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适应始于识别:个性化职场无障碍环境中的治理问题

Heather Grizzle · April 24, 2025

个性化无障碍功能必须先对用户进行分类,才能对其做出适配。这也引出一个问题:在部署之前,各机构应就残疾推断建立哪些原则。

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该主张的假设前提

自适应无障碍的理由直接而诱人。与其建立一个统一界面并要求每位员工去适应它,不如部署能够持续地、无需请求地自行调整以适应每个人的系统。无障碍变得个人化、即时化、且不着痕迹。通常伴随这一理念而来的说法是:无障碍应当去适应人,而不是要求人去适应它。

作为一项原则,这一表述是正确的;但作为一项规范说明,它是误导性的,因为它掩盖了“适应”所需要的东西。系统若未对某个人加以分类,就无法自行调整以适应此人。要为一名

员工放大文字而不为另一名员工放大,要简化仪表盘、改变计时、更换输入方式,系统必须首先判定这个特定的人需要这样做。个性化即分类,而在职场中,所涉及的分类正是残障。

这是一个治理问题,而不是实施细节。一个雇主若部署了能够推断其员工中谁是残障人士的系统,所构建的东西与无障碍功能截然不同。它构建了一种机制,能够持续地、在未经请求、未经披露、且绕开法律为此专门设立的程序的情况下,生成关于其员工队伍的残障信息。

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分类恰恰是就业法最为限制的事项

《美国残障人法》(ADA)限制雇主要求员工接受体检,或询问员工是否为残障人士,或询问该残障的性质或严重程度,除非该询问与工作相关且符合业务必要性。这项限制被有意设计得十分宽泛,美国平等就业机会委员会(EEOC)长期以来将其解读为涵盖那些可能引出残障相关信息的询问,而不仅仅是直接提问。

Whether an inference engine makes an inquiry within the meaning of the statute is an open question, and it should be labeled as open rather than resolved in either direction. A system that monitors zoom level, dwell time, error rates, input method, correction frequency, or navigation patterns and derives from them that a user is likely to have a visual, motor, or cognitive impairment has not asked anything. It has obtained the answer without the question, which is either outside the provision's language or precisely the mischief the provision exists to prevent, and no court has yet had occasion to say which.

不确定的是这一点是什么,但确定的是雇主最终所持有的东西。无论这种推断如何定性,其输出结果都是一份记录,与一名具名员工相关联,表明其可能患有残障。ADA要求,雇主所获取的关于员工的医疗信息必须保存在单独的表格和单独的档案中,并作为保密医疗记录处理。一个在通用产品分析管道内部生成残障相关推断、保存在供应商基础设施上、可被平台管理者查看的自适应无障碍系统,不太可能满足这一标准,而在大多数部署中,没有人考虑过这个问题,因为该系统是作为用户体验功能采购的,而非作为员工医疗信息的来源。

Note also what the employee loses. The accommodation process exists to give the person control: whether to disclose, what to disclose, to whom, and what to request. An adaptive system decides all four on the employee's behalf and never tells her it did. The individual is better served by a plain form and a named decision-maker than by a system that quietly determines what she requires.

The relevant EEOC guidance on these questions, the May 2022 technical assistance on the ADA and the use of software, algorithms, and artificial intelligence to assess job applicants and employees, named impermissible disability-related inquiry as one of three principal mechanisms of algorithmic ADA harm alongside failure to accommodate and screen-out. That document was removed from the agency's website in January 2025. Its removal changed the availability of the explanation, not the content of the statute.

市场刚刚被告知了会发生什么

在本文写作前三个月,美国联邦贸易委员会(FTC)宣布了一项投诉及拟议命令,要求accessiBe支付一百万美元,以了结有关其歪曲其人工智能驱动的网页无障碍工具能力的指控。该公司曾推销一款插件,声称能使任何网站符合《网页内容无障碍指南》(WCAG),部分内容可在四十八小时内通过自动化流程立即、全面实现合规,并持续重新扫描以在内容变化时维持合规。FTC指控该产品并未做到这一点,在菜单、标题、表格、图片和录音等基本组成部分上均存在缺陷,并且该公司还将付费背书包装成看似独立的评价。拟议命令禁止该公司声称其自动化产品能够使网站符合WCAG,或长期维持合规,除非有证据支持该声明。

无障碍叠加层是目前最接近自适应无障碍的先例,而其教训并非“自动化无法提供帮助”。而是:叠加在一个本身不具无障碍性的底层系统之上的自动化调整,产生的是“看似可访问”的表象,而非真正的可访问性,而部署它的组织获得的正是这种表象,作为其辩护。叠加层当年的营销话术恰恰与如今自适应无障碍的宣传如出一辙:不要止步于合规,要创新;技术会实时调整;无障碍将变得自动化。数百个使用叠加层的组织在网页无障碍诉讼中被起诉,而叠加层并未帮助他们,反而暴露了他们。

An organization that adopts a personalization system on the strength of a vendor's claim that it adapts to every user is making the same purchase, in a context where the affected people are employees rather than website visitors and where the applicable statute carries an individual right of action.

“适应”正被当作“合理便利”的替代品来推销,而这一点目前正处于诉讼之中

实际的危险不在于自适应系统会失败,而在于它们的存在被当作已经履行了提供合理便利的义务。

In March 2025, the American Civil Liberties Union, the ACLU of Colorado, Public Justice, and Eisenberg and Baum filed a complaint with the Colorado Civil Rights Division and the EEOC on behalf of a Deaf and Indigenous employee. According to the public filings, she requested human-generated captioning as a reasonable accommodation for an automated video interview, and the request was denied on the basis that the platform's automated captions would suffice. Portions of the interview were allegedly uncaptioned in any event. Both companies deny the allegations, and the matter will be determined by investigation rather than by commentary.

Whatever its outcome, the fact pattern names the risk exactly. The employer's position was that the automated adaptive feature made the requested accommodation unnecessary. That is the proposition adaptive accessibility marketing advances as its central benefit. An organization that adopts the technology and internalizes the marketing has adopted a defense that is currently being tested, and it should understand that it is the defense at issue rather than a way of avoiding the dispute.

> **是底线,不是上限**
>
> 正确的关系恰恰相反。自适应功能是一道底线,能够降低对合理便利的需求频率。它不是一道上限,不能决定可提供哪些合理便利,任何自动化调整都不应被用作拒绝某项具体请求的理由。

辅助技术不是无障碍计划

A final distinction, because the proposition tends to collapse it. Applications such as Seeing AI and Google Lookout are assistive technologies: tools a blind or low-vision person chooses, configures, controls, and can abandon. They belong to the user. Their governance is the user's own, and their value is real.

雇主部署的自适应界面则是另一种性质的对象。它属于机构,被施加于当事人身上而非由她操作,无论她是否愿意都会运行,并且会生成由雇主持有的数据。从第一类工具的成

功推论出第二类工具的安全性,是这一领域中最核心的分析错误,而这种错误之所以反复出现,是因为两者都被冠以“无障碍人工智能”之名。

There is also a quieter problem in citing consumer assistive apps as evidence of an organization′s accessibility posture. If a blind employee is navigating the workplace using an application she found, installed, and learned on her own time, the organization has not provided accessibility. It has benefited from her doing so, and counting that as institutional provision obscures an unmet obligation. The relevant question is not what tools employees have found. It is whether the organization′s own documents, systems, and physical environment are accessible without them.

该原则真正要求的是什么

无障碍应当去适应人,而不是相反。这一原则本身是正确的。由此得出的结论不是“推断”,而是“自主决定”:由当事人明确说明她需要什么,系统按照她所说明的去执行。这正是“偏好控制”与“检测引擎”之间的区别,也是整个治理问题的关键所在。

任何考虑采用这类系统的组织,都应遵循以下六点。

1. 以书面形式询问供应商:该系统是推断用户特征,还是应用用户自行声明的偏好。如果是推断,询问它推断的是什么、依据什么信号、推断结果存储在何处、谁能查看、保留多久。保存好这份答复。
2. 只要能达到相同效果,应优先选择“声明偏好”而非“检测”。一个由员工自己控制的设置面板,能实现同样的适应效果,却不带有任何推断问题,并且让员工自己掌控其披露内容。
3. Treat any disability-related inference the system generates as confidential medical information for handling purposes, in separate storage with restricted access, and confirm that the vendor′s architecture permits this before deployment rather than after.
4. 在政策以及合理便利流程本身中明确声明:自动化的自适应功能不限制、也不能替代提出合理便利请求的权利,并对负责处理此类请求的人员进行相应培训。
5. 拒绝接受合规声明。任何声称某产品能够自动实现或维持符合某项无障碍标准的说法,除非附有证据支持,否则都应被视为缺乏依据的营销宣传——这如今也正是FTC的立场。

6. 修复底层系统。将自适应修正应用于一个本身不具无障碍性的文档、仪表盘或工作流程,产生的只是表层的临时性修改。修复源头虽然更慢、在演示中不那么亮眼,却是唯一能持久奏效的做法。

结语

个性化无障碍被宣传为绕过合理便利流程摩擦的一种方式:无需表格、无需披露、无需等待、无需尴尬的对话。它试图消除的这种摩擦,在很大程度上正是残障人士借以掌控关于自己的信息、并说明自己实际需要什么的那个过程。消除它并不会消除分类本身,只会把分类从一场员工能够参与的对话,转移到一个她看不见的系统里。

技术本身不是问题,其中许多确实将被证明真正有用。问题在于宣传的说法——当前所宣扬的“无障碍可以是自动的、自适应的、完整的,而无需任何人做出任何决定”这一说法,正是已经在相邻市场引发一起联邦执法行动和一波诉讼浪潮的同一种说法。它在网站领域并不成立,在职场中也不会更成立,因为在职场中被“适应”的对象是拥有私人诉权的员工,而保护他们的法规自1990年起便已生效。

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- 《网页内容无障碍指南》,万维网联盟。

TIPS

Know something about a sign language AI system that the public should know? Send it to tips@novaracg.com. Every tip is read by me and kept confidential. If you work in the UK, writing to us is not by itself a protected disclosure under the Public Interest Disclosure Act 1998, so before you share employer information, check your options with Protect (protect-advice.org.uk), the free whistleblowing advice line.

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