-nexus requirement at all because Section 504's coverage unit is the recipient's "program or activity" rather than a "place of public accommodation." A plaintiff challenging an inaccessible digital interface of a Section 504-covered recipient need not establish physical nexus under any circuit precedent; the statutory text eliminates the question. The third is the Market Replacement Doctrine developed in the next subsection, which supplies a substantive legal response to pedantic applications of the nexus requirement even in nexus-requiring circuits.

C. The Market Replacement Doctrine: A Proposed Doctrinal Development

This subsection proposes the *Market Replacement Doctrine* as a statutory-interpretation argument available to Title III plaintiffs in the digital-platform context. The doctrine is not currently black-letter law and has not been adopted under that label by any federal court. The labeling used here flags it as a proposed development rather than a description of settled authority.

The First Circuit in *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Association of New England*[57] articulated the foundational principle that Title III's public accommodation coverage cannot be limited to physical structures without generating absurd results. The court observed that if the coverage requirement were read as strictly geographic, Title III would protect a disabled person who walked into a physical shoe store but strip the same person of all civil rights the moment the transaction moved to a telephone or a mail-order catalog.[58] That 1994 logic operates with particular force when applied to the 2026 economy.

The platform defendants at issue in this Article have restructured entire categories of commerce and public discourse into digital monopolies. Amazon has been widely documented as a primary driver of brick-and-mortar retail decline across categories including books, general merchandise, groceries, and pharmacy.[59] Meta and Google have captured more than half of total U.S. digital advertising revenue and have displaced local newspapers, television stations, and other traditional journalism channels that once served as primary

[57] Carparts, 37 F.3d 12.

[58] *Id.* at 19-20.

[59] *See, e.g.*, Retail Dive, reporting on brick-and-mortar retail closures and Amazon's market share growth, 2018-2025; U.S. Census Bureau Annual Retail Trade Survey, reporting e-commerce share growth from 8.0% of total retail in 2015 to over 16% by 2024.

sources of civic information.[60] YouTube has become the primary news source for substantial portions of the American public: a Pew Research Center survey conducted in August 2025 found that 35% of U.S. adults regularly get news from YouTube and 53% of U.S. adults at least sometimes get news from social media overall.[61] Instagram, Facebook, TikTok, and comparable platforms function as the primary digital public square for civic participation, political discourse, and social community that town squares, community bulletin boards, and public gathering places served in the pre-digital economy.

The applicable doctrinal proposition is straightforward. The ADA was enacted to guarantee disabled persons equal participation in the American economy and civic life. If the courts apply a strict physical-nexus reading of Title III in circumstances where the digital economy has replaced the accessible physical economy that the ADA regulated, the courts do not merely interpret the statute narrowly; they render the statute functionally dead with respect to the economic and civic activity that actually exists. The ADA was passed to remove the stairs that excluded disabled persons from the public accommodations of 1990. If the 2026 economy reconstructs those stairs as dark-pattern consent flows, cognitively inaccessible default designs, and addictive interface mechanics that disproportionately burden the protected class, the statute reaches them or it reaches nothing.

The Market Replacement Doctrine operates as a substantive statutory-interpretation argument with three components. First, the argument that Title III reaches only physical places is inconsistent with congressional purpose because it renders the statute dead letter as applied to the economic and civic activity that has migrated to digital platforms. Second, the argument that Title III reaches only physical places is inconsistent with the statutory text's enumerated categories, which include functional categories ("place of public gathering," "sales or rental establishment," "service establishment," "place of exhibition or entertainment") that describe activities rather than bricks. Third, the argument that Title III reaches only physical places is inconsistent with the 1994 First Circuit analysis in *Carparts*, which the Supreme Court declined to disturb and which subsequent First, Second, and Seventh Circuit decisions have expanded upon.

The doctrine operates with particular force where a digital platform's market dominance has correlated with the decline or elimination of accessible physical alternatives. If

[60] *See, e.g.*, Pew Research Center, *State of the News Media* reports, documenting newspaper advertising revenue decline and digital platform capture; eMarketer reports on digital advertising market concentration.

[61] Pew Research Center, *Social Media and News Fact Sheet*, based on survey of U.S. adults conducted Aug. 18-24, 2025. YouTube is used by 84% of U.S. adults, the highest of any online platform Pew tracks.

Amazon's retail dominance has driven accessible physical bookstores, department stores, and grocery stores out of business in particular regions, and if Amazon's digital interfaces are inaccessible to the protected class, the protected class has been functionally excluded from the affected categories of commerce. If YouTube has become a primary news source for 35% of U.S. adults while local and regional news organizations have contracted, and if YouTube's consent gates and algorithmic recommendation systems are cognitively inaccessible to the protected class, the protected class has been functionally excluded from primary civic information. The statutory interpretation that would permit this outcome cannot be the correct reading of a statute Congress enacted to prevent exactly this form of exclusion.

The Market Replacement Doctrine is available in every federal circuit as a statutory-interpretation argument. In circuits that have already rejected the physical-nexus requirement, it reinforces the existing holding. In circuits that apply a nexus requirement in other contexts, it supplies a substantive ground for narrowing the nexus requirement where the defendant's market position has displaced the accessible physical alternatives that the nexus would otherwise require. The doctrine does not depend on a circuit split being resolved in advance; it operates within the doctrinal posture of each circuit as an interpretive consideration courts must weigh.

A practical note on litigation posture: the immediate trial-court strategy in nexus-requiring circuits is the physical-nexus mapping developed in Part IV.D for each defendant. The Market Replacement Doctrine is framed here as an interpretive argument for appellate courts asked to reconsider the nexus requirement, for circuits that have not yet ruled on digital-public-accommodation coverage, and for Supreme Court consideration of the question. A district-court plaintiff in a nexus-requiring circuit should not build the case on Market Replacement as a substitute for the physical-nexus mapping; the doctrine is an argument in the alternative and a normative framing for appellate courts, not a pleading substitute for the nexus facts that trial-court doctrine currently requires.

D. Which Categories of Public Accommodation Reach Platform Defendants

The twelve enumerated categories at 42 U.S.C. § 12181(7) offer multiple entry points for Title III coverage of platform defendants. The most directly applicable categories include: "place[s] of exhibition or entertainment" (subsection (C), covering platforms that display video content including YouTube, Instagram Reels, and TikTok's platform architecture); "place[s] of public gathering" (subsection (D), covering social networking platforms that constitute the digital equivalent of gathering places); "sales or rental establishment[s]" (subsection (E), covering platforms with commercial transaction functionality including Instagram Shopping, Facebook Marketplace, and YouTube's monetization infrastructure); "service establishment[s]" (subsection (F), a catch-all covering service-providing platforms); and "place[s] of public display or collection" (subsection (H), covering platforms that collect and display user-generated content). Platform defendants fall within multiple enumerated categories simultaneously, and plaintiffs can plead Title III claims under whichever categories are most cleanly supported by the platform's specific features.

E. WCAG 2.1 AA as the Prevailing Technical Standard

The Department of Justice has not promulgated a binding Title III WCAG regulation analogous to its 2024 Title II rule at 28 C.F.R. Part 35, and the 2026 Interim Final Rule extending Title II deadlines does not address Title III.[62] In the absence of a binding Title III regulation, federal courts have adopted the Web Content Accessibility Guidelines 2.1 Level AA as the prevailing technical standard for Title III digital accessibility cases.[63] WCAG's status as the operative benchmark under Title III does not depend on DOJ regulatory action and is not affected by the 2026 IFR extending Title II deadlines. The 2024 DOJ Title II rule and the 2024 HHS Section 504 rule at 45 C.F.R. § 84.84 reinforce WCAG's authoritative status across the statutory tracks but do not create Title III's reliance on WCAG, which predates both rules.

Defendants in future Title III cases may attempt to deploy language from the 2026 IFR suggesting that WCAG 2.1's reliance on dynamically updated supplementary materials renders compliance requirements unknowable. The argument is not persuasive as applied to Title III because Title III has been enforced against defendants by reference to WCAG for more than two decades without regulatory controversy, because the WCAG 2.1 AA standard has settled operational content notwithstanding the referenced supplementary materials, and because twenty-plus years of DOJ settlements, court rulings, and agency guidance have treated WCAG as the operational standard. The DOJ's current argument contradicts its own institutional position accumulated across both Democratic and Republican administrations.

[62] DOJ Interim Final Rule, published April 20, 2026, extending the 2024 Title II web accessibility rule compliance deadlines by one year. The IFR addresses Title II only; Title III operates on a separate legal track without a corresponding DOJ regulation.

[63] *See, e.g.*, *Robles*, 913 F.3d at 907 (referencing WCAG as technical standard); *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006) (early case citing WCAG). Settlement agreements in DOJ Title III enforcement actions have routinely adopted WCAG.

F. Title III Coverage of Meta, Google, Microsoft, Apple, and Amazon

Title III's public accommodation coverage reaches the general consumer products of all platform defendants identified in this Article. The coverage analysis is substantially simpler than the Section 504 recipient analysis because it does not require identifying federal financial assistance pathways, does not require successor-liability analysis for acquired entities, and does not require the principal-engagement analysis under § 794(b)(3)(B). The per-defendant analyses that follow demonstrate that each platform defendant falls within Title III coverage under multiple independently sufficient doctrinal pathways, including the physical-nexus analysis that nexus-requiring circuits demand.

Amazon.com, Inc.: The Domino's Precedent at Scale. Amazon presents the strongest physical-nexus argument of any platform defendant. The leading case establishing Title III's reach to digital interfaces, *Robles v. Domino's Pizza, LLC*, addressed a website and app through which customers ordered a physical product (a pizza) delivered to a physical place (the customer's home).[64] Amazon is *Robles* at civilization scale. The Amazon retail platform is the required gateway to the delivery of physical goods from physical warehouses, including physical groceries through Amazon Fresh and Whole Foods Market, physical pharmaceuticals through Amazon Pharmacy, physical consumer products across virtually every category, and physical Whole Foods retail store purchases through Prime integration. Amazon Pharmacy's delivery of controlled substances, prescription medications, and over-the-counter medications through digital interfaces makes the physical-nexus analysis identical to the analysis courts apply to any pharmacy's digital ordering system. An Amazon user with executive-function impairment, attentional capture vulnerability, or cognitive overload vulnerability who cannot navigate the platform's consent gates, dark-pattern defaults, or algorithmic recommendation architecture is precisely the plaintiff *Robles* held the statute protects: a person whose disability prevents access to the goods and services of a place of public accommodation through the defendant's inaccessible digital interface. Amazon's vertical products (Amazon Pharmacy and One Medical, acquired in 2022 and 2023 respectively) are additionally covered under Section 504 where federal assistance pathways are established.

Alphabet Inc. and Google LLC: The Modern Public Square. YouTube is, by Pew Research Center's measurements, the most widely used online platform in the United States, with 84% of U.S. adults using it; 35% of U.S. adults regularly obtain news from YouTube, and 53% of U.S. adults at least sometimes obtain news from social media.[65] YouTube TV

[64]Robles, 913 F.3d 898.

[65]Pew Research Center, *Social Media and News Fact Sheet*, *supra* note 61.

adds a separate category of coverage as a direct competitor to cable and broadcast television news. A platform that one-third of the country relies upon for primary news access operates as the modern equivalent of the "place of public gathering" and "place of public display or collection" enumerated in 42 U.S.C. § 12181(7). If the platform's consent gates, algorithmic recommendation systems, and interface defaults are cognitively inaccessible to the protected class, the discriminatory effect is not the denial of entertainment access; it is the denial of civic information and participation in public discourse. The Market Replacement Doctrine applies with particular force. YouTube's news function has displaced substantial portions of the local and regional news apparatus that once served this civic function. If YouTube is inaccessible to the protected class, the protected class is systematically excluded from the news environment that the physical news environment of 1990 once provided accessibly.

Google's physical-nexus foundation is also robust for nexus-requiring circuits. Google Pay integrates with physical merchants. Google Maps' core function is access to physical places and services. Google Shopping connects users to physical-retail inventory. The Google Store operates both as a digital sales channel and as physical retail through Google's direct stores and third-party retail partnerships. Google Play Store's application distribution reaches physical products through every retail integration each distributed app carries. Google's consumer products are reached through Title III under multiple enumerated categories, with physical-nexus support in nexus-requiring circuits and direct digital-service coverage in First, Second, and Seventh Circuit jurisdictions. Google's vertical products (Google Cloud for Healthcare, Google Workspace for Education, Google Classroom) are covered under Section 504 in parallel.

Meta Platforms, Inc.: Digital Core, Physical Hardware. Meta's Reality Labs operates physical retail through Best Buy partnerships and direct Meta retail, selling Meta Quest headsets and related hardware products that require Meta account authentication and platform access to function. The physical hardware is inaccessible without the digital platform; the two are inextricably linked. Users with cognitive disabilities who cannot navigate Meta's consent flows or account management interfaces cannot use the physical Meta hardware products they have purchased. In nexus-requiring circuits, the physical-hardware dependence on digital-platform access establishes the nexus. Meta Marketplace provides an additional physical-nexus layer through direct facilitation of physical-goods transactions, including local pickup of physical items between physical parties. Instagram Shopping and Facebook Shops direct users to physical-goods merchants through integrated transaction flows. WhatsApp Business connects users to physical establishments for service transactions. Each of these physical-nexus pathways independently supports Title III coverage in circuits that require physical nexus, and the Market Replacement Doctrine supports coverage on the basis of Meta's market position in the public-gathering function generally.

Meta's consumer platforms (Facebook, Instagram, WhatsApp, Messenger) also fall within multiple enumerated categories of public accommodation on their face: places of public gathering for social networking, service establishments for messaging and communication services, sales or rental establishments for commerce features, and places of exhibition or entertainment for Reels and video content. The coverage does not depend on Meta's federal financial assistance status, which is the primary weakness of the Section 504 analysis against Meta.

Microsoft Corporation. Microsoft operates extensive physical retail through Microsoft Store physical locations, retail partnerships across electronics and office-supply channels, and direct sales of physical hardware (Xbox consoles, Surface devices, Windows-licensed physical computers, peripherals, and accessories). Xbox, Windows consumer services, Microsoft Store digital platform, Bing, and Microsoft's consumer products fall within Title III's coverage in parallel with the physical-nexus support and with Section 504 coverage of Microsoft's vertical products (Microsoft Cloud for Healthcare, Microsoft Education, Microsoft 365 education offerings).

Apple Inc. Apple operates the most extensive direct physical retail presence of any platform defendant, with more than 270 Apple Store physical locations in the United States. The physical-nexus foundation is indisputable: Apple's digital interfaces are the required gateway to physical product purchase, physical Apple Store reservation and appointment, Genius Bar service, and physical device operation. The App Store, Apple Music, Apple TV+, iMessage's consumer features, Apple Pay's merchant integration, and Apple's consumer services fall within Title III's coverage through direct physical-nexus pathways and through multiple enumerated categories. Apple's vertical products (Apple Health, ResearchKit for medical research applications) are covered under Section 504 where federal assistance pathways are established.

The dual-framework structure accordingly reaches the full range of platform defendants through whichever statute provides the cleanest coverage for each product. The Section 504 and Title III coverages are not alternative theories of the same product's coverage; they are parallel theories covering different products within each defendant's portfolio, with complete coverage of the defendants' operations when the two statutes are deployed together. For plaintiffs in nexus-requiring circuits, each platform defendant supplies multiple independently sufficient physical-nexus pathways. For plaintiffs in First, Second, or Seventh Circuit jurisdictions, the nexus question is moot because those circuits have already rejected the requirement. For plaintiffs challenging Section 504-covered vertical products, the nexus question does not arise because Section 504 has no nexus requirement.

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V. The Disparate Impact Analysis

A. *The Regulatory Basis for Disparate Impact Claims Under Both Statutes*

Section 504's statutory text prohibits exclusion "solely by reason of" disability. The Supreme Court in *Alexander v. Choate* construed that phrase in light of Section 504's legislative history and concluded that it reaches not only intentional discrimination but also practices that deny meaningful access to disabled persons through failure to accommodate.[66] Disparate impact claims under Section 504 rest on a regulatory basis that operationalizes the *Choate* meaningful-access duty.

45 C.F.R. § 84.68(b)(3) provides that a recipient may not "utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons."[67] The regulation is framed in effects terms, reaching facially neutral practices with discriminatory impact. Parallel regulations exist at the Department of Education (34 C.F.R. § 104.4(b)(4)) and at every other agency with Section 504 jurisdiction. The regulations have been in force, in substantially the current form, since 1977 for HHS and since 1980 for Education.

ADA Title III's disparate impact basis is doctrinally distinct but operationally parallel. Title III at 42 U.S.C. § 12182(b)(2)(A) enumerates specific forms of discrimination that public accommodations must avoid, including: "the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services,

[66]*Alexander v. Choate*, 469 U.S. 287, 299 (1985) ("Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect.").

[67]45 C.F.R. § 84.68(b)(3). The provision was redesignated from former 45 C.F.R. § 84.4(b)(4) to 45 C.F.R. § 84.68(b)(3) by HHS final rule, 89 Fed. Reg. 40180 (May 9, 2024), effective July 8, 2024. The substantive text was preserved verbatim; only the section number changed. Throughout this Article, citations are to the current § 84.68(b)(3).

facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered."[68] The provision reaches practices with the *effect* of screening out the protected class, not merely those with the *intent* of doing so. Platform design features calibrated to exploit neurological mechanisms that define protected classes operate as eligibility criteria in effect because they condition meaningful participation on cognitive characteristics that members of the protected class lack.

Title III at 42 U.S.C. § 12182(b)(2)(A)(ii) further prohibits "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations."[69] The reasonable-modification obligation applies to the platform defendants' defaults and creates an affirmative duty to modify design features that impose disparate burden on protected classes. The KGM record's on-the-record representation that features can be disabled by user election, made through open-court statement by Google's trial counsel, is evidentiary support for the conclusion that reasonable modification is feasible and does not fundamentally alter the platform service. The statement is on-the-record evidence admissible in subsequent proceedings against the same defendant, and it is persuasive authority on the feasibility question in litigation against other platform defendants whose products operate similar features, though it is not a universal judicial admission binding beyond the *KGM* proceeding itself.

Title III at 42 U.S.C. § 12182(b)(2)(A)(iii) obligates public accommodations to "take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden."[70] The auxiliary-aids provision is the basis for the WCAG 2.1 AA digital accessibility standard that federal courts have adopted in Title III cases, as discussed in Part IV.D.

The disparate impact analyses under both statutes accordingly converge on the same operational questions: what is the challenged practice, what is its effect on the protected

[68] 42 U.S.C. § 12182(b)(2)(A)(i).

[69] 42 U.S.C. § 12182(b)(2)(A)(ii).

[70] 42 U.S.C. § 12182(b)(2)(A)(iii).

class, what is the defendant's business justification, and what less-restrictive alternatives are available. The two statutes supply parallel doctrinal pathways to the same conclusion. The remainder of this Part applies the analysis to the specific design features and protected classes at issue.

B. Mechanisms of Addictive Design and Protected Classes

The design features condemned in *KGM* are not randomly selected. Each targets a specific neurological mechanism that, when impaired or dysregulated, constitutes a recognized disability. The correspondence is close and documented in clinical literature.

Infinite scroll removes the natural stopping point that ends a browsing session. The natural stopping point is an executive function event: the user's prefrontal cortex weighs the cost of continued engagement against the cost of stopping and initiates the motor action of stopping. Executive function impairment is a defining diagnostic criterion of Attention Deficit Hyperactivity Disorder under DSM-5 and ICD-11.[71] Approximately 4.4 percent of American adults and approximately 11 percent of American children meet criteria for ADHD.[72] Section 504 recognizes ADHD as a protected disability.[73]

Autoplay removes the moment of choice at the transition between one video and the next. Task transition difficulty, including reduced capacity to initiate transitions and reduced tolerance for interruption, is a defining characteristic of autism spectrum disorder and a feature of ADHD.[74] Autism affects approximately 2.8 percent of American children and a growing adult-diagnosed population.[75]

[71] Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) [hereinafter DSM-5], at criteria for 314.0x ADHD.

[72] R.C. Kessler et al., "The Prevalence and Correlates of Adult ADHD in the United States: Results From the National Comorbidity Survey Replication," 163 Am. J. Psychiatry 716, 716 (2006) (reporting 4.4% adult prevalence); CDC, National Survey of Children's Health (2022) (reporting approximately 11% pediatric prevalence). The pediatric population is the population at issue in *KGM* and the MDL 3047 bellwether pool.

[73] *See* 34 C.F.R. § 104.3(j) (definition of "individual with a disability" including mental impairments).

[74] DSM-5 diagnostic criteria for autism spectrum disorder (criterion B.2: insistence on sameness, inflexible adherence to routines).

[75] CDC, Autism and Developmental Disabilities Monitoring Network (2023 data).

Push notifications manufacture urgency that triggers attentional capture. Vulnerability to attentional capture is a recognized feature of ADHD, anxiety disorders, and obsessive-compulsive disorder under the diagnostic criteria of the DSM-5, which identifies distractibility by extraneous stimuli as a core symptom of ADHD.[76]

Variable reward schedules, which underlie engagement-maximizing algorithmic recommendation systems, exploit dopamine-mediated reward prediction error. Dopamine dysregulation is central to ADHD, bipolar disorder, substance use disorder, and behavioral addictions including gambling disorder.[77] The mechanism was explicitly identified by Sean Parker, Facebook's founding president, as the design logic of social media platforms: "a social validation feedback loop . . . exactly the kind of thing a hacker would come up with."[78]

Beauty filters and social comparison metrics exploit body image processing and social evaluation systems. Dysregulation of these systems is central to body dysmorphic disorder, eating disorders, major depressive disorder, and anxiety disorders.[79] Eating disorders in particular disproportionately affect girls and young women, and have been the subject of sustained empirical study as outcomes of Instagram use.[80]

Table 2 summarizes the mapping between design mechanisms, neurological vulnerabilities, and Section 504 protected disability classes.

Beneath each addictive design mechanism is a specific neurological vulnerability. Each neurological vulnerability defines a Section 504 protected class. The question for the disparate impact analysis is not whether the design features affect protected classes more severely than the general population. That question is settled by the clinical mechanism. The question is whether the disparate impact is justified by business necessity and whether reasonable accommodation is feasible.

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[76] DSM-5, *supra* note 71 (criterion A.1.h for ADHD: "is often easily distracted by extraneous stimuli"); internal Meta and Google product-design documents admitted in *KGM* trial record describing intentional deployment of variable-reinforcement notification patterns and autoplay mechanisms.

[77] R.Z. Goldstein & N.D. Volkow, "Dysfunction of the prefrontal cortex in addiction: neuroimaging findings and clinical implications," 12 Nat. Rev. Neurosci. 652 (2011).

[78] Sean Parker, remarks at Axios event, Nov. 2017, transcript available at axios.com.

[79] DSM-5, *supra* note 71 (diagnostic criteria for body dysmorphic disorder, anorexia nervosa, bulimia nervosa, and major depressive disorder).

[80] Georgia Wells, Jeff Horwitz & Deepa Seetharaman, "Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show," Wall St. J. (Sept. 14, 2021) (reporting Meta's internal slide deck finding that thirty-two percent of teen girls said Instagram made them feel worse about their bodies); Frances Haugen testimony before U.S. Senate Subcommittee on Consumer Protection, Product Safety, and Data Security (Oct. 5, 2021).

Table 2. Addictive Design Mechanisms, Neurological Vulnerabilities, and Protected Disability Classes

Design mechanism	Neurological vulnerability exploited	Protected disability classes
Infinite scroll	Executive function: the prefrontal stopping decision that ends a session	ADHD
Autoplay	Task-transition difficulty; insistence on sameness and inflexible routines	Autism spectrum disorder; ADHD
Push notifications	Attentional capture; distractibility by extraneous stimuli	ADHD; anxiety disorders; obsessive-compulsive disorder
Variable reward schedules	Dopamine-mediated reward prediction error	ADHD; bipolar disorder; substance use disorder; gambling and behavioral addiction
Beauty filters and social comparison metrics	Body-image processing and social-evaluation systems	Body dysmorphic disorder; eating disorders; major depressive disorder; anxiety disorders

C. Thoughtlessness, Indifference, and the Empty Design Record

The disparate impact analysis under both Section 504 and ADA Title III does not require proof of discriminatory intent. The Supreme Court in *Alexander v. Choate* held that Section 504's prohibition reaches more than animus-based discrimination: "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect."[81] The *Choate* principle carries through to Title III, the methods-of-administration regulations at 45 C.F.R. § 84.68(b)(3), and the parallel regulations of other agencies. The operational consequence is that plaintiffs need not prove the platforms intended to discriminate. They need to establish the pattern of non-consideration, differential burden, and failure to respond that the *Choate* Court identified as the principal mechanism of disability discrimination that Congress meant to reach.

The *KGM* record establishes exactly that pattern. Two features of the record are load-bearing.

First, the design records of the platform defendants contain no documented consideration of disability, accessibility, or disparate impact on cognitive disability classes. Internal design documents, product specifications, feature-development records, and engineering decision records produced in *KGM* discovery do not reveal any point in the design process at which the platforms evaluated the effect of infinite scroll, autoplay, push notifications,

[81] Choate, 469 U.S. at 295.

algorithmic recommendation, or variable reward mechanics on users with ADHD, Autism Spectrum Disorder, mood disorders, post-traumatic stress disorder, or eating disorders. The design process proceeded as if the protected class did not exist. This is the *Choate* thoughtlessness standard at its center: non-consideration of disability as the mechanism of discrimination.

Second, where internal research did identify disparate vulnerability, the platforms failed to respond. Meta's Project Myst study found that children who had experienced adverse events, trauma, and stress were particularly vulnerable to addictive use patterns on Meta platforms. Meta had this knowledge. Meta did not act on it. This is not thoughtlessness. It is deliberate indifference in the strong sense: actual knowledge of disparate impact on a population substantially overlapping with Section 504 and ADA protected classes, plus failure to respond. The Supreme Court in *Davis v. Monroe County Board of Education* articulated the deliberate-indifference standard for Title IX school-district liability as actual knowledge plus a response that is clearly unreasonable.[82] The *Davis* standard has analogs in Section 504 enforcement, and the *KGM* record establishes its elements: actual knowledge through Project Myst, unreasonable response through no response at all.

The combined pattern of non-consideration plus actual-knowledge-plus-non-response operates in the disparate impact analysis at three doctrinal levels. At the prima facie case level, it supplies affirmative evidence that the challenged practice is a method of administration rather than a neutral technical choice. A practice adopted through a process that systematically excluded consideration of disability is not facially neutral in the *Choate* sense; it is a method of administration that disproportionately burdens the protected class by virtue of its own design. At the affirmative defense level, it forecloses the defense that the recipient considered disability and adopted the least-discriminatory alternative available. A recipient whose design record is empty cannot meet this burden. The record is not merely silent; the silence is affirmative evidence that disability consideration was not part of the design process and that alternatives were not evaluated. At the remedial level, it supports injunctive relief requiring the recipient to conduct the disability analysis that was not originally performed, and to adopt the defaults that the analysis supports. The remedy is prospective compliance with the non-discrimination obligation the recipient has not yet met.

The *Choate*-based theory is the doctrinal core of the disparate impact analysis in this Article. It does not require proving that platforms intended to harm disabled users. It does not require proving that platforms created a new disability (a theory whose doctrinal foundation is contested). It requires the pattern of design that the *KGM* record already establishes

[82] *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 648 (1999).

as public fact: design features calibrated to exploit neurological mechanisms that define Section 504 and ADA protected classes, adopted through a design process that contains no documented consideration of disability, maintained in the face of internal research documenting disproportionate harm to protected populations, and not accommodated despite the feasibility of accommodation established by the defendants' own counsel in open court.

D. Reasonable Accommodation After Project Myst

Section 504 requires reasonable accommodation where feasible. The standard defense to a Section 504 disparate impact claim asserts that the recipient has already provided reasonable accommodation, typically through opt-in accessibility settings or configurable defaults.

Project Myst forecloses this defense for the platforms. The study, conducted by Meta's own research team and admitted into evidence in *KGM*, established two findings material to the accommodation analysis.[83] First, parental controls and supervision had little impact on the addictive use patterns of children, including children identified as particularly vulnerable. Second, the harm fell disproportionately on children with pre-existing trauma and stress, a population that overlaps substantially with Section 504 protected classes.

Meta's own conclusion that parental controls do not work is at minimum admissible evidence against the company under Federal Rule of Evidence 801(d)(2), and functions as a party admission in subsequent proceedings involving the same research record. A Section 504 recipient cannot credibly defend against disparate impact by pointing to an accommodation its own research has established as ineffective.

Google's counsel went further. In open court, Google's trial lawyer stated that "all of the YouTube features Lanier challenged in his opening statement could be disabled and modified to match users' preferences."[84] Whether the statement binds Google as a formal judicial admission is contested; opening statements are advocacy rather than evidence, and the doctrine of judicial admission by counsel's in-court statement is fact-specific. At a minimum, however, the statement is on-the-record evidence of the feasibility of disablement, admissible in subsequent proceedings against the same defendant. If the features can be disabled by user election, as counsel represented, they can be disabled by default. The feasibility of accommodation is established on the record. The only remaining question is whether the recipient has chosen to provide the accommodation.

The platforms have not. They continue to operate with addictive design as default and non-addictive design as buried opt-in setting, access to which is itself gated by dark

[83] Project Myst study findings, admitted as evidence in *KGM*.

[84] Opening statement of Luis Li, counsel for YouTube/Google, *KGM v. Meta & YouTube* (Feb. 2026).

patterns that the underlying research shows users do not successfully navigate. The *KGM* record therefore establishes all three elements of the disparate impact claim: the disparate effect, the absence of business necessity (the companies' own research shows the features are not necessary to provide the service), and the feasibility of accommodation.

E. The Inaccessible Consent Gate as Threshold Violation Under Both Statutes

The disparate impact analysis developed in the preceding subsections addresses platform design features that operate during ongoing use. A distinct and logically prior civil rights violation occurs at the consent gate that admits the user to the platform in the first instance. The consent gate is the interface through which a prospective user accepts the platform's terms of service, privacy policy, data collection practices, algorithmic recommendation defaults, arbitration clauses, class-action waivers, and other conditions of access. Access to the service is contingent on the user's acceptance. The consent flow is itself a communication from the platform to the user, and the design of that communication is itself subject to Section 504 and to ADA Title III.

Under the implementing regulations of the Americans with Disabilities Act Title III, a public accommodation must "furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities."[85] The Department of Justice has construed the effective communication obligation to reach the design of the communication itself, not only the provision of auxiliary aids for a communication otherwise inaccessibly structured.[86] Section 504's corresponding obligation, expressed through the meaningful access doctrine articulated in *Alexander v. Choate*, directs that a facially neutral practice which denies the disabled user an opportunity to participate in the program on equal terms with non-disabled users constitutes discrimination under the statute.[87] The consent-gate violation is cognizable under both statutory frameworks.

A consent flow composed of dozens of pages of dense legal text, rendered in low-contrast typography, gated behind timed acceptance mechanisms, populated with pre-checked boxes, burdened with dark-pattern defaults that structure the visible choice architecture against considered review, and presenting service denial as the alternative to immediate acceptance, is not effective communication with users whose disabilities impair the cognitive functions required to process such material. Executive function impairment, attentional

[85] 28 C.F.R. § 36.303(c)(1).

[86] *See* DOJ, Americans with Disabilities Act Title III Technical Assistance Manual, III-4.3200 (discussing effective communication standards).

[87] Choate, 469 U.S. at 301.

capture vulnerability, reading difficulty, impaired working memory, and stress-induced cognitive narrowing are clinically recognized features of disabilities covered by both statutes.[88] For users with such disabilities, the consent gate operates as a barrier to meaningful access in the same structural sense that an inaccessible physical entrance operates as a barrier to users with mobility impairments.

The Federal Trade Commission's 2022 report on dark patterns identifies consent-gate manipulation as a category of unfair practice distinct from the downstream design choices that follow from accepted consent.[89] State privacy statutes including the California Consumer Privacy Act and the Colorado Privacy Act contain express prohibitions on dark patterns at the consent-gate level.[90] The regulatory recognition of dark-pattern consent gates as unfair or deceptive practices under general consumer protection authority establishes the factual predicate that the same consent gates fail the civil rights effective communication standard with respect to disabled users.

Meta's own internal research is directly relevant. The Project Myst findings that parental controls and supervision settings had minimal impact on child users' addictive use patterns apply *a fortiori* at the consent gate. A user who cannot effectively exercise parental controls post-acceptance cannot effectively exercise consent pre-acceptance. The same cognitive vulnerabilities that defeat the downstream accommodation defeat the upstream consent.

Three consequences follow for the civil rights analysis.

First, the injury for Article III standing purposes is the consent-gate violation itself. A plaintiff who is a member of a protected class under either statute and who has been required to navigate a platform's consent flow to access the service has suffered an injury in fact at the moment of the consent demand. The injury is cognizable without reference to downstream psychological harm, addictive use patterns, or specific damages flowing from use of the platform. Standing attaches at the threshold interaction.

Second, class certification on the consent-gate theory is structurally available in a manner the downstream disparate-impact theory cannot match. The class is definable without reference to individual downstream experience: persons with specified disabilities who have used the platform during the relevant limitations period. The common question is whether the consent-gate design meets the effective communication standard for the protected class.

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[88] *See, e.g.*, DSM-5, *supra* note 71 at diagnostic criteria for ADHD, autism spectrum disorder, post-traumatic stress disorder, and generalized anxiety disorder.

[89] FTC, *Bringing Dark Patterns to Light: Staff Report* (Sept. 2022).

[90] Cal. Code Regs. tit. 11, § 7004 (CCPA regulations on dark patterns in consent); Colo. Rev. Stat. § 6-1-1303(9) (Colorado Privacy Act dark pattern prohibition).

The question is answerable at the class level through evidence about the consent flow's design, expert testimony about the cognitive demands the design imposes, and reference to the clinical literature establishing the protected class's cognitive profile. Individual users' downstream experiences, individual damages, and individual causation chains are not required.

Third, the consent-gate theory bypasses the Title III physical-nexus requirement in nexus-requiring circuits under the Section 504 pathway. Section 504's coverage unit is the recipient's "program or activity," which includes purely digital programs and activities without any physical-place requirement. A plaintiff bringing a consent-gate claim against a Section 504-covered recipient need not establish physical nexus, need not navigate the *Robles* line of cases, and need not confront circuit-specific variations on the nexus question. The consent-gate violation occurs at the threshold of the digital program, and Section 504 reaches the threshold directly.

Vitiated Consent and the Destruction of the Contract-of-Adhesion Defense

The consent-gate violation has substantive consequences that reach beyond the civil rights claim itself and into the structure of defenses the platform defendants routinely deploy across their user-facing litigation. The consent extracted through an inaccessible consent gate is not meaningful consent with respect to the disabled user, and the contract that the consent gate purports to form is not validly formed as to the disabled user. The consequence is that the contract-of-adhesion defenses the platforms rely upon across their user-facing litigation are vitiated with respect to any plaintiff who is a member of the protected class and cleared the inaccessible gate.

The platform defendants' terms of service contain provisions that are load-bearing across virtually every category of claim users might bring. These typically include: binding arbitration clauses that divert disputes from courts; class-action waivers that prevent aggregation; jury-trial waivers; choice-of-law provisions selecting favorable forums; liability limitations capping damages at nominal amounts; consent to data collection that grounds privacy defenses; consent to algorithmic processing that grounds recommendation-system defenses; and user representations that the user is of age, or that the user has obtained parental permission, or that the user accepts the risks of the service. Every one of these provisions depends for its validity on the premise that the user consented to the terms when the user clicked acceptance at the consent gate.

The civil rights consent-gate violation vitiates this consent with respect to the protected class. The argument operates at three doctrinal levels.

At the contract-formation level, consent obtained through a communication that violated the defendant's civil rights duty to provide effective communication is not consent in the legally operative sense. The defect is not a mere state-law unconscionability issue that might be cured by a procedural fix. The defect is that the formation of the agreement itself was accomplished through statutory discrimination under federal civil rights law. A contract cannot be validly formed through the civil rights violation that brought the contract into existence.

At the arbitration level, the Federal Arbitration Act's strong policy favoring arbitration does not survive the conclusion that the arbitration clause is a product of civil rights discrimination. The Supreme Court has repeatedly distinguished procedural unconscionability challenges to arbitration clauses (generally unsuccessful) from challenges rooted in the formation of the underlying contract (where the analysis turns on whether a contract exists at all).[91] A plaintiff arguing that the consent gate violated federal civil rights law and that no valid contract was formed through the discriminatory gate is arguing about contract formation, not about arbitration clause unconscionability. If no valid contract was formed, no valid arbitration obligation exists.

At the class-action waiver level, the waiver is part of the same invalid contract. If the contract is vitiated at formation, the waiver embedded within it is vitiated with the contract. *AT&T Mobility LLC v. Concepcion*[92] and its progeny establish that class-action waivers in arbitration clauses are generally enforceable under the FAA; they do not address the prior question of whether a valid contract was formed. The consent-gate theory operates at that prior question.

The frame that carries this argument is non-formation, and its distinction from voidability is load-bearing rather than semantic. A contract attacked as voidable, including one attacked for a party's incapacity, is a contract that formed and is then challenged as defective; under the severability doctrine that challenge is routed to the arbitrator, the delegation provision survives, and the disabled plaintiff is delivered into the very forum the class waiver was designed to compel.[93] A contract challenged at formation is different in kind. *Buckeye Check Cashing, Inc. v. Cardegna* separates the question whether a concluded agreement is valid, which the arbitrator decides under the severability rule, from the question whether any

[91] *See Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010) (distinguishing challenges to arbitration clauses from challenges to the underlying contract's validity); *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287 (2010) (arbitration obligation depends on whether the parties agreed to arbitrate).

[92] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

[93] Rent-A-Center, 561 U.S. at 70-72.

agreement was ever concluded at all, which the court decides; and *Granite Rock* confirms that a court may compel arbitration only once satisfied that the parties actually formed an agreement to arbitrate, the same question the Federal Arbitration Act reserves to the court when it conditions compelled arbitration on the making of the agreement not being in issue.[94] A consent gate that, by its design relative to the protected class's disabilities, never obtained a manifestation of assent from any member of the defined class presents a formation question, and a delegation clause cannot delegate the question whether the instrument containing it was ever agreed to. The formation frame carries a second advantage at class certification. Incapacity is the most individualized inquiry in contract law, assessed person by person and mental state by mental state, and as a class theory it fails on commonality and predominance; non-formation, pleaded structurally, is a single common question, whether the interface, by its design relative to this disability, obtained assent from anyone in the class, answered once and classwide. The proof of concept exists. In *National Federation of the Blind v. Container Store*, a formation challenge grounded in the inaccessibility of the interface through which assent was solicited was adjudicated by the court rather than the arbitrator and defeated the motion to compel outright.[95] Extending that reasoning from the sensory context of *Container Store* to the cognitive context at issue here is the natural next step, because the operative fact in both is the same: the interface, as designed, never obtained the assent the contract presupposes.

The defendant's predictable response is the traditional contract-law argument that a click is a click, that every user who clicked has legal capacity unless adjudicated incompetent, and that disability alone does not render a contract voidable under state law. The response fails because the plaintiff is not arguing traditional contract capacity. The plaintiff is arguing a federal civil rights violation, specifically the defendant's breach of the affirmative duty under 28 C.F.R. § 36.303(c)(1) to ensure effective communication with disabled persons and the parallel duty under Section 504's meaningful access doctrine. The federal civil rights analysis does not require adjudication of the plaintiff's general legal competence. It requires only the factual showing that the plaintiff is a member of the protected class and that the defendant's consent flow failed the effective communication standard for that class. The analysis operates on the defendant's conduct, not on the plaintiff's state-law capacity.

[94] *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006); *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 296 (2010); 9 U.S.C. § 4.

[95] *Nat'l Fed'n of the Blind v. Container Store, Inc.*, 904 F.3d 70 (1st Cir. 2018) (interface-inaccessibility formation challenge is a gateway question for the court, not the arbitrator).

The preemption analysis runs in the plaintiff's favor. The Supreme Court in *AT&T Mobility* held that the FAA preempts state laws interfering with arbitration. The consent-gate theory does not invoke state law. It invokes federal civil rights statutes that run in parallel with the FAA rather than against it. The argument is not that state unconscionability law invalidates the arbitration clause; the argument is that federal civil rights law invalidates the contract that contains the arbitration clause. The FAA does not preempt the application of federal civil rights law to the formation of the contract in which an arbitration clause appears.

The implications extend beyond the civil rights claim itself. If a plaintiff establishes the consent-gate violation, the platform's forced arbitration regime, class-action waiver, liability limitations, and other provisions of the terms of service become unavailable as defenses to the civil rights claim and to any other claims the plaintiff brings. Traditional torts claims, consumer protection claims, state privacy claims, and statutory claims that the platform would otherwise route to arbitration with class-action waivers can proceed in court as class actions. The consent-gate theory, in other words, is not only a civil rights claim in its own right; it is a key that unlocks the courtroom door for every other type of claim a member of the protected class might bring against the platform.

Remedial and Enforcement Implications

The consent-gate theory supports injunctive remedies requiring platforms to redesign consent flows to meet effective communication standards. An adequate redesign would require, at a minimum, plain-language summaries of material terms at the gate level, accessible formatting including appropriate contrast and typography, elimination of timed pressure mechanics, removal of pre-checked boxes and dark-pattern choice architecture, meaningful opt-out paths that do not conceal the non-default choice, and cognitive accessibility features including predictable behavior, error prevention, and adjustable timing consistent with WCAG 2.1 Level AA's cognitive-accessibility criteria. The redesign requirements produce substantial ancillary benefits for non-disabled users, consistent with the universal-design consequence of civil rights accommodation generally.

The consent-gate theory also supports enforcement through pathways the downstream disparate impact theory does not reach as directly. State consumer protection authorities have existing jurisdiction over dark patterns in consent flows under statutes including CCPA and the Colorado Privacy Act. Federal Trade Commission enforcement against consent-gate dark patterns is ongoing under Section 5 of the FTC Act. State attorneys general pursuing actions against platforms under consumer protection, privacy, or youth protection statutes can add Section 504 and Title III consent-gate counts to existing enforcement contexts, transforming consumer protection actions into civil rights enforcement actions with the remedial, standing, and arbitration-preemption advantages that civil rights status confers.

F. Parallel Authority: Robles, Title III, and the 2024 HHS Section 504 Rule on Digital Accessibility

The disparate impact and consent-gate theories developed in the preceding subsections do not stand alone. Two bodies of parallel authority reinforce the conclusion that the digital interfaces of covered recipients are subject to civil rights accessibility requirements. The first is the judicial extension of ADA Title III to digital content, led by the Ninth Circuit in *Robles v. Domino's Pizza, LLC*. The second is the 2024 final rule of the U.S. Department of Health and Human Services implementing Section 504 with respect to web content and mobile applications of HHS recipients.

Robles held that the ADA applies to a public accommodation's website and mobile application where their inaccessibility impedes access to the goods and services of the physical place of accommodation.[96] The plaintiff, who was blind, had been unable to use Domino's online ordering because the website and app were not compatible with screen-reader software. The Ninth Circuit held that Title III reached the digital interfaces and that the absence of formal federal web accessibility regulations did not defeat the ADA obligation.[97] The Supreme Court denied certiorari, leaving the Ninth Circuit's holding in place, and Domino's ultimately settled in 2022 with a commitment to conform its digital properties to WCAG 2.0 Levels A and AA.

Robles is an ADA Title III decision rather than a Section 504 decision, but the two statutes are interpreted in parallel where their text and purpose permit, and both are grounded in the same principle that protected persons must be provided meaningful access to covered programs and services.[98] The Ninth Circuit's reasoning in *Robles*, that digital interfaces of covered entities must be accessible and that the absence of formal regulatory standards is no defense, applies with equal force to the Section 504 framework developed in this Article. The platforms' purpose-built vertical products in § 794(b)(3)(B) categories are no less subject to accessibility obligations than Domino's ordering website.

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[96]Robles, 913 F.3d at 905-06.

[97]*Id.* at 907-09.

[98]*See, e.g.*, *Rodriguez v. City of New York*, 197 F.3d 611, 618 (2d Cir. 1999) (noting that Section 504 and the ADA are generally construed together).

The 2024 HHS final rule makes the point directly for a large subset of the platform defendants' vertical products. On May 9, 2024, HHS published its final rule titled Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.[99] The rule codifies at 45 C.F.R. § 84.84 a requirement that recipients ensure that the web content and mobile applications they provide or make available, directly or through contractual, licensing, or other arrangements, conform to Web Content Accessibility Guidelines 2.1 Levels A and AA.[100] Compliance is required as of May 11, 2026 for recipients with fifteen or more employees and May 10, 2027 for recipients with fewer employees, subject to limited exceptions for fundamental alteration and undue burden.[101]

The 2024 rule's coverage tracks the recipient coverage of Section 504. It reaches recipients of HHS financial assistance, including the healthcare-adjacent operations of the platform defendants that receive HHS assistance directly or through sub-recipient relationships. Microsoft Cloud for Healthcare, Google Cloud for Healthcare, Amazon Pharmacy, One Medical, Fitbit in its NIH sub-recipient capacity, and the HHS-funded research collaborations in which the platform defendants participate are candidates for direct coverage under the rule as of the 2026 and 2027 compliance deadlines.

Three consequences for the analysis in this Article follow.

First, the 2024 rule forecloses the argument that Section 504's application to digital interfaces is doctrinally novel. The rule makes explicit what *Robles* established for Title III: that inaccessibility of a covered entity's digital property is a civil rights violation. The framework developed in this Article extends the same principle from narrow web accessibility (screen-reader compatibility, alternative text, keyboard navigation) to the broader accessibility failures created by addictive design defaults and dark-pattern consent architecture. The step is analogical rather than categorical, but the predicate is established.

Second, the 2024 rule's WCAG 2.1 standard provides an articulable technical baseline against which addictive design defaults can be evaluated for Section 504 compliance. WCAG's criteria for cognitive accessibility, including predictable behavior, error prevention, and adjustable timing, directly implicate autoplay, notification frequency, infinite scroll, and timed consent pressure. A defendant that violates WCAG 2.1 Level AA through timed consent mechanics, dark-pattern button architectures, or unavoidable autoplay is out of

[99] Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066 (May 9, 2024) (codified at 45 C.F.R. pt. 84).

[100] 45 C.F.R. § 84.84(a)-(b) (2024) (incorporating WCAG 2.1 Level A and Level AA success criteria and conformance requirements).

[101] 45 C.F.R. § 84.84(b) (compliance deadlines); § 84.84(g) (exceptions).

compliance with the 2024 HHS rule for its healthcare-vertical products, and the same design choices constitute independent Section 504 violations under the disparate impact and consent-gate theories developed here.

Third, the 2024 rule creates an administrative enforcement lane that does not depend on *Sandoval*. OCR can investigate and resolve 45 C.F.R. § 84.84 violations directly as regulatory noncompliance, without the private-right-of-action question that *Sandoval* raises for disparate impact regulations. A complaint to OCR alleging that Microsoft Cloud for Healthcare, Google Cloud for Healthcare, or Amazon's healthcare operations fail WCAG 2.1 Level AA due to the specific design features challenged in *KGM* is a cognizable complaint that OCR has authority to investigate and resolve under the rule's compliance mechanism, independent of the broader disparate impact theory.

Robles and the 2024 HHS rule together establish that the digital accessibility territory covered by this Article is not novel civil rights terrain. The platforms have been on notice since 2019 that their digital interfaces are subject to Title III accessibility obligations. The healthcare-vertical platforms have been on notice since 2024 that their digital interfaces must meet WCAG 2.1 Level AA by 2026 or 2027. The addictive design features and consent gates challenged in this Article are the next logical application of the same civil rights principle.

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VI. Engaging the Doctrinal Challenges

The doctrinal challenges to the dual-framework analysis vary by statute. Challenges specific to Section 504 disparate impact (*Sandoval*) and Section 504 damages (*Cummings*) do not apply to Title III. Challenges that apply to both statutes (Section 230) must be engaged across the dual framework. This Part addresses each challenge and identifies which statute it affects.

A. Alexander v. Sandoval and the Survival of Section 504 Disparate Impact

Sandoval's limitation on private disparate impact actions applies to Section 504 only. ADA Title III disparate impact analyses under 42 U.S.C. § 12182(b)(2)(A) are not affected by *Sandoval* because Title III contains its own private right of action at 42 U.S.C. § 12188 that independently authorizes private suits for the enumerated forms of discrimination. The analysis that follows accordingly addresses only the Section 504 side of the framework; the Title III claims proceed unaffected by *Sandoval*.

The most significant doctrinal challenge to private Section 504 disparate impact actions arises from *Alexander v. Sandoval*.[102] *Sandoval* held that Title VI of the Civil Rights Act of 1964 does not provide a private right of action for disparate impact claims under implementing regulations, because the statute itself prohibits only intentional discrimination and Congress did not create a private right of action for the regulations' broader disparate impact prohibition.

Sandoval creates difficulty for Section 504 disparate impact because Section 504 borrows Title VI's enforcement mechanisms.[103] If Section 504's private right of action is coextensive with Title VI's, then *Sandoval* suggests private plaintiffs cannot enforce Section 504's disparate impact regulations.

Three considerations nonetheless support the survival of private Section 504 disparate impact actions.

The unified position of this Article is that *Sandoval* does not foreclose private enforcement of Section 504's methods-of-administration regulations where those regulations operate as authoritative constructions of the statute's own meaningful-access requirement rather than as extensions of statutory coverage beyond intentional discrimination. The Ninth Circuit recognized this distinction in *Mark H. v. Lemahieu*, which held that Section 504's implementing regulations construing the statute's substantive prohibition are enforceable through the statute's private right of action, and distinguished such regulations from those that extend beyond the statute's scope.[104] Section 504's substantive prohibition reaches practices that deny meaningful access, as construed in *Alexander v. Choate*.[105] The regulations at 45 C.F.R. § 84.68(b)(3) prohibiting methods of administration with discriminatory effect operationalize the *Choate* meaningful-access duty; they are the agency's authoritative construction of what the statute's meaningful-access requirement means in practice. Under *Lemahieu*, such regulations are enforceable through the statute's private right of action as incorporated through the Title VI cross-reference in 29 U.S.C. § 794a(a)(2), confirmed by *Barnes v. Gorman*.[106] The analysis developed in Part IV does not depend on a pure disparate-impact theory that *Sandoval* foreclosed. It depends on meaningful access under

[102] *Alexander v. Sandoval*, 532 U.S. 275 (2001).

[103] 29 U.S.C. § 794a(a)(2) (incorporating remedies of Title VI).

[104] *Mark H. v. Lemahieu*, 513 F.3d 922, 937-38 (9th Cir. 2008).

[105] Choate, 469 U.S. at 299.

[106] *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

Choate, operationalized through methods-of-administration regulations that construe the *Choate* requirement, as the Ninth Circuit recognized in *Lemahieu*.

First, Section 504's statutory text differs materially from Title VI's. Title VI prohibits discrimination "on the ground of race, color, or national origin." Section 504 prohibits exclusion "solely by reason of" disability. The Supreme Court in *Alexander v. Choate* construed this phrase in light of Section 504's legislative history and concluded that it reaches practices that disparately impact disabled people, because a disability-blind policy may effectively exclude on the basis of disability by failing to accommodate. Whether *Choate*'s analysis survives *Sandoval* for private enforcement is contested across circuits.[107] *Lemahieu*'s construction-versus-extension distinction supplies the doctrinal framework for resolving that question in favor of private enforcement of the meaningful-access regulations.

Second, the regulations at 45 C.F.R. § 84.68(b)(3) are not general anti-disparate-impact regulations of the type *Sandoval* held unenforceable. They are specific implementations of the statutory accommodation requirement that *Choate* identified as part of Section 504's meaning. The regulations operationalize the statutory duty to not subject disabled people to exclusion through facially neutral practices that fail to accommodate.

Third, failure-to-accommodate is a separately recognized Section 504 cause of action that survives *Sandoval* independently, because the duty to accommodate arises directly from the statute as construed in *Choate*. The claims developed in Part IV are not exclusively disparate-impact claims; they also fit the failure-to-accommodate framework under Section 504 and the reasonable-modification framework under Title III at 42 U.S.C. § 12182(b)(2)(A)(ii) and the auxiliary-aids requirement at 42 U.S.C. § 12182(b)(2)(A)(iii). The *Lemahieu*-anchored meaningful-access theory and the failure-to-accommodate theory operate as cumulative pathways, not as alternatives requiring the plaintiff to abandon one in favor of the other. Title III's private right of action is uncontested and does not implicate *Sandoval* at all.

Fourth, even if a court accepts the most aggressive reading of *Sandoval* against Section 504 private enforcement, the framework's enforcement pathways include administrative enforcement by the Office for Civil Rights, state Protection and Advocacy agency litigation, state attorney general enforcement under parens patriae, and Title III claims brought in parallel. No single doctrinal ruling against private Section 504 disparate impact forecloses the framework.

[107] Compare *Smith v. Barton*, 914 F.2d 1330 (9th Cir. 1990) (permitting Section 504 disparate impact), with *Powell v. Nat'l Bd. of Med. Examiners*, 364 F.3d 79 (2d Cir. 2004) (questioning private enforcement of Section 504 disparate impact post-*Sandoval*).

The practical upshot is that claims of the kind this Article describes can be brought through multiple pathways. The private Section 504 meaningful-access pathway, operationalized through *Choate* and *Lemahieu*, is the lead theory and is available in at least the Ninth, Second, and Third Circuits on current precedent. The private failure-to-accommodate Section 504 pathway is uncontested. The Title III private right of action is uncontested. The administrative pathway under Section 504 is uncontested. The Protection and Advocacy agency pathway proceeds under statutory authority that does not depend on private-right-of-action analysis. The state attorney general pathways under both statutes proceed under parens patriae authority. No single doctrinal challenge forecloses the framework.

B. Section 230 Preemption

Section 230 applies to both Section 504 and Title III claims and must be engaged across the dual framework. Section 230 of the Communications Decency Act provides broad immunity for "provider[s] of an interactive computer service" against claims based on "information provided by another information content provider."[108] The provision has been applied to immunize platforms against a range of claims based on user-generated content.

Platform defendants will argue that both Section 504 and Title III claims challenging algorithmic recommendation, content moderation, or design features that shape content flow are preempted by Section 230 because those features process third-party content. The argument was raised in *KGM* and the court distinguished first-party design conduct from third-party content moderation decisions, permitting the negligent design claim to proceed.[109]

The distinction matters for both civil rights frameworks. The design features at issue are the companies' own engineering choices about how to present content, not the content itself. Infinite scroll is the companies' code. Autoplay is the companies' code. Push notification timing and frequency are the companies' code. The addictive design mechanisms are conduct by the platform, even when the content they present is third-party material.

The Ninth Circuit's decision in *Lemmon v. Snap* affirms the conduct/content distinction in Section 230 analysis for platform design features.[110] *Lemmon* involved a Snapchat Speed Filter design feature that did not depend on any characterization of third-party content, and the court held that claims targeting the feature's design were not barred by Section 230. The Third Circuit in *Anderson v. TikTok* extended related reasoning to algorithmic

[108] 47 U.S.C. § 230(c)(1).

[109] *KGM* court rulings on Section 230 motions, 2025 (denying motion to dismiss on design conduct claims).

[110] *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021).

amplification decisions.[111] *Anderson*'s extension remains contested, has drawn substantial critical commentary, rests in significant part on the First Amendment characterization of algorithmic speech in *Moody v. NetChoice*, and may not survive Supreme Court review or find acceptance in other circuits.[112] The *Lemmon* design-feature framework is the more durable precedent for civil rights claims of the kind developed in this Article, which target the platforms' own design choices (default infinite scroll, default autoplay, default notification frequency, default consent-gate architecture) rather than their characterization or curation of third-party content. These cases support the conclusion that both Section 504 and Title III claims targeting design conduct, rather than content moderation decisions, are not preempted by Section 230.

The New Mexico Attorney General's successful navigation of Section 230 in *New Mexico v. Meta Platforms, Inc.*, followed by the March 24, 2026 jury verdict assessing $375 million in civil penalties against Meta, provides a proven template for state-level enforcement that parallel civil rights claims can build upon.[113] A state attorney general adding Section 504 or Title III counts to a case that has already cleared Section 230 on design-conduct grounds faces materially less Section 230 exposure than a plaintiff bringing a standalone civil rights case would face, because the Section 230 question has already been resolved for the underlying design conduct.

C. Cummings and the Injunctive Remedy Focus

Cummings applies to Section 504 damages only and does not reach Title III. Title III's private remedy scheme at 42 U.S.C. § 12188(a)(1) does not include compensatory damages for private plaintiffs; private Title III plaintiffs can obtain injunctive relief and attorneys' fees. The *Cummings* limitation on emotional distress damages accordingly has no effect on the Title III track of the framework, because the affected damages category does not exist under Title III regardless of *Cummings*. For the Section 504 track, *Cummings* is relevant but less constraining than it first appears.

[111] *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024).

[112] *See, e.g.*, Electronic Privacy Information Center, Analysis of *Anderson v. TikTok* (2024); Eric Goldman, Technology & Marketing Law Blog. *Anderson*'s continued vitality is not assumed here.

[113] *New Mexico v. Meta*, *supra* note 2 (second phase bench trial May 4, 2026 addressing public nuisance and injunctive relief including age verification, removal of predators, and restrictions on encrypted communications). The New Mexico AG's consumer protection claims survived Section 230 challenges by targeting design conduct rather than third-party content; the jury subsequently found Meta willfully violated the Unfair Practices Act.

Cummings v. Premier Rehab Keller held that emotional distress damages are not available under Section 504 or other Spending Clause civil rights statutes.[114] The decision narrowed the damages available to private Section 504 plaintiffs.

Cummings does not eliminate Section 504 remedies. It leaves available injunctive relief, declaratory relief, attorneys' fees under 29 U.S.C. § 794a(b), and administrative enforcement remedies including OCR corrective action orders and termination of federal financial assistance. Compensatory damages for economic harm are strongly defensible post-*Cummings*, though the post-*Cummings* circuit landscape on the precise contours of recoverable economic damages under Spending Clause statutes is not yet uniformly settled.

For the systemic project described in this Article, *Cummings* is less constraining than it first appears. The primary remedy sought is injunctive: redesign of product defaults to eliminate the disparate impact. Injunctive relief reaches every user of the redesigned product and creates systemic change. It does not depend on per-plaintiff damages.

Class actions seeking injunctive relief under Federal Rule of Civil Procedure 23(b)(2) are particularly well-suited to the framework under both statutes. *Cummings* does not affect the availability of (b)(2) injunctive classes, which do not require the common damages proof that (b)(3) classes require. A class of "all persons with ADHD (or a specified broader class of cognitive disabilities) who use [Instagram/Facebook/YouTube] in the United States," seeking injunctive relief requiring the companies to redesign default settings to eliminate disparate impact, is certifiable in principle under either statute and has not yet been filed.

D. Title III-Specific Challenges

Two challenges are specific to Title III and do not apply to Section 504.

First, the nexus requirement in some circuits, discussed in Part IV.B, requires that digital services be connected to a physical place of public accommodation. The requirement is not a bar to Title III claims against platform defendants because the platforms' integrations with physical retail and physical services supply sufficient nexus, but it is an additional element that must be pleaded and proven in nexus-requiring circuits.

Second, Title III has historically been deployed primarily for drive-by-style accessibility litigation, and some federal courts have expressed concern about Title III litigation abuse. The concern does not doctrinally affect civil rights claims grounded in the *Choate* thoughtlessness-and-indifference standard and the *KGM* record, but plaintiffs should be prepared to distinguish the systemic-reform litigation developed in this Article from the serial-plaintiff litigation that has generated judicial skepticism in some circuits. The distinction

[114] *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (2022).

can be drawn through the scope of the remedy sought (systemic injunctive relief affecting defaults rather than per-accommodation compliance), the nature of the protected class claims (cognitive disability classes rather than physical accessibility), and the factual predicate (the *KGM* evidentiary record rather than boilerplate allegations).

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VII. Enforcement Pathways

A. OCR Administrative Complaints

The Office for Civil Rights at the U.S. Department of Health and Human Services enforces Section 504 with respect to HHS-funded programs. The Office for Civil Rights at the U.S. Department of Education enforces Section 504 with respect to Department of Education-funded programs. Both have authority to investigate complaints, negotiate compliance agreements, and, ultimately, terminate federal financial assistance for continuing violations.[115]

Administrative complaints do not require individual plaintiffs. An organizational complainant may file a complaint alleging that a recipient is in violation of Section 504 with respect to a class of beneficiaries. The complaint must allege facts sufficient to support the violation and must identify the recipient and the specific practice at issue.

A complaint filed by Real Safety AI Foundation or a similar organization, alleging that Meta, Alphabet, Microsoft, Amazon, and other named recipients are engaged in disparate impact disability discrimination through specified addictive design features, would invoke OCR investigative jurisdiction. The complaint would cite the USAspending records establishing recipient status, the *KGM* evidentiary record establishing the design features and their harm, the clinical literature establishing the neurological mechanism and protected class correspondence, and the specific accommodation requests (default disablement of the identified features, or accessible-by-default alternatives).

OCR's enforcement capacity is limited, and the agency's recent enforcement record against major corporations is modest. But the administrative complaint creates a record, triggers investigative process that the recipient must engage with, and produces an OCR disposition that is itself evidence in subsequent private litigation.

[115] 29 U.S.C. § 794a; 45 C.F.R. Part 84 Subpart G (HHS OCR enforcement procedures).

B. Rule 23(b)(2) Injunctive Class Actions

Federal Rule of Civil Procedure 23(b)(2) permits class certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."[116] The rule is particularly well-suited to civil rights claims seeking systemic remedies.

A (b)(2) class action under Section 504 against a major platform would allege the following: that members of the class are persons with specified disabilities (ADHD, autism, or broader cognitive disability classes); that the defendant platform operates features with disparate impact on the class; that reasonable accommodation through default disablement is feasible as admitted in the *KGM* record; and that the defendant refuses to accommodate. The requested relief is an injunction requiring the defendant to redesign its default settings to eliminate the disparate impact.

The principal obstacle to class certification in civil rights litigation after *Wal-Mart Stores, Inc. v. Dukes* is the requirement that the class share common questions that yield common answers rather than merely common grievances.[117] *Dukes* denied certification to a 1.5-million-member class alleging sex discrimination across Wal-Mart's retail operations because the challenged conduct—discretionary personnel decisions by thousands of individual store managers—was not uniform across the class. The defaults-redesign class described here is structurally different from the *Dukes* class in the ways that matter for the commonality analysis. The challenged conduct is the uniform design of a single platform's default settings. The same default confronts every class member at the same point in the user experience. The relief sought, redesign of the default, is uniform. The question whether the default disparately impacts the class yields a single, class-wide answer. *Dukes*'s commonality objection, which turned on the dispersed and discretionary character of the challenged decisions, does not apply to a class claim targeting a single uniform design choice.

Class certification would nonetheless face vigorous defense briefing on commonality, typicality, and the definition of the class. But the central questions, common to the class, are whether the defendant's default design has disparate impact and whether accommodation is feasible. These are systemic questions amenable to class-wide resolution.

[116] Fed. R. Civ. P. 23(b)(2).

[117] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

C. State Protection and Advocacy Agency Litigation

Each state has a federally funded Protection and Advocacy agency with statutory authority to pursue legal remedies on behalf of people with disabilities in the state.[118] Protection and Advocacy agencies have standing to bring Section 504 actions without individual plaintiffs. They have case-in-chief experience litigating disability civil rights claims. Their funding structure and independence from state government give them capacity to bring cases that state attorneys general may decline for political reasons.

Disability Rights California is the Protection and Advocacy agency for the state that hosts both MDL 3047 and the *KGM* proceedings. Disability Rights California has substantial experience with Section 504 enforcement and has the jurisdictional standing to bring an injunctive action against Meta and Alphabet based on the *KGM* factual record.

The National Disability Rights Network coordinates Protection and Advocacy activity across states. A coordinated Protection and Advocacy filing across multiple states seeking injunctive relief against a common defendant would present the companies with litigation in multiple jurisdictions, each of which independently has the authority to impose injunctive remedies.

D. State Attorney General Coordination Under Both Statutes

State attorneys general have previously coordinated enforcement actions against social media companies on consumer protection grounds, and at least one such action has now reached verdict. The current landscape includes the multistate action filed by forty-two state attorneys general against Meta in October 2023,[119] the March 24, 2026 jury verdict in *New Mexico v. Meta*, and various state AG actions against TikTok.[120]

Section 504 counts can be added to existing complaints by amendment for defendants where Section 504 coverage is established. State attorneys general have parens patriae standing to bring Section 504 claims on behalf of disabled residents of the state. The addition of Section 504 counts to existing enforcement actions carries low marginal cost, leverages

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[118] 42 U.S.C. § 15043 (Protection and Advocacy systems for persons with developmental disabilities); 42 U.S.C. § 10801 et seq. (Protection and Advocacy for individuals with mental illness); 29 U.S.C. § 794e (Protection and Advocacy for Individual Rights program covering Section 504).

[119] Complaint in *In re Meta Multistate Action*, N.D. Cal., filed Oct. 24, 2023 (multistate AG consumer protection action against Meta Platforms).

[120] *New Mexico v. Meta*, *supra* note 2 ($375 million jury verdict March 24, 2026; second phase bench trial May 4, 2026 on public nuisance claim and injunctive relief); multistate AG action against TikTok announced October 2024.

existing discovery and investigative work, and strengthens the relief available to include systemic injunctive remedies.

Title III counts offer a parallel amendment pathway with broader defendant reach. State attorneys general have parens patriae standing to bring Title III claims under 42 U.S.C. § 12188, and many state disability rights statutes incorporate Title III standards with state-level enforcement authority. California's Unruh Civil Rights Act, New York State Human Rights Law, Washington Law Against Discrimination, Colorado Anti-Discrimination Act, and similar statutes in other states authorize state AG enforcement and in some cases provide statutory damages that exceed federal remedies. The Title III amendment pathway reaches Meta's consumer products directly, reaches Google's YouTube and general consumer products, and reaches Microsoft, Apple, and Amazon consumer products without the recipient-status fight.

The New Mexico Attorney General's approach in *New Mexico v. Meta* is now a proven template rather than a speculative one. The AG successfully navigated Section 230 on the design conduct theory and obtained a jury verdict assessing $375 million in civil penalties, with a bench trial on injunctive relief and public nuisance commencing May 4, 2026. The injunctive relief the New Mexico AG is seeking, including age verification, removal of predators from the platform, and restrictions on encrypted communications that shield bad actors, overlaps with but does not exhaust the relief available under a civil rights framework. Amending that complaint, or filing parallel actions in other states, to add Section 504 or Title III counts converts the consumer protection action into a combined civil rights plus consumer protection enforcement action, with access to the additional remedial scope that civil rights status confers: forced redesign of default settings to eliminate disparate impact on protected disability classes, consent-gate accessibility conformance, WCAG 2.1 Level AA conformance for platform interfaces, and the systemic injunctive relief architecture that Rule 23(b)(2) and parens patriae jurisdiction together supply. The California Attorney General, with its established disability rights practice, its jurisdiction over defendants headquartered within the state, and its role in the MDL 3047 and JCCP 5255 proceedings, is well-positioned to take this approach. The New York Attorney General's disability rights practice, the Washington State Attorney General's consumer protection and disability rights practices, and similar offices in other states can coordinate under the framework.

A multi-state AG coalition filing coordinated Title III and Section 504 claims based on the *KGM* record would present the platform defendants with civil rights enforcement actions in multiple jurisdictions simultaneously. Each state has independent authority to impose injunctive remedies. The Administrative Office of the Courts records show that coordinated multi-state AG enforcement has been effective in prior technology enforcement contexts, including the 2023 multistate Meta consumer protection action.

E. Private Title III Plaintiff Actions

Title III creates a private right of action at 42 U.S.C. § 12188(a)(1) for any person "who is being subjected to discrimination on the basis of disability" or "who has reasonable grounds for believing that such person is about to be subjected to discrimination."[121] The remedy is injunctive relief and attorneys' fees under 42 U.S.C. § 12205. Title III does not authorize compensatory damages for private plaintiffs, but the injunctive remedy is structured to reach systemic change: the court may order the defendant to make facilities readily accessible and to modify policies, practices, and procedures.[122]

Private Title III plaintiffs face fewer doctrinal barriers than Section 504 plaintiffs for claims of the kind this Article describes. *Sandoval* does not apply. The private right of action is express in the statute. Standing requirements under Title III are typically satisfied by concrete exposure to the challenged barrier; disability-rights plaintiffs who are members of the protected class and who use the platforms have standing to seek injunctive relief against the challenged design features. Class certification under Rule 23(b)(2) is available on the same terms discussed above, with the defaults-redesign class structure fitting the commonality and typicality requirements.

The defendant population reached through private Title III actions includes the consumer platforms of all platform defendants. Private plaintiffs can bring Title III claims directly against Meta, Google, Microsoft, Apple, and Amazon without the recipient-pathway analysis. A coordinated private enforcement program, perhaps supported by disability rights organizations as organizational plaintiffs or amici, could generate multiple parallel Title III cases in different circuits, establishing venue for the civil rights argument in forums where the doctrinal posture is favorable.

F. Department of Justice Title III Enforcement

The Department of Justice has independent authority under 42 U.S.C. § 12188(b) to investigate Title III violations, seek civil penalties, and pursue injunctive relief where the Attorney General concludes that a public accommodation is engaged in a pattern or practice

[121] 42 U.S.C. § 12188(a)(1).

[122] 42 U.S.C. § 12188(a)(2).

of discrimination or that the violation raises issues of general public importance. DOJ enforcement carries the ability to obtain monetary damages for aggrieved persons under 42 U.S.C. § 12188(b)(2)(B) and civil penalties up to 75,000*forafirstviolationand*150,000 for subsequent violations under 42 U.S.C. § 12188(b)(2)(C), which distinguish DOJ Title III enforcement from private enforcement.

DOJ's pattern-or-practice authority and public-importance jurisdiction are well-suited to the addictive design context. The *KGM* record establishes pattern conduct across multiple platform defendants. The harm implicates substantial populations of disabled minors and adults, which satisfies the public-importance threshold. DOJ enforcement does not depend on individual complainants; the agency can initiate enforcement based on its own investigation or on referrals from OCR, state agencies, or other sources.

The current DOJ posture toward Title III digital accessibility enforcement is uncertain in the post-IFR environment. The 2026 IFR extending Title II deadlines signals administration reluctance toward accessibility enforcement generally. Nevertheless, DOJ retains statutory authority and can be the subject of administrative petitions requesting enforcement action. A formal DOJ complaint alleging pattern-or-practice Title III violations by the platform defendants, supported by the *KGM* record and the expert analyses described in this Article, creates an administrative record that subsequent DOJ action can build upon regardless of the agency's short-term enforcement priorities.

VIII. Conclusion

The *KGM* verdict was described as a bellwether. The description is apt. The verdict signals that juries will find platform companies liable for the consequences of design choices that exploit psychological vulnerability. It signals that the courts will distinguish design conduct from content moderation for Section 230 purposes. It signals that the internal documents the plaintiffs obtained in discovery are sufficient to establish the platforms' knowledge and intent.

What the verdict does not signal, because the plaintiffs did not argue it, is that the design choices constitute federal civil rights violations under two distinct statutory frameworks that together reach the full range of conduct at issue. The negligence framework under which the case was tried reaches per-plaintiff damages but does not reach systemic redesign of defaults, does not invoke the administrative enforcement authority of the Office for Civil Rights, does not invoke the parens patriae authority of state attorneys general on civil rights grounds, and does not invoke the statutory authority of state Protection and Advocacy agencies. The civil rights frameworks developed in this Article reach all of these remedial mechanisms.

Section 504, through its recipient coverage under 45 C.F.R. § 84.10, its four pathways under 29 U.S.C. § 794(b)(3), and its disparate impact framework under 45 C.F.R. § 84.68(b)(3), reaches purpose-built vertical products in the enumerated service categories of education, health care, housing, social services, and parks and recreation. It reaches them against the platform defendants who have built those vertical products, including Microsoft, Alphabet, Apple, and Amazon. It reaches them on the factual record that the *KGM* plaintiffs developed. It reaches them through enforcement mechanisms that do not depend on individual damages plaintiffs.

ADA Title III, through its public accommodation coverage under 42 U.S.C. § 12181(7), its discrimination framework at 42 U.S.C. § 12182(b)(2)(A), and the body of federal case law adopting WCAG 2.1 AA as the operative digital accessibility standard, reaches the consumer platforms that Section 504's revenue-weighted analysis does not reach. It reaches them against all platform defendants, including Meta, whose consumer products are the primary target of the *KGM* record. It does not require recipient status, does not require federal financial assistance pathways, and does not require the contested principal-engagement analysis under § 794(b)(3)(B). Its coverage of digital services is established directly in the First and Seventh Circuits and through the nexus theory in the Third, Sixth, Ninth, and Eleventh Circuits under *Robles* and subsequent circuit authority, with plaintiffs pleading appropriate factual allegations to satisfy the governing circuit's formulation.

The two frameworks together provide comprehensive coverage of the conduct at issue. Section 504 reaches the vertical products cleanly. Title III reaches the consumer products cleanly. Where Section 504 coverage is contested for a particular defendant's consumer product, Title III provides the clean pathway. Where Title III faces circuit-specific nexus requirements, the platform defendants' physical-retail integrations supply the nexus. No defendant in the *KGM* record falls outside both frameworks; every addictive-design product at issue is reached by at least one of the two statutes.

Neither framework requires proof of discriminatory intent. The *Alexander v. Choate* thoughtlessness-and-indifference standard reaches the non-consideration of disability that the *KGM* record documents across the platform design process. The *Davis v. Monroe County Board of Education* deliberate-indifference standard reaches Meta's failure to respond to Project Myst's findings of disparate harm to vulnerable children. The design records of the platform defendants are empty with respect to disability consideration, and the empty record is affirmative evidence that the non-discrimination obligation was not met.

The *KGM* record's documentation of these facts supplies the evidentiary predicate for civil rights claims under both statutes.

The analytical distinction between general-purpose infrastructure and purpose-built tailored services that the Supreme Court articulated in *Cox Communications* for copyright contributory-liability purposes informs the § 794(b)(3)(B) analysis for civil rights purposes, without controlling it directly. The stronger argument is one of judicial consistency. The platform defendants cannot have tailored services for market pricing and regulatory positioning purposes and general-purpose infrastructure for civil rights liability purposes. They cannot market Microsoft Cloud for Healthcare as HIPAA-compliant health care technology, price it at a premium on that basis, and then disclaim principal engagement in health care for civil rights purposes. The principal engagement follows the tailoring. Whether the argument is framed through judicial estoppel, through the plain text of § 794(b)(3)(B), or through analogy to *Cox*, the conclusion is the same.

The statutes are available. The recipient status is documented for the Section 504 vertical products identified, and the public accommodation status is established for the Title III consumer products. The factual record is public. The enforcement pathways exist under both frameworks. What is required is the filing.