

CALL FOR PAPERS

Deadline for submission: October 1, 2024

Topic: Evidence in tort law trials for damage caused by artificial intelligence: evidentiary difficulties and presumptions.

Languages: Spanish and English

Organizer: Henry Mauricio Reyes Garcés

Theme and Objective: To discuss the evidentiary difficulties arising in tort law trials where damages have been caused by defective artificial intelligence software. Additionally, to explore evidentiary rules that will facilitate proving that the AI software is defective and the cause of these damages, as well as their justification.

Justification:

New digital products, specifically artificial intelligence (AI), generate new risks of harm related to their malfunction. These include, among others, the dissemination or use of privileged and personal information without proper authorization, as well as the generation of incorrect information that is subsequently used for decision-making. These AI products also possess certain characteristics that complicate demonstrating to a regulatory or judicial authority, if necessary, that they have malfunctioned and caused harm. These characteristics include their opacity and complexity, which complicate demonstrating the cause of harm, and their openness and autonomy, which allow the product to develop after being placed on the market.

Thus, in a society interested in consumer protection, authorities have reasons to establish civil liability trials that facilitate—and in some cases make feasible—the proof of such damages when they occur. For instance, demonstrating that an AI product has malfunctioned is difficult if relying on the reasonable expectations of consumers about the safety of the product at the time it is placed on the market. The complexity of AI and its interaction with other terminals create obstacles to determining whether the defect stems from the AI or from the information input for its programming.

The new Directive on liability for defective products in the European Union, dated March 12, 2024, exemplifies a body of tort law aimed at addressing the difficulties posed by new digital products like AI. This directive seeks to update the liability regime and facilitate proof to protect consumer rights. Notably, although injured parties still bear the burden of proof, presumptions of defectiveness are introduced to alleviate evidentiary difficulties (Art. 10, Nos. 2 and 4). For example, if the defendant fails to disclose information, the product may be presumed defective (Art. 10, No. 2, letter a). Additionally, cases are established where the causal link between the defective nature of the product and the damage is presumed (Art. 10, Nos. 3 and 4).

Consequently, several current and important themes are planned for discussion at the workshop. On one hand, the type of norms that regulatory authorities should adopt in these cases. On the other hand, where these presumptions have been implemented, how they should be interpreted. In the case of the new EU directive, for instance, one could discuss when a manufacturer is deemed to have breached the duty to disclose information in cases of products

they may entirely lack knowledge of, such as digital products with AI components, or what it means that “the damage caused is of a type normally consistent with the defect in question.”

Workshop Topics:

Participants are invited to present papers on the following themes:

- Presumption of defect in new digital products, especially AI.
- Presumption of causality in new digital products, especially AI.
- Justification of these presumptions.

Participation Requirements:

1. Register for the event.
2. Attend the event in person.
3. Submit an abstract of no more than 500 words explaining the paper to be discussed at the workshop.

Presentation proposals should be sent to the following email: henry.reyes@udg.edu Any questions can also be directed to this email.