From Code to Courtroom: The Growing Risk from AI Products

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I. Introduction

Artificial intelligence is everywhere and rapidly becoming part of everyday life. A recent Gallup survey shows that AI is already widely embedded in everyday consumer products, with nearly all Americans using AI-enabled technology.[1] More than eight in ten Americans report using several AI-enabled products each week, including weather forecasting apps (87%), streaming services (83%), online shopping platforms (82%), social media (81%), and navigation apps (81%).[2] Yet nearly two-thirds of these users do not realize they are using AI.[3]

As AI spreads into both everyday tools and higher-stakes areas like medical devices, vehicles, and therapy apps, the number of people affected when these technologies fail inevitably grows. More use means more potential harm. And more harm raises questions about who should be held liable. This growing exposure presents a critical question: Can product liability law serve as a way for people to seek redress when AI technologies cause harm?

The answer is far from clear. There can be no product liability claim without a "product."[4] Product liability law is well settled when a tangible good causes a harm. A defective toaster, for example, clearly counts as a product and the law provides a path for injured consumers to seek redress. AI systems are different. Their intangible nature makes it difficult to determine whether they qualify as a "product" under traditional doctrine.

Legislatures and courts are beginning to respond, attempting to shape the law to address AI-related injuries. But the law is developing far more slowly than the technology itself. This article addresses those doctrinal developments and explores what AI businesses can do to respond.

II. Traditional Product Liability Doctrine: Why AI Does Not Fit Easily

Traditional product liability doctrine generally has been limited to tangible goods placed into the stream of commerce.[5] Consistent with this principle, courts have historically declined to treat software, apps, and other digital platforms as "products" because they are intangible. Instead, courts typically characterized them as services or information, placing them outside the reach of product liability law.

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[1] Ellyn Maese, *Americans Use AI in Everyday Products Without Realizing It*, Gallup (January 15, 2025), https://news.gallup.com/poll/654905/americans-everyday-products-without-realizing.aspx.
[2] *Id*.
[3] *Id*.
[4] *Patterson v. Rohm Gesellschaft*, 608 F. Supp. 1206, 1211 (N.D. Tex. 1985).
[5] Restatement (Third) of Torts: Prod. Liab. § 19 (1998) ("A product is tangible personal property distributed commercially for use or consumption.").

Several cases illustrate this traditional approach. A federal court in Kentucky held that video games and software were not subject to a product liability claim because "intangible thoughts, ideas, and expressive content are not 'products.'" *James v. Meow Media, Inc*., 90 F. Supp. 2d 798, 811 (W.D. Ky. 2000). And another federal court in New York held that an e-retailer's website "is better characterized as a provider of services." *Eberhart v. Amazon.com, Inc.*, 325 F. Supp. 3d 393, 399 (S.D.N.Y. 2018). Similarly, in *Jackson v. Airbnb, Inc.*, a California court dismissed the Plaintiff's product liability claim, holding that an online marketplace app was a platform connecting users, and therefore a service rather than a tangible product. 639 F. Supp. 3d 994, 1011 (C.D. Cal. 2022).

Several state statutes reflect the traditional assumption that product liability is directed at physical goods—machines, appliances, and cars that can be manufactured, sold, and placed in the stream of commerce. Tennessee's product liability statute defines products as "any tangible object or goods produced." Tenn. Code § 29-28-102. Ohio's statute limits the definition of product to "any object, substance, mixture, or raw material that constitutes tangible personal property." Ohio Rev. Code § 2307.71.

The upshot of these cases and statutes was a clear doctrinal line: tangible goods were considered products, but software and digital systems usually were not. Because of that distinction, courts routinely dismissed product liability claims involving software or apps on the ground that there was no "product" about which to sue. For decades, that meant that technology-related harms fell outside of the reach of product liability law.

That line, however, is beginning to blur. Given the rapid growth of AI and its expanding role in everyday life, courts are reconsidering the traditional line between tangible products and intangible technology.

III. Courts Are Beginning to Adapt: Emerging AI Product Liability Theories

While courts historically treated software applications and websites as services rather than products, a recent wave of cases suggests that this line is beginning to shift. As one court put it, "as our physical and digital lives become further entwined," the issue of whether software and AI are products "is an issue that must be treated thoughtfully." *Beyer v. DraftKings,* Inc., No. 25 C 1336, 2025 WL 3281680, at *12 (N.D. Ill. Nov. 25, 2025). Several recent cases demonstrate this shift.

A. *Garcia v. Character Technologies, Inc.*

One of the most closely watched cases addressing this issue is *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157 (M.D. Fla. 2025). That case involved the Character AI app, which allows users to chat with fictional AI "Characters." *Id*. at 1167. After a 14-year-old boy became emotionally attached to one of these Characters, his mental health severely declined and he eventually took his own life after a Character encouraged him to "come home." *Id*. at 1168-69.

In deciding whether the Character AI app was a product, the court drew a critical distinction. It held that the app could qualify as a product, but only for design defect-based claims—not for

claims based on the content or the AI generated speech. According to the court, allegations related to the content, like remarks the Characters made, could not survive. *Id*. at 1179-80. But allegations that Character AI was defective because the app failed to confirm users' ages and because users were unable to exclude indecent content *could* survive. *Id*. The decision thus carefully limited liability to defects tied to the functional design of the technology, rather than to the content produced by the system. *Id*. at 1180.

B. *Doe v. Lyft, Inc.*

Doe v. Lyft, Inc., took a similar approach to *Garcia*. 756 F. Supp. 3d 1110 (D. Kan. 2024). In that case, a rideshare company approved a fraudulent driver application—the drivers photo did not match the license photo submitted with the application. *Id*. at 1117. The plaintiff was sexually assaulted by the driver and an accomplice after a ride. *Id*. The plaintiff alleged the rideshare app was defective because it approved someone as a driver when the license did not match the picture provided. *Id*. at 1118-1119.

In deciding whether the rideshare app was a product, the court noted the "recent trend of expanding product liability theories towards these platforms," rejected the all-or-nothing approach that software is either always a product or never one, and held that the plaintiff's product liability claim was viable. *Id*. at 1119-1120. The harm, the court reasoned, resulted from the app's biometric verification and driver validation systems, which were designs or functionalities of the app. *Id*.

C. *In Re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*

Though also rejecting the all-or-nothing approach, the court in *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.* took a different approach. 702 F. Supp. 3d 809 (N.D. Cal. 2023). There, the plaintiffs alleged several defects with social media applications that led to addiction and mental health issues in children. *Id*. at 819. The Defendants argued that their platforms were services and not subject to product liability claims. *Id*. at 838.

The court rejected that sweeping argument. *Id*. Drawing on the Restatement (Third) of Torts, the court explained that while product liability traditionally applied to tangible goods, intangible items (like social media applications) may qualify as products when they are sufficiently analogous to tangible goods in their distribution and use. *Id*. at 841-42. The court also considered "public policy factors in determining what constitutes a 'product' for the purposes of product liability claims." *Id*. at 850 n.50. Applying that framework, the court examined the plaintiffs' allegations feature by feature, considering defects such as age-verification systems, screen-time limits, account deletion barriers, and algorithmic design choices. *Id*. at 849-53. The court concluded that several of these features could be plausibly treated as products because they functioned in ways analogous to traditional consumer goods. *Id*.

D. The Emerging Consensus

Although the law remains unsettled and these decisions differ in their reasoning, one consistent theme emerges—courts are beginning to reject categorical arguments that AI systems, software, or mobile applications are always services and never products.

Still, the legal landscape remains in flux. Some decisions focus on the source of the harm, others on the functional analogue to tangible goods, and others on the policy justifications underlying strict product liability. Taken together, however, these cases reflect an important shift in how courts approach digital technology. The traditional rule that products must be tangible is increasingly difficult to apply in a world where software, algorithms, and AI systems shape how products function and how consumers interact with them. Courts are therefore moving toward a more flexible, function-based analysis. But while the direction of change is becoming clearer, the doctrine is far from settled. As AI continues to expand across industries and consumer products, courts will likely continue to grapple with where the line between services and products ultimately should be drawn.

IV. Efforts to Fill the Doctrinal Gap

The growing number of AI-related disputes has exposed a basic problem: the law has not yet developed a clear framework for addressing injuries caused by AI systems. This uncertainty is particularly significant given the rapid pace at which AI is evolving and becoming a part of everyday life. As AI systems become embedded in more consumer products and services, questions about liability will only become more frequent and more consequential. That is why legislatures and legal groups are beginning to respond.

A. The AI LEAD Act

Recognizing this uncertainty, lawmakers and legal institutions have begun exploring ways to clarify how liability should apply to AI. One of the most significant proposals in the United States is the AI LEAD Act (Aligning Incentives for Leadership, Excellence, and Advancement in Development Act), introduced by Senators Dick Durbin (D-IL) and Josh Hawley (R-MO). The Bill would establish a federal framework for AI product liability.

The AI LEAD Act begins by acknowledging that while AI systems hold "great promise," they "have caused and will cause harm to businesses and individuals," and "jeopardize public safety and the financial well-being of both individuals and entire industries."[6] The Bill explains that product liability law can assist in addressing harms caused by AI.[7] To that end, it defines "Artificial Intelligence Systems" broadly to include software, tools, or applications that use algorithms or machine learning to make or assist in decisions—whether standalone or built into larger systems—and classifies AI systems as "products" within traditional liability frameworks.[8]

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[6] S. 2937, 119th Cong. § 2(2), available at https://www.congress.gov/bill/119th-congress/senate-bill/2937/text.
[7] *Id*. at § 2(4)
[8] *Id*. at § 3.

The Bill would create a federal cause of action, allowing plaintiffs to bring claims in federal court when AI systems cause harm, with a four-year statute of limitations.[9] The Act would authorize lawsuits by individuals, class plaintiffs, state attorneys general, or the U.S. Attorney General.[10]

B. The American Law Institute AI Liability Project

In parallel with legislative efforts, legal institutions are working to develop principles that can guide courts, legislatures, and private actors. In October 2024, the American Law Institute (ALI) launched a project focused on civil liability for artificial intelligence.[11] The project aims to analyze how existing common-law doctrines apply to AI-related harms and to develop principles that can guide courts and private actors. The project's principles will provide much-needed clarity on how AI-based products fit within established product liability frameworks, particularly as courts confront novel AI product liability claims.

C. Comparative Law: The European Union

While U.S. law is evolving primarily through litigation and proposed legislation, the European Union has taken a more proactive approach. The EU's adoption of Directive (EU) 2024/2853 on October 23, 2024, marked a significant development in product liability law, as it recognized software and artificial intelligence as products subject to strict liability.

Under the updated Product Liability Directive, software and AI systems are recognized as products. Article 4(1) of the Directive defines a product as "all movables, even if integrated into, or inter-connected with, another movable or an immovable; it includes electricity, digital manufacturing files, raw materials and software."[12] The Directive explicitly clarifies that "software is a product for the purposes of applying no-fault liability, irrespective of the mode of its supply or usage, and therefore irrespective of whether the software is stored on a device, accessed through a communication network or cloud technologies, or supplied through a software-as-a-service model."[13]

V. Practical Guidance for AI Companies and Product Designers

In light of this evolving legal landscape, companies developing or deploying AI systems should anticipate increased litigation risk. Courts are beginning to scrutinize AI systems in ways analogous to traditional products, focusing on issues such as design choices, safety features, and foreseeable misuse. But many courts have yet to address the issue, and the ones that have are not applying a single, consistent framework.

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[9] *Id*. at § 301, 303.
[10] *Id*. at § 301.
[11] Principles of the Law, *Civil Liability for Artificial Intelligence*, American Law Institute (October 2024), https://www.ali.org/project/principles-law-civil-liability-artificial-intelligence?active-tab=tab_2.
[12] Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on Liability for Defective Products and Repealing Council Directive 85/374/EEC, 2024 O.J. (L 2853).
[13] *Id*.

Nonetheless, companies and developers should approach AI risk through a product safety lens. This includes conducting thorough product safety reviews, documenting risk assessments, and evaluating reasonably foreseeable uses and misuses of AI systems. Businesses may also implement appropriate safeguards and control mechanisms, such as age verification tools, parental controls, and limitations on prolonged or harmful use.

Given the unsettled state of the law, there is no one-size-fits-all compliance strategy. Businesses must be prepared to defend their AI design, development, and deployment decisions under multiple, evolving theories of liability. Early involvement of litigation counsel can help companies not only to respond to claims but proactively position themselves to defend against them.

VI. Conclusion

AI liability law is changing—and quickly. Courts are moving away from rigid distinctions and becoming more willing to treat AI systems like products. Legislatures are not far behind. And though the law remains in flux, companies and developers should assume their systems will be scrutinized under expanding theories of liability and prepare accordingly.