PRODUCT LIABILITY IN THE AGE OF AI

This factsheet explores the potential issues surrounding artificial intelligence (AI) and product liability for businesses relying on AI-enabled products or services, such as manufacturers and distributors.

AI PRODUCT LIABILITY COMPLEXITY

- **Determining liability:** It is complicated to identify who is responsible when an AI system causes harm as multiple stakeholders are often involved (e.g. developers, manufacturers, deployers, data providers, and end-users).
- **Lack of explainability:** AI-enabled decisions can be complex, making AI systems difficult to audit, test or investigate.
- **Biased data:** AI systems that use biased or flawed data can result in unfair or discriminatory outcomes.
- **Evolving AI systems:** AI's constant evolution raises questions about responsibility for errors caused by AI that have undergone significant autonomous updates.

Establishing a clear timeline of updates, maintenance, and version control is essential to address liability concerns.

'STATE OF THE ART' DEFENCE

- Strict liability applies to manufacturers for personal injuries or property damage caused by safety defects in their AI systems.
- The 'state of the art' or 'development risk' defence allows AI developers to disclaim liability if the scientific or technical knowledge used when the manufacturer supplied the product was inadequate to discover the defect.
- However, if the harm caused by the AI systems is a result of its autonomous decision-making, then manufacturers may not be able to rely on this defence.

AI PRODUCT LIABILITY CHECKLIST

Businesses must adopt proactive measures to navigate the complexities of AI product liability and implement strategies to mitigate potential risks.

You might consider:

- ☐ conducting comprehensive risk assessments involving experts;
- ☐ integrating compliance and risk mitigation strategies from the outset;
- ☐ addressing data privacy, discrimination, and industry-specific regulations;
- ☐ developing interpretable AI systems to enhance explainability, especially for end users;
- ☐ implementing robust data governance frameworks to reduce biases in training data;
- ☐ conducting regular audits and validation processes to identify and rectify bias issues;
- ☐ establishing mechanisms to track AI system performance in real-world settings;
- ☐ setting up emergency "switch off" control features; and
- ☐ identifying and addressing issues promptly through feedback loops.

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