Optimizing Against the Disability:
Section 504 and the Deliberate Capture of Attention as Disability Discrimination

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Abstract

Section 504 of the Rehabilitation Act forbids a recipient of federal financial assistance from discriminating against people with disabilities in any of its operations. Attention deficit hyperactivity disorder is a recognized disability whose defining functional limitation is the regulation of attention. This article argues that when a federal funding recipient adopts a design model whose stated purpose is to capture and hold user attention, that recipient is optimizing against the precise capacity the disability impairs, and Section 504 is implicated. The argument is built on a live exemplar. Microsoft Corporation is a direct recipient of federal financial assistance, and its leadership has publicly reframed its consumer strategy around the capture of user attention, naming as its models two firms that courts and the Federal Trade Commission have already sanctioned for engagement design that harmed minors. The article establishes the recipient hook, identifies attention as the axis of the disability, sets out the regulatory record showing that attention capture design is both harmful and knowingly deployed, and then advances two theories of liability: denial of meaningful access under *Alexander v. Choate*, and intentional discrimination evidenced by an admission of design objective coupled with knowledge of disparate effect. It confronts the central obstacles, principally *Alexander v. Sandoval* and the limits of disparate impact enforcement, and shows why the intentional theory survives them. The recipient that declares it wants the attention has named the very thing the statute forbids it to optimize against.

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Contents

I. Introduction

A corporation said the quiet part out loud. In the spring of 2026, Microsoft's reconstituted Xbox leadership described the company's competition not as another console maker but as attention itself, and held up the engagement driven platforms that dominate young people's screen time as the model to emulate.[1] The statement was made as a matter of business pride. It is also, this article argues, a legal admission of a kind its maker did not intend, because of one fact about the speaker that the business press did not connect to it: Microsoft is a recipient of federal financial assistance, and a recipient is forbidden to discriminate against people with disabilities.

The disability at the center of this article is attention deficit hyperactivity disorder. Its defining functional limitation, the thing that makes it a disability rather than a personality, is the impaired regulation of attention.[2] An industry that organizes itself around the capture of attention is therefore organizing itself around the precise capacity that this disability leaves least defended. When the entity doing the organizing is a private actor with no relationship to the federal fisc, that is a policy problem. When the entity is a recipient of federal financial assistance, it is a civil rights problem, because Section 504 of the Rehabilitation Act reaches every operation of such a recipient and forbids discrimination on the basis of disability within them.[3]

This article makes that civil rights problem concrete. Part II establishes that Microsoft is a direct recipient of federal financial assistance, distinct from a federal contractor, and that recipient status reaches the corporation as a whole. Part III identifies attention as the axis of the disability and situates the attention disabled within the protected class. Part IV sets out the regulatory and adjudicative record, the recent social media addiction verdicts and the Federal Trade Commission's landmark order against the maker of the very game the industry treats as

1. The strategic reframing, often summarized in the phrase that the competition is attention, was reported across trade and general coverage of the Xbox leadership reset of June 2026. *See* Stephen Totilo, *Game File* (June 2026) (reporting the internal strategic posture and the studio consolidation that followed). [Full citation pending verification.]

2. 42 U.S.C. §12102(2)(A) (listing concentrating and thinking among major life activities); *id.* §12102(2)(B) (listing the operation of neurological and brain function among major bodily functions).

3. 29 U.S.C. §794(a); *id.* §794(b) (defining program or activity to reach all the operations of a covered entity).

its lodestar, to show that attention capture design is both harmful and knowingly deployed, and then reads the Microsoft admission against that record. Part V advances two theories of Section 504 liability, denial of meaningful access and intentional discrimination. Part VI confronts the objections that matter, principally the private enforcement problem after *Alexander v. Sandoval*, the limits the Supreme Court placed on disparate impact in *Alexander v. Choate*, the everyone is affected objection, and the remedial ceiling the Court has built around spending clause statutes. The conclusion returns to the admission.

A note on what this article does not claim. It does not claim that Microsoft has already consummated a violation in a particular product shipped to a particular child. That is a fact question for a particular case. The claim is narrower and prior to any such case: that the legal framework exists, that the recipient hook is satisfied, that the disability and its axis are settled, and that a recipient which both deploys attention capture design and announces the design objective has positioned itself squarely within the statute's prohibition. The admission is not the violation. It is the notice.

II. The Recipient

Section 504 does not reach the world. It reaches recipients of federal financial assistance, and only them.[4] The threshold question for any Section 504 theory is therefore jurisdictional in spirit: is the defendant a recipient at all. For most large technology firms the honest answer is contested, and a responsible analysis says so. For Microsoft the answer is documented.

A. Financial assistance, not procurement

The statutory hook is financial assistance, and the most common error in applying it is to treat every federal dollar as assistance. It is not. The settled distinction is between federal financial assistance, which subsidizes or aids the recipient and triggers the civil rights conditions, and federal procurement, where the government buys goods or services for its own use and the civil

4. 29 U.S.C. §794(a) (prohibiting discrimination under any program or activity receiving Federal financial assistance).

rights spending statutes do not attach.[5] A firm that sells cloud capacity to a federal agency on a procurement contract has not thereby become a Section 504 recipient. The dollar must be assistance.

That distinction defeats most speculative recipient theories, and it is the reason careful scholars decline to call the large technology firms recipients on the strength of their government contracts. It does not defeat the theory here, because the awards that establish Microsoft's recipient status are assistance awards, not procurement.

B. The Microsoft awards

Public federal spending records document direct federal financial assistance to Microsoft Corporation in several independent instruments. The largest is a direct prime award from the Department of Defense for research in topological quantum computing, the line of work associated with the company's long running quantum program, in an amount on the order of several million dollars.[6] A second is a direct award from the Department of Agriculture for artificial intelligence based biothreat detection.[7] A third class consists of sub awards routed through an intermediary consortium on Defense funded work.[8]

The doctrinal significance of a direct prime research award is that it is assistance extended to the corporation, not payment for goods the government consumes. It makes Microsoft Corporation a direct recipient. The point is not the dollar amount, which is modest against the company's revenue. The point is status. A direct recipient is a recipient.

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5. The assistance versus procurement line is long settled in the Title VI and Section 504 case law and in the implementing regulations, which exclude contracts of guaranty or insurance and ordinary procurement from the definition of federal financial assistance. *See* 34 C.F.R. §104.3(h) (defining federal financial assistance for Section 504 purposes); *cf. Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984) (construing the scope of Section 504 coverage tied to assistance).

6. The award is documented in the public federal spending record. *See* USAspending.gov (Department of Defense prime award to Microsoft Corporation for topological quantum computing research). [Award identifier and amount to be confirmed against the live record.]

7. *See* USAspending.gov (Department of Agriculture award to Microsoft Corporation, bio-hardened environments and AI based biothreat detection). [Award identifier to be confirmed.]

8. *See* USAspending.gov (sub awards to Microsoft Corporation via the National Center for Manufacturing Sciences on Department of Defense funded programs). [Identifiers to be confirmed.]

C. Coverage reaches the whole corporation

A reader schooled in the older Section 504 case law may expect the next move to be a fight about which program received the money and whether the challenged conduct sits inside that program. That fight is over, and it has been over since 1988. After *Grove City College v. Bell* read the statute to confine coverage to the specific funded program, Congress enacted the Civil Rights Restoration Act of 1987 and wrote a definition of program or activity into the statute that restores institution wide coverage.[9] For a private corporation, the definition provides that where federal financial assistance is extended to the corporation as a whole, the program or activity is all of the operations of the corporation.[10]

The consequence is direct. Once Microsoft Corporation is a recipient through a direct prime award, the covered program is not the quantum laboratory. It is the corporation. The obligation not to discriminate on the basis of disability follows the corporate person into every operation it runs, including the operations through which it designs and ships consumer software. Any argument that the gaming division or the consumer applications division is too far from the Defense award to be covered is the program specific argument that the Restoration Act abolished.

III. The Disability and Its Axis

A. Attention deficit hyperactivity disorder as a protected disability

The Rehabilitation Act borrows the Americans with Disabilities Act's definition of disability and its construction.[11] Under that definition, a disability is a physical or mental impairment that substantially limits one or more major life activities.[12] The 2008 amendments to the ADA expanded the construction of that phrase and instructed that it be read in favor of broad coverage,

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9. Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (amending the program or activity definitions in the civil rights spending statutes); *see* 29 U.S.C. §794(b).

10. 29 U.S.C. §794(b)(3)(A)(i).

11. 29 U.S.C. §794(d) (directing that the standards of Title I of the ADA apply to Section 504 claims, and more generally aligning Section 504 with ADA disability standards).

12. 42 U.S.C. §12102(1)(A).

and they enumerated major life activities that include concentrating and thinking, and major bodily functions that include neurological and brain function.[13] Attention deficit hyperactivity disorder, which by clinical definition substantially limits the regulation of attention and related executive function, sits within that protected class. The federal courts have applied the amended standard to it directly, treating ADHD as a covered mental impairment, measuring the substantial limitation against the general population rather than against a peer group, and holding that a high level of achievement does not foreclose disability where the individual reaches it only through additional time or effort.[14] This is not a novel or aggressive classification. It is the ordinary application of the amended statute.

B. Attention as the axis of the disability

What distinguishes this disability for present purposes is the identity between its impaired function and the resource the engagement economy is built to extract. The disability is, in functional terms, a reduced capacity to regulate where attention goes and how long it stays. The engagement business is, in functional terms, the deliberate engineering of stimuli that capture attention and resist its release. The two describe the same human faculty from opposite sides. One names a vulnerability. The other names a design target. They are the same axis.

The significance of naming the axis is that it converts a general harm into a discrimination question. A design that captures attention acts on everyone, and a critic will say so, and Part VI takes that objection seriously. But a design that is engineered to defeat the regulation of attention does not act on everyone equally. It acts most powerfully on the population whose regulation of attention is already impaired, because that population has the least remaining capacity to resist it. The attention disabled are not incidental casualties of attention capture design. They are the population on whom it works best. A practice that works best on a protected class by exploiting

13. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553; 42 U.S.C. §12102(2)(A), (B); *id.* §12102(4)(A) (rule of construction favoring broad coverage).

14. *See Ramsay v. Nat'l Bd. of Med. Exam'rs*, 968 F.3d 251 (3d Cir. 2020) (recognizing ADHD as a covered impairment under the implementing regulations, measuring substantial limitation against most people in the general population, and holding that strong academic performance does not preclude a finding of disability where it is attained through added effort).

the very function that defines the class is the paradigm of a practice that demands civil rights scrutiny, not the periphery of it.

IV. The Design and the Admission

A. Attention capture design is harmful, and the industry knows it

A Section 504 theory that depended on proving, from scratch, that engagement design harms minors and that its deployers know it would be a heavy theory. It does not have to. Two recent bodies of authority have already established both propositions on records built through adversarial discovery.

The first is the wave of social media addiction litigation that reached verdicts in early 2026. In a Los Angeles trial, a jury found Meta Platforms and Google's YouTube liable for designing their platforms to addict a young user, and the verdict carried a punitive component that required a finding of malice, oppression, or fraud.[15] In a separate New Mexico action, a jury returned a large consumer protection verdict against Meta arising from the same family of conduct.[16] What matters for the present argument is not the dollar figures but the evidentiary core that produced them: internal corporate research showing that the companies knew their engagement maximizing features hooked young users, and continued to build them. The codefendants who settled before trial did so, the reporting indicates, to keep those internal records from being read in open court.[17] The knowledge element, the hardest element in this entire field, has been litigated and found.

The second is the Federal Trade Commission's action against Epic Games, the maker of the game the industry treats as the unicorn of the engagement era. In December 2022 the

15. The March 2026 Los Angeles Superior Court verdict finding Meta and YouTube liable in the social media addiction trial, including the punitive finding, was reported contemporaneously across national outlets. [Case name, docket, and pin citation pending verification through the litigation record.]

16. The March 2026 New Mexico verdict against Meta under state consumer protection law was likewise widely reported. [Case name and docket pending verification.]

17. Contemporaneous reporting described pretrial settlements by other platform defendants and characterized the motivation as avoiding disclosure of internal design records. [Citations pending verification.]

Commission announced two settlements totaling 520 million dollars.[18] One settlement, a 275 million dollar penalty entered through a federal court order, was the largest ever obtained for a violation of an agency rule, and it rested in part on a finding that the game defaulted voice and text communication to on for children and teenagers and connected them with strangers, exposing them to harassment, in violation of Section 5 of the FTC Act.[19] The other, a 245 million dollar administrative order, found that the game used dark patterns, described by the Commission as a counterintuitive, inconsistent, and confusing button configuration, to charge consumers for purchases they did not intend, charged children without authorization, and obstructed the cancellation and refund tools, all as unfair practices under Section 5.[20] Both halves of that record describe the engagement model in its mature form: a manipulation layer on the monetization, and an open social channel on the safety side, each deployed against minors, each found unlawful.

B. The admission

Against that record, return to the Microsoft statement. A recipient of federal financial assistance announced that its consumer strategy is reorganizing around the capture of user attention, and identified as its models the firms whose engagement practices courts and the Commission have already sanctioned. A statement of that kind, made by an ordinary company, is a strategy. Made by a recipient, against this record, it is evidence of a design objective, and the design objective is the capture of the very faculty that defines a protected disability.

The admission does not prove a completed violation, and Part I disclaimed that reading. What it does is supply, in the recipient's own voice, the element that intentional discrimination

18. Press Release, Fed. Trade Comm'n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), `https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations`.

19. *Id.*; *see also* 15 U.S.C. §45 (Section 5, prohibiting unfair or deceptive acts or practices). The COPPA component was entered in *United States v. Epic Games, Inc.*, No. 5:22-cv-00518 (E.D.N.C. 2022). [Docket pending confirmation.]

20. Press Release, Fed. Trade Comm'n, FTC Finalizes Order Requiring Fortnite Maker Epic Games to Pay $245 Million for Tricking Users into Making Unwanted Charges (Mar. 14, 2023), `https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-finalizes-order-requiring-fortnite-maker-epic-games-pay-245-million-tricking-users-making`.

theories ordinarily must assemble from circumstance: the objective. It places the recipient on notice that the model it has chosen to emulate is, on the existing record, an engine of harm to minors, and that the faculty it has chosen to optimize against is the axis of a recognized disability. A recipient cannot later claim it did not know what it was building when it described what it was building.

V. The Discrimination

Section 504's operative command is that no qualified individual with a disability shall, solely by reason of disability, be excluded from participation in, denied the benefits of, or subjected to discrimination under a covered program.[21] Two theories carry the attention capture case into that command. They are not equally strong, and the article presents them in ascending order of durability.

A. Denial of meaningful access

The first theory runs through *Alexander v. Choate*, in which the Supreme Court held that Section 504 reaches at least some conduct that imposes an unjustified disparate burden on people with disabilities, and framed the inquiry as whether the recipient has denied the protected class meaningful access to the benefit it offers.[22] On this theory, a recipient that builds its consumer products around attention capture offers those products to a public that includes the attention disabled on terms the attention disabled cannot meaningfully accept, because the product is engineered to defeat the very regulation their disability already compromises. The benefit, framed as safe and self directed use of the product, is meaningfully accessible to the general user and not to the protected class, by design. The courts of appeals have confirmed that a facially neutral benefit can support exactly this claim. Following *Choate*, the Ninth Circuit has held that

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21. 29 U.S.C. §794(a).

22. *Alexander v. Choate*, 469 U.S. 287, 301 (1985) (framing the question as meaningful access and recognizing that Section 504 reaches some disparate impact discrimination while declining to hold that all disparate impact is actionable).

the neutral face of a benefit does not dispose of a Section 504 claim where the benefit has the effect of denying meaningful access to people with disabilities while it remains open and easily accessible to others.[23]

The meaningful access theory has the virtue of fitting the facts and the vice of standing on contested ground, which Part VI addresses. It is offered as the broader and the more vulnerable of the two.

B. Intentional discrimination

The second theory does not depend on disparate impact doctrine at all. Section 504, like the Title VI provision on which it is modeled, prohibits intentional discrimination directly, and that prohibition is privately enforceable.[24] In the disability context, a recipient acts with the requisite state of mind where it is deliberately indifferent to a known harm to the protected class, that is, where it knows that its conduct is substantially likely to harm the class and proceeds anyway.[25]

The attention capture case fits that standard better than it fits disparate impact, because the recipient has supplied the knowledge and the objective itself. The recipient knows, on the record assembled in Part IV, that attention capture design harms minors and that its chosen models were sanctioned for it. The recipient has announced that capturing attention is the objective. And the faculty it has set out to capture is, by clinical definition, the faculty a recognized disability impairs. A recipient that optimizes against a function with knowledge that the optimization exploits a protected class's defining limitation is not stumbling into a disparate effect. It is choosing the effect. That is the intentional theory, and it is the one the article would litigate first.

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23. *See Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204 (9th Cir. 2020) (the facially neutral character of a benefit does not defeat a disparate impact claim premised on the denial of meaningful access).

24. The intentional discrimination core of the Title VI and Section 504 scheme is privately enforceable; the Supreme Court reaffirmed as much even as it foreclosed private enforcement of disparate impact regulations. *See Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001).

25. *See, e.g.*, *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138–39 (9th Cir. 2001) (articulating deliberate indifference as knowledge that a harm to a federally protected right is substantially likely and a failure to act upon that likelihood, in the Section 504 and ADA damages context); *Liese v. Indian River County Hosp. Dist.*, 701 F.3d 334 (11th Cir. 2012) (holding that a plaintiff may demonstrate the intent required for Section 504 compensatory damages through deliberate indifference, and collecting agreeing decisions from the Second, Ninth, and Tenth Circuits); *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008) (a funding recipient may be liable in damages under Section 504 where it intentionally or with deliberate indifference fails to provide meaningful access).

VI. Objections

A theory of this kind earns its keep by meeting the strongest objections to it directly. Four matter.

A. Sandoval and private enforcement

The most serious obstacle is *Alexander v. Sandoval*, which held that the private right of action implied under Title VI does not extend to the disparate impact regulations promulgated under it, because the statutory section that creates the private right reaches only intentional discrimination.[26] Because Section 504 is construed in tandem with Title VI, *Sandoval* casts substantial doubt on whether a private plaintiff may enforce a Section 504 disparate impact theory that rests on the implementing regulations, and the lower courts have divided on the question in the years since.

The honest concession is that this doubt is real and that it weakens the meaningful access theory in Part V.A as a vehicle for a private damages suit. Three responses follow. First, *Choate* itself located disparate impact coverage in the statute, not merely in the regulations, and *Choate* has not been overruled, so the meaningful access theory is not simply a regulatory disparate impact claim of the kind *Sandoval* addressed. Second, and decisively, the intentional discrimination theory in Part V.B is untouched by *Sandoval*, which expressly preserved private enforcement of intentional discrimination. The article leads with the intentional theory precisely because it survives the obstacle that the impact theory must survive. Third, the administrative enforcement route through the relevant agency's office for civil rights does not depend on an implied private right of action at all, and remains available regardless of how the *Sandoval* question is resolved in court.

B. The limits of Choate

A second objection is that *Choate* declined to hold that all disparate impact is actionable and warned against reading Section 504 to require recipients to accommodate every disparate effect

26. *Sandoval*, 532 U.S. at 280–93.

of facially neutral conduct.[27] The response is that the attention capture case is not a complaint about an incidental disparate effect of neutral conduct. It is a complaint about conduct engineered to act on the exact faculty the disability impairs. *Choate* drew its line to exclude the recipient who merely fails to equalize outcomes; it did not draw it to protect the recipient who designs against the protected function. Meaningful access is denied most clearly where the inaccessibility is the design. *Choate* made the distinction itself, contrasting the benefit reduction that was neutral on its face and did not turn on any trait that the disabled as a class are less capable of meeting, which it left undisturbed, with conduct that does turn on such a trait, which it did not.[28] A design built to defeat the regulation of attention turns on precisely such a trait, so it falls on the actionable side of the line *Choate* drew rather than the protected side, and the meaningful access authority collected in Part V.A confirms that the neutral face of a product is no answer where its effect denies the protected class the access that others keep.

C. Everyone is affected

A third objection is that attention capture design acts on all users, so singling out the attention disabled is arbitrary, and the harm is a general consumer harm rather than a disability harm. This is the objection Part III anticipated. Two points answer it. First, disparate impact doctrine exists precisely for practices that are facially neutral and universal in application but unequal in effect; that a practice touches everyone is the beginning of the analysis, not the end of it. Second, the equal application premise is false on the merits. A design built to defeat the regulation of attention does not impose an equal burden on a population defined by an impaired capacity to regulate attention. The general user retains a regulatory capacity the protected class lacks. The burden is heaviest exactly where the capacity is lowest, which is the population the disability defines. The doctrine asks for nothing more. The Ninth Circuit has held that a meaningful access plaintiff need not show that the deprivation was unique to the disability or especially severe, only

27. *Choate*, 469 U.S. at 298–303 (cautioning that not all disparate impact states a Section 504 claim and framing the inquiry around meaningful access rather than identical results).

28. *Choate*, 469 U.S. at 302 (describing the challenged reduction as neutral on its face and not distinguishing on the basis of any trait that the handicapped as a class are less capable of meeting).

that meaningful access was denied, which forecloses the argument that a harm shared in lesser degree by the general public defeats the disability claim.[29]

D. The remedial ceiling

A fourth objection concerns remedies rather than liability. The Supreme Court has built a restrictive remedial doctrine around the spending clause civil rights statutes, holding that punitive damages are unavailable and, more recently, that damages for emotional distress are unavailable in private actions under Section 504 and statutes that incorporate its remedies.[30] The response is that the remedial ceiling narrows the recovery available in a private damages suit; it does not defeat liability, and it does not touch the relief that matters most here. Declaratory and injunctive relief remain available, and injunctive relief against the design practice is the relief a civil rights plaintiff in this posture would principally seek. The administrative enforcement route, which can compel changes to a recipient's practices as a condition of continued funding, is likewise unaffected by the damages doctrine. The ceiling shapes the damages remedy; it does not close the courthouse, and it does not close the agency. Two points reinforce the relief that remains. Compensatory damages as a category survive the ceiling: what the spending clause cases withhold is punitive damages and damages for emotional distress, not pecuniary compensatory relief for intentional discrimination.[31] And the injunctive remedy is durable against the obvious evasion, because a private defendant cannot moot a claim for prospective relief by quietly retiring the challenged design once suit is filed; it carries a heavy burden to show the conduct will not

29. *Doe*, 982 F.3d 1204 (the meaningful access standard does not require that the deprivation be unique to the protected class or severe).

30. *Barnes v. Gorman*, 536 U.S. 181, 187–89 (2002) (no punitive damages under Section 504 and Title VI); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022) (no emotional distress damages under Section 504 and the Affordable Care Act's antidiscrimination provision).

31. *See Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008) (Section 504 affords the full panoply of equitable relief and compensatory damages, excluding only punitive damages).

recur, and courts withhold from private defendants the presumption of good faith they extend to public ones.[32]

VII. Conclusion

The recipient announced its objective. It said that the contest it cares about is the contest for attention, and it pointed to the firms that have already been sanctioned for winning that contest at the expense of children. It said this as a recipient of federal financial assistance, which means it said it as an entity the Rehabilitation Act forbids to discriminate against people with disabilities in any of its operations. And the faculty it announced it would capture is, by the settled definition of the statute it operates under, the axis of a recognized disability.

None of that is a verdict, and this article has not pretended otherwise. It is a framework and a notice. The framework is that attention capture design, deployed by a federal funding recipient, is not merely a consumer protection problem but a disability discrimination problem, because the design optimizes against the precise function a protected class cannot defend. The notice is that one recipient has placed itself inside that framework in its own words. What remains is the ordinary work of a particular case: a plaintiff, a product, a record. The doctrine is already there to receive it.

32. *See Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173 (11th Cir. 2007) (voluntary cessation by a private defendant does not moot a claim absent a heavy showing that the challenged conduct will not recur), *abrogated on other grounds by Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022).