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AI-Based Technologies and Products Liability Law

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For decades, software has been treated as a service in the eyes of the law. Issues arising from computer games, programs and code were generally handled via principles of contract law based on the end user agreements that must be accepted before their use as opposed to traditional product liability claims, such as negligence, failure to warn, wrongful death or claims asserted under state product liability statutes. An influx of cases asserting product-type claims—grounded in the use of AI tools and "defects" in their development—is changing how these technologies are treated in litigation.

Historically, courts addressing claims against social media platforms did not consider ideas, images, information, words, expressions, or concepts as products for liability purposes. See e.g. *Jacobs v. Meta Platforms, Inc.*, No. 22-cv-5233, 2023 WL 2655586, at *4 (Cal. Super. Ct. Mar. 10, 2023) ("as a social media platform that connects its users, Facebook is more akin to a service than a product," but not considering whether the platform's "recommendation algorithms or related features, such as newsfeeds or those related to social groups, may be considered 'products'").

However, courts are now permitting novel legal theories against social media companies

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as plaintiffs attempt to hold them liable under traditional products liability claims. See e.g. *In re Coordinated Proceeding Special Title Rule 3.550 Soc. Media Cases*, 2023 Cal. Super. LEXIS 76992, at *2 (Cal. Super. Ct. Oct. 13, 2023) ("social media platforms are not 'products' for purposes of product liability claims, but ... cause[s] of action for negligence [were adequately pled]"); Kaitlyn Huamani & Barbara Ortutay, Jury finds Instagram and YouTube liable in a landmark social media addiction trial, AP News, (Mar. 25, 2026) (jury found social media companies negligent in design and operation of platform and that negligence was a substantial factor in causing plaintiff's harm).

With the increasing pace of new lawsuits over alleged injuries caused by AI platforms,

courts are now grappling with familiar claims and terms (think "product," "defect" and "design choices") previously applied to novel social media fact patterns. See *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1179 (M.D. Fla. 2025), motion to certify appeal denied, No. 6:24-CV-1903-ACC-DCI, 2025 WL 2581834 (M.D. Fla. July 15, 2025); c.f. *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 849, 854 (N.D. Cal. 2023) (allegations regarding certain defects in the "various functionalities of defendants [social media] platforms ... [were] analogizable to tangible personal property" rather than "akin to ideas, content, and free expression" and could thus support plaintiffs' products liability claims).

This switch in mindset from service to product is forcing courts to analyze consumer claims traditionally found in products liability litigation brought against AI-based platforms and companies. For example, in *Garcia*, the plaintiff claimed that the content and design choices of the AI chatbot developers were responsible for the death of her son. *Garcia*, 785 F. Supp. 3d at 1169. The defendants argued that the AI chatbot, "Character A.I.," should be treated as a service based on the prevailing theory—summarized above—that software is not a product. Id. at 1179.

The court agreed with Garcia that Character A.I. was a product because the complaint alleged harms that stemmed from Character A.I.'s alleged design defects. Id. at 1180. The court's ruling includes many key concepts in products liability cases, such as "design defects," "tangible medium" of expression and duty of care. Id. at 1180-81. The court noted that Character A.I. was "a product for the purposes of Plaintiff's product liability claims so far as Plaintiff's claims ar[o]se from defects in the … app rather than ideas or expressions within the app." Id. at 1180.

After determining the AI platform was a product, the *Garcia* court assessed the substantive tort claims. As a threshold matter, the court held that the plaintiff sufficiently alleged that defendants owed a duty of care. *Garcia*, 785 F. Supp. 3d at 1181. Plaintiff alleged that defendants "were aware of the inherent risks of harm associated with [the AI product]" in part due to the product's premature release. Id. The court emphasized that, for the defendant to owe a duty, its conduct must foreseeably create a risk that poses a threat of harm to others and be in a position to control that risk. Id. The plaintiff sufficiently alleged that defendants were aware of the associated risks of their product and released that product to the public anyway. By doing so, the defendants created a foreseeable risk of harm they could control and owed the plaintiff a duty "either to lessen the risk or see that sufficient precautions [were] taken to protect others from the harm that the risk poses." Id. (citing *McCain v. Florida Power Corp.*, 593 So. 2d 500, 503 (Fla. 1992)). After addressing this threshold matter, the court explained that the plaintiff sufficiently stated claims for negligence per se, failure to warn, unjust enrichment, and under a state product liability statute. Id. at 1181-85.

The *Garcia* court's reasoning shifted the AI platform at issue from being treated as a service to the legal battleground of products liability cases, thus exposing the defendant who developed (or, as one in the realm of products liability would put it: manufactured) AI platforms to new and varied claims. In doing so, the court relied on cases finding that, where the harm is alleged to originate determines whether the aspect of the virtual platform at issue is

a product or a service. Id. at 1180. *Garcia* and related cases have found that, if the harm arises from defects in a virtual platform (i.e., apps, websites or coding), then “the tangible medium itself which delivers the information is ‘clearly a product.’” Id.; *Brookes v. Lyft Inc*., No. 50-2019-CA004782, 2022 WL 19799628, at *4 (Fla. Cir. Ct. Sept. 30, 2022) (quoting Restatement (Third) of Torts § 19(a)) (claim was based on alleged design defects of an application that was designed and distributed by defendant, not from ideas or expressions in the application, thus the application was considered a product for purposes of the product liability claims presented).

This shift is not limited to *Garcia*—similar claims also can be seen in new filings in wrongful death and other contexts. See, e.g., Compl. ¶ ¶109-194, *Gavalas v. Google LLC, et al.*, 5:26-cv-1849 (N.D. Cal. Mar. 4, 2026) (wrongful death); Compl. ¶ ¶ 257-323, *Stephanie Gray v. OpenAI Inc. et al.*, 26STCV00988 (Cal. Super. Ct. Jan. 12, 2026) (same); Compl. ¶ ¶35-58, *Fernihough v. Acclarent, Inc.*, et al., 4:25-cv-00525-Y (N.D. Tex. Dec. 3, 2025) (medical device personal injury). For example, in the Federal Social Media Addiction MDL, plaintiffs contend that Meta can be held liable not just for user content but for the design features of its programs. *In re Soc. Media Adolescent Addiction*, 702 F. Supp. 3d at 860. Specifically, the product defect claims assert that the “continuous scrolling” and algorithmic feeds drive compulsive use. Id. at 819-20. This is notable because content on platforms, such as Meta, have typically enjoyed broad protection from such claims under Section 230 of the 1996 Communications Decency Act.

If courts, as in *Garcia* and the *Social Media MDL*, allow cases asserting product liability claims to move forward, it could open the door to broad liability for how digital products are engineered. Recently, the Superior Court of California consolidated cases against ChatGPT and titled the consolidation “ChatGPT Product Liability Cases.” Notice of Order Authorizing Assignment of Coordination Trial Judge (JCCP No. 5431), *In re: ChatGPT Prod. Liab. Cases*, CGC-25-628528 (Cal. Super. Ct. Feb. 20, 2026). This further demonstrates courts’ willingness to embrace plaintiffs’ product liability arguments against AI platforms.

AI companies or those who offer an AI product need to assess their potential product-liability-based exposure and work with counsel to explore potential risks and defenses. There is no “one size fits all” approach given the variations in AI technologies, so tailoring such discussion to the specific product at issue will be important.

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