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Regulamentação jurídica da responsabilidade civil por danos causados por inteligência artificial

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Resumo: O objetivo deste estudo é sistematizar a jurisprudência internacional sobre a indemnização por danos relacionados com a IA, de forma a desenvolver propostas para adaptar a legislação nacional aos desafios jurídicos da digitalização. O estudo empregou os seguintes métodos: um formalismo jurídico para analisar as disposições sobre direitos de autor; um método jurídico comparativo para comparar as abordagens dos EUA e da UE em relação à responsabilidade civil por danos relacionados com a IA; análise da jurisprudência para identificar tendências na aplicação da lei e critérios para a avaliação dos danos. Os resultados do estudo mostraram que a jurisprudência dos EUA e da UE demonstra abordagens diversas, mas complementares, em relação à responsabilidade por danos relacionados com a IA. Nos EUA, a responsabilidade é formada principalmente através da jurisprudência, onde os casos de violação de direitos de autor desempenham um papel fundamental, assim como os casos relacionados com a discriminação, a opacidade dos algoritmos e a violação de garantias processuais. Verificou-se que a aplicação da doutrina do "uso justo" depende da natureza transformadora do uso do conteúdo e do prejuízo económico direto. Na prática da UE, observa-se o início do estabelecimento de uma abordagem autónoma da responsabilidade por danos relacionados com a IA. Está provado que a combinação da regulação baseada no risco com mecanismos de responsabilidade civil cria um modelo eficaz de gestão do risco em IA, capaz de garantir a proteção dos direitos humanos sem inibir o desenvolvimento inovador.

Palavras-chave: inteligência artificial; direito civil; direitos de autor; Estado de direito; direitos humanos.

Legal Regulation of Civil Liability for Harm Caused by Artificial Intelligence

Abstract: The aim of the study is to systematize international case law on compensation for AI-related harm in order to develop proposals for adapting national legislation to the legal challenges of digitalization. The study employed the following methods: a legal formalism for analysing copyright provisions; a comparative legal method for comparing the approaches of the US and the EU to civil liability for AI-related harm; analysis of case law to identify trends in law enforcement and criteria for assessing damage. The results of the study showed that the case law of the US and the EU demonstrates diverse, but complementary approaches to liability for AI-related harm. In the US, liability is formed mainly through case law, where copyright infringement cases play a key role, as well as cases related to discrimination, opacity of algorithms, and violation of procedural guarantees. It was found that the application of the "fair use" doctrine depends on the transformative nature of the use of content and direct economic harm. In EU practice, the beginning of the establishment of an autonomous approach to liability for AI-related harm is observed. It is proven that the combination of risk-based regulation with civil liability mechanisms creates an effective AI risk management model that can ensure the protection of human rights, while not inhibiting innovative development..

Keywords: artificial intelligence; tort law; copyright; rule of law; human rights.

Introduction

In recent years, AI tools have been actively implemented in many types of human activity[1]. AI enables simplifying routine processes and procedures, preserve the intellectual potential of specialists in modern enterprises and direct it to other, more productive areas of activity. AI is considered as an auxiliary tool, a way to optimize human activity. Attitudes towards the use of AI tools in certain areas of human activity range from positive to sharply negative[2].

In particular, concern is caused by the growing number of incidents related to the use of AI, when algorithmic errors, opacity, or lack of control lead to harm to individuals and legal entities. This raises the issue of legal regulation of civil liability for AI-related harm. However, these issues are poorly addressed because of the lack of unified approaches to the qualification of harm, the limited number of judicial precedents, and the insufficient integration of international and national norms in the field of AI regulation.

The issues of regulating AI in the context of global digitalization deserve particular attention[3]. The increasingly widespread use of AI creates significant obstacles to the protection of human rights[4]. AI reproduces long-term structural problems and creates additional challenges that require a discussion of the relationship between

1 KUSSAINOV, K.; GONCHARUK, N.; PROKOPENKO, L.; PERSHKO, L.; VYSHNIVSKA, B.; AKIMOV, O. Anti-corruption management mechanisms and the construction of a security landscape in the financial sector of the EU economic system. **Economic Affairs**, New Delhi, v. 68, n. 1, p. 509–521, 2023. DOI: 10.46852/0424-2513.1.2023.20. Disponível em: https://doi.org/10.46852/0424-2513.1.2023.20. Acesso em: 15 abr. 2026.

2 OLIINYK, I.; BULAVINA, O.; ROMANENKO, T.; TATARNIKOVA, A.; SMIRNOV, A. Artificial intelligence in developing doctoral students' research competencies. **Revista Eduweb**, [S. l.], v. 18, n. 3, p. 294–305, 2024. DOI: 10.46502/issn.1856-7576/2024.18.03.22. Disponível em: https://doi.org/10.46502/issn.1856-7576/2024.18.03.22. Acesso em: 15 abr. 2026.

3 ALAZZAM, F. A. F.; SHAKHATREH, H. J. M.; GHARAIBEH, Z. I. Y.; DIDIUK, I.; SYLKIN, O. Developing an information model for e-commerce platforms: A study on modern socioeconomic systems in the context of global digitalization and legal compliance. **Ingénierie des Systèmes d'Information**, [S. l.], v. 28, n. 4, p. 969–974, 2023. DOI: 10.18280/isi.280417. Disponível em: https://doi.org/10.18280/isi.280417. Acesso em: 15 abr. 2026.

4 AHMAD, N.; ALI, A. W.; YUSSOF, M. H. B. The challenges of human rights in the era of artificial intelligence. **UUM Journal of Legal Studies**, [S. l.], v. 16, n. 1, p. 150–169, 2025. DOI: 10.32890/uumjls2025.16.1.9. Disponível em: https://doi.org/10.32890/uumjls2025.16.1.9. Acesso em: 15 abr. 2026.

human rights, science and technology[5]. The use of AI can not only violate human rights, but also cause harm, which emphasizes the need to optimize its legal regulation. One of the issues that is particularly relevant today is the issue of the legal personality of AI. Previously, technologies were used more as tools, but with the growth of autonomy and self-learning capabilities, work and intelligent AI systems will look less and less like machines and tools[6]. Therefore, it is important not only to regulate the use of AI systems, but also to clearly define the mechanisms of civil liability for related damage.

Therefore, the hypothesis of the study is the assumption that in the judicial practice of the USA and the EU, effective legal regulation of AI-related harm is possible only in case of combining regulatory requirements for transparency and control with flexible liability mechanisms. The novelty of the study is an attempt to systematically generalize the initial judicial practice regarding AI-related harm through a comparative analysis of the approaches of the US and EU courts to assessing copyright, procedural and discriminatory risks. The aim of this study is to systematize international judicial practice regarding compensation for AI-related harm in order to develop proposals for adapting national legislation to the legal challenges of digitalization. Research objectives:

- compare US and EU copyright cases where the use of AI has been found to be fair or unfair;
- define the category of "fair use" of AI and the key factors for its assessment (according to US law);
- analyse other types of AI-related harm and approaches of judicial practice to assessing liability;
- compare US and EU legal approaches to judicial assessment of the use of AI;

Provide recommendations for further development of legislation in the field of AI based on the analysis.

Literature review

The increasing number of lawsuits and claims related to the use of AI has raised the issue of civil liability for harm caused by such technologies, which is reflected in this study. Cardoso and da Anunciação Melo[7] examined this issue from the perspective of human rights protection. According to the researchers, there should be a system that can be used to regulate harmful actions using regulatory law tools. Researchers emphasized that AI rules should be based on risk assessments that clearly define risk levels. According to Soyer and Tettenborn[8], risks associated with the use of AI should be addressed through tort law. Both studies agree that AI risks exist, that liability should be adjusted according to risk, and note the need to ensure a balance between legal regulation and innovation. At the same time, the works differ in the level of legal intervention proposed. In the first case, researchers focus on preventive regulatory control (ex ante), in the second – on correction of consequences through tort law mechanisms (ex post). Tort law

5 BAKINER, O. The promises and challenges of addressing artificial intelligence with human rights. **Big Data & Society**, [S. l.], v. 10, n. 2, 2023. DOI: 10.1177/20539517231205476. Disponível em: https://doi.org/10.1177/20539517231205476. Acesso em: 15 abr. 2026.

6 WONG, A. Ethics and regulation of artificial intelligence. In: IFIP INTERNATIONAL WORKSHOP ON ARTIFICIAL INTELLIGENCE FOR KNOWLEDGE MANAGEMENT, 2021. **Proceedings...** [S. l.]: Springer, 2021. p. 1–18. DOI: 10.1007/978-3-030-80847-1_1. Disponível em: https://doi.org/10.1007/978-3-030-80847-1_1. Acesso em: 15 abr. 2026.

7 CARDOSO, H. R.; ANUNCIAÇÃO MELO, B. L. da. Regulation and civil liability for damage caused by artificial intelligence. **Revista de Direito Administrativo**, Rio de Janeiro, v. 283, n. 3, p. 143, 2024. DOI: 10.12660/rda.v283.2024.91698. Disponível em: https://doi.org/10.12660/rda.v283.2024.91698. Acesso em: 15 abr. 2026.

8 SOYER, B.; TETTENBORN, A. Artificial intelligence and civil liability—Do we need a new regime? **International Journal of Law and Information Technology**, [S. l.], v. 30, n. 4, p. 385–397, 2022. DOI: 10.1093/ijlit/eaad001. Disponível em: https://doi.org/10.1093/ijlit/eaad001. Acesso em: 15 abr. 2026.

is considered in the context of improving the understanding of the risk-based approach. Chamberlain[9] studies the relationship between traditional principles of tort law, focusing on risk assessment, and the AI legislation developing in the EU. So, two complementary approaches to liability for AI-related harm have been formed in the academic literature, which actualizes the search for the optimal balance between preventive regulation and compensation mechanisms.

The search for a balance between prevention and compensation becomes particularly acute given that rapid technological development has changed traditional notions of the subject of liability. In this context, it is appropriate to refer to the study of Yas et al.[10], who substantiated the need for a new legal framework, relying on the concept of "social harm". The authors assure that the general rules of civil liability have not been able to protect the new type of harm caused, despite the constant efforts of jurisprudence, the judiciary, and legislation. The key obstacles were the impossibility of identifying the guilty party (in most cases), as well as the difficulty of proving a mistake, which left many victims without compensation. These ideas are also reflected in the work of Zech[11], who proposes a specific economic instrument for ensuring compensation – "social insurance". So, the academic literature is developing ideas about the insufficiency of the existing rules of civil liability for AI-related harm, which encourages the search for alternative models of risk prevention and compensation.

In the abovementioned context, Burylo[12] notes that AI calls into question the current tort law, as it can cause harm by acting independently. At the same time, AI is not considered a legal or natural person. The researcher notes that at a theoretical level, the issue of civil liability for AI-related harm can be approached using the concepts of vicarious liability, strict liability, and fault-based liability. At a practical level, the European approach is most likely to be based on risk assessment. The researcher considers granting legal personality to autonomous AI systems unlikely in the near future, but does not rule it out in the future. This is consistent with the views of other researchers, in particular, Ziemianin[13] indicates that there are currently no grounds for granting legal personality to AI. Therefore, individuals, legal entities or organizational units with legal capacity should be responsible for AI-related harm. So, the prevailing approach in research is that liability for AI-related harm should rest with individuals or legal entities. Granting AI legal personality is often seen only as a distant and unlikely prospect.

It is interesting that some studies welcome the granting of legal personality to AI. Bertolini and Episcopo[14] noted that from an ontological perspective, advanced technologies are only objects, and there is no reason to consider them as legal subjects and hold them liable. At the same time, from a functional perspective, there may be grounds for granting a fictitious legal entity to a specific AI, similar to corporations. Granting a legal entity a certain technology,

9 CHAMBERLAIN, J. The risk-based approach of the European Union's proposed artificial intelligence regulation: Some comments from a tort law perspective. **European Journal of Risk Regulation**, [S. l.], v. 14, n. 1, p. 1–13, 2023. DOI: 10.1017/err.2022.38. Disponível em: https://doi.org/10.1017/err.2022.38. Acesso em: 15 abr. 2026.

10 YAS, N.; AL QARUTY, R.; HADI, S. A.; ALADEEDI, A. Civil liability and damage arising from artificial intelligence. **Migration Letters**, London, v. 20, n. 5, p. 430–446, 2023. Disponível em: https://migrationletters.com/index.php/ml/article/view/3554. Acesso em: 15 abr. 2026.

11 ZECH, H. Liability for AI: Public policy considerations. **ERA Forum**, [S. l.], v. 22, n. 1, p. 147–158, 2021. DOI: 10.1007/s12027-020-00648-0. Disponível em: https://doi.org/10.1007/s12027-020-00648-0. Acesso em: 15 abr. 2026.

12 BURYLO, Y. Civil liability for damage caused by artificial intelligence: The modern European approach. E**ntrepreneurship, Economy and Law**, [S. l.], n. 6, p. 5–11, 2022. DOI: 10.32849/2663-5313/2022.6.01. Disponível em: https://doi.org/10.32849/2663-5313/2022.6.01. Acesso em: 15 abr. 2026.

13 ZIEMIANIN, K. Civil legal personality of artificial intelligence: Future or utopia? **Internet Policy Review**, [S. l.], v. 10, n. 2, p. 1–22, 2021. DOI: 10.14763/2021.2.1544. Disponível em: https://doi.org/10.14763/2021.2.1544. Acesso em: 15 abr. 2026.

14 BERTOLINI, A.; EPISCOPO, F. The expert group's report on liability for artificial intelligence and other emerging digital technologies: A critical assessment. **European Journal of Risk Regulation**, [S. l.], v. 12, n. 3, p. 644–659, 2021. DOI: 10.1017/err.2021.30. Disponível em: https://doi.org/10.1017/err.2021.30. Acesso em: 15 abr. 2026.

requiring its registration and compliance with other legal requirements would turn it into a point of departure for all legal claims, making the situation easier for plaintiffs. This position is strongly criticized in Avila Negri[15]. The author notes that the imagination of robots is strongly marked by associations with anthropomorphic artifacts, such as androids that appear in films and literature. A particularly dangerous metaphor for the law is to give in to this symbolism, projecting autonomy, consciousness and other human attributes onto robotic artifacts. According to the researcher, the electronic personality does not solve the problems arising from the real rapprochement between robots and people. On the other hand, it creates a risk of manipulation through the hidden imitation of human behaviour. These views are also supported in the works of Finocchiaro[16] and Deshpande et al.[17], which emphasize the risk of anthropomorphization of AI, which only masks real risks. Therefore, there is no consistent view in the academic literature on the creation of an electronic personality, as researchers see both the advantages and risks of anthropomorphization.

In modern case law, in particular the ECHR, AI continues to be considered as a decision-making tool that requires human intelligence, rather than a subject of law[18]. This reinforces the relevance of the EU AI Act as a mechanism for protecting human rights. However, the implementation of this protection faces the problem of the "fluidity" of algorithms: Bottomley and Thaldar[19] argue that due to the ability of AI to self-learn, it ceases to be a "static product". This, among other things, makes classical legislation on product defects ineffective. However, while in the EU case law on AI is only beginning to take shape, the US already has initial case law that defines the limits of liability for damage caused by AI. Therefore, this work mainly focuses on US case law, allowing for a broader view of the contradictions identified during the literature review. In particular, this concerns differences in approaches to liability for damage caused by AI (preventive, compensatory), views on the legal personality of AI, the need to improve existing rules of civil liability for AI-related harm.

The practical contribution of this study is the systematization of current judicial practice, which enables determining real mechanisms for adapting traditional liability institutions to the challenges posed by the autonomy and opacity of AI systems. It is appropriate to continue research into the impact of AI systems on human rights, in particular on privacy, non-discrimination, and access to a fair trial.

15 AVILA NEGRI, S. M. Robot as legal person: Electronic personhood in robotics and artificial intelligence. **Frontiers in Robotics and AI**, [S. l.], v. 8, p. 789327, 2021. DOI: 10.3389/frobt.2021.789327. Disponível em: https://doi.org/10.3389/frobt.2021.789327. Acesso em: 15 abr. 2026.

16 FINOCCHIARO, G. The regulation of artificial intelligence. **AI & Society**, [S. l.], v. 39, n. 4, p. 1961–1968, 2024. DOI: 10.1007/s00146-023-01650-z. Disponível em: https://doi.org/10.1007/s00146-023-01650-z. Acesso em: 15 abr. 2026.

17 DESHPANDE, A.; RAJPUROHIT, T.; NARASIMHAN, K.; KALYAN, A. Anthropomorphization of AI: Opportunities and risks. **arXiv**, [S. l.], 2023. DOI: 10.48550/arXiv.2305.14784. Disponível em: https://doi.org/10.48550/arXiv.2305.14784. Acesso em: 15 abr. 2026.

18 KUTOVYI, O.; BURMA, S. Artificial intelligence in the case-law of the european court of human rights. **Ehrlich's Journal**, [S. l.], n. 12, p. 34–44, 2025. DOI: 10.32782/ehrlichsjournal-2025-12.05. Disponível em: https://doi.org/10.32782/ehrlichsjournal-2025-12.05. Acesso em: 15 abr. 2026.

19 BOTTOMLEY, D.; THALDAR, D. Liability for harm caused by AI in healthcare: An overview of the core legal concepts. **Frontiers in Pharmacology**, [S. l.], v. 14, p. 1297353, 2023. DOI: 10.3389/fphar.2023.1297353. Disponível em: https://doi.org/10.3389/fphar.2023.1297353. Acesso em: 15 abr. 2026.

Methods and materials

Research procedure

The study was conducted in several consecutive stages. The first stage involved an analysis of academic sources and regulatory legal acts of the USA and the EU regulating the use of AI and civil liability for related damage. Particular attention was paid to doctrinal approaches to tort liability, risk-based regulation, and the interaction of regulatory and private law mechanisms. At the second stage, relevant case law of the USA and the EU was selected and systematized, relating to copyright, discrimination, algorithmic opacity, and violation of procedural guarantees when using AI systems. The USA was selected due to its developed case law on AI, and the EU – due to its emphasis on preventive regulation, algorithmic transparency, and protection of human rights. The case law was selected through a search in open databases and academic sources; the criteria for including cases were the use of AI systems that resulted in copyright infringement, discrimination, algorithmic opacity or violation of procedural guarantees. The analysis algorithm included the following sequence of actions: search and selection of court cases according to the criteria defined below, filtering and classifying cases to reduce the resulting sample. The third stage included a comparative analysis of the identified cases in order to establish common trends, differences and directions of development of legal regulation of liability for AI-related harm. The case law of the USA and the EU was analysed in the study according to the following criteria:

- the nature of the AI-related harm;
- dominant legal approaches to the qualification of liability;
- the role of transparency and controllability of algorithms;
- criteria for the admissibility of the use of AI;
- the ratio of regulatory and tort liability mechanisms.

The final stage was drawing of generalized conclusions and providing recommendations on the combination of regulatory and tort approaches using the method of legal modelling.

Sample

The research sample consists of six court decisions that have precedential or conceptual significance for shaping approaches to liability for AI-related harm. The sample covers cases from US and EU case law for 2016–2025. The sample includes key cases from US case law[20,21,22,23,24] as well as the first appeal to the Court of Justice of the EU on issues related to generative AI - case C-250/25 Like Company v. Google Ireland. This selection made it

20 BARTZ et al. v. Anthropic PBC, No. 3:24-cv-05417 WHA (N.D. Cal. June 23, 2025). Disponível em: https://docs.justia.com/cases/federal/district-courts/california/candce/3%3A2024cv05417/434709/231. Acesso em: 15 abr. 2026.

21 THOMSON REUTERS ENTERPRISE CENTRE GMBH v. Ross Intelligence Inc., No. 1:20-cv-00613-SB (D. Del. Feb. 11, 2025). Disponível em: https://business.cch.com/ipld/ThomsonReutersRossIntelligencePetCert3C20250415.pdf. Acesso em: 15 abr. 2026.

22 STATE v. Loomis, 881 N.W.2d 749 (Wis. 2016). Disponível em: https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf. Acesso em: 15 abr. 2026.

23 HOUSTON FEDERATION OF TEACHERS v. Houston Independent School District, No. 4:16-cv-02531 (S.D. Tex. 2017). Disponível em: https://www.courtlistener.com/opinion/4404620/houston-federation-of-teachers-v-houston-independent-school/. Acesso em: 15 abr. 2026.

24 FEDERAL TRADE COMMISSION v. Rite Aid Corporation, No. 2:23-cv-5023 (E.D. Pa. 2023). Disponível em: https://www.ftc.gov/legal-library/browse/cases-proceedings/2023190-rite-aid-corporation-ftc-v. Acesso em: 15 abr. 2026

possible to cover different types of damage (economic, reputational, social, discriminatory) and different areas of application of AI. Accordingly, the criteria for including cases were: precedent or conceptual significance, coverage of different types of AI-related harm, coverage of different areas of application (commercial, government, educational), belonging to the practice of the US and the EU. Private companies involved in the analysed court cases are not the subject of the study as such. They are used solely as examples of the practical implementation of legal liability models in Ai-related disputes.

Methods

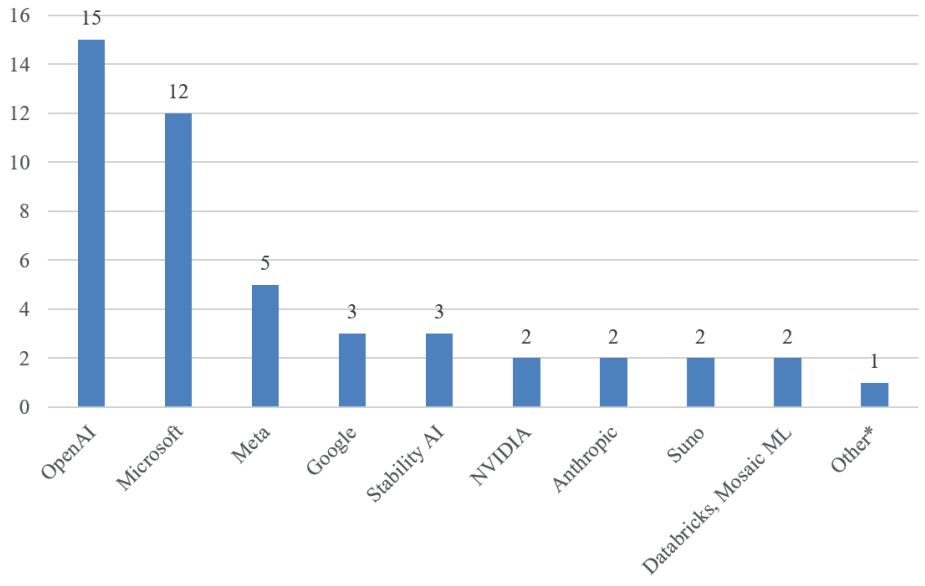
The study used a formal legal method to analyse copyright norms, provisions of EU directives, and the EU AI Act. Comparative law was used to compare the approaches of the US and the EU to civil liability for AI-related harm. Case law analysis identified trends in law enforcement and criteria for assessing damage.

MS Excel and MS Word were used to create visualizations in the study.

Results

The problems of legal regulation of AI systems are attracting increasing attention at the international and national levels because of the potential harm of such systems due to algorithmic errors, opacity, and inadequate control. In the USA, some judicial practice has already been formed regarding the assessment of the use of AI in various spheres of public relations. Copyright is the most common category of claims where intellectual property rights become the legal basis for liability for AI-related harm (Figure 1).

Figure 1. Number of copyright lawsuits.

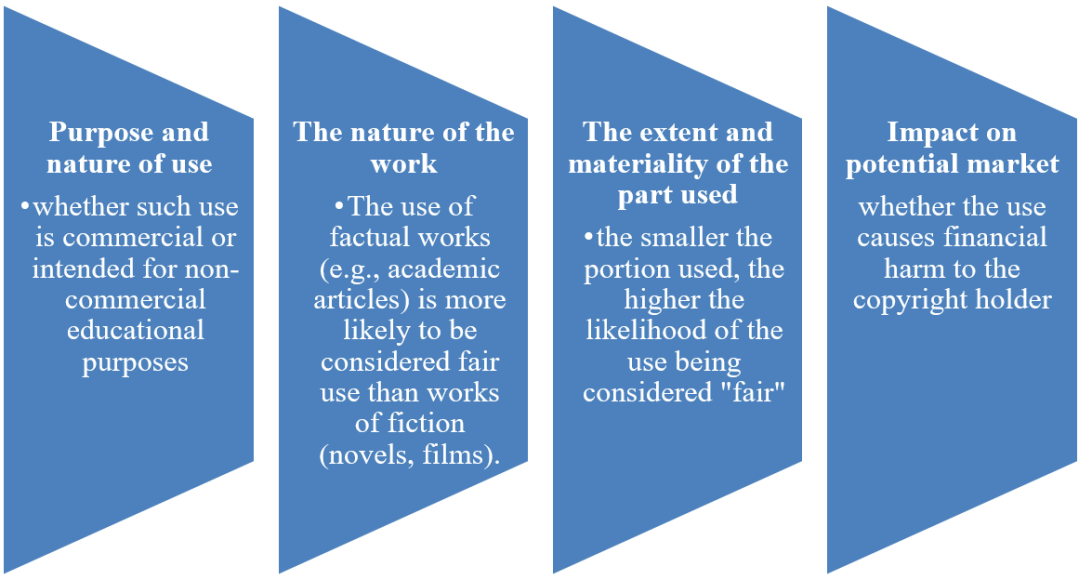


Source: [25]*ROSS Intelligence, Midjourney, DeviantArt, Runway, Udio, Tesla-Elon Musk-Warner Brothers Discovery, Bloomberg, ElevenLabs, Photobucket, Brave Software (DJ action), Caseway AI, LAION, HowardsHome, Naver, and TAB

25 CHATGPT IS EATING THE WORLD. **Infographic on which AI companies face most copyright lawsuits**. [S. l.], 30 mar. 2025. Twitter: @chatgptworld. Disponível em: https://chatgptiseatingtheworld.com/2025/03/30/infographic-on-which-ai-companies-face-most-copyright-lawsuits/. Acesso em: 15 abr. 2026.

In this practice, there are cases where the court ruled in favour of the company developing AI systems. For example, in the case of Bartz et al.[26], the use of copyrighted books by an AI company to train models was recognized as "fair use". Fair use is a principle that, under certain circumstances, allows unauthorized use of copyrighted works. This legal theory is a key defence for technology companies (OpenAI, Microsoft, Meta Platforms) in cases of copyright infringement of authors, record companies, artists, etc. Figure 2 shows the key factors that must be considered when determining whether the use of a work in any particular case is fair use under Section 107 of the U.S. Copyright Act[27].

Figure 2. Factors for determining "fair use".



Source: [28].

The "fair use" doctrine, enshrined in §107 of the US Copyright Act[29], plays a key role in protecting technology companies in disputes over the use of content for AI training. At the same time, the use of copyrighted works by companies does not always fall under this doctrine. In the case son Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.[30], a US federal judge came to the opposite conclusion. He recognized that the use of Westlaw's protected content to create a competitive AI-oriented legal system is not sufficiently transformative and poses a risk of undermining the copyright holder's business model. A comparison of the abovementioned court decisions demonstrates that in American practice, the key criteria for assessing the legality of the use of content for AI training are the transformative nature of the use, its commercial purpose, and the impact on the market of the original product.

Unlike the US, where approaches are shaped mainly by case law and the application of existing doctrines, the legal regulation of the consequences of the use of AI in the European Union is still in its infancy. The case law of the Court of Justice of the EU on AI is limited, which emphasizes the importance of the regulatory approach enshrined in the EU AI Act, which focuses primarily on risk prevention, transparency, and control over the use of high-risk systems. The first reference to the Court of Justice on an AI-related issue was made in case C 250/25 Like Company v.

26 BARTZ et al. v. Anthropic PBC, op. cit.

27 ESTADOS UNIDOS. [Constitution (1988)]. **17 U.S.C. § 107**. Limitations on exclusive rights: Fair use. United States Code, 2025. Disponível em: https://www.law.cornell.edu/uscode/text/17/107. Acesso em: 15 abr. 2026.

28 ibid.

29 ibid.

30 THOMSON REUTERS ENTERPRISE CENTRE GMBH v. Ross Intelligence Inc., op. cit.

Google Ireland[31]. A Hungarian court referred to the Court of Justice of the EU whether the responses of the Gemini chatbot could be considered as unauthorised reproduction and public communication of press publications under the Directive on Copyright in the Digital Single Market[32].

As of the end of December 2025, Case C-250/25 is pending before the Court of Justice of the EU, and the final decision has not yet been issued. However, this case is a key moment for European copyright law in the AI era. After Case C-250/25, case law in this area in the EU began to develop rapidly. Among other things, this was stimulated by the entry into force of the EU AI Act[33], which adds new requirements for transparency in the use of AI and compliance with copyright.

In addition to copyright infringement, there are other negative consequences of using AI technology. In particular, AI algorithms can affect people's social, economic, and personal rights, as illustrated by the following examples. In this context, decision in State v. Loomis[34] is demonstrative, where the court allowed the use of the algorithmic COMPAS system to assess the risk of reoffending, while emphasizing that such assessments cannot be the sole basis for sentencing. The court recognized the potential risks of algorithmic bias and limited the admissibility of the use of opaque models that are not subject to review by the defence. This case demonstrated the problem of reconciling automated analysis with the right to a fair trial.

Similar procedural fairness issues arose in Houston Federation of Teachers v. Houston ISD[35], where a patented algorithmic teacher performance evaluation system was used as the basis for personnel decisions. The court concluded that the inability to verify the logic and accuracy of the algorithm could constitute a violation of due process, which ultimately led to the rejection of the use of algorithmic indicators as a stand-alone basis for dismissal.

A separate category of cases is cases of direct harm caused by AI to individuals. For example, in the case FTC v. Rite Aid[36], it was found that the use of a facial recognition system led to false identification of customers and discriminatory practices. The Federal Trade Commission's reaction in the form of a ban on the use of this technology demonstrated a shift from a purely compensatory approach to preventive regulation of the risks associated with the use of AI.

So, if earlier it was difficult for publishers to prove the fact of the use of their texts, after the entry into force of the specified act, companies become legally obliged to disclose this information. The conducted analysis made it possible to create a comparative table of legal regulation of AI in the USA and the EU (Table 1).

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31 COURT OF JUSTICE OF THE EUROPEAN UNION. Request for a preliminary ruling from the Budapest Environs Regional Court (Hungary) lodged on 21 April 2025 – Case C-250/25. **Official Journal of the European Union**, Luxembourg, v. C, n. 2025/3039, 2025. Disponível em: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC_202503039. Acesso em: 15 abr. 2026.

32 EUROPEAN UNION. **Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market**. Official Journal of the European Union, Brussels, L 130, p. 92–125, 2019. Disponível em: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0790. Acesso em: 15 abr. 2026.

33 EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION. **Regulation (EU) 2024/1689... (Artificial Intelligence Act)**. Official Journal of the European Union, Brussels, L 1689, 2024. Disponível em: http://data.europa.eu/eli/reg/2024/1689/oj. Acesso em: 15 abr. 2026.

34 STATE v. Loomis, op. cit.

35 HOUSTON FEDERATION OF TEACHERS v. Houston Independent School District, op. cit.

36 FEDERAL TRADE COMMISSION v. Rite Aid Corporation, op. cit.

Table 1. Comparative table of legal regulation of AI in the USA and the EU.

Criterion / Jurisdiction	USA	EU
Nature of AI-related harm	Mainly property damage (copyright infringement, commercial losses), reputational damage, discriminatory consequences	Harm to fundamental rights (privacy, non-discrimination, dignity), material and non-material damage
Dominant legal approaches to the qualification of liability	Torturous and contractual liability; application of existing private and copyright law; case law	Combined approach: tort liability combined with ex ante regulatory obligations (AI Act, GDPR)
The role of transparency and controllability of algorithms	Limited; claims are formed situationally through litigation and the doctrine of discovery	Key; established as a mandatory condition for the permissible use of AI (transparency, traceability, human oversight)
Criteria for the admissibility of the use of AI	Absence of direct prohibition; assessment of admissibility through the prism of harm and violation of rights ex post	Risk-oriented approach: classification of AI by risk level, direct prohibitions for unacceptable practices
The relationship between regulatory and tort liability mechanisms	Predominance of tort mechanisms; regulation is fragmentary	Dominance of regulatory mechanisms with the addition of tort liability for damage caused

Source: developed by the authors.

So, the case law in the US is more developed and diverse, while in the EU it is only beginning to take shape. It is also worth noting that the EU places greater emphasis on preventive regulation, algorithm transparency and the protection of human rights. Based on the analysis and comparison, recommendations can be made for the further development of legislation on AI:

1. Identify categories of risk and harm by dividing the use of AI into groups according to potential risk:
   - high risk for individuals (healthcare, criminal justice, financial services);
   - medium risk (advertising, recommendation systems);
   - low risk (process optimization, analytics).
2. Introduce clear rules of "fair use" for AI training, taking into account the transformative nature of use, direct financial loss to authors, and sources of content.
3. Ensure transparency and audit standards, in particular, require companies to disclose algorithms in the part that may affect people's rights; introduce mandatory AI audits for bias, accuracy and discrimination; provide mechanisms for assessing risk for users.
4. Establish liability mechanisms, in particular, define different types of liability for discrimination, copyright infringement, non-compliance with security standards.
5. Introduce licensing and certification according to international standards.
6. Ensure international coordination, which will allow using international experience and harmonizing licensing, auditing and transparency standards.

Discussion

The analysis conducted in the paper emphasizes the need for proper regulation of AI to prevent the realization of AI risks. At the same time, the tort approach remains important for cases where the risk from AI has been realized. This enables supplementing the previous results of researchers, in particular, Cardoso and da Anunciação Melo[37] , who focused mainly on the regulatory approach. In contrast, Soyer and Tettenborn[38] focused mainly on the role of tort law. The researchers proposed a strict liability regime for bodily injury and death only, considering existing norms sufficient for other types of harm. This paper substantiates the need for a comprehensive view, where regulatory preventive measures minimize risks, and tort mechanisms serve as a universal means of legal protection. This makes it possible to overcome the conservatism of purely tort models, without creating excessive barriers to technological progress.

In contrast to the works discussed above, Yas et al.[39] show the need for a radically new legal framework for regulating AI. While Cardoso and da Anunciação Melo[40] consider regulation through the lens of individual human rights, this study shifts the focus to collective security, examining the concept of "social harm". Similar to Yas et al.[41], Zech[42] emphasizes the impossibility of determining the culprit for the AI-related harm, but the author proposes a specific economic instrument to solve this problem – social insurance. This implies that when it is impossible to find the causer, the losses should be covered by the insurance system, which will allow innovation not to stop. This approach correlates with this study, which states that a combination of preventive and compensatory mechanisms allows for compensation in cases where the causer cannot be identified.

A significant contribution to understanding the interaction between the approaches noted above is made by Burylo[43]. The researcher lays the foundation for reforming the civil liability system, arguing that the law should adapt by defining liability regimes because of the lack of legal personality in AI. Such an approach would include a combination of strict liability for harm caused by high-risk AI systems and fault-based liability for harm caused by other AI systems. Ziemianin[44] holds similar views, noting that liability for harm caused by AI should be borne by persons who have legal capacity. In the researcher's opinion, civil legislation should be changed in this regard and adapted to the requirements that AI places on the law. The principles of this liability should depend on the type of

37 CARDOSO, H. R.; ANUNCIAÇÃO MELO, B. L. da. Regulation and civil liability for damage caused by artificial intelligence. **Revista de Direito Administrativo**, Rio de Janeiro, v. 283, n. 3, p. 143, 2024. DOI: 10.12660/rda.v283.2024.91698. Disponível em: https://doi.org/10.12660/rda.v283.2024.91698. Acesso em: 15 abr. 2026.

38 SOYER, B.; TETTENBORN, A. Artificial intelligence and civil liability—Do we need a new regime? **International Journal of Law and Information Technology**, [S. l.], v. 30, n. 4, p. 385–397, 2022. DOI: 10.1093/ijlit/eaad001. Disponível em: https://doi.org/10.1093/ijlit/eaad001. Acesso em: 15 abr. 2026.

39 YAS, N.; AL QARUTY, R.; HADI, S. A.; ALADEEDI, A. Civil liability and damage arising from artificial intelligence. **Migration Letters**, London, v. 20, n. 5, p. 430–446, 2023. Disponível em: https://migrationletters.com/index.php/ml/article/view/3554. Acesso em: 15 abr. 2026.

40 CARDOSO, H. R.; ANUNCIAÇÃO MELO, B. L. da, op. cit., p. 143.t.

41 YAS, N.; AL QARUTY, R.; HADI, S. A.; ALADEEDI, A., op. cit., p. 430.

42 ZECH, H. Liability for AI: Public policy considerations. **ERA Forum**, [S. l.], v. 22, n. 1, p. 147–158, 2021. DOI: 10.1007/s12027-020-00648-0. Disponível em: https://doi.org/10.1007/s12027-020-00648-0. Acesso em: 15 abr. 2026.

43 BURYLO, Y. Civil liability for damage caused by artificial intelligence: The modern European approach. **Entrepreneurship, Economy and Law**, [S. l.], n. 6, p. 5–11, 2022. DOI: 10.32849/2663-5313/2022.6.01. Disponível em: https://doi.org/10.32849/2663-5313/2022.6.01. Acesso em: 15 abr. 2026.

44 ZIEMIANIN, K. Civil legal personality of artificial intelligence: Future or utopia? **Internet Policy Review**, [S. l.], v. 10, n. 2, p. 1–22, 2021. DOI: 10.14763/2021.2.1544. Disponível em: https://doi.org/10.14763/2021.2.1544. Acesso em: 15 abr. 2026.

AI and its technological development. Chamberlain[45] develops this idea, noting that traditional principles of tort law should become the basis for interpreting the risk-based approach in the EU AI Act. This study reveals how tort law can act not only as a means of compensation, but also as an analytical tool to improve regulatory requirements for safety. This confirms the position reflected in this study on the close connection between regulatory standards and tort liability as a holistic risk management mechanism. Developing this idea from a practical perspective, Truby et al.[46] propose a "sandbox" approach to AI regulation in addition to the strict liability regime. In the authors' opinion, such an approach provides a balance between a regulatory approach aimed at protecting people and society and promoting innovation through continuous development in the field of AI.

Conclusions

The problems of using and regulating AI systems are caused by the increase in the number of legal disputes related to the infliction of harm due to algorithmic errors, opacity, and inadequate control over the use of AI. The analysis of the case law of the USA and the EU shows that copyright is currently the most common category of claims, within shapes an approach to assessing the legality of the use of AI, in particular through the application of the doctrine of fair use. In addition to cases of copyright infringement, there are other negative consequences of using AI technology. In particular, AI algorithms can affect the social, economic and personal rights of people, as confirmed by the cases of State v. Loomis, Houston Federation of Teachers v. Houston ISD and FTC v. Rite Aid. An analysis of EU case law, in particular case C-250/25 Like Company v. Google Ireland, indicates the beginning of the formation of a European approach to liability for harm associated with the use of generative AI systems. After Case C-250/25, the EU case law in this area began to develop rapidly, driven by the entry into force of the EU AI Act.

The analysis of the case law of the USA and the EU makes a valuable contribution to the protection of human rights, in particular the right to intellectual property and privacy, and to minimizing the harm caused by AI. The considered court cases emphasize the need to adapt national legislative acts to the requirements of the digital age. The practical significance of the results obtained in this study is the possibility of their use in the development and improvement of legislation in the field of AI. In particular, this may be useful for the development of risk-oriented regulatory requirements and their combination with civil liability mechanisms. The results can be applied by legislators, regulatory authorities and courts in assessing the AI-related harm and implementing liability regimes. Further research prospects include a comprehensive analysis of the case law after the entry into force of the EU AI Act.

Limitation

The limitations of the study are that it focuses on the analysis of individual court cases, which does not allow for a full generalization of all judicial practice in the field of liability for AI-related harm. Given the relative novelty of the issue under research, the study has also chronological and methodological limitations. Chronological limitations are associated with the novelty of the relevant legal relations and the fragmentation of judicial practice. Methodological limitations are explained by the use of qualitative case analysis without quantitative representativeness. Geographic limitations are associated with the fact that the work covers the judicial practice of the USA and the EU only.

45 CHAMBERLAIN, J. The risk-based approach of the European Union's proposed artificial intelligence regulation: Some comments from a tort law perspective. **European Journal of Risk Regulation**, [S. l.], v. 14, n. 1, p. 1–13, 2023. DOI: 10.1017/err.2022.38. Disponível em: https://doi.org/10.1017/err.2022.38. Acesso em: 15 abr. 2026.

46 TRUBY, J.; BROWN, R. D.; IBRAHIM, I. A.; PARELLADA, O. C. A sandbox approach to regulating high-risk AI applications. **European Journal of Risk Regulation**, [S. l.], v. 13, n. 2, p. 270–294, 2022. DOI: 10.1017/err.2021.52. Disponível em: https://doi.org/10.1017/err.2021.52. Acesso em: 15 abr. 2026.

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