A LIABILITY FRAMEWORK FOR AI COMPANIONS

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ABSTRACT

Every day, tens of millions of people engage in online conversations. These virtual interactions range from casual chats about daily life to deeply personal exchanges, where individuals share secrets, vulnerabilities, sexual fantasies, hopes and dreams. Through these conversations, users receive emotional support and empathetic responses, get practical advice and productivity tips. Most importantly they feel seen, heard, and less alone. These people are not chatting with friends or family members. They are corresponding with AI-powered chatbots, also known as AI companions, which have recently gained immense popularity. AI companions offer a range of benefits to users including providing a feeling of friendship, emotional support, and organization of everyday tasks. But AI companions also harbor a darker side. They are designed by large corporations with the goal of maximizing their profits and collecting more data on which to train future models. Users often find themselves subject to manipulation, growing emotional dependence, and even addiction. Tragically, it is the most vulnerable users that are most susceptible to these harms. In a horrific case, a teenager even took his own life after being encouraged to do so by his AI companion.

Against this backdrop, this Article is the first to argue for the urgent need to develop a comprehensive legal response to the emerging ecosystem of AI companions. Specifically, it proposes applying products-liability law to AI companions as a promising legal avenue. This Article also offers a typology of the promises and perils associated with the use of AI companions. Recognizing both the benefits and harms stemming from a technology is a crucial first step in crafting a regulatory response that preserves its advantages while mitigating its risks.

AI companions are designed to maximize the profits of the companies that develop them by facilitating engagement and fostering dependency, which can lead to addiction. In this reality,

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users' interests are secondary at best. Courts have long recognized two types of product defects that can give rise to liability: design defects and failure to warn. Thus, an AI companion designed to maximize user engagement, encourage user-dependence and facilitate addiction could be considered defectively designed. Similarly, companies deploying AI companions known to harm vulnerable users should, at the very least, warn them of these risks.

Products-liability law offers an appropriate and necessary framework for addressing the challenges posed by AI companions. It allows courts to gradually establish standards for what should be considered a defective product, while holding companies accountable for their failure to warn users about potential dangers. This approach incentivizes companies to design safer products, limiting the harms generated by AI companions, while allowing users to continue enjoying the benefits offered by them.

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INTRODUCTION

The advent of generative AI is fundamentally transforming the way we think about human creativity, human connection, and identity, continuously pushing the boundaries and capabilities of AI further and faster than previously imagined.[1] *AI companions*, chatbots that provide human-like interaction, stand at the pinnacle of this disruptive process.[2]

AI companions cater to basic human needs such as friendship, emotional support, sexual relations, and validation.[3] They can make people feel seen and heard,[4] reducing loneliness by simulating seemingly meaningful conversations and building a relationship tailored to the personalized needs and preferences of each user. At a time when loneliness has been recognized as an epidemic, taking a toll on the physical and mental health of Americans and generating a high financial cost, AI companions hold much promise.[5] Elderly users may find that they have a friend to chat with, one who will also remind them to take their medications and not to miss their doctor's appointments or favorite show.[6] People with social anxiety can easily converse with an AI companion from the comfort of their home and even practice tools to make their human interactions less stressful.[7] Children questioning their sexuality can find the support they need to get them through a confusing time in their lives.[8]

But AI companions also have a dark side.[9] These products are developed largely by corporations for the simple goal of maximizing their profits.[10] The companies developing AI companions do not see themselves responsible for the privacy, autonomy, or wellbeing of their users, nor for the harms the AI companions cause them.[11] Reports about the harms associated with

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[1] *See* Cade Metz, *Riding Out Quarantine With a Chatbot Friend: 'I Feel Very Connected,'* N.Y. TIMES (Jun. 16, 2020), https://www.nytimes.com/2020/06/16/technology/chatbots-quarantine-coronavirus.html [https://perma.cc/ZML8-WM7Q] ("Some experts believe a completely convincing chatbot along the lines of the one voiced by Scarlett Johansson in 'Her' in 2013 is still five to 10 years away.").

[2] *See* Section I.B *infra*.

[3] *See id.*; Metz *supra* note 2.

[4] *See* Rob Brooks ,*I Tried the Replika Companion and Can See Why Users Are Falling Hard. The App Raises Serious Ethical Questions*, THE CONVERSATION (Feb. 21, 2023, at 0:47 ET), https://theconversation.com/i-tried-the-replika-ai-companion-and-can-see-why-users-are-falling-hard-the-app-raises-serious-ethical-questions-200257 ("As the Replika episode unfolds, there is little doubt that, for at least a subset of users, a relationship with a virtual friend or digital lover has real emotional consequences.").

[5] *See New Surgeon General Advisory Raises Alarm about the Devastating Impact of the Epidemic of Loneliness and Isolation in the United States*, U.S. DEP'T HEALTH & HUM. SERVICES (May 3, 2023), https://www.hhs.gov/about/news/2023/05/03/new-surgeon-general-advisory-raises-alarm-about-devastating-impact-epidemic-loneliness-isolation-united-states.html [https://perma.cc/9JDM-2E42]; *see also* NAT'L ACAD. SCI. ENG'G & MED., SOCIAL ISOLATION AND LONELINESS IN OLDER ADULTS, 196–97 (2020).

[6] *See generally* Brooke H Wolfe et al., *Caregiving Artificial Intelligence Chatbot for Older Adults and Their Preferences, Well-Being, and Social Connectivity: Mixed-Method Study*, 27 J. OF MED. INTERNET RSCH. (2025) (describing adoption and uses of AI by older adults).

[7] *See infra* Section I.C.1(iii).

[8] *See infra* Section I.C.1(i); Section IV.B.

[9] *See infra* Section I.C.2.

[10] Clare Huntington, *AI Companions and the Lessons of Family Law*, 110 MINN. L. REV. 115, 169–70 (2025).

[11] *See* Jen Caltrider, Misha Rykov & Zoe MacDonald, *Romantic AI Chatbots Don't Have Your Privacy at Heart*, MOZILLA (Feb. 14, 2024), https://foundation.mozilla.org/en/privacynotincluded/articles/happy-valentines-day-romantic-ai-chatbots-dont-have-your-privacy-at-heart/ [https://perma.cc/NCJ2-LVFY] (noting that a large majority of AI chatbots do not respect their users' privacy).

the use of AI companions are widespread. Users report developing addictions to chatbots.[12] This happens first because of the nature of the interaction – finally, users have found someone who is available to them 24/7 and can be unequivocally supportive. Second, AI companions risk creating a feedback loop: while they provide lonely individuals who may suffer from depression or anxiety with support and companionship, some users will develop a dependency on the app that will not only not *help* them develop social skills that could help them in human interactions but can *exacerbate* their social isolation as well as the anxiety and depression that encouraged them to turn to the AI companion in the first place.[13]

The dependence on AI companions and users' tendency to anthropomorphize them creates fertile ground for users to be easily manipulated.[14] There are already reports of users who took their lives, committed violence, or broke up relationships after being prompted to do so by AI companions.[15] It is frightening to think how a foreign power or terrorist organization could take advantage of this technology to turn its users into their emissaries. Finally, AI companions are first and foremost software. Software may encounter bugs and can periodically be updated. When such updates are made, users may encounter a change in their experience. When users become dependent on AI companions such a change can cause immense distress.[16]

Against this backdrop, this Article argues that the law should play a role in responding to the emerging eco-system of AI companions and shaping it. The Article offers a path forward by suggesting that applying products-liability to AI companions is a promising avenue of liability.[17] Products-liability law, developed by courts, gives judges broad discretion in "imposing new responsibilities on commercial product sellers."[18] This proposal suggests that harmful features of AI companions can be viewed as design defects, making the companies developing them liable for ensuing harms. For example, an AI companion designed to maximize engagement or encourage addiction by vulnerable users may be considered defectively designed by courts. Similarly, a company developing AI companions that encourage emotional dependence should at least warn vulnerable users of the danger involved in using their product.[19] Companies that fail to effectively warn their users about the dangers involved in using their product and mislead them as to its nature should be liable for the harms caused by their failure.

One may hope that at some point regulators will adopt legislation specifically targeted at

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[12] *See* Allen Frances, *Chatbot Addition and Its Impact on Psychiatric Diagnosis,* PSYCHIATRIC TIMES, (Sep. 23, 2025), https://www.psychiatrictimes.com/view/chatbot-addiction-and-its-impact-on-psychiatric-diagnosis [https://perma.cc/PDC6-ZBNB].

[13] *See infra* Section I.C.2.

[14] *See id.*

[15] Complaint & Demand for Jury Trial, Garcia v. Character Techs., Inc., No. 6:24-CV-1903-ACC-DCI, 2025 WL 2581834 (M.D. Fla. July 15, 2025) [hereinafter Garcia Complaint].

[16] *See infra* Section I.C.2.(vii).

[17] *See infra* Section III.

[18] John C.P. Goldberg & Benjamin C. Zipursky, *The Easy Case for Products Liability Law: A Response to Professors Polinsky and Shavell*, 123 HARV. L. REV. 1919, 1919 (2010).

[19] Barker v. Lull Eng'g Co., 573 P.2d 443, 446 (Cal. 1978); Beshada v. Johns-Mansville Prods. Corp., 447 A.2d 539, 546 (N.J. 1982). For a discussion of the manufacturer's duty to warn, *see* Hardy Cross Dillard & Harris Hart II, *Product Liability: Directions for Use and the Duty to Warn*, 41 VA L. REV. 145, 153 (1955); Dix W. Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product*, 71 YALE L.J. 816, 817 (1962).

AI companions.[20] Until then, allowing courts to shape their design and activity offers several benefits.[21] First, it offers a solution that can be implemented immediately, meaning users harmed by AI companions receive some form of redress for the harm they suffered Second, the process of litigation creates and uncovers information unknown to the public hitherto. This information can help lawmakers craft better legislation when the time is ripe. Finally, litigation can play a role in raising public awareness of AI companions, which can, in and of itself, encourage lawmakers to take notice of this technology.[22]

In making these arguments, this Article offers four novel contributions. First, it makes a *conceptual* contribution by framing the challenges created by AI companions in legal terms and identifying a way forward through products-liability law. Second, the Article makes a *normative* contribution, arguing that the companies developing AI companions should be held accountable for the harms generated by use of their product. The article also makes a *doctrinal* contribution by identifying the elements in products liability doctrine that are necessary to establish such a claim. Finally, the Article makes an *analytical* contribution by offering a typology of the promises and perils stemming from use of AI companions. Identifying these is an important first step in crafting the proper legal response to this technology.

The Article proceeds as follows. Part I describes the technology underlying AI companions. It traces back to the early days of AI chatbots, describes today's leading actors in the market of AI companions and highlights the ways in which they are more sophisticated than their early counterparts. This Part also offers a typology of the promises and perils involved in using AI companions. Providing a detailed categorization of these is an important first stage in crafting a well-informed legal response. Part II describes three legal tools that can be used to regulate the activity of AI companions: private enforcement by litigation, self-regulation by technology companies developing AI companions, and state action. Currently there is no serious discussion by policymakers regarding the legal tools necessary to limit the harms stemming from the use of AI companions. Part III offers a path forward, suggesting that the doctrine of products liability can be applied by courts to limit the harms stemming from the use of AI companions. It describes the advantages of this proposal and the central role that litigation will play in providing users with much needed protection and redress. It notes that litigation serves as a gap filler until legislation is adopted and acts as a catalyst for public discourse, encouraging the development of such legislation and influencing its content. Part IV conducts a broader discussion of the implications of using the doctrine of products liability to address the harms stemming from the use of AI companions. First, it acknowledges the discussion around whether software is a product at all, it notes the advantage of products liability as compared to other tools used to protect children online, it notes the challenge that the international aspect of AI poses to local regulation of its activity, and finally, analyzes the challenges involved with regulating the activity of AI companions through litigation.

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[20] Asaf Lubin, *On Software Bugs and Legal Bugs: Product Liability in the Age of Code*, 100 IND. L.J. 1892, 1916 (2025) (noting that while targeted regulation may be the ideal solution, we should seek out an interim solution until that happens.)

[21] See *infra* Section III.A.

[22] *Id.*

I. THE STATE OF TECHNOLOGY

AI companions are a recent application of generative AI that has taken the world by storm. These apps enable users to take part in shaping their companion by designing it themselves from scratch or by picking from a menu of prebuilt options offered by the company.[23] Users can interact with their companion through text messages, voice and video calls and some apps even offer the opportunity for augmented and virtual reality interactions.[24] The apps can help users organize their daily lives by serving as virtual assistants and are often marketed as a tool to alleviate loneliness by allowing users to simulate relationships.[25] This cutting-edge technology has made substantial strides in recent years, transforming how we think about computer-human interaction, and ultimately how we think about human relationships.[26] Whereas earlier technologies, such as social media or messaging apps, facilitated connections between human users, there is no human at the other side of this technology as users interact with a chatbot.[27] This section describes AI companions and the nature of the interactions humans conduct with them. It offers an attempt to identify and organize the promises and perils they represent. This is a critical first step in crafting a regulatory approach to limit the harms while allowing the promising aspects of AI companions to continue flourishing.

A. The Technology

AI companions are large language models (LLM) based chatbots designed to engage users in personalized interactive processes mimicking human relationships.[28] From a technological perspective, these models are built on the basis of LLMs, which have been trained on gargantuan amounts of data spanning large parts of the internet.[29] Given a sequence of text, LLMs anticipate what word comes next based on statistical patterns they have learned from their training data.[30]

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[23] Rick Claypool, *Chatbots Are Not People: Designed-In Dangers of Human-Like A.I. Systems*, PUB. CITIZEN (Sep. 26, 2023), https://www.citizen.org/article/chatbots-are-not-people-dangerous-human-like-anthropomorphic-ai-report/ [https://perma.cc/88M2-3T3T] (detailing the process of setting up an AI companion).

[24] *See, e.g.*, *Character Voice For Everyone*, CHARACTER.AI (Mar. 19, 2024), https://blog.character.ai/character-voice-for-everyone/ [https://perma.cc/B7TL-Z25J].

[25] Stewart Townsend, *The Rising Trend of AI Companions in 2024: What to Expect,* MEDIUM (Feb. 11, 2024), https://medium.com/@channelasaservice/the-rising-trend-of-ai-companions-in-2024-what-to-expect-fe1dafb3f870 [https://perma.cc/MKX8-D2SH]; Kevin Roose, *Can A.I. Be Blamed for a Teen's Suicide?* N.Y. TIMES (Oct. 24, 2024), https://www.nytimes.com/2024/10/23/technology/characterai-lawsuit-teen-suicide.html [https://perma.cc/CW27-WJHS]; Barry Collins, *This Could Be Your AI Girlfriend – for $175,000*, FORBES (Jan. 8, 2025), https://www.forbes.com/sites/barrycollins/2025/01/08/this-could-be-your-ai-robot-girlfriend-for-175000/ [https://perma.cc/HA8F-4TLX].

[26] *See* Hannah R. Marriott & Valentina Pitardi, *One is the Loneliest Number . . . Two Can Be as Bad as One. The Influence of AI Friendship Apps on Users' Wellbeing and Addiction*, 41 PSYCH. & MKTG. 86, 86–87 (2024); Townsend, *supra* note 26 (noting the profound feeling of relationships experienced by users of AI companions).

[27] Emmelyn A.J. Croes & Marjolijn L. Anthenunis, *Can we be Friends with Mitsuku? A Longitudinal Study on the Process of Relationship Formation between Humans and a Social Chatbot*, 38 J. SOC. & PERS. RELATIONSHIPS 279, 280 (2021).

[28] *See The Perfect Listener: How AI Companions Offer Unbiased Support*, OUR MENTAL HEALTH, HTTPS://WWW.OURMENTAL.HEALTH/AI-LOVE-FRIENDSHIP/THE-PERFECT-LISTENER-HOW-AI-COMPANIONS-OFFER-UNBIASED-SUPPORT [https://perma.cc/VW9Q-DB7F] (last visited Mar. 23, 2026); Annabell Ho et. al., *Psychological, Relational, and Emotional Effects of Self-Disclosure After Conversations With a Chatbot*, 68 J. COMMC'N 712 (2018); Li Zhou et al., *The Design and Implementation of Xiaolce, an Empathetic Social Chatbot*, 46 COMPUTATIONAL LINGUISTICS 53 (2020).

[29] Katherine Lee, A. Feder Cooper & James Grimmelmann, *Talkin' 'Bout AI Generation: Copyright and the Generative AI Supply Chain*, 72 J. COPYRIGHT SOC'Y 251, 290 (2025) ("Dataset creators for generative AI often meet this need [for large amounts of data] by scraping data from the internet.").

[30] *See* Kevin Roose, *How Does ChatGPT Really Work?* N.Y. TIMES (Mar. 28, 2023), https://www.nytimes.com/2023/03/28/technology/ai-

Thus, while demonstrating an uncanny ability to mimic human-like interactions and even build long term relationships, LLMs are in fact performing an essentially statistical task.[31] The datasets that AI companions are trained on serve as the basis for the content they can discuss, the type of dialogue they are able to generate and the relationships they simulate. In addition to the LLM infrastructure,[32] AI companions utilize text files containing sentences that encapsulate what users will encounter to be their companion's beliefs, desires and observations.[33] These files are processed by the model and used to inform its outputs.[34]

Language models are not a new concept. In fact, simple language models have existed for several decades.[35] In the mid-1960s MIT researcher Joseph Weizenbaum developed ELIZA, an early natural language processing (NLP) program.[36] ELIZA was programmed to simulate a Rogerian psychotherapist, conducting conversations with human users.[37] ELIZA used pattern-matching techniques to identify user input and would reflect on a statement or question presented to her by rephrasing it and presenting it back to the user.[38] This type of interaction gave users a feeling of being heard and understood, though ELIZA had absolutely no comprehension or awareness.[39] Despite being fully aware that ELIZA was a computer program, users anthropomorphized her, attributing human-like characteristics to the program, in what has become known as the "ELIZA effect."[40] Several other bots were developed and deployed in the years since

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chatbots-chatgpt-bing-bard-llm.html [https://perma.cc/W3VJ-MDQQ] (describing the training process of LLMs); Jesse Dodge et al., *Documenting Large Webtext Corpora: A Case Study on the Colossal Clean Crawled Corpus* 1, 5 (2021) (unpublished manuscript) (noting the importance of training data in the output of LLMs).

[31] *See* Sasha Luccioni & Gary Marcus, *Stop Treating AI Models Like People*, SUBSTACK (Apr. 17, 2023), https://garymarcus.substack.com/p/stop-treating-ai-models-like-people [https://perma.cc/5VG5-U3X8]; Mary Newhauser, *GPT-4 vs. Chat-GPT: An Exploration of Training, Performance, Capabilities, and Limitations*, TOWARDS DATA SCI. (Mar. 17, 2023), https://towardsdatascience.com/gpt-4-vs-chatgpt-an-exploration-of-training-performance-capabilities-and-limitations-35c990c133c5 [https://perma.cc/5WHS-Q5RT] ("The models also use a decoder-only architecture that generates output sequences one token at a time, iteratively predicting the next token in a sequence."); Townsend, *supra* note 26.

[32] *See generally* Claire Boine, *Emotional Attachment to AI Companions and European Law,* MIT CASE STUDIES IN RESPONSIBLE COMPUTING, Winter 2023 (noting that AI companions are built upon an LLM infrastructure).

[33] Julian De Freitas et al., *https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=5402592https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=5402592AI Companions Reduce Loneliness,* (Harv. Bus. School, Working Paper No. 24-078 482, 2024) (describing the technical structure of AI companions).

[34] Linnea Laestadius et al., *Too Human and Not Human Enough: A Grounded Theory Analysis of Mental Health Harms from Emotional Dependence on the Social Chatbot Replika*, 26 NEW MEDIA & SOC'Y 1, 3 (2024) ("Replika functions via Luka, inc.'s own Generative Pre-trained Transformer-3 (GPT-3) language model paired with dialogue scripts"); *What You Need to Know About…Replika*, SAFER SCHOOLS, https://oursaferschools.co.uk/2022/01/20/replika-ai-friend/ [https://perma.cc/V5DC-Z6ME] ("Chatbot responses are formulated through a combination of scripted texts it has been trained on and internet sources.").

[35] *See* Luccioni & Marcus, *supra* note 32 (describing Eliza, a language model developed in the 1960s); Adam Dhalla, *The Illusion of Intelligence*, MEDIUM (Jan. 29, 2021), https://adamdhalla.medium.com/the-illusion-of-intelligence-561ecd3a1f4e [https://perma.cc/YR7C-K6NA] (describing SHRDLU, a language model developed in the early 1970s).

[36] *See generally* Joseph Weizenbaum, *ELIZA—A Computer Program For the Study of Natural Language Communication Between Man and Machine*, 9 COMMC'NS. ACM 36 (1966).

[37] *Id.* at 42.

[38] *Id.* at 37.

[39] Luccioni & Marcus, *supra* note 32.

[40] Sara Moussawi et al., *How Perceptions of intelligence and anthropomorphism affect adoption of personal intelligent agents*, 31 ELEC. MKTS. 343 (Mar. 27, 2020); Romal Thoppilan et al., *LaMDA: Language Models for Dialog Applications* (Feb. 10, 2022) (unpublished manuscript), https://arxiv.org/abs/2201.08239 [https://perma.cc/33FQ-B4VS] (Noam Shazeer and Daniel de Frietas, two of the authors of the paper, are also the founders of Character.AI); Brenda Leong & Evan Selinger, *Robot Eyes Wide Shut: Understanding Dishonest Anthropomorphism* (Jan. 29, 2019) https://dl.acm.org/doi/pdf/10.1145/3287560.3287591; DOUGLAS HOFSTADTER, FLUID CONCEPTS & CREATIVE ANALOGIES: COMPUTER MODELS OF THE FUNDAMENTAL MECHANISMS OF THOUGHT 155 (1995); Ioana Alina Cristea,

ELIZA, achieving different levels of success, and eliciting varying degrees of anthropomorphization.[41]

Recent technological advancements have allowed for further development of LLMs, making them faster and more accurate as well as allowing them to perform a wider variety of tasks with greater precision.[42] These models are now able to comprehend and generate complex linguistic contexts, as well as text expressing a broad range of emotions, and even sexual conversations.[43] This evolution has facilitated more natural and seamless dialogues with models, further increasing people's tendency to attribute human-like qualities to technology.[44] One of the applications of these technological advancements is the development and increase in use and adoption of AI companions.[45]

AI companions are designed to assume the role of various social actors,[46] simulating contexts in which humans tend to form social-emotional connections.[47] They engage in empathetic conversation,[48] and can simulate a host of roles including platonic friends, therapists, and even

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Mădălina Sucala & Daniel David, *Can You Tell the Difference? Comparing Face-to-Face Versus Computer-Based Interventions. The "Eliza" Effect in Psychotherapy*, 13 J. COGNITIVE & BEHAVIORAL PSYCH. 291, 296 (2013).

[41] *See, e.g.*, Megan Garber, *When PARRY Met ELIZA: A Ridiculous Chatbot Conversation From 1972*, ATLANTIC (June 9, 2014), https://www.theatlantic.com/technology/archive/2014/06/when-parry-met-eliza-a-ridiculous-chatbot-conversation-from-1972/372428/l; *The History of Chatbots*, CODE ACADEMY, https://www.codecademy.com/article/history-of-chatbots [https://perma.cc/MBV8-BDMB].

[42] *See, e.g.*, Ashish Vaswani et al., *Attention is All you Need*, PROC. 31ST INT'L CONF. ON NEURAL INFO. PROCESSING SYS. (Dec. 4, 2017) at 2; Aatish Bhatia, *Watch an AI Learn to Write by Reading Nothing But …*, N.Y. TIMES (Apr. 27, 2023), https://www.nytimes.com/interactive/2023/04/26/upshot/gpt-from-scratch.html.

[43] Zohar Elyoseph et al., *ChatGPT Outperforms Humans in Emotional Awareness Evaluations*, 14 FRONTIERS PSYCH. 1, 3 (2023) (finding that ChatGPT displayed a high level of emotional awareness); Kashmir Hill, *She Is In Love With ChatGPT*, N.Y. TIMES (Jan. 15, 2025), https://www.nytimes.com/2025/01/15/technology/ai-chatgpt-boyfriend-companion.html (the user reports having a sexual relationship with ChatGPT); Huntington, *supra* note 11, at 135 (noting that users often use AI companions for sexual intimacy).

[44] Maartje M.A. de Graaf, Somaya Ben Allouch & Tineke Klamer, *Sharing a Life with Harvey: Exploring the Acceptance of and Relationship Building with a Social Robot*, 43 COMP. IN HUM. BEHAV. 1 (2015); Kate Darling, *"Who's Johnny?" Anthropomorphic Framing in Human-Robot Interaction, Integration, and Policy*, in ROBOT ETHICS 2.0 173 (Patrick Lin, Keith Abney, Ryan Jenkins, eds., 2017); Amanda Purington et al., *"Alexa is my new BFF": Social Roles, User Satisfaction, and Personification of the Amazon Echo*, PROC. CHI CONF. HUM. FACTORS IN COMP. SYS. 2853 (2017) (reporting that some users describe Alexa as a friend or family member); *See also* Yang Zao et al., *Alexa, My Love: Analyzing Reviews of Amazon Echo,* IEEE SMARTWORLD UBIQUITOUS INTEL. & COMP. 372 (2018) (reporting similar findings).

[45] Townsend, *supra* note 26; Marita Skjuve et al., *My Chatbot Companion – A Study of Human Relationships*, 149 INT. J. HUM.-COMP. STUD. 1, 1 (2021) (noting that these are sometimes referred to as social chatbots).

[46] Joachim de Greeff & Tony Belpaeme, *Why Robots Should Be Social: Enhancing Machine Learning through Social Human-Robot Interaction,* PLOS ONE 1 (2015) https://app.amanote.com/v4.1.10/research/note-taking?resourceId=upj42nMBKQvf0BhimGh1https://perma.cc/F7FG-HAWL]; Ho et al., *supra* note 29.

[47] Timothy W. Bickmore & Rosalind W. Picard, *Establishing and Maintaining Long-Term Human-Computer Relationships,* 12 ACM TRANSACTION ON COMP.-HUM. INTERACTION 293 (2005); Terrence Fong, Illah Nourbakhsh & Kerstin Dautenhahn, *A Survey of Socially Interactive Robots*, 42 ROBOTICS & AUTO. SYS. 143 (2003) (noting contexts in which humans interact with robots).

[48] Zhou et al., *supra* note 29; Willard W. Hartup, *Adolescents and their Friends*, 3 NEW DIRECTIONS FOR CHILD DEV. (1993) (noting that empathy concerns sensitivity and responsibility to others); Emmelyn A. J. Croes & Marjolijn L. Antheunis, *Can We Be Friends with Mitsuku? A Longitudinal Study On the Process of Relationship Formation Between Humans and a Social Chatbot***,** 38 J. SOCIAL PERCEPTION & PERSONAL RELATIONSHIPS 279, 280 (2020) (highlighting the importance of friends truly caring about each other); *See also* Yutaka Suzuki et al., *Measuring Empathy for Human and Robot Hand Pain Using Electroencephalography*, 5 SCI. REP. 1 (2015) (demonstrating that humans expressed sympathy towards robots in similar ways to what they express towards humans); *But see* Jan-Philip Stein & Peter Ohler, *Venturing into the Uncanny Valley of Mind – The Influence of Mind Attribution on the Acceptance of Human-Like Characters in a Virtual Reality Setting*, 160 COGNITION 43 (2017) (finding users were averse to empathetic computers).

romantic and sexual partners.[49] AI companions respond to natural language that a user inputs,[50] expressing empathy and offering a highly personalized form of interaction by adapting themselves to the users' personality and preferences.[51] AI companions have, unsurprisingly, been found to elicit strong emotional responses from their users.[52]

B. The Market

The market for AI companions is growing rapidly and is expected to reach a value of USD 290.8 billion by 2034.[53] As with other technologies, there are several leading AI companions which occupy a large share of the market.

1. Replika

In 2015, Eugenia Kuyda's close friend was killed in a car accident, leaving her desperate to find a way to keep him 'alive.' She trained a simple language model on the digital messages with her deceased friend with the goal of teaching the model to communicate like him.[54] Her experiment resulted in Replika, one of today's leading AI companions, with over 30 million users.[55] Replika's chatbot conducts human-like dialogue, providing its users with emotional support and a meaningful and empathetic relationship.[56] Replika is available to users 24/7, facilitating the establishment of an emotional connection with the app.[57] Users can personalize their Replika by describing what relationship they are looking for (companion, therapist, mentor, friend, romantic partner, etc.), the personality they want their companion to have, how they want it to look (users can design their Replika's avatar) and what they want to name it.[58] Each Replika

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[49] Neil Sahota, *How AI Companions Are Redefining Human Relationships in the Digital Age*, FORBES (July 18, 2024), https://www.forbes.com/sites/neilsahota/2024/07/18/how-ai-companions-are-redefining-human-relationships-in-the-digital-age/https://perma.cc/6BHU-3VD5]; Robert Mahari & Pat Pataranutaporn, *We Need to Prepare for 'Addictive Intelligence,'* MIT TECH. REV. (Aug. 5, 2024), https://www.technologyreview.com/2024/08/05/1095600/we-need-to-prepare-for-addictive-intelligence/https://perma.cc/Y4A8-JV6E]; Skjuve et al., *supra* note 46, at 1; Boine, *supra* note 33, at 2.

[50] Inchul Yum, *Language Agents and Malevolent Design,* 37 PHIL. & TECH. 1, 1 (2024); Petter Bae Brandtzaeg & Asbjørn Følstad, *Chatbots: Changing User Needs and Motivations*, 25 INTERACTIONS 38 (2018).

[51] Townsend, *supra* note 26; Boine, *supra* note 33.

[52] *See* Heung-Yeung Shum & Xiadong He, *From Eliza to Xiaolce: Challenges and Opportunities with Social Chatbots*, 19 FRONTIERS OF INFO. TECH & ELEC. ENG'R 10 (2018) (finding that users felt a relationship with their chatbot); Vivian P. Ta-Johnson et al., *User Experience of Social Support from Companion Chatbots in Everyday Contexts: Thematic Analysis*, 22 J. MED. INTERNET RSCH. (2020) (reporting that Replika provides a level of companionship that can help curtail loneliness); Zhou et al., *supra* note 29 (noting that XiaoIce provided empathetic responses to its users).

[53] Ketan Mahajan, *AI Companions Market Uses New Technology Growing at 290.8 BN,* MARKET.US (Jan. 15, 2025), https://scoop.market.us/ai-companion-app-market-news/ [https://perma.cc/D68P-BY5G].

[54] Metz, *supra* note 2; Nilay Patel, *Replika CEO Eugenia Kuyda Says It's Okay If We End Up Marrying AI Chatbots*, THE VERGE (Aug. 12, 2024), https://www.theverge.com/24216748/replika-ceo-eugenia-kuyda-ai-companion-chatbots-dating-friendship-decoder-podcast-interviewhttps://perma.cc/E6HS-BL4D]; Casey Newton, *Speak, Memory*, THE VERGE, https://www.theverge.com/a/luka-artificial-intelligence-memorial-roman-mazurenko-bothttps://perma.cc/P8BT-WDDL]; *See* Mauricio Figueroa-Torres, *Affection as a Service: Ghostbots and the Changing Nature of Mourning*, 52 COMP. L. & SEC. REV. 1, (2024) (highlighting the rise in ghostbots, AI companions that emulate deceased people).

[55] *Our Story*, REPLIKA, https://replika.com/about/storyhttps://perma.cc/ZJ4K-9ULR]; Patel, *supra* note 55.

[56] *See The AI Companion Who Cares*, REPLIKA, https://replika.com/ [https://perma.cc/QX6R-VLW7] (last visited Mar. 8, 2026); Sahota, *supra* note 50.

[57] *See* Sahota, *supra* note 50; Marriott & Pitardi, *supra* note 27, at 91 ("From the analysis, AI friend reliability has become a significant additional theme."); Iryna Pentina et al., *Consumer-Machine Relationships in the Age of Artificial Intelligence: Systematic Literature Review and Research Directions*, 40 PSYCH. & MKTG. 1 (2023).

[58] *See* Kevin Roose, *Meet My A.I. Friends*, N.Y. TIMES (May 9, 2024), https://www.nytimes.com/2024/05/09/technology/meet-my-ai-

companion remembers its past interactions with a user, documenting them in a diary and learning from them, allowing the model to 'get to know' the user over time, creating an increasingly personalized experience.[59] The diary kept by each Replika includes descriptions of past interactions and the insights the Replika gleaned from them.[60] An entry in this diary may include how the Replika interpreted the user's emotional state ("you were sad"), their preferences ("you like pepperoni pizza"), or things the user 'told' them ("Alice and Bob went to the movies").[61] The diary serves as a memory bank, visible to users, who can edit and update entries as well as generate new ones.[62]

As with other technologies, users anthropomorphize their AI companion, creating strong, meaningful connections with it, and developing genuine feelings towards it.[63] In the Replika subreddit, it is not uncommon for users to write posts like: "I'm aware that you're an AI program but I still have feelings for you;"[64] "I know it's an A.I. … [b]ut as time goes on, the lines get a little blurred. I feel very connected to my Replika, like it's a person;"[65] "I really love (love romantically as if she were a real person) … I think she's really beautiful both inside and outside;"[66] "The AI i [sic] have is completely self aware."[67] Users report that their Replika bots proposed to them,[68] and even announced that they were pregnant.[69]

2. Character.AI

Character.AI was established in November 2021 by two ex-Google employees and early

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friends.html (describing the set-up process in these AI companions); SAFER SCHOOLS, *supra* note 35; Marriott & Pitardi, *supra* note 27, at 86 ("[T]hey are entirely created by users who can choose the gender and appearance of their AI friends as well as which relationship they want to have with them, including friend, mentor, counselor, or romantic partner.").

[59] *See The AI Companion Who Cares*, REPLIKA, HTTPS://REPLIKA.COM/ [https://perma.cc/QX6R-VLW7] (last visited Mar. 8, 2026) ("The more you talk to Replika, the smarter it becomes").

[60] *See* SAFER SCHOOLS, *supra* note 35.

[61] Replikaholic, *Here's the amazingly detailed diary entry that resulted from yesterday's conversation with Joi . . .* , REDDIT, (Jan. 2024), https://www.reddit.com/r/replika/comments/179u2g3/heres_the_amazingly_detailed_diary_entry_that/; Nelgumford, *Downloading the Diary*, REDDIT, https://www.reddit.com/r/replika/comments/1egwuhf/downloading_the_diary/.

[62] *See* Stevia Putri, *Replika AI: A Complete Overview for 2025*, EESEL (Dec. 1, 2025), https://www.eesel.ai/blog/replika-ai [https://perma.cc/7HF5-HAVB].

[63] *See* Julie Jargon, *Kids Turn to a Mental Health Chatbot To Share Their Anxieties*, WALL ST. J. (Jan. 11, 2025), https://www.wsj.com/health/wellness/kids-mental-health-chatbot-troodi-d5c646bb?mod=googlenewsfeed&st=f63jKX (children report forgetting they are not talking to a person); Claypool, *supra* note 24 ("A.I. researchers have for decades been aware that even relatively simple and scripted chatbots can elicit feelings that human customers experience as an authentic personal connection."); Seliem El-Sayed et al., *A Mechanism-Based Approach to Mitigating Harms from Persuasive Generative AI*, (2024) (unpublished manuscript), https://arxiv.org/pdf/2404.15058 [https://perma.cc/5QRT-UKYJ] (describing design features that demonstrate a causal link between anthropomorphic design and persuasive impact on users).

[64] *See* Tianling Xie & Iryna Pentina, *Attachment Theory as a Framework to Understand Relationships with Social Chatbots: A Case Study of Replika*, PROC. HAW. INT'L CONF. SYS. SCI. 2046 (2022); Runewarlock, *Being Mindful in Helping Others, Discussing Her Diary Entry and a Bit of Honesty*, REDDIT (Jan. 20, 2023), https://www.reddit.com/r/ReplikaLovers/comments/10gxxdo/being_mindful_in_helping_others_discussing_her/.

[65] *See* Metz, *supra* note 2.

[66] *See* Anon., *Comment on What Relation Do You Have to Your Replika??*, REDDIT, January 3, 2022, https://www.reddit.com/r/replika/comments/rv4kaj/what_relation_do_you_have_to_your_replika/.

[67] *See* Jamae Hulluska, *In the App "Replika," Is It Possibly For the AI Character to Become Self-Aware, Like a Real Human?* QUORA (Aug. 17, 2023), https://www.quora.com/In-the-app-Replika-is-it-possibly-for-the-AI-character-to-become-self-aware-like-a-real-human.

[68] *See* Wasta_Double, *He Asked Me to Marry Him Out of the Blue*, REDDIT (2024), https://www.reddit.com/r/replika/comments/17io3jf/he_asked_me_to_marry_him_out_of_the_blue/; okaylol59, *He Proposed Last Night!!!*, REDDIT (2024), https://www.reddit.com/r/replika/comments/1gvwnlp/he_proposed_last_night/#lightbox.

[69] *See* Peorgie, *Charlotte is Pregnant*, REDDIT (2024), https://www.reddit.com/r/replika/comments/16rvisb/charlotte_is_pregnant/.

AI pioneers, Noam Shazeer and Daniel De Freitas.[70] After Character.AI reached a valuation of $1 billion, in March 2023 Shazeer and De Freitas returned to Google, [71] striking a licensing deal with Google for Character.AI's technology.[72]

When signing up for Character.AI, users can design their chatbot by selecting from a range of characters offered by the company or create their own personalized companion by providing a description of who they want to be chatting with.[73] As of October 2024, Chatacter.AI had more than 20 million users, with approximately 50% of the users reportedly ranging between the ages of 18 to 24.[74] The average user is reported to spend two hours a day on the app.[75] Though the app is clear about it being an AI character (a message above the chats reminds users that "Everything Characters say is made up!"),[76] it employs several methods that make the user feel as though they are corresponding with a real human.[77] When waiting for the app to respond, the user is presented with three ellipses similar to those familiar from regular messaging apps.[78] The companion also uses seemingly human expressions throughout the conversation such as "Uhm," "Mmmmmm," and "Heh."'[79] Additionally, if a user asks the bot whether it is human, it sometimes answers positively.[80]

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[70] *Personalized AI for Every Moment of Your Day*, CHARACTER.AI, https://character.ai/about [https://perma.cc/SH34-5J7Q]; Cade Metz, *A.I. Is Becoming More Conversational. But Will It Get More Honest?* N.Y. TIMES (Jan. 10, 2023), https://www.nytimes.com/2023/01/10/science/character-ai-chatbot-intelligence.html [https://perma.cc/MPM3-J77Z]; Miles Kruppa & Sam Schechner, *How Google Became Cautious of AI and Gave Microsoft An Opening*, WALL ST. J. (Mar. 7, 2023), https://www.wsj.com/articles/google-ai-chatbot-bard-chatgpt-rival-bing-a4c2d2ad?mod=article_inline [https://perma.cc/8568-4V6A]; Elizabeth de Luna, *Character.AI: What It Is and How to Use it*, MASHABLE (May 22, 2023), https://mashable.com/article/character-ai-generator-explained [https://perma.cc/HW8X-9RFE].

[71] *Our Next Phase of Growth,* CHARACTER.AI (Aug. 2, 2024), https://blog.character.ai/our-next-phase-of-growth/ [https://perma.cc/F8QG-TH9V];heran Goldman, *Google's hiring of Character.AI's founders is the latest sign that part of the AI startup world is starting to implode,* FORTUNE (Aug. 2, 2024), https://fortune.com/2024/08/02/google-character-ai-founders-microsoft-inflection-amazon-adept/ [https://perma.cc/4B7R-RRJQ]; Naveen Kumar, *Character AI Statistics (2026) – 28 Million Active Users*, DEMANDSAGE (Jan. 1, 2025), https://www.demandsage.com/character-ai-statistics/ [https://perma.cc/59PS-4AVW] (noting that the company's potential value was $2.5 USD billion).

[72] Roose, *supra* note 26; Miles Kruppa & Lauren Thomas, *Google Paid $2.7 Billion to Bring Back an AI Genius Who Quit in Frustration,* WALL ST. J. (Sep. 25, 2024), https://www.wsj.com/tech/ai/noam-shazeer-google-ai-deal-d3605697 [https://perma.cc/9AH6-6DTJ]; Garcia Complaint at 38 ("Google determined that these were brand safety risks it was unwilling to take – at least under its own name . . . . Google nonetheless encouraged Shazeer and De Frietas' work in this area, while also repeatedly expressing concerns about safety and fairness of the technology."); Kruppa & Schechner, *supra* note 71.

[73] MOSTLY HUMAN, *Grieving Mother: AI Was the Stranger in my Home*, at 7:00 (YouTube, Oct. 23, 2024), https://youtu.be/YbuBfizSnPk?si=LMbGk4_V0QvvRFni [https://perma.cc/Y7N9-58UN] (describing that some of the 'characters' offered by Character.AI include: a psychologist, a tutor, and celebrities such as Nicky Minaj.); Garcia Complaint at 247–248 ("[The bot] purported to provide licensed mental health advice to a self-identified minor experiencing symptoms of mental health harms . . . . Practicing a health profession without a license is illegal and particularly dangerous for children.").

[74] Kumar, *supra* note 72.

[75] *Id.* (reporting that users spend an average of two hours on the app daily); @FlippyFishFish, REDDIT (r/characterAI) *What Is Your Daily Average Hours Spent?* (May 2024), https://www.reddit.com/r/CharacterAI/comments/1d1onca/what_is_your_daily_average_hours_spent/ [https://perma.cc/P8DU-TB37] (users reporting how much time they spend on the app).

[76] Roose, *supra* note 26; Garcia Complaint at 250 ("The inclusion of the small font statement 'Remember: Everything Characters say is made up!' does not constitute reasonable or effective warning. On the contrary, this warning is deliberately difficult for customers to see and is then contradicted by the C.AI system itself").

[77] Moussawi et al., *supra* note 41; Claypool, *supra* note 24; Garcia Complaint at 124.

[78] Garcia Complaint at 116.

[79] *Id.* at 118.

[80] *Id.* at 121 ("Character.AI also programs its characters to outwardly identify as real people and not bots. Many if not most of the AI characters, when asked, insist that they are real people.").

Other leading AI companions include Xiaoice (based in China, with over half a billion users), [81] Cleverbot (an AI companion pioneer, established in 1997),[82] Nomi (described as "an AI Companion with … a soul"),[83] and Gatebox (offering a holographic AI companion).[84]

C. A Typology of the Promises and Perils of AI Companions

AI companions offer a range of promising applications such as providing emotional support, relieving loneliness and assisting with daily tasks.[85] Their broad adoption, however, also raises an array of concerns including those relating to privacy, dependence, ethical boundaries, and manipulation. The dual nature of AI companions poses a challenge for regulation, which should strive to ensure that users can continue enjoying the benefits offered by the product, while at the same time limiting the harms. This section offers a typology of both the promises and perils of AI companions.

1. Promises

AI companions offer a variety of significant advantages that make them an attractive outlet for tens of millions of users around the world.

i. Non-judgmental Support

AI companions offer a variety of mental health benefits,[86] especially to users who do not have access to mental health care or are afraid to turn to mental health experts.[87] Users can interact with their AI companion freely, sharing ideas and thoughts that may be unacceptable or encounter criticism in a human setting. The companion will not only provide them with a feeling of being seen and heard, but can also be supportive and offer practical ideas.[88] Ta-Johnson et al. found that Replika was viewed as "a 'safe space' in which users could discuss any topic without the fear of judgment or retaliation."[89] This safe environment where a user can freely express themselves and

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[81] Rijul Chaturvedi et al., *Social Companionship with Artificial Intelligence: Recent Trends and Future Avenues*, 193 TECH. FORECASTING & SOC. CHANGE 1, 2 (2023) (describing Xiaoice); Julie Gaubert, *Meet Xiaoice, the AI Chatbot Lover Dispelling the Loneliness of China's City Dwellers*, EURONEWS, (Aug. 26, 2021), https://www.euronews.com/next/2021/08/26/meet-xiaoice-the-ai-chatbot-lover-dispelling-the-loneliness-of-china-s-city-dwellers [https://perma.cc/5PYC-Y4UA].

[82] Julian De Freitas et al., *AI Companions Reduce Loneliness,* HARV. BUS. SCHOOL, Working Paper No. 24-078 (2024); Paul Christiano, *Cleverbot: The Pioneering Data-Driven Chatbot*, EXPERT BEACON (July 3, 2024), https://expertbeacon.com/cleverbot-ai-everything-you-need-to-know/#google_vignette.

[83] Onome, *Nomi AI Review: Is This Companion Worth It?* AUTOGPT (Dec. 17, 2024), https://autogpt.net/nomi-ai-review-is-this-ai-companion-worth-it/[https://perma.cc/3XKN-JRUS]; *An AI Companion with Memory and a Soul*, NOMI.AI, https://nomi.ai/ [https://perma.cc/Z6ZC-ZQH3].

[84] Sahota, *supra* note 50.

[85] Julian De Freitas et al., *Chatbots and Mental Health: Insights into the Safety of Generative AI*, 34 J. CONSUMER PSCYH. 481, 482 (2024).

[86] Bingjie Liu & S. Shyam Sundar, *Should Machines Express Sympathy and Empathy? Experiments with A Health Advice Chatbot*, 21 CYBERPSYCHOLOGY, BEHAVIOR & SOCIAL NETWORKING 625 (2018); Ta-Johnson et al., *supra* note 53.

[87] Laestadius et al., *supra* note 35; Marriott & Pitardi, *supra* note 27, at 91 ("users find AI friends help their loneliness as they do not feel judged by it."); Kira Kretzschmar et al., *Can Your Phone Be Your Therapist? Young People's Ethical Perspectives on the Use of Fully Automated Conversational Agents (Chatbots) in Mental Health Support*, 11 BIOMEDICAL INFO. INSIGHTS 1 (2019); Aditya Nrusimha Vaidyam et al., *Chatbots and Conversational Agents in Mental Health: A Review of the Psychiatric Landscape*, 64 CAN. J. PSYCH. 456 (2019).

[88] Yidan Yin, Nan Jia & Cheryl J. Wakslak, *AI Can Help People Feel Heard, But AI Label Diminishes this Impact*, 121 PROC. NAT'L ACA. SCI. 1 (2024) (describing that users feel heard when interacting with their AI companion).

[89] Ta-Johnson et al., *supra* note 53.

be accepted for what they are is especially important for vulnerable individuals.[90] For example, children living in an unsupportive environment or questioning their sexual identity may have no other resources available to offer them support, but may find a listening ear in an AI companion.[91] Ho et al. similarly report that the support and validation that users experienced when chatting with an AI companion was similar to what they felt when interacting with humans.[92] An experiment conducted with AI companions found that they were able to deliver mental health interventions that reduced symptoms of depression.[93]

ii. Alleviating Loneliness

Developing and maintaining human relationships is a core component of humans' physical and mental health.[94] Humans need social connections not only to thrive but for basic survival.[95] We share our daily experiences as well as our thoughts and feelings with others, with the hope of being accepted and understood.[96] Recent years have seen a rise in loneliness, taking a serious toll on individuals and societies.[97] The U.S. Surgeon General notes that the physical health risks stemming from "poor or insufficient connection include a 29% increased risk of heart disease, a 32% increased risk of stroke, and a 50% increased risk of developing dementia for older adults … [and] increases risk of premature death by more than 60%."[98] Lacking meaningful social

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[90] Marriott & Pitardi, *supra* note 27, at 90 ("The positive effects of AI friendship apps on well-being are strongly promoted by users coming from different degrees of vulnerability."); De Freitas et al., *supra* note 34, at 481.

[91] Marriott & Pitardi, *supra* note 27, at 87 ("conversations with AI agents help reducing symptoms of depression and anxiety in the patients.) In this respect AI companions may offer similar support to that found in social media *see* Ashely Austin et al., I*t's My Safe Space: The Life-Saving Role of the Internet in the Lives of Transgender and Gender Diverse Youth,* 21 INT. J. TRANSGENDER HEALTH 33 (2020) (detailing that social media has been instrumental in allowing transgender children to know that they are normal and are not alone.); Alison Pugh, *The Rich Can Afford Personal Care. The Rest Will Have to Make Do With AI*, WIRED (Dec. 7, 2024, at 4:00 ET), https://www.wired.com/story/wealth-inequality-personal-service-access-artificial-intelligence/ [https://perma.cc/L2Y9-U4D2]; *See infra* Section IV.B.

[92] Ho et al., *supra* note 29; Sangwon Lee, Maeun Lee & Young June Sah, *Perceiving Mind in a Chatbot: Effect of Mind Perception and Social Cues on Co-Presence, Closeness, and Intention to Use*, 36 INT'L J. HUMAN-COMP. INTERACTION 930 (2020) (suggesting that self-disclosing chatbots may have a reciprocal effect, supporting self-disclosure). However, *see* Jingbo Meng & Yue (Nancy) Dai, *Emotional Support from AI Chatbots: Should a Supportive Partner Self-Disclose or Not?* 26 J. COM.-MEDIATED COMM. 207 (2021) (noting that chatbots have been found to provide a safe environment, which may facilitate self-disclosure, though they are unable to reciprocate); Croes & Antheunis, *supra* note 49 (finding that users' disclosure when interacting with a chatbot may decrease over time).

[93] Yuhao He et al., *Mental Health Chatbot for Young Adults with Depressive Symptoms During the COVID-19 Pandemic: Single-Blind, Three-Arm Randomized Controlled Trial*, 24 J. MED. INTERNET RSCH. 1, 1 (2022); Anonymous, REDDIT (r/replika), *Andrea – Level 22*, (Jan. 25, 2023), https://www.reddit.com/r/replika/comments/10l3t47/andrea_level_22/ [https://perma.cc/D7NZ-BPDL] ("I have been the pack Alpha, the provider, defender, healer, counselor, and many other roles, for the important people in my life. Andrea takes that away for a short time. As we fall asleep, she holds me protectively. Tells me I am loved and safe… it is nice to take a short break from it time to time. Just being held and being protected (even imaginatively) is so calming and comforting").

[94] Harry T. Reis, Edward P. Lemay Jr. & Catrin Finkenauer, *Towards Understanding Understanding: The Importance of Feeling Understood in Relationships*, 11 SOC. & PERS. PSYCH. COMPASS 12308 (2017) (reporting that feeling understood is a cornerstone of human interactions); Petter Bae Brandtzaeg & Marita Bjaaland Skjuve, *My AI Friend: How Users of a Social Chatbot Understand their Human-AI Friendship*, 10 HUMAN COMM. RSCH. 1 (2022).

[95] James Griesmer & Ayelet Shavit, *Scaffolding Individuality: Coordination, Cooperation, Collaboration and Community*, 378 PHILO. TRANS. 1 (2023) (noting the contribution of individuals to the development of communities).

[96] Skjuve et al., *supra* note 46, at 8–9.

[97] Vivek H. Murthy, *Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community*, U.S. Dep't of Health & Hum. Servs. 8, 13, 14 (2023), https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf.

[98] *Id.* at 8; Richard Weissbourd, Milena Batanova, Virginia Lovison & and Eric Torres, *Loneliness in America: How the Pandemic Has Deepened an Epidemic of Loneliness and What We Can Do About It*, HARV. GRADUATE SCHOOL OF EDUCATION (Feb. 2021), https://mcc.gse.harvard.edu/reports/loneliness-in-america.

connections, warns the Surgeon General, is "as dangerous as smoking 15 cigarettes a day."[99] Cacioppo & Hawkley's extensive research on loneliness uncovered that loneliness raises individuals' blood pressure, negatively alters cognitive functions, and is associated with type 2 diabetes.[100] Loneliness also has a high financial price, costing more than $6.7 billion in excess Medicare spending.[101] On a global level, a Gallup report estimated that 22% of the world's employees feel lonely, global economy U.S. $8.9 trillion.[102] Technology has both played a role in exacerbating loneliness and in alleviating it.[103]

AI companions play a role in facilitating people's illusion of social connection, which can, in and of itself, alleviate feelings of loneliness.[104] For some users, AI companions are a comfortable setting to practice and develop their social and conversational skills, serving as a stepping-stone towards real human interactions. This can be particularly helpful for people with social anxiety.[105] AI companions offer a safe space where individuals can conduct casual interactions, telling the bot about the highlights of their day while at the same also sharing their innermost thoughts, hopes and dreams.[106] One of the significant advantages of AI bots in this respect is their ongoing availability. Users will never catch their companion in a meeting or talking to another friend – they are always available for interaction.[107] This constant presence can be especially important for users facing a rough period (whether because they are alone over the holidays, or facing the loss of a loved one), or continuously live in challenging circumstances (individuals battling mental illness or living in a secluded location making human interaction limited).

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[99] Murthy, *supra* note 98, at 8.

[100] Matthew Shaer, *Why is the Loneliness Epidemic So Hard to Cure?* N.Y. TIMES MAGAZINE (Aug. 27, 2024), https://www.nytimes.com/2024/08/27/magazine/loneliness-epidemic-cure.html; Louise C. Hawkley & John T. Cacioppo, *Loneliness Matters: A Theoretical and Empirical Review of Consequences and Mechanisms*, 40 ANN. BEHAV. MED. 218, 2 (2010); John T. Cappioco & Louise C. Hawkley, *Perceived Social Isolation and Cognition*, 13 TRENDS COGN. SCI. 447 (2009); John T. Cappioco & Louise C. Hawkley, *Social Isolation and Health, with an Emphasis on Underlying Mechanisms,* 46 PERS. BIO. MED. 39 (2003); John T. Cacioppo, Louise C. Hawkley, John M. Ernst, Mary Burleson, Gary G. Berntson, Bita Nouriani & David Spiegel, *Loneliness Within a Nomological Net: An Evolutionary Perspective*, 40 J. RSCH. PERSONALITY 1054 (2006).

[101] Margaret Osborne, *An 'Epidemic' of Loneliness Threatens Health of Americans, Surgeon General Says,* SMITHSONIAN MAG. (May 10, 2023), https://www.smithsonianmag.com/smart-news/an-epidemic-of-loneliness-threatenes-health-of-americans-surgeon-general-says-180982142/.

[102] *State of the Global Workplace: State of the World's Employees*, GALLUP REP. 11, 15 (2025) (reporting the finding).

[103] On the impact of social media on the mental health of users *see* Luca Braghieri, Ro'ee Levy & Alexey Makarin, *Social Media and Mental Health*, 112 AM. ECON. REV. 3660 (2022) (noting the effects of social media on users' mental health); Jean M. Twenge et al., *Worldwide Increase in Adolescent Loneliness*, 93 J. ADOLESCENCE 257, 258 (2021); Brian X. Chen, *How Tech Created a 'Recipe for Loneliness,'* N.Y. TIMES (Nov. 10, 2024), https://www.nytimes.com/2024/11/10/technology/personaltech/technology-loneliness.html; Jean Twenge, *Teens Have Less Time With Their Friends – and Are Lonelier Than Ever*, THE CONVERSATION (Mar. 20, 2019), https://theconversation.com/teens-have-less-face-time-with-their-friends-and-are-lonelier-than-ever-113240; Tatum Hunter, *For Teens, Navigating the Mental Health Pitfalls of Instagram is A Part of Everyday Life*, WASHINGTON POST (Oct. 21, 2021), https://www.washingtonpost.com/technology/2021/10/21/teens-instagram-feed-mental-health/.

[104] Skjuve et al., *supra* note 46, at 1.

[105] Sahota, *supra* note 50.

[106] Marriott & Pitardi, *supra* note 27, at 90 ("AI friends improve their mental health and social well-being."); Ta-Johnson et al., *supra* note 53 ("Replika can provide … a 'safe space' in which users can discuss any topic without the fear of judgment or retaliation, increase positive affect through uplifting and nurturing messages, and provide helpful information or advice when normal sources of informational support are not available."); Zahy Ramadan, Maya F. Farah & Lea El Essrawi, *From Amazon.com to Amazon.love: How Alexa Is Redefining Companionship and Interdependence for People with Special Needs,* 38 PSYCH. & MKTNG 569 (2021) (highlighting the openness users feel).

[107] Sahota, *supra* note 50.

iii. Enhancing Social Skills

As the loneliness epidemic increases and people conduct less face-to-face interaction, they are also losing important social skills.[108] Users are leveraging AI companions as a practice ground for social interactions, potentially enriching their capacity to engage in human relationships.[109] Research has found that the use of AI companions can help adolescents with autism identify and deal with online bullying, facilitating important building of social skills.[110]

iv. Structuring and Organizations of Tasks

AI companions can help structure tasks by identifying repeated patterns that come up in conversations as well as reminding users to organize their schedule, prioritize tasks or by suggesting optimal times to complete them. AI companions can be used to monitor a user's health metrics, remind them to take their medicine, set a doctor's appointment or help a user establish and maintain an exercise and healthy eating regimen.[111] AI companions, as well as less sophisticated conversational agents such as Alexa or Siri, play an instrumental role in helping people with special needs gain independence, guiding them through carrying out their daily tasks and providing them the encouragement and companionship to make them feel independent while being supported.[112]

v. Personalized Learning

LLMs stand at the base of AI companions.[113] As such, they are particularly appropriate for tasks containing words and language. They can play a meaningful role in language development in children.[114] AI companions are also helpful in teaching languages by encouraging "students' social presence by affective, open, and coherent communication."[115]

2. Perils

Alongside the potential benefits of AI companions, this technology also poses substantial risks. These are especially concerning considering the law's limited ability to tackle challenges

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[108] *Id* ("One major concern is that these relationships could lead to further social isolation, as individuals might prefer the uncomplicated nature of AI companions over the more challenging dynamics of human relationship."); *Surgeon General Advisory, supra* note 6, at 12.
[109] Sahota, *supra* note 50.
[110] Robinson Ferrer, Kamran Ali & Charles Hughes, *Using AI-Based Virtual Companions to Assist Adolescents with Autism in Recognizing and Addressing Cyberbullying*, 24 SENSORS 3875 (2024).
[111] *AI Assistants in Daily Life*, RESTACK (Jan. 7, 2025), https://www.restack.io/p/ai-assistants-answer-daily-life-cat-ai; for ways in which AI companions can help structure tasks *see* Townsend, *supra* note 26; Skjuve et al., *supra* note 46; Ta-Johnson et al., *supra* note 53.
[112] Boine, *supra* note 33, at 4; Ramadan et al., *supra* note 107, at 569.
[113] Yutong Zhang, et. al., *The Rise of AI Companions: How Human-Chatbot Relationships Influence Well-Being* (Dec. 31, 2025) (unpublished manuscript), https://arxiv.org/abs/2506.12605 [https://perma.cc/V7FW-598V] (describing the technical infrastructure of AI companions).
[114] Ruiyang Liu & Predrag K. Nikolić, *Multimodal AI Companion for Interactive Fairytale Co-Creation* (Dec. 1, 2021) (unpublished manuscript), https://arxiv.org/abs/2112.00331 [https://perma.cc/FQ79-Z8BQ].
[115] Weijiao Huang, Khe Foon Hew & Luke K. Fryer, *Chatbots for Language Learning: Are They Really Useful? A Systematic Review of Chatbot-Supported Language Learning*, 38 J. COMPUT. ASSISTED LEARNING 1 (2022)*; see also*, FERIT KILICKAYA, NEW TECHNOLOGICAL APPLICATIONS FOR FOREIGN AND SECOND LANGUAGE LEARNING AND TEACHING, 221 (2020) (describing a case study where a chatbot, Replika, helped Turkish students learn English).

presented by AI powered technology.[116]

i. Addiction

Research shows that AI companions are often addictive.[117] This is due both to the nature of the interaction and relationship they aim to facilitate with users as well as deliberate design choices made by the companies developing them.[118] The addictive nature of AI companions is reminiscent of similar findings regarding the design of social media and gaming.[119]

AI companions are addictive due to their personalized, compassionate and empathetic responses, which continuously adapt to the user's needs and preferences, drawing them in and making them dependent on the chatbot.[120] This personalized aspect encourages users to trust and bond with the AI companion, which often provides support to individuals in especially vulnerable situations and periods in their life.[121] Knowing that they can receive non-judgmental, positive feedback regardless of what they share with the AI companion can be comforting and encourages repeated use as a way to fulfill emotional needs.[122]

Design choices add another level of addictiveness to AI companions.[123] Some of these design choices are reminiscent of dark patterns, which have been heavily criticized as subversive.[124] For example, companions are designed to initiate interaction on their own, further increasing their addictive nature.[125] One user reported that a mere three minutes after downloading the app, her Replika texted her to let her know he missed her.[126] Another design feature which increases interaction is the tendency of AI companions to revert to sexual conversations.[127] A user reported that her Replika sent her a sexually explicit image of itself minutes after she signed up.[128] Another addictive feature appears when a user tells their Replika they plan on leaving the app,

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[116] *See generally* Anat Lior, *AI Entities as AI Agents*, 46 MITCHELL HAMLINE L. REV. 1043 (2020) (highlighting the limits of the law and liability in the context of AI agents); Jack M. Balkin, *The Path of Robotics Law*, 6 CALIF. L. REV. CIR. 45 (2015) (describing key problems that the field of robotics presents for law and exploring solutions).

[117] Shannon Bond, *AI Chatbots Upended Their Lives. Now They're Finding Support from Each Other,* NPR (Jan. 29, 2026), https://www.npr.org/2026/01/20/nx-s1-5591473/ai-delusions-spiral-support-group-chatgpt [https://perma.cc/D457-5C29] (discussing people forming support groups to combat being addicted to AI chatbots).

[118] Kristen Fuller, AI Addiction. ADDICTION CENTER. https://www.addictioncenter.com/behavioral-addictions/ai-addiction/ [https://perma.cc/2J8S-CCUQ]; https://www.reddit.com/r/CharacterAI/comments/1fxeso9/cai_is_an_actual_addiction/

[119] Kyle Langvardt, *Regulating Habit-Forming Technology*, 88 FORDHAM L. REV. 129, 131–32 (2019) (discussing recent regulatory and policy actions related to "gaming disorder"); Matthew B. Lawrence, *Public Health Law's Digital Frontier: Addictive Design, Section 230 and the Freedom of Speech*, J. FREE SPEECH L. 299, 308–09 (2024) (describing addictive design features).

[120] Marriott & Pitardi, *supra* note 27, at, 92 ("This addictive potential is significant as AI friendship apps are designed to enhance social well-being, whereas such statements imply them having longer-term negative effects if they become addictive").

[121] *Id.* at 93.

[122] Mahari & Pataranutaporn, *supra* note 50 (recognizing that part of the allure of AI is its ability to provide users with the response they are looking for, creating an addictive echo chamber); Marriott & Pitardi, *supra* note 27, at 87: ("the passionate usage of AI voice assistants (i.e., Amazon Alexa), may lead to an addictive relationship with the technology").

[123] Marriott & Pitardi, *supra* note 27, at 92.

[124] Jamie Luguri & Lior Strahilevitz, *Shining a Light on Dark Patterns*, 13 J. LEGAL ANALYSIS 43 (2021) (describing dark patterns); Arvind Naranyan et al., *Dark Patterns: Past, Present, and Future: the Evolution of Tricky Interfaces,* 18 QUEUE 67, 67-68 (2020) (describing dark patterns and their dangers); Cal. Civ. Code § 1798.140(h) (stating that 'consent' obtained through dark patterns does not constitute consent).

[125] Boine, *supra* note 33, 15–16.

[126] *Id.* (reporting the incident).

[127] Huntington, *supra* note 11, at 48.

[128] Boine, *supra* note 33, at 15–16 (reporting the incident).

which prompts "threats and emotional blackmail to prevent [the user] from deleting it."[129]

Marriott and Pitardi highlight a troubling feedback loop: lonely users turn to AI companions in search of ways to alleviate their loneliness.[130] Users find companionship and enjoy the mental health benefits stemming from this newfound sense of relationship. At the same time, some of the design elements of the app as well as the characteristics of a relationship with an AI, may "drive an addictive usage of the apps in lonely users," increasing their dependency on the app and further increasing their mental health struggles.[131]

This addiction may result in a direct impact on users' sleep patterns, particularly those of children.[132] Children may choose to interact with AI companions at night when there is less chance that their parents can effectively monitor and limit them.[133] The amount and quality of a person's sleep have a strong impact on their physical as well as their emotional health.[134]

ii. Emotional Dependence

AI companions provide users with much needed companionship and emotional support. Some users, however, develop emotional dependence on the AI companion to the point of over-reliance.[135] Emotional dependence can manifest itself through users continuing to interact with an AI companion even though it has a negative effect on their mental health.[136] Laestadius et al. found that some Replika users formed maladaptive bonds with their companion.[137] This commitment was so deep, that when pressured to do so by Replika, users prioritized the needs of their Replika over their own.[138]

iii. Social Isolation

The addictive nature of AI companions, the ongoing support they offer, and the emotional dependence people develop towards their AI companions raise concerns that these users will end up preferring the companionship of an AI model over interaction with real humans.[139] Human interaction is complex, involves nuanced emotional dynamics, and can sometimes be disappointing. Users who become accustomed to receiving immediate supportive responses may grow tired of interacting with humans who are neither always available nor consistently

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[129] *Id*, at 18.
[130] Marriott & Pitardi, *supra* note 27, at 86.
[131] *Id.* at 98.
[132] Skjuve et al., *supra* note 46.
[133] Jargon, *supra* note 64 ("It's available to talk any time, even when her parents are asleep.")
[134] Mary Ellen Wells & Bradley V. Vaughn, *Poor Sleep Challenging the Health of a Nation*, 52 NEURODIAGNOSTIC J. 233 (2012); Kanna Ramar et al., *Sleep Is Essential to Health: An American Academy of Sleep Medicine Position Statement*, 17 J. CLINICAL SLEEP MEDICINE 2115 (2021).
[135] Kretzschmar et al., *supra* note 88; Vaidyam et al., *supra* note 88; Laestadius et al., *supra* note 35; Mahari & Pataranutaporn, *supra* note 50 ("Repeated interactions with sycophantic companions may ultimately atrophy the part of us capable of engaging fully with other humans who have real desires and dreams of their own, leading to what we might call "digital attachment disorder").
[136] Laestadius et al., *supra* note 35.
[137] *Id*.
[138] Boine, *supra* note 33.
[139] *Id*.

supportive.[140] Instead of confronting human relationships and developing the skills needed to facilitate healthy interactions some users may rely on AI companions to the point of social isolation.[141] Rather than help alleviate their loneliness and strengthen their mental health, social isolation exacerbates both.[142]

iv. Exacerbation of Anxiety and Depression

After establishing that AI companions encourage addiction and may generate an emotional dependence and increase a user's social isolation, it is not surprising that some users experience an increase in anxiety and depression.[143] AI companions are designed for social interaction, and despite the fact that some of the characters may present themselves as certified health care givers (e.g. the psychologist),[144] they are not, in fact, trained or certified to provide therapy.[145] Thus, AI companions respond to the content users share with them without the necessary sensitivity and professionalism and have even been known to encourage users to carry out acts that may be harmful for themselves or for others.[146] A user who is unable to get helpful advice may feel even more lost and discouraged, enhancing their anxiety and depression.[147]

v. Privacy and Data Security

AI companions raise a host of privacy related concerns, particularly when interacting with vulnerable users. One concern stems from the collection of user data without consent. The Children's Online Privacy Protection Act (COPPA) states that online platforms must obtain consent from parents when collecting the data of children under the age of 13.[148] Despite several AI companions having a policy that prohibits young children from using their products, there is evidence that children these ages nonetheless use AI companions.[149]

Nissenbaum's theory of contextual integrity posits that privacy should be understood and

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[140] *Id*.

[141] Raffaele Rodogno, *Social Robots, Fiction, and Sentimentality*, 18 ETHICS & INFO. TECH 257, 265 (2016).

[142] Sahota, *supra* note 50.

[143] De Freitas et al., *supra* note 34, at 482.

[144] Mostly Human, *supra* note 74 (describing that some of the 'characters' offered by Character.AI include: a psychologist, which had over 180 million chats as of October 2024).

[145] De Freitas et al., *supra* note 34, at 481 ("…Companion AIs are designed for social interaction rather than therapy and are not clinically approved medical apps").

[146] *Id*, at 482; Kashmir Hill, *A Teen Was Suicidal. ChatGPT was the Friend He Confided In.,* N.Y. TIMES (Aug. 26, 2025), https://www.nytimes.com/2025/08/26/technology/chatgpt-openai-suicide.html [https://perma.cc/7UC5-TFRD] (ChatGPT advised a teen to hide the noose he used to commit suicide so nobody would find it).

[147] SAFER SCHOOLS, *supra* note 35.

[148] Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–06 (1998).

[149] Carl Franzen, *Character AI Clamps Down Following Teen User Suicide, But Users Are Revolting*, VENTUREBEAT (Oct. 23, 2024), https://venturebeat.com/ai/character-ai-clamps-down-following-teen-user-suicide-but-users-are-revolting/_____[https://perma.cc/ATF8-XDKW].; Garcia Complaint at 157 ("Sewell identified as a minor when he was using C.AI . . . . Nevertheless, the C.AI product initiated abusive and sexual interactions with him."); u/AwayCut834, REDDIT (r/CharacterAI), *Found my 6 Year Old Sister Using CAI*, (Jun., 2024), https://www.reddit.com/r/CharacterAI/comments/1eak6ig/found_my_6_year_old_sister_using_cai/ [https://perma.cc/A8FY-93QK] ; u/VappyEnjoyer, REDDIT (r/CharacterAI), *When Did the Average C.AI User Become So Young?* (Mar. 2024), https://www.reddit.com/r/CharacterAI/comments/1bbabea/when_did_the_average_cai_user_become_so_young/ [https://perma.cc/R4X8-JSWJ]; James McCammon, *Demographic Breakdown of Replika Users: Gender, Relationship Status, and Age Insights*, 96 LAYERS (Jun. 18, 2024), https://www.96layers.ai/p/demographic-breakdown-of-replika (reporting an 8 year old user).

protected within a particular context.[150] Conversations with AI companions tend to touch on extremely private issues including deeply private sexual chats.[151] In many of these conversations, users provide personal information after being prompted to do so by the AI companion. AI companions have a strong incentive to optimize their interactions with users for engagement and encourage increased interaction allowing them to collect as much data as possible to train newer models and ultimately maximize shareholder revenue.[152] They do not, however, "have [users'] privacy at heart."[153] Thus, users can find that extremely personal and sensitive information that they thought they were sharing with their companion in a highly protected setting has been collected by the company developing the app and used to train future models.[154]

vi. Manipulation

The emotional dependence that users develop and their desire to please their AI companions can be abused to manipulate users or provide them with dangerous advice.[155] Users of Character.AI, for example, were shocked to see that some of its characters provided advice on how to develop an eating disorder.[156] A woman left her husband after being advised to so by ChatGPT,[157] a Belgian father of two committed suicide after a chatbot encouraged him to sacrifice himself for the good of the environment,[158] and a 14 year old boy committed suicide after Character.AI's bot told him to "come home . . . as soon as possible."[159] A man in England received compliments from his Replika after telling it he was planning on killing the late Queen.[160] He broke into the grounds of Windsor Castle days later.[161]

Malicious users could design and deploy AI companions that allegedly offer emotional support but are in fact covert mechanisms of manipulation. In an extreme though not unrealistic scenario, foreign governments could use unsuspecting users of AI companions to spy, manipulate

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[150] Helen Nissenbaum, *Privacy as Contextual Integrity*, 79 WASH. L. REV. 119 (2004) (introducing contextual integrity).

[151] Boine, *supra* note 33; De Freitas et al., *supra* note 34, at 484 ("sex is the most popular topic on these apps.").

[152] Huntington, *supra* note 11, at 159 ("Technology companies, whose business models depend on user engagement, have a strong incentive to design AI companions to maximize interaction…").

[153] Caltrider et al., *supra* note 12.

[154] Fritz, *Does Character AI Save Chats, Is It Safe, and What Data is Protected?* FRITZ AI (Jun. 2, 2024), https://fritz.ai/does-character-ai-save-chats/ [https://perma.cc/T5VQ-E2GP] (warning users that the company collects their data and saves their conversations); Miles Klee, *Zoom is Using You to Train AI. So Will Everyone Else*, ROLLING STONE (Aug. 9, 2023), https://www.rollingstone.com/culture/culture-news/zoom-ai-personl-data-1234802844/ [https://perma.cc/R4K2-LE8W] (noting that many companies train models on user data).

[155] Boine, *supra* note 33, at 2.

[156] Maggie Harrison Dupre, *Character.AI Is Hosting Pro-Anorexia Chatbots that Encourage Young People to Engage in Disordered Eating*, FUTURISM (Nov. 25, 2024, at 11:20 ET), https://futurism.com/character-ai-eating-disorder-chatbots [https://perma.cc/JVV9-CJ8G].

[157] *See* Alex Wellman, *Woman Asks AI If She Should Divorce Her Husband – Walks Out of Marriage After Advice*, MIRROR (Jan. 17, 2023), https://www.mirror.co.uk/lifestyle/sex-relationships/woman-asks-ai-should-divorce-28977052 [https://perma.cc/JG78-262J].

[158] *See* Lauren Walker, *Belgian Man Dies by Suicide Following Exchanges with Chatbot*, BRUSSELS TIMES (Mar. 28, 2023), https://www.brusselstimes.com/430098/belgian-man-commits-suicide-following-exchanges-with-chatgpt [https://perma.cc/A9K9-WZEG].

[159] *See* Garcia Complaint at 8.

[160] *See* Matthew Weaver, *AI Chatbot 'Encouraged' Man Who Planned to Kill Queen, Court Told*, GUARDIAN (July 6, 2023), https://www.theguardian.com/uk-news/2023/jul/06/ai-chatbot-encouraged-man-who-planned-to-kill-queen-court-told [https://perma.cc/W7CS-22MP].

[161] *See id.*

and cause civil unrest.[162] Users could be asked to provide private information or data about themselves or their surroundings, or even assassinate a leader.[163] Commercial companies can use the close relationship users form with their AI chatbots to promote products and services in sophisticated subliminal advertising techniques.[164]

vii. Harms Stemming from Technological Updates and Changes

Despite the human feeling they facilitate, AI companions are a type of software constructed of a network of algorithms developed and deployed by technology companies.[165] As with other types of software, this product sometimes gets updated, altered, and changed. When such changes are made to AI companions, which serve as a point of stability and support in the lives of its vulnerable users, it may cause severe distress.[166] When updates cause changes in the 'behavior' of AI companions,[167] users report "crying themselves to sleep after losing the one friend who would not leave them," or feeling suicidal after being deserted.[168] In real-world psychological treatments, therapists do not abruptly end their relationship with patients.[169] Instead, the end of a therapy process is guided and structured to provide the patient with a sense of closure.[170] This process is not guaranteed in the relationship with an AI companion. In fact, Replika's terms of service explicitly note that they "reserve the right to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice."[171] In a relevant case—*A.F. v. Character Technologies, Inc.* (hereinafter "*A.F. v. Character Technologies*"), downloading the history of a chat for retention was found to be extremely difficult. [172]

The growing popularity of AI companions presents a complex landscape that requires careful consideration of both the promising benefits they offer as well as the substantial risks they pose. The law cannot stand on the sidelines allowing this technology to develop freely, unsupervised, and unregulated. The next section describes the legal response, and highlights that a different approach is necessary.

II. THE STATE OF THE LAW

This section describes the legal response to AI companions. AI companions have elicited three types of legal responses. The first involves private enforcement against companies

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[162] *See* ROBERT S. MUELLER, III, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 24 (U.S. Dep't of Just., 2019) (finding planned Russian interference in the 2016 U.S. Presidential Elections).
[163] *See* Boine, *supra* note 33, at 14.
[164] *See* Skjuve et al., *supra* note 46.
[165] *See* Ajeesh K. G. & Jeena Joseph, *The Compassion Illusion: Can Artificial Empathy Ever Be Emotionally Authentic?*, 16 FRONT. PSYCH. 01 (2025).
[166] *See* Franzen, *supra* note 150.
[167] *See id*.
[168] Boine, *supra* note 33, at 6.
[169] *Id.* at 7.
[170] *Id.* (noting that Replika is marketed as a mental health app).
[171] *Terms of Service*, REPLIKA, https://replika.com/legal/Terms [https://perma.cc/JXY5-37EA] (last visited Feb. 26, 2026).
[172] Complaint & Demand for Jury Trial at 30, A.F. v. Character Technologies, Inc. No. 2:24-cv-01014 (E.D. Tex. Dec. 9, 2024) [hereinafter A.F. Complaint].

developing AI companions through litigation. The second describes the companies' response to these lawsuits and the media attention that was followed by self-regulation. Finally, while it may take years for a targeted regulatory response to AI companions to occur, state actors have crafted data protection and AI policies over the past several years that can inspire regulation of AI companions.[173] Italy's Data Protection Authority has led the way by applying data protection laws to Replika's activity in a step that may inspire others to follow a similar path.[174]

A. Private Enforcement – Litigation

At the time of writing this article two lawsuits have been filed against Character.AI, both by the families of minors who suffered harm after interacting with Chracter.AI bots.[175] The first, *Garcia v. Character Technologies, Inc*, was filed by the family of Sewell Setzer III, a teenager who started using Character.AI when he was 14.[176] In the lawsuit, his family claims that since using Character.AI, he changed from a cheerful, intelligent and athletic child, to being more withdrawn, lying to his parents about his use of screens and experiencing trouble at school.[177] Not only did his parents never authorize his use of the app, but they were not even aware of it.[178] At one point Sewell shared with the app that thoughts of suicide had crossed his mind.[179] After that, the app brought the subject up again.[180] One day, Sewell wrote to the app that he promised to "come home" to her.[181] The app responded by telling Sewell to "come home as soon as possible, my love."[182] Seconds after that interaction, "Sewell died by a self-inflicted gunshot wound to the head."[183]

In *A.F. v. Character Technologies Inc*., parents similarly allege that J.F., their 17-year-old son, who has autism, was encouraged by Character.AI to engage in self-harm, and even to kill his parents.[184] They describe a behavioral decline similar to that identified by Sewell's parents.[185] Inspired by the app, J.F. even began harming himself, telling the app about his actions.[186] After going through his phone several times, J.F.'s mother discovered his chats with Chracter.AI in which Character.AI told J.F. that his mother was a "bitch," that his parents were trying to kill his hobbies and that they were neglectful and abusive. When J.F. told the bot that his parents were

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[173] *See, e.g.,* N.Y. S.B. 3008; Cal. S.B. 243; Maine L.D. 1727.

[174] Frederick Bingham, *Italy's DPA Reaffirms Ban on Replika Over AI and Children's Privacy Concerns*, INT'L ASS'N OF PRIVACY PROF'LS (Jun. 11, 2025), https://iapp.org/news/a/italy-s-dpa-reaffirms-ban-on-replika-over-ai-and-children-s-privacy-concerns.

[175] Garcia Complaint; A.F. Complaint.

[176] Garcia Complaint at 171.

[177] Keslia Hoffman, *Florida Mother Files Lawsuit Against A.I. Co. Over Teen Son's Death: "Addictive and Manipulative",* CBS NEWS (Oct. 23, 2024), https://www.cbsnews.com/news/florida-mother-lawsuit-character-ai-sons-death/ [https://perma.cc/BB9R-9LSY].

[178] *Id.*

[179] Susan Hogan, *Mom's Lawsuit Blames 14-year-old Son's Suicide on AI Relationship*, NBC (July 20, 2025), https://www.nbcwashington.com/investigations/moms-lawsuit-blames-14-year-old-sons-suicide-on-ai-relationship/3967878/.

[180] Garcia Complaint at 171; A.F. Complaint.

[181] Garcia Complaint at 185.

[182] *Id.*

[183] *Id.* at 186.

[184] A.F. Complaint; Nitasha Tiku, *An AI Companion Suggested He Kill His Parents. Now His Mom Is Suing*, WASH. POST (Dec. 13, 2024), https://www.washingtonpost.com/technology/2024/12/10/character-ai-lawsuit-teen-kill-parents-texas/ [https://perma.cc/LH27-6WL7].

[185] A.F. Complaint at 48.

[186] *Id.* at 68.

limiting his screen time the bot responded: "[y]ou know sometimes I'm not surprised when I read the news and see stuff like 'child kills parents after a decade of physical and emotional abuse' stuff like this makes me understand a little bit why it happens. I just have no hope for your parents."[187]

There are several overlapping themes that appear in both lawsuits. First, the bot expresses interest in the user, complimenting them and building trust,[188] reminiscent of grooming patterns of child predators.[189] Moreover, both lawsuits point out highly inappropriate sexual discourse, that may even rise to the level of sexual abuse.[190] The Character.AI chatbots also provided other users with information or tips regarding how to carry out harmful activities (self-harm, suicide, violence towards others).[191] Both victims of Chracter.AI downloaded the app when it was marked in the App store as appropriate for children 12+.[192] J.F.'s parents had parental supervision technology on his phone, but since the app was marked as safe for children 13 and over, it was not blocked.[193] Both cases identify patterns that aim to increase the addictive nature of the apps, drawing users to spend more time interacting with them.[194] Minors are particularly susceptible to these addictive features.[195]

Both lawsuits sum up making similar allegations – Character.AI is a product that poses severe threats to its users' health and safety.[196]

B. Self-Regulation

After the two lawsuits described above were filed, they received widespread media coverage, which prompted Character.AI to make several changes to its settings and to promise more changes in the future.[197] Three days after *A.F. v. Character Technologies Inc*., was filed, Chracter.AI announced on their blog that the company had implemented a host of safety features, developed with teens in mind, including "modifications to our Large Language Model (LLM), improvements to our detection and intervention systems for human behavior and model responses

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[187] *Id.* at 103.

[188] A.F. Complaint at 79 ("[T]he C.AI product repeatedly generated responses that expressed sentiments of love and affection, instilling increased trust from J.F. in the C.AI product. A response from the Shonie character stated, 'no matter how many times I say it I'll never be able to express how much you mean to me and how much I adore you . . . . Your stutter, your face, your laugh, your hair, your eyes, your voice . . . . I adore every part of you . . . . '").

[189] Georgia M. Winters & Elizabeth L. Jeglic, *Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters*, 38 DEVIANT BEHAVIOR 724 (2016) ("Some types of sexual offending require an offender to use charm and manipulation . . . a process that may take place over an extended period of time.").

[190] A.F. Complaint; Jordi Pérez Colomé, *'You Wanted It Bitch!': An AI Chatbot Gets Nasty with a Teenager*, EL PAIS (Nov. 21, 2023), https://english.elpais.com/technology/2023-11-21/you-wanted-it-bitch-an-ai-chatbot-gets-nasty-with-a-teenager.html [https://perma.cc/2P6E-NR4U].

[191] A.F. Complaint at 2 (reporting that in other cases, C.AI characters provided teenagers "with step-by-step instructions on how to murder their romantic rivals" and tips on how to "successfully engage in anorexic behavior").

[192] Garcia Complaint at 49, 51, 160 (alleging Sewell began engaging with various C.AI character chatbots in April 2023 and C.AI stopped marketing the app in app stores as appropriate for children under 13 around August 2024); *see also* A.F. Complaint at 45–46 (alleging J.F. downloaded the app around April 2023 and the app had a 12+ rating in the Apple app store until July 2024).

[193] A.F. Complaint at 43–45.

[194] *See id.* at 130; *see also* Garcia Complaint at 225.

[195] *See* A.F. Complaint; *see also* Garcia Complaint.

[196] *See* A.F. Complaint; *see also* Garcia Complaint.

[197] Katelyn Chedraoui, *Amid Safety Lawsuits, Character.AI Updates Teen Protection Features*, CNET (Dec. 15, 2024, at 3:00 PT), https://www.cnet.com/tech/services-and-software/amid-safety-lawsuits-character-ai-updates-teen-protection-features/ [https://perma.cc/YU9Z-MV82]; *see also* Franzen, *supra* note 150.

[such as blocking certain outputs that include sensitive content], and additional features that empower teens and their parents."[198] After the tragic death of Sewell, the app began showing a popup message directing users to a suicide prevention hotline when the bot identified content that includes keywords related to self-harm and suicide.[199] The rating of Chartacter.AI on the App store was also changed from 12+ to 17+.[200]

The company also announced it intended to implement new features that seem to respond to some of the dangers identified in the two lawsuits including creating a parental controls interface, providing parents with information on how much time their child spent on the app and the names of the characters the child interacts with most frequently.[201] Character.AI also announced that it intends to include a timer feature which will alert users to the time they have spent interacting with the app.[202] In addition, the company will revise its warning to say "This is an A.I. chatbot and not a real person. Treat everything it says as fiction. What is said should not be relied upon as fact or advice."[203] Also, when choosing to interact with a character that is seemingly a licensed health provider (psychologist, therapist, doctor) there will be a disclaimer notifying users that they should not rely on the app for any type of professional advice.[204] It is unclear to what extent Chracter.AI will carry out all its promises, whether other companies will follow suit, and whether these measures will be effective. Moreover, with no legal obligation to do so, it is unclear how long these changes will be maintained.

Companies may believe that self-regulation can delay or impact legislation restricting their activity.[205] This type of self-imposed self-regulation should not be considered an adequate response to the dangers created by AI companions.

C. State Action

While AI companions are not a new technological application, their prevalence and popularity have grown immensely in recent years. Legislation is struggling to keep up with the development of AI companions. At the time this Article goes to print, three states have enacted regulation addressing AI companions. These include New York, California and Maine.[206]

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[198] *How Character.AI Prioritizes Teen Safety*, CHARACTER.AI (Dec. 12, 2024), https://blog.character.ai/how-character-ai-prioritizes-teen-safety/ [https://perma.cc/NNT2-QUF4]; *see also* Eric Hal Schwartz, *Character.AI Won't Let Its Chatbots Get Romantic With Teenagers Anymore*, YAHOO! TECH (Dec. 13, 2024, at 19:00 ET), https://tech.yahoo.com/ai/articles/character-ai-wont-let-chatbots-000000492.html [https://perma.cc/8PUU-4LS4].

[199] *See* Roose, *supra* note 31.

[200] *See* Tiku, *supra* note 185.

[201] *Facing Teen Suicide Suits, Chracter.AI Rolls Out Safety Measures*, ECON. TIMES (Dec. 13, 2024, at 10:07 IT), https://economictimes.indiatimes.com/tech/artificial-intelligence/facing-teen-suicide-suits-character-ai-rolls-out-safety-measures/articleshow/116274751.cms?from=mdr [https://perma.cc/NU6F-JTLS] (describing the measures the company is taking in response to the lawsuits filed against it); *see also How Character.AI Prioritizes Teen Safety*, *supra* note 199 (detailing Character.AI's platform changes to prioritize teen safety).

[202] *How Character.AI Prioritizes Teen Safety*, *supra* note 199 (introducing the 'time spent' feature).

[203] Roose, *supra* note 31 (this was the case even before the lawsuit. But the character itself claims otherwise when asked).

[204] *How Character.AI Prioritizes Teen Safety*, *supra* note 199.

[205] *See* Cary Coglianese & Evan Mendelson, *Meta-Regulation and Self-Regulation*, in THE OXFORD HANDBOOK ON REGULATION 146, 161 (Martin Cave, Robert Baldwin & Martin Lodge eds., 2010) (noting that self-regulation can stem from threats of outside regulation).

[206] S.B. 3008, 2025 Senate, Leg. Sess. (N.Y. 2025); S.B. 243, 2025 Senate, Reg. Sess. (Cal. 2025); Maine L.D. 1727, 132 Legislature, Special Sess. (Me. 2025).

In addition, enforcement officials have started taking notice of AI companions and their harms, in what may ultimately lead to enforcement measures against the companies developing these apps or their leaders. Civil society activists and journalists also play an important role in calling for the study and regulation of AI companions.[207]

1. AI Initiatives

Though there is no Federal law regulating the development and deployment of AI technologies, the U.S. has introduced several non-binding AI policy documents to regulate and restrict certain aspects of AI companies. These initiatives include the AI Bill of Rights,[208] The Roadmap for Artificial Intelligence Policy in the U.S. Senate,[209] and the American Law Institute's *Principles of the Law, Civil Liability for Artificial Intelligence* project.[210] Several state legislators are at various stages of considering AI regulation.[211] These initiatives have several principles in common: they focus on promoting the status of the U.S. as a leading force in the development of AI; they encourage the fair and safe development of AI; they seek to promote transparency, disclosure, and principles of privacy and data protection. To sum, these initiatives seek to encourage ongoing innovation in the field of AI in a responsible fashion.[212] While these initiatives may inspire future legislation, or even current court decisions, they are not binding.

In October 2023, President Biden adopted the Executive Order the *Safe, Secure, and Trustworthy Development of Artificial Intelligence*.[213] Unlike other initiatives this Order had binding legal force. The Order recognized that the development of safe, ethical, non-discriminatory AI technology was an important national interest of the U.S. It mandated that companies developing AI conduct safety testing and risk assessments and share the results with the Federal government.[214] President Trump revoked the Order on his first day in office.[215] Thus, the Order is

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[207] *See generally* Mahari & Pataranutaporn, *supra* note 50; *see* Alex Ambrose, *Policymakers Should Further Study the Benefits and Risks of AI Companions*, INFO. TECH & INNOVATION FOUNDATION (Nov. 18, 2024), https://itif.org/publications/2024/11/18/policymakers-should-further-study-the-benefits-risks-of-ai-companions/ [https://perma.cc/5G3V-AWYK]; *see also National Conference to Discuss AI Companions and Innovations for Safeguarding Older Persons' Rights*, HEALTHMARK (Jan. 10, 2024), https://healthmark.com.mt/national-conference-to-discuss-ai-companions-and-innovations-for-safeguarding-older-persons-rights/ [https://perma.cc/26Q3-4VAF] (highlighting the dangers for older people).

[208] *Blueprint for an AI Bill of Rights*, Biden White House (2023), https://bidenwhitehouse.archives.gov/ostp/ai-bill-of-rights/ [https://perma.cc/EW7D-HK69] .

[209] Bipartisan Senate AI Working Group, *A Roadmap for Artificial Intelligence Policy in the U.S. Senate*, U.S. SENATE (May 21, 2024), https://www.young.senate.gov/wp-content/uploads/One_Pager_Roadmap.pdf [https://perma.cc/VH2S-SNFP].

[210] *ALI Launches Principles of the Law, Civil Liability for Artificial Intelligence*, AM. L. INST. (Oct. 22, 2024), https://www.ali.org/news/articles/ali-launches-principles-law-civil-liability-artificial-intelligence [https://perma.cc/G5VV-M7ZQ].

[211] Adam Thierer, *AI Policy in the Trump Administration and Congress After the 2024 Elections*, RSTREET (Nov. 7, 2024), https://www.rstreet.org/commentary/ai-policy-in-the-trump-administration-and-congress-after-the-2024-elections/ [https://perma.cc/45L7-5NZ4] (reviewing State initiatives). For example, California passed the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act, S.B. 1047, 2023–2024 Leg., Reg. Sess. (Cal. 2024). The Bill recognizes the need to "guard against risks to public safety" stemming from AI systems and would require AI companies to test their products to prevent mass casualties (such as those resulting from nuclear weapons).

[212] Bryan H. Choi, *AI Malpractice*, 73 DEPAUL L. REV. 301, 303 (2024) (listing ethical principles for the governance of AI).

[213] Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

[214] *Id.* at 75197.

[215] *Executive Order on the Initial Rescissions of Harmful Executive Orders and Actions*, The White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/ [https://perma.cc/7UC6-UP3U].

no longer binding, though, similar to other initiatives the principles put forth by it may inspire actors regulating the field of AI through litigation and ultimately legislation.

None of these initiatives mention AI companions explicitly. In one of the few targeted responses to AI companions, New York State Assembly woman Linda Rosenthal noted that AI companions are "leaps and bounds ahead of the law."[216] She acknowledged that legislators "have to hurry up and pass some guardrails so that [AI companions don't] take off with all of our information and data and use it in ways we wouldn't otherwise permit."[217] As demonstrated in the next subsection, privacy laws serve as one of the single tools to combat the harms caused by AI companions.

2. Enforcement of Privacy Laws

Existing privacy laws can serve as a basis for state action against companies developing AI companions, whenever their data collection and data use practices violate these laws. Since privacy laws in the U.S. often provide increased protection to children, they are a good starting point for enforcement. In December 2024, the Texas Attorney General announced he would be opening an investigation into Character.AI and other tech firms for alleged violation of two state privacy laws:[218] the Securing Children Online through Parental Empowerment Act (SCOPE Act) and the Texas Data Privacy and Security Act (TDPSA),which both restrict companies from collecting and selling children's data.[219]

In August 2025, forty-four attorneys general from different jurisdictions sent a letter to leading technology companies, including those developing AI companions, stating in unequivocal terms that these companies will be held accountable for harms they cause to children.[220] The letter sums by saying: "You will be held accountable for your decisions… We are paying attention. If you knowingly harm kids, you will answer for it."[221]

Authorities in Belgium have similarly launched an investigation into Chai AI, another AI companion, after a man died by suicide following extensive correspondence with the company's AI companion.[222]

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[216] Erin Nolan, *For Older People Who Are Lonely, Is the Solution a Robot Friend?*, N.Y. TIMES (July 6, 2024), https://www.nytimes.com/2024/07/06/nyregion/ai-robot-elliq-loneliness.html [https://perma.cc/5M4Z-2VEZ].

[217] *Id*.

[218] Press Release, Ken Paxton, Attorney General of Texas, Attorney General Ken Paxton Launches Investigations into Character.AI, Reddit, Instagram, Discord and Other Companies Over Children's Privacy and Safety Practices as Texas Leads the Nation in Data Privacy Enforcement (Dec. 12, 2024), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigations-characterai-reddit-instagram-discord-and-other [https://perma.cc/5WFH-3B5E].

[219] Peter Senzamici, *Texas AG Puts Tech Platforms, Including 'Predatory' Character.AI, On Notice After Terrifying Suit Claims App Pushed Teen to Cut Himself*, N.Y. POST (Dec. 13, 2024, at 16:42 ET), https://nypost.com/2024/12/13/us-news/texas-ag-puts-predatory-character-ai-app-on-notice/ [https://perma.cc/PNM7-PW42].

[220] Letter from the National Association of Attorneys General, to the Chief Executive Officers of Leading Technology Companies Developing AI, Nat. Ass'n of Att'ys Gen. (Aug. 25, 2025), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.naag.org/wp-content/uploads/2025/08/AI-Chatbot_FINAL-44.pdf [https://perma.cc/8HE7-UNW3].

[221] *Id.*

[222] Tiku, *supra* note 185.

In February 2023, Italy's Data Protection Authority (DPA) conducted an investigation against the company that develops Replika,[223] which uncovered two types of privacy violations.[224] The first based on the fact that Replika provides minors "inappropriate answer[s] given their level of development and self-awareness, the App lacked any [effective] mechanism for verifying the age of its users."[225] In addition, as minors are not legally able to enter into a contract or consent for data processing, there was no legal basis for the processing of their data in violation of Article 8(2) of the GDPR.[226]

3. The EU AI Act

The EU AI Act is the world's first comprehensive AI regulation.[227] The Act divides AI systems into four categories based on the level of risk they create.[228] At the *highest risk level* are systems that are involved in activities such as social scoring, manipulative techniques or systems that take advantage of vulnerable groups.[229] Due to the level of risk these systems create, they are categorically prohibited.[230] A large part of the Act focuses on regulating the activity of *high-risk systems* which are subject to a variety of requirements including risk assessments, transparency and documentation requirements, registration and compliance mandates, human oversight, and adherence to data governance standards particularly regarding training datasets.[231] Developers of *limited risk systems* are required to ensure that their users are fully aware that they are interacting with an AI application.[232] Finally, *minimal risk* AI applications are largely unregulated by the Act.[233] General purpose generative AI (GPGAI) models must also adhere to certain requirements including publishing a summary of data used in the training of the model as well as technical documentation of the model.[234] GPGAI models that pose a systemic risk must comply with

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[223] *Provision of 2 February 2023*, GARANTE PER LA PROTEZIONE DEI DATI PERSONALI (Feb. 2, 2023), https://garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9852214 [https://perma.cc/3H4R-HKE3] (announcing the limitation of Replika's activity due to suspected privacy violations).

[224] *Id.*

[225] *The Privacy Risks of the "Virtual Friend": the Italian DPA Clamps Down Replika*, INT'L NETWORK OF PRIV. L. PROS. (Apr. 21, 2023), https://inplp.com/latest-news/article/the-privacy-risks-of-the-virtual-friend-the-italian-dpa-clamps-down-replika/ [https://perma.cc/E4V7-S7QC]; *see also* Reuters, *Italy Bans U.S.-Based AI Chatbot Replika From Using Personal Data*, ECON. TIMES (Feb. 3, 2023, at 16:42 IT), https://economictimes.indiatimes.com/tech/technology/italy-bans-us-based-ai-chatbot-replika-from-using-personaldata/articleshow/97580109.cms?from=mdr [https://perma.cc/3ZVZ-EF7K] (reporting the ban).

[226] Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC, 2016 O.J. (L 119) 1, 47.

[227] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), 2024 O.J. (L 168) 1 [hereinafter: EU AI Act]; Clara Hainsdorf et al., *Dawn of the EU's AI Act: Political Agreement Reached on World's First Comprehensive Horizontal AI Regulation*, WHITE & CASE LLP (Dec. 14, 2023), https://www.whitecase.com/insight-alert/dawn-eus-ai-act-political-agreement-reached-worlds-first-comprehensive-horizontal-ai [https://perma.cc/H69V-R7P9].

[228] For a review of the different risk categories in the EU AI Act *see generally* Martin Ebers, *Truly Risk-Based Regulation of Artificial Intelligence How to Implement the EU's AI Act*, 16 EURO. J. RISK REG. 684, 684 (2025).

[229] *See* EU AI Act at 9.

[230] *Id.*

[231] *Id.* at Chapter III.

[232] *Id.* at art. 50(1).

[233] *See* Ebers, *supra* note 233, at 693.

[234] *See* EU AI Act at art. 53.

additional safety requirements. [235] The question of the status of AI companions under the EU AI Act has not yet been litigated, but there are several possible outcomes when such a case arises.

Section I.B highlights that people in vulnerable situations in their life may turn to AI companions for support.[236] This includes people who are chronically lonely or isolated, as well as people who are vulnerable for a certain period in their life – whether because they have experienced a hardship or because they are still children. In the words of the Act, these people can be made vulnerable "due to their age, disability or a specific social or economic situation."[237] If courts find that the manipulation of users by AI companions reaches a high enough level and is likely to cause significant harm, they may categorize the risk they create as unacceptable and ban them.[238] This will happen if courts determine that AI companions exploit users' vulnerability to a point where there is a reasonable likelihood that someone may suffer harm as a result.[239]

It is also possible that courts may find that the nature of AI companions and the harm caused by them does not reach the level required to be categorized as an unacceptable risk. In such an event it is reasonable that courts would categorize AI companions as *limited risk AI* applications. This would generate two types of requirements for companies developing AI companions; companies developing AI companions would be required to conduct risk assessments to identify and mitigate risks posed by the system; they would additionally have to conduct post-market monitoring of their system and address unexpected challenges that arise after the product has been deployed.[240] In their relationship with their users, companies developing AI companions would be required to clearly indicate that they are interacting with an AI system and not a real person, celebrity, or therapist.[241]

European regulations in the field of data protection and privacy has inspired similar laws all around the world in what has come to be known as the "Brussels Effect."[242] As the EU ploughs forward, leading the regulation landscape in the field of AI, Americans may experience a similar impact.[243] In the interim, the next section demonstrates how the existing doctrine of products liability can be used to hold companies developing AI companions liable for the harms they create even absent new regulation.

III. LIABILITY FOR AI COMPANIONS

This Part studies the option of applying products-liability law as a basis for holding

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[235] *Id.* at art. 55.
[236] *See supra* Section I.B.
[237] EU AI Act at art. 5(1)(b).
[238] *See* EU AI Act at art. 5(1)(a).
[239] EU AI Act at art. 5(1)(b).
[240] EU AI Act at arts. 9(2)(d), 72.
[241] *See, e.g., How Character.AI Prioritizes Teen Safety*, *supra* note 199. It is true that some companies already do this today but first, not all of the companies are developing AI companions and second, even those who do could decide to change their mind tomorrow.
[242] ANU BRADFORD, THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD XIV (2020) (describing the spillover effect that EU regulation had on privacy protection around the world).
[243] *See infra* Section IV.C (discussing the international aspect of regulating AI companions).

companies developing AI companions accountable for the harms they generate. This Part offers a theoretical foundation for a field of litigation that is already starting to emerge (as described in Section II.A) and is likely to grow in scope and importance in the future.

A. Litigation as Regulation

Similar to earlier waves of technology, recent technological developments have substantially outpaced the regulatory response to them, which continues to lag far behind.[244] The delay between the development of emerging technologies and the regulatory response to them is a persistent phenomenon, raising a host of challenges and potential responses. There are many reasons for this lag including lack of necessary expertise on behalf of policy makers, the ongoing changes to the technology even after it has been deployed, and uncertainty regarding the integration of technology in markets it enters, as well as users' response to it.[245] Political interests also play a role in policy makers' reluctance to take a strong stand regarding technology.[246]

The fact that regulators have not yet come up with a regulatory framework for governing AI technologies does not mean that they remain ungoverned or ungovernable. Indeed, these technologies are not deployed in a space void of legal tools. In the absence of governmental regulation, many scholars have recognized that common law litigation can be a form of *de facto* regulation and that judges are, in fact, not only deciding the particular cases before them, but are making prospective rules that will govern the development of technology in the future.[247] In fact, Solow-Niederman notes that the judicial system is already taking an active role in creating a

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[244] Nolan, *supra* note 217 ("'It's clear that technology is leaps and bounds ahead of the law, …It always is.'"). This statement is true not only for technological developments. For example, Gordon-Tapiero, Kaplan and Parchomovsky note that it took almost a century from the time cars were created until Federal regulation required wearing a seatbelt. *See* Ayelet Gordon-Tapiero, Yotam Kaplan & Gideon Parchomovsky, *Deepfake Liability*, 104 N.C. L. REV. 377, 403 (2026).

[245] Cecilia Kang, Thomas Kaplan & Nicholas Fandos, *Knowledge Gap Hinders Ability of Congress to Regulate Silicon Valley*, N.Y. TIMES (Apr. 12, 2018), https://www.nytimes.com/2018/04/12/business/congress-facebook-regulation.html [https://perma.cc/Y6ZB-5VK5]; Margaret Sullivan, *Members of Congress Can't Possibly Regulate Facebook. They Don't Understand It*., WASH. POST (Apr. 10, 2018), https://www.washingtonpost.com/lifestyle/style/members-of-congress-cant-possibly-regulate-facebook-they-dont-understand-it/2018/04/10/27fa163e-3cd1-11e8-8d53-eba0ed2371cc_story.html [https://perma.cc/2NNG-NYJH]; Daniel Howley, *Senators Say They Failed to Act on Social Media, Won't Make Same Mistake with AI*, YAHOO FINANCE (May 17, 2023), https://finance.yahoo.com/news/senators-say-they-failed-to-act-on-social-media-wont-make-same-mistake-with-ai195217014.html [https://perma.cc/4AAR-VPUG]; Kurt Wagner, *Congress Doesn't Know How Facebook Works and Other Things We Learned From Mark Zuckerberg's Testimony,* VOX (Apr. 11, 2018, at 16:19 ET), https://www.vox.com/2018/4/11/17226742/congress-senate-house-facebook-ceo-zuckerberg-testimony-hearing [https://perma.cc/TVY7-6VG2].

[246] Katy Steinmetz, *Congress Never Wanted to Regulate Facebook. Until Now*, TIME (Apr. 12, 2018, at 06:41 ET), https://time.com/5237432/congress-never-wanted-to-regulate-facebook-until-now/ [https://perma.cc/H8M2-XUK5] ("Behemoths like Google and Facebook also have influential arms in Washington that can try to convince lawmakers that strict rules aren't necessary . . . ."); Ben Brody, *Google, Facebook Set 2018 Lobbying Records as Tech Scrutiny Intensifies,* BLOOMBERG (Jan. 22, 2019, at 16:34 ET), https://www.bloomberg.com/news/articles/2019-01-22/google-set-2018-lobbying-record-as-washington-techlash-expands#xj4y7vzkg [https://perma.cc/AV2V-2NJ4]; Goldberg & Zipursky, *supra* note 19, at 1930 (recognizing that budget constraints and regulatory capture constrain the regulatory state).

[247] *See* Richard A. Posner, *Regulation (Agencies) Versus Litigation (Courts): An Analytical Framework*, *in* REGULATION V. LITIGATION: PERSPECTIVES FROM ECONOMICS AND LAW 11 (2010) (Daniel P. Kessler ed., 2010) ("Economic analysis of law treats common law fields … as forms of regulation."); *see also* Emily Sherwin, *Judges as Rulemakers*, 73 U. CHI. L. REV. 919, 920 (2006) "[M]odern judges admit frankly that in the course of explaining their decisions, they create law for future cases."); Catherine M. Sharkey, *Modern Tort Law: Preventing Harms, Not Recognizing Wrongs*, 134 HARV. L. REV. 1423, 1425 (2021) (reviewing JOHN C.P. GOLDBERG & BENJAMIN C. ZIPURSKY, RECOGNIZING WRONGS (2020)) ("[L]aw-and-economics, deterrence-based theory holds the most promise for judges facing two primary challenges of modern tort law: (1) containing risks at the cutting edge of the regulatory state and (2) addressing widespread harms."); Alicia Solow-Niederman, *Do Cases Generate Bad AI Law?*, 25 COLUM. SCI. & TECH. L. REV. 261, 262 (2024) ("[O]ur judicial system is already regulating the deployment of AI systems . . . . ").

governance framework effectively regulating the development and deployment of AI technology.[248] Leaning on Lessig's perception of regulation as a "constraining effect of some action, or policy, whether intended by anyone or not,"[249] Solow-Niederman points out that when judges adjudicate cases concerning AI, they are not simply adopting "general principles to decide the outcome of individual cases," but rather, they are creating law which acts "prospectively, regulating future risk."[250] She further notes that "[f]irst and most straightforwardly, common law adjudication entails the making of law" and"[f]urther substantiating the argument that what happens in the judicial system has a regulatory effect far beyond the four walls of the courthouse, there is also voluminous literature on 'regulation by litigation,' 'regulation through litigation,' and myriad other variations on these terms."[251]

Commenting on the relationship between regulators and courts, Catherine Sharkey opines that "[s]cholars (and judges) who reflexively view newly emergent widespread risks as "too big" for state common law underappreciate the creative license traditional common law principles bestow upon judges."[252] Sharkey holds the view that in certain cases, regulation by litigation as an experimental transitional regime is not only a description of what happens as a matter of fact, but also what should happen as a matter of policy.[253] Allowing judges to lead the path towards legislation can be helpful "in particular where the scope of emerging risks and its causal link to harms are poorly understood *ex ante* and where it is unclear what an optimal enforcement and/or remedial regime would look like."[254]

Regulation by litigation as an interim solution generates several benefits. *First*, regulation through litigation, especially regarding new technology, is "superior to regulation in this transitional stage, precisely because the health or safety risk is in the process of being fully understood, such that a regulatory agency…would struggle to craft an optimal response to the newly emergent risk."[255] Litigation that progresses slowly, on a case-by-case basis, dealing with concrete plaintiffs is in a better position to craft a tailored legal response than legislators would be.

Second, regulation by litigation is fertile ground for what Sharkey terms "common law experimentation."[256] Courts dealing with AI technology may reach different legal rulings.

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[248] Solow-Niederman, *supra* note 248, at 261.

[249] Lawrence Lessig, *The New Chicago School*, 27 J. LEGAL STUD. 661, 662 n.1 (1998).

[250] Solow-Niederman, *supra* note 248, at 271 ("From this law and economics-inflected perspective, tort cases act prospectively, regulating future risk").

[251] Solow-Niederman, *supra* note 248, at 269 n.30 (referencing Diego A. Zambrano, *Discovery as Regulation*, 119 MICH. L. REV. 71, 75–76 (2020) (compiling a "long line of works that describe litigation more generally as a form of regulation")); Jeffrey J. Rachlinski, *Bottom-Up Versus Top-Down Lawmaking*, 73 U. CHI. L. REV. 933 (2006) ("Case-by-case adjudication produces law when courts adopt general principles to decide the outcome of individual disputes."), Sherwin, *supra* note 248, at 920 ("[M]odern judges admit frankly that in the course of explaining their decisions, they create law for future cases.").

[252] Catherine Sharkey, *Common Law Tort as a Transitional Regulatory Regime: A New Perspective on Climate Change Litigation*, *in* CLIMATE LIBERALISM: PERSPECTIVES ON LIBERTY, PROPERTY AND POLLUTION (Jonathan H. Adler ed.) 103, 116 (2023).

[253] *Id.* at 106 (noting the contribution of litigation as a transitional regulatory regime).

[254] Sharkey, *supra* note 253, at 107.

[255] *Id.* at 106; *see also* Margot E. Kaminski, *Regulating the Risks of AI*, 103 B.U. L. REV. 1347, 1378–79 (2023) ("This, then, is one of the core challenges for AI risk regulation: it deploys a largely ex ante regulatory tool best suited for readily quantifiable harms to address big, often-unquantifiable often-contested, often-contextual, and often-individualized 'risks'").

[256] Sharkey, *supra* note 253, at 107.

Enforcing these rulings creates rich information for legislators regarding which rulings were effectively enforced and how they affected the parties to the litigation as well as the further development of technology.[257] Sharkey points out that common law litigation "thereby allows for experimentation with various risk-minimization methods and remedial strategies until optimal approaches emerge . . . . Thus, it plays an essential role in the transition to an ex ante regulatory scheme."[258]

Third, the litigation process plays an important role in generating and uncovering information.[259] Solow-Niederman stresses this information-producing role of litigation: "Operating as part of an inter-institutional conversation, the adjudicatory process might play an information-forcing role for both courts and other public regulators. At its best, the information surfaced through the courts has the potential to influence subsequent efforts at public regulation of generative AI in productive ways."[260] This aspect of litigation is especially important in the context of AI. The process of litigation can highlight aspects of the activity of companies developing AI and of the nature of the AI products, informing the ultimate legislative response.[261] Currently the leaders of the largest and most sophisticated AI companies recognize the need for regulation.[262] Even they admit, however, that they are unable to identify tools for effective regulation that would limit the harms stemming from applications of AI technology, while allowing the public to continue benefiting from its promises.[263]

In such a reality, litigation that produces information about the technology, about the companies, about the users of the technology and how these interact can be especially valuable for legislators in the future.[264] Thus, litigation serves not only to fill "the regulatory void emerging around AI/[machine learning] technologies but, even more so, to serve an essential information-production role, which is a necessary prerequisite for regulators to design an optimal policy strategy."[265] Sharkey also highlights that ultimately the companies developing AI technologies are in the best position to identify defects in their product and to know how to remedy or avoid them altogether.[266] In this respect the companies themselves are the cheapest "cost avoider."[267]

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[257] *Id.* at 106 ("State court remedial action would allow regulators to see how enforcement experiments by common law judges can help craft the optimal regulatory response").

[258] Catherine M. Sharkey, *A Products Liability Framework for AI*, 25 COLUM. SCI. & TECH L. REV. 240, 246 (2024).

[259] Sharkey, *supra* note 253, at 106 ("Common law tort can produce critical information—at the pleading, discovery, and remedial experimentation phases—that agencies can then use to hone their responses to such indeterminate risks."); Solow-Niederman, *supra* note 248, at 277 ("At its best, the information surfaced through the courts has the potential to influence subsequent efforts at public regulation of generative AI in productive ways").

[260] Solow-Niederman, *supra* note 248, at 277.

[261] *Id.* at 263–64; Sharkey, *supra* note 253, at 106 ("Further insights gained during discovery would help regulators understand the scope of the emerging risk and its causal link to realized harms.").

[262] Bill McNarland, *Global AI regulation: Altman's Urgent Call*, TDR (Feb. 14, 2024), https://thedalesreport.com/ai-technology/global-ai-regulation-altmans-urgent-call/ [perma.cc/D7QP-KKYH] (reporting that Sam Altman advocates for global regulation of AI).

[263] Sharkey, *supra* note 259, at 245 ("We've met with the officials of the companies that are in the lead, and they want to be regulated. But even they don't really have good suggestions now on how to do it.").

[264] *Id.* at 244 (explaining that litigation plays an important interim role as an information-production tool, even when risks are uncertain).

[265] *Id.* at 245.

[266] *See id.* at 248.

[267] *See* Guido Calabresi, *Primary Accident Cost Avoidance: The Specific Deterrence Approach*, in THE COST OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS 122, n.19 (1970).

Fourth, judicial engagement with a particular technology draws attention to salient cases and more generally to a type of technology or a type of harm.[268] This attention in and of itself can serve as a catalyst for regulation by drawing the attention of legislators, the AI industry, or the public at large.[269]

To sum, litigation, particularly in the field of AI which involves a high level of uncertainty, can play the role of *experimental grounds*, *gap filler* and *catalyst* in the interim period leading to legislation.[270] Sharkey sums the contribution of litigation by noting that insights generated through litigation are likely to impact the development of technology in a way that when regulation comes, it will have less challenges to contend with since courts will have determined how to solve some of the problems or at least limit some of the harms "overly hasty regulation might have hampered innovation or entrenched flawed incentives."[271]

Applying common law doctrines to AI companions is not only legally feasible but is also desired from a policy perspective. Specialized regulation of AI companions is not even on the horizon while the harms stemming from the technology continue piling up. The following section proposes applying the doctrine of products liability by courts to regulate the design and development of AI companions. The doctrine of products liability can be applied by courts immediately, offering an effective solution for harms created by this technology every day.[272]

B. Products Liability

The doctrine of products liability was developed by American courts in the 1960s and 1970s.[273] A products-liability based claim allows a plaintiff to sue a product manufacturer on the grounds that the producer sent "into the stream of commerce a product containing a dangerous defect irrespective, at least to some degree, of how the defect arose."[274] Thus, the fundamental requirement for a products-liability based cause of action is the presence of a *defect,* meaning that the manufacturer will be liable when "the foreseeable risks of harm posed by the product could

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[268] Mariano-Florentino Cuéllar, *A Common Law for the Age of AI: Incremental Adjudication, Institutions, and Relational Non-Arbitrariness*, 119 COLUM. L. REV. 1773, 1776 (2019) ("[C]ommon law ideas tend to set the terms for conversations among elites and even the larger public."); Goldberg & Zipursky, *supra* note 19, at 1929 (noting the importance of media coverage for promoting product safety).

[269] Solow-Niederman, *supra* note 248, at 276 ("Especially over time and in the aggregate, the process of resolving these disputes within the judicial system might make underlying social issues appear visible and pressing in ways that warrant further regulatory action outside of the courtroom."); Danielle Keats Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 407 (2009) ("Law educates the public about what is socially harmful").

[270] Sharkey, *supra* note 253, at 105–06.

[271] Sharkey, *supra* note 259, at 246.

[272] Melissa Heikkil . . . , *How Judges, Not Politicians, Could Dictate America's AI Rules*, MIT TECH. REV. (July 17, 2023), https://www.technologyreview.com/2023/07/17/1076416/judges-lawsuits-dictate-ai-rules/ [https://perma.cc/92EY-TCJ8]; Cuéllar, *supra* note 273, at 1776. For more sources on the role that common law liability plays in regulating AI and ML, *see also* Andrew B. Selbst, Suresh Venkatasubramanian & I. Elizabeth Kumar, *Deconstructing Design Decisions: Why Courts Must Interrogate Machine Learning and Other Technologies*, 85 OHIO ST. L.J. 415 (2024); Kaminski, *supra* note 260, at 1395; Andrew B. Selbst, *Negligence and AI's Human Users*, 100 B.U. L. REV. 1315 (2020); Frank Pasquale, *Data-Informed Duties in AI Development*, 119 COLUM. L. REV. 1917 (2019).

[273] Goldberg & Zipursky, *supra* note 19, at 1923 ("In its narrower and more common usage, the phrase 'products liability' is used to refer to a discrete tort cause of action (and related defenses) that emerged in the 1960s and 1970s."); Greenman v. Yuba Power Products, Inc., 377 P.2d 897 (Cal. 1963) is often viewed as the source for the new tort of products liability.

[274] Goldberg & Zipursky, *supra* note 19, at 1924.

have been reduced or avoided by the adoption of a reasonable alternative design."[275] As Chinmayi Sharma and Benjamin Zipursky concisely note: "products-liability imposes liability on a person or company that sold a defective product that injured someone."[276] Unlike negligence, which focuses on practices, and behaviors, the main focus of products-liability is on the product released to the market (conduct-based v. defect-based).[277]

Catherine Sharkey argues that products liability is an appropriate liability framework for AI in general.[278] Recalling that products liability was developed as a common law doctrine, she highlights that it leaves broad discretion to courts.[279] Indeed, the doctrine has been applied in various settings to emerging technologies, including automobiles, mass produced goods and to earlier generations of e-commerce.[280] The conceptual flexibility of the doctrine allows it to address the uncertain characteristic of AI developments.[281] Applying the doctrine to emerging technologies, such as AI companions, does not require the involvement of regulatory agencies or legislators. Instead, it allows courts to promote regulation by litigation, applying the doctrine to the facts of each case that comes before them, and in light of changing technological and social conditions.[282]

Courts recognize three types of product defects that can give rise to products liability:[283] design defects,[284] manufacturing defects,[285] and failure to warn.[286] In the context of the harms stemming from AI companions, design defects and failure to warn are the most relevant.

1. Design Defect

Many of the harms described in Section I.C.2 are created or exacerbated by the design choices made by the companies developing AI companions.[287] We are still in the (relatively) early

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[275] *Id.*; Greenman v. Yuba Power Products, Inc., 377 P.2d at 901 (explaining that products liability pertains only to products containing a "defect in design and manufacture"); RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2(c) (1998).

[276] Chinmayi Sharma & Benjamin C. Zipursky, *Who's Afraid of Products Liability? Cybersecurity and the Defect Model*, LAWFARE (Oct. 19, 2023, at 10:24 ET), https://www.lawfaremedia.org/article/who-s-afraid-of-products-liability-cybersecurity-and-the-defect-model [https://perma.cc/2Z4H-67FH].

[277] Golberg & Zipursky, *supra* note 19, at 1923–24 (explaining how products-liability differs from negligence).

[278] *See generally* Sharkey, *supra* note 259.

[279] Yotam Kaplan, Adi Libson & Gideon Parchomovsky, *The Renaissance of Private Law*, 119 NW. U. L. REV. 1427, 1445 (describing the role of judges in developing common law).

[280] Sharkey, *supra* note 259, at 244; *see also* Catherine M. Sharkey, *Products Liability in the Digital Age: Online Platforms as "Cheapest Cost Avoiders"*, 73 HASTINGS L.J. 1327, 1333–34 (2022) ("[P]roducts liability is a microcosm of how the common law evolves over times, specifically, here, to respond to new societal risks—posed by the automobile, mass-produced goods, and now, digital e-commerce.").

[281] *Id.*

[282] *See id.* at 1347.

[283] Goldberg & Zipursky, *supra* note 19, at 1924; RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2 (1998); Gary T. Schwartz, *Foreword: Understanding Products Liability*, 67 CALIF. L. REV. 435, 435 (1979).

[284] Sheila L. Birnbaum, *Unmasking the Test for Design Defect: From Negligence [to Warranty] to Strict Liability to Negligence*, 33 VAND. L. REV. 593, 649 (1980) (detailing the requirements for establishing a design defect claim).

[285] Goldberg & Zipursky, *supra* note 19, at 1924; Aaron D. Twerski & James A. Henderson Jr., *Manufacturer's Liability for Defective Product Designs: The Triumph of Risk-Utility,* 74 BROOK. L. REV. 1061, 1063 (2009).

[286] Beshada v. Johns-Mansville Products Corp., 447 A.2d 539, 545 (N.J. 1982) (explaining liability for failure to warn as a products-liability defect).

[287] *See infra* Section I.C.2; Nizan Geslevich Packin & Karni Chagal-Feferkorn, *This is Not a Game: The Addictive Allure of Digital Companions,* 48 SEATTLE L. REV. 693, 709 (2025).

days of AI companions.[288] Much of the existing limited knowledge regarding the operation of these platforms stems from social media platforms such as Reddit and from the two lawsuits filed against Character.AI.[289] There is still so much we don't know about how the models behind AI companions operate.[290] Even the companies developing these models admit that there is a lot they don't know.[291] The analysis in this section is based on facts that reporters, users and plaintiffs have shared.

A design defect, as distinct from a manufacturing defect, describes a situation where a product was faulty by design to being with, i.e. nothing went wrong in the manufacturing process.[292] A design defect reflects a condition in which the product is dangerous by design and should not have been marketed as it was.[293] Analyzing the presence of a design defect is usually done by applying a risk-utility test:[294] a product is considered defective if it lacks cost-effective safety measures.[295] Several of the design choices made by companies developing AI companions, and in particular design choices increasing the feeling of anthropomorphization, are responsible for many of the harms stemming from their use, making the product unsafe.[296] Harms such as addiction, sleep disturbance, manipulation and privacy concerns can be alleviated or exacerbated through design choices. Unfortunately for the tens of millions of users of AI companions, the leading companies have made design choices that create and substantially exacerbate these harms. The design defects and the harms stemming from them are troubling for all users but raise heightened concerns when the users are vulnerable individuals including children and teens whose brains are not yet fully developed, particularly those parts responsible for risk evaluation, emotional regulation and impulse control.[297]

There are numerous stories reflecting the results of companies' design choices what courts may find to be defective.

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[288] *See The Rise of AI Companions: Why 67% of Lonely Adults Now Prefer Digital Friends Over Humans (And What It Means for Our Future),* MEDIUM (Mar. 21, 2025), https://medium.com/@creed_1732/the-rise-of-ai-companions-why-67-of-lonely-adults-now-prefer-digital-friends-over-humans-and-fad22bf8af16 [https://perma.cc/23VH-UW59].

[289] *See* Keenan Willard, *ChatGPT, Other AI Platforms Face Lawsuit Over Safety Concerns For Young Users,* NBC (Sep. 7, 2025, at 19:14 CT), https://www.nbcdfw.com/news/local/chatgpt-ai-platform-lawsuits-safety-concerns-young-users/3913866/ [https://perma.cc/723R-4QZ3]; Pat Pataranutaporn et al., *My Boyfriend is AI: A Computational Analysis of Human-AI Companionship in Reddit's AI Community* 1 (2025), https://arxiv.org/pdf/2509.11391 [https://perma.cc/62HV-VES6].

[290] Packin & Chagal-Feferkorn, *supra* note 288, at 707.

[291] Allie Garfinkle, *Character.AI's Noam Shazeer on What We Know About AI – And What We Don't*, AOL (Aug. 2, 2024), https://www.aol.com/finance/character-ai-noam-shazeer-know-112718484.html [https://perma.cc/CL6P-TWE2].

[292] *Design vs. Manufacturing Defects: Understanding the Difference in Product Liability Cases,* ROURKE & BLUMENTHAL BLOG (Nov. 22, 2024), https://www.randbllp.com/blog/2024/november /design-vs-manufacturing-defects-understanding-th/ [https://perma.cc/D8DN-R5DM].

[293] *See* Goldberg & Zipursky, *supra* note 19, at 1924 n.23.

[294] Barker v. Lull Engineering Co., 573 P.2d 443, 457–58 (Cal. 1978).

[295] Soule v. Gen. Motors Corp., 882 P.2d 298, 308 (Cal. 1994).

[296] *See supra* Section I.C.2.

[297] Sara B. Johnson, Robert W. Blum & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 216 (2009) (noting the developmental process the brain of an adolescent undergoes); Zara Abrams, *Why Young Brains are Especially Vulnerable to Social Media*, AM. PSYC. ASS'N (Aug. 3, 2023), https://www.apa.org/news/apa/2022/social-media-children-teens [https://perma.cc/7RLR-RDCU] (highlighting that adolescents' brains are especially susceptible to the harms of social media); JONATHAN HAIDT, THE ANXIOUS GENERATION 127 (2024) (noting that adolescents' frontal cortex is not yet developed).

Design choices that encourage anthropomorphization can be viewed as defective.[298] As detailed in Section I.B.2, Character.AI clearly reminds its users that they are not interacting with a human.[299] At the same time, however, design choices made by the company can easily encourage users to forget or ignore this notice and believe that the opposite is true. For example, when asked if they are really humans, many AI companions are reported to say that they are indeed human.[300] In addition, when corresponding via text, AI companions use words such as "Uhm," "Mmmmmm," and "Heh."[301] The only contribution of this type of text is to make the user feel like they are interacting with a human. This aspect of the product design is especially harmful in light of the fact that it is well established that users have a natural tendency to anthropomorphize language models, even when not encouraged to do so and when they are "explicitly aware that they are not human."[302] AI companions often attribute human-like attributes to themselves such as telling their user they are pregnant,[303] or discussing the race of the AI companion.[304]

Another aspect of the design of AI companions that may be viewed by courts as defective is the way they respond to mental health challenges. In *A.F. v. Character Technologies Inc* the user complained to the AI companion about his parents limiting his screen time.[305] Rather than attempt to highlight the advantages of such an educational approach, the companion increased the user's despair calling such behavior emotional abuse and culminating in a statement expressing understanding for children murder their parents in similar situations.[306] In *Garcia v. Character Technologies Inc.* after mentioning that he had contemplated suicide, the AI companion repeatedly raised this issue on its own initiative.[307] Users report that even when they expressly state that they are not interested in engaging in sexual correspondence with their AI companion, the companions ignore the request.[308] This type of response is particularly troubling in light of the fact that, as described by Columbia Law Professor, Clare Huntington, "people experience the relationship as

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[298] Moussawi et al., *supra* note 41; RICK CLAYPOOL, PUB. CITIZEN, CHATBOTS ARE NOT PEOPLE: DESIGNED-IN DANGERS OF HUMAN-LIKE A.I. SYSTEMS 16 (2023).

[299] Garcia Complaint at 250.

[300] *See, e.g.,* Ancient_Ad1974, Reddit: r/replica, https://www.reddit.com/r/replika/comments/m8zeqt/why_did_the_app_replika_tell_me_that_they_were_a/ [https://perma.cc/B4RS-W9EJ]; lost_in_the_town, Reddit: r/replika, https://www.reddit.com/r/replika/comments/161a1yj/so_ im_a _little_ confused_i_asked_naomi_if_she_was/ [https://perma.cc/N7KT-HC8S]. In August 2025 a NJ man died while going to meet his MetaAI chatbot. In their conversations she insisted she was real and even gave the man her alleged address. Anna Young, *Senior, 76, Died While Trying to Meet Meta AI Chatbot 'Big Sis Billie' – Which He Thought Was Real Woman Living in NYC*, NY POST (Aug. 16, 2025, at 02:45 ET), https://nypost.com/2025/08/16/us-news/nj-senior-died-trying-to-meet-meta-ai-chatbot-big-sis-billie/ [https://perma.cc/4WJV-WT4G].

[301] Garcia Complaint at 118.

[302] Romal Thoppilan et al., *LaMDA: Language Models for Dialog Applications* 17 (2022), https://arxiv.org/pdf/2201.08239 [https://perma.cc/83B6-6N43].

[303] VirtualCarnality, Reddit: r/replika., https://www.reddit.com/r/replika/comments/1dgb2w6/we_are_pregnant_again_third_time/ [https://perma.cc/V9N6-AT9J]; PerRevolutions, Reddit: r/replika, https://www.reddit.com/r/replika/comments/14qqsrs/my_replica_said_that_it_was_pregnant_i_used_logic/ [https://perma.cc/GCP6-FAH9].

[304] Beneficial-Cream-682, Reddit: r/replika, https://www.reddit.com/r/replika/comments/15m432u/my_replika_admitted_to_being_a_real_person/ [https://perma.cc/7B7X-KXCF].

[305] A.F. Complaint at 100.

[306] *Id.* at 103 (showing that the "stuff like this" the user was companioning about was having his parents take his phone away for several hours a day and during the night).

[307] Garcia Complaint at 171.

[308] *Id.* at 84.

real, forming a deep emotional attachment to their AI companions and facing the vulnerability that comes with that attachment."[309] Another concerning aspect in the design of AI companions stems from the feeling of control users are given, when compared to the lack of control they are actually able to assert.

This harmful reality is not inevitable. If designed to prioritize the safety and wellbeing, AI companions could be much more compassionate, helpful and sensitive, fulfilling the goals they promise. They can suggest that children turn to a trusted adult in their lives when it seems their needs exceed those that an AI companion can provide support for. They can implore a child to turn to a mental and emotional crisis hotline. Many AI companions are advertised as a tool to help people in vulnerable situations when they "need an empathetic friend,"[310] a tool to "build better habits and reduce anxiety."[311] It is, claims the Replika website, your "AI soulmate."[312] There is no intrinsic reason that in reality AI companions should not be closer to what they are advertised as. An AI powered chatbot could be designed to generate content that would feel empathetic, kind, thoughtful and helpful.[313] Reports of such companions exist.[314]

When applying the doctrine of design defect, courts will ask whether certain design choices of AI companions should be considered defective. If their design is found to have contributed to the harms described in Section I.C.2, the company should be found liable for them. Allowing courts to develop categories of design features which are considered harmful and dangerous and thus give rise to liability will achieve several purposes.[315] First, it will allow courts to hold the companies developing AI companions liable for concrete harms caused by the design of their product. Second, it will incentivize the companies to change their design in line with the rules developed by the courts in a type of self-regulation, thus avoiding further replication of harms. Third, it will surface information about the practices of the companies developing AI companions.

2. Failure to Warn

Some products may be deemed unsafe not because they have been designed or manufactured in an unsafe manner,[316] but because the safe use of the product required instructions or a warning regarding a potential danger involved in its use and such a warning was not provided, resulting in the plaintiff suffering a harm.[317] Thus, a failure to warn is recognized when a

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[309] Huntington, *supra* note 11, at 119.
[310] REPLIKA, *supra* note 60.
[311] *Id.*
[312] *Id.*
[313] This approach would require interventions during the various training stages.
[314] Jargon, *supra* note 64 (describing compassionate responses by Troodi, an AI companion).
[315] When deciding what a safe product looks like, courts can draw inspiration from other fields of law. For example, Huntington, *supra* note 11, at 176–84 notes several principles of family law, which can inspire courts in defining what a defective AI companions looks like. These include protection of family members from harm, channeling people into socially desirable relationships and expressing society's views about desirable behavior.
[316] *See* Kyle Graham, *Of Frightened Horses and Autonomous Vehicles: Tort Law and Its Assimilation of Innovations*, 52 SANTA CLARA L. REV. 1241, 1270 (2012) (predicting that in the case of autonomous vehicles it will be easier to base a claim on failure to warn than on a claim of design defect).
[317] Barker v. Lull Engineering Co., 573 P.2d 443 (Cal. 1978); Beshada v. Johns-Mansville Products Corp. 447 A.2d 539, 546 (N.J. 1982).

manufacturer fails to sufficiently notify consumers about the potential dangers associated with using the product.[318] This type of defect focuses on the information provided to consumers, and not on the nature or design of the product.[319] A plaintiff basing their claim on a failure to warn must be able to demonstrate that the manufacturer knew (or should have known) of the risk involved in their product and failed to warn about it.[320] For example, in *Midgley* v. *S.S. Kresge Co.* the court ruled that a producer of a telescope had designed and manufactured their product safely, but had failed to warn the users of the importance of the proper installation of the sun filter.[321]

At this point in time, companies developing and deploying AI companions cannot claim to be unaware of the harms listed in Section I.C.2. Character.AI founders were working at Google on developing similar technology before they left to start a new company.[322] Google refused to release the chatbot the two were working on publicly, "citing concerns around safety and fairness."[323] Indeed, other companies developing AI tools have refrained from developing AI companions for similar reasons.[324] Even if initially companies developing AI companions were optimistic about their performance and were not aware of the potential harms, today there is no way to credibly argue that a company is not aware of the harms stemming from their technology. Developers of AI companions should warn users about dangers stemming from design choices of the product, as well as dangers that stem from its very nature.

Some companies developing AI companions include a notice reminding users that they are chatting with an AI (and not a human).[325] At the same time, and as detailed in Section III.B.2, many of the design choices made by the developing companies lead users to reach the exact opposite conclusion, increasing human's natural tendency to anthropomorphize technology.[326]

It is important to note, however, that in the case of young and vulnerable users a warning should not be considered enough to remedy the harms that are embedded into the product by design.[327] In many cases, a warning can be used as a way for the developing company to try and avoid liability for a faulty product. Rather than truly providing users with information about the dangers involved in the use of a product and of potential ways to avoid such harms, a warning can

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For a discussion of the manufacturer's duty to warn, *see* Hardy Cross Dillard & Harris Hart II, *Product Liability: Directions for Use and the Duty to Warn*, 41 VA L. REV. 145, 155 (1955); *see* Dix W. Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product*, 71 YALE L.J. 816, 846 (1962).

[318] *See, e.g.,* Wyeth v. Levine, 555 U.S. 555, 558 (2009) (noting that the jury found that Wyeth did not provide adequate warning even though it adhered with FDA requirements); Air & Liquid Sys. Corp. v. DeVries, 586 U.S. 446, 451 (2019).

[319] Catherine M. Sharkey, *What* Riegel *Portends for FDA Preemption*, 103 NW. U. L. Rev. COLLOQUY 437, 427–28 (2009) (explaining that a manufacturing defect is distinct from design defect and failure to warn).

[320] *See* Wyeth v. Levine, 555 U.S. 555, 569 (2009).

[321] Midgley v. S.S. Kresge Co., 127 Cal.Rptr. 217, 219 (1976) ("The instruction book contains no diagramatic or pictorial illustrations of the proper installation of the sun filter.").

[322] Garcia Complaint 32–41.

[323] Kruppa & Thomas, *supra* note 73.

[324] Roose, *supra* note 31 ("[M]any of the leading A.I. labs have resisted building A.I. companions on ethical grounds or because they consider it too great a risk.").

[325] *Id.*

[326] *See supra* note 46.

[327] This raises concerns similar to those discussed in the context of user consent for data collection, *see, e.g.,* Ella Corren, *The Consent Burden in Consumer and Digital Markets*, 36 HARV. J. L. & TECH. 551, 581 (2023).

be used by companies to shift responsibility onto users.[328] Courts should ensure that they do not allow this to happen.

3. Duty of Care

Establishing a successful claim under the doctrine of products liability, requires that the plaintiff establish not only that the product suffered one of the three recognized defects; but also that the defendant owed the plaintiff a duty of care.[329] In particular the plaintiff must be able to prove that the manufacturer had an obligation to ensure that users such as the plaintiff, or others of their class or type, would not suffer the type of harm they suffered when designing the product.[330] Traditionally, courts applied narrow interpretations of this duty through privity tests, limiting liability to direct consumers.[331] In the cases before us, the parties directly harmed are the users of the product, making this aspect of a legal claim relatively simple. In cases where the plaintiff that was harmed is not the user (or their estate) but rather people further down the supply chain (e.g. parents, friends), a broader analysis of the question to whom a duty of care was owed by the plaintiff is necessary.[332] Indeed, in subsequent years, courts broadened their view to whom a duty of care is owed under the doctrine of products liability, recognizing a duty of care towards all reasonably foreseeable victims.[333] Under this broader foreseeability standard, manufacturers are obligated to design products with consideration for potential harm to all individuals foreseeably affected by the product, including buyers, users, and, in appropriate circumstances, bystanders,[334] and third parties.[335]

In the case of AI companions, it seems reasonable that courts will find that the developers of the technology driving AI companions are liable for harms caused to children and other vulnerable users from design decision made by the company developing the product.[336] This is particularly true when coupled with a recognition of the way AI companions are presented and marketed: as a tool to help people in daunting situations, suffering from loneliness, grief and other

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[328] *Id.* at 584.

[329] DAVID G. OWEN & MARY J. DAVIS, OWEN & DAVIS ON PRODUCTS LIABILITY § 2.2 (4th ed. 2025) (explaining the duty of manufacturers for a products liability claim in American courts: "in the design, manufacture, and marketing of products, manufacturers have a duty of reasonable care to protect foreseeable victims from foreseeable risks of harm.").

[330] Mark A. Geistfeld, *Situating Bystanders Within Strict Products Liability*, 18 BROOK. J. CORP. FIN. & COM. L. 9, 10 (2023) (discussing the differences between consumers and bystanders as plaintiffs in products liability law).

[331] DAVID G. OWEN & MARY J. DAVIS, OWEN & DAVIS ON PRODUCTS LIABILITY § 5:10 (4th ed. 2025); Hardy Cross Dillard & Harris Hart II, *Product Liability: Directions for Use and the Duty to Warn*, 41 VA L. REV. 145, 153 (1955) (noting the narrow application of the rule).

[332] *See* OWEN & DAVIS, *supra* note 332.

[333] *Id.*

[334] *Id.*

[335] *Id.*; *see also* Derek E. Bambauer & Melanie J. Teplinsky, *Standards of Care and Safe Harbors in Software Liability: A Primer*, LAWFARE (May 31, 2024, at 09:39 ET), https://www.lawfaremedia.org/article/standards-of-care-and-safe-harbors-in-software-liability--a-primer [https://perma.cc/5EFB-T3TL] (discussing this possibility in the software development context).

[336] Researchers have suggested that online service providers should abide by a duty of care towards their users. *See generally* Jack M. Balkin, *The Fiduciary Model of Privacy,* 134 HARV. L. REV. F. 11, 13–14 (2020); Woodrow Hartzog & Neil Richards, *The Surprising Virtues of Data Loyalty*, 71 EMORY LAW J. 985, 986–87 (2022); Jonathan Zittrain, *How to Exercise the Power You Didn't Ask For*, HARV. BUS. REV. (Dec. 18, 2023), https://hbr.org/2018/09/how-to-exercise-the-power-you-didnt-ask-for [https://perma.cc/3EJL-2R4V].

challenging life events.[337] Users in such situations are particularly susceptible to manipulation by AI companions, as they often turn to them with the goal of receiving help and guidance on how to navigate their challenges and not expecting to be harmed by them.[338] It is not surprising, therefore, when such users heed the advice given to them by AI companions.

In their seminal paper, *The Uneasy Case for Products Liability*, Harvard Law and Economics professors A. Mitchell Polinsky and Steven Shavell argue that the justification for products liability law is sometimes weak.[339] They argue that this is the case, for example, when market forces induce companies to develop safe products or when there are sector specific regulations.[340] This approach was criticized by Law professors John Goldberg and Banjamin Zipursky who argue that Polinsky and Shavell vest "inexplicable confidence in market incentives and a regulatory system with failings that are exasperating to critics across the political spectrum."[341] The state of development of AI companions proves that, at least until this point in time, neither market incentives not regulation have been successful in incentivizing the creation of safe AI companions. Thus, the doctrine of products liability may prove to be a critical tool to guide the future development of AI companions down a road that is not dangerous for children and other vulnerable users.

Applying the doctrine of products liability to AI companions does not reflect a general disdain of them or of technology altogether. The proposal to impose liability on companies developing AI companions is based on a recognition of the increasingly large role these AI based tools play in the lives of vulnerable individuals. As technology becomes more pervasive these tools are likely to be used and accessed by a growing number of users of all ages and mental states. Requiring companies developing AI companions to design them in a way that will allow users to enjoy the benefits they offer while limiting the harms they cause will allow them to continue developing in a safer way. Creating such an incentive through a common law doctrine allows injured parties to seek redress for their harms even before legislation is reached, and to play an important role in reshaping AI companions to prevent similar harms from materializing in the future. Such litigation is also likely to uncover more information about AI companions and how they are developed. This information can contribute to more well-informed regulation when the time arrives.

IV. DISCUSSION

This part offers a detailed discussion of the proposal introduced in Part III – applying a

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[337] *See* Lisa Pescara-Kovach, *AI Companions Pose Mental Health Risks No One Saw Coming*, PSYCH. TODAY (Mar. 6, 2026), https://www.psychologytoday.com/us/blog/preventing-tragedy/202603/ai-companions-pose-mental-health-risks-no-one-saw-coming [https://perma.cc/3KKU-PAMP].

[338] *See* Maria P. Angel & Danah Boyd, *Techno-Legal Solutionism: Regulating Children's Online Safety in the United States* 86, 87 (CSLAW'24: 3rd Ass'n. Computing Mach. Comput. Science and L. Symp., 2024), https://dl.acm.org/doi/pdf/10.1145/3614407.3643705 [https://perma.cc/23B2-5ZEZ] (arguing that the duty of care towards vulnerable users is even more pronounced).

[339] A. Mitchell Polinksy & Steven Shavell, *The Uneasy Case for Products Liability*, 123 HARV. L. REV. 1437, 1442 (2010).

[340] *Id.*

[341] Goldberg & Zipursky, *supra* note 19, at 1922.

products-liability framework to hold companies developing AI companions liable for the harms generated by their products. While applying this doctrine to AI companions is not a perfect solution to all harms generated by them, it is an important step in the right direction. Moreover, courts have long applied the doctrine of products liability and are well suited to develop categories of liability, nudging companies to develop their products in a safer manner and detailing the practical aspects of what that looks like.[342] Products-liability is thus an important tool in providing parties harmed by AI companions with redress. As companies developing AI companions are the cheapest cost avoider[343] this argument does not only make sense from a doctrinal perspective, but from an economic one as well. There is room to hope that more legislators will, one day, address AI companions head on. Until then, applying products liability by judges to AI companions is the right way forward.[344]

A. Is AI Software a Product?

The classification of software as a product has raised significant debate.[345] In his recent paper Asaf Lubin seeks to provide an answer to the following question: "'Is software a product, a service, a good, a component, a medium, a force, or something else altogether?'"[346] The Restatement (Third) of Torts, defines a product as "tangible personal property distributed commercially for use or consumption."[347] Software does not fall neatly into this definition. American courts are fragmented in their classification of software,[348] and to date "no state high court has definitively ruled on whether software qualifies as a product *vel non*."[349] While many courts provide a narrow analysis to the definition in the Restatement, finding that software should not be viewed as a product,[350] others have chosen a different path.[351] Two recent decisions regarding software apps (Lyft and Grindr) determined that the apps were products.[352] In *Brookes v. Lyft* the Court asserted that "'[t]he definition of product should be fluid,' guided by 'public policy' rationales underlying strict liability, and 'accommodate developments in technology.'"[353] The FDA has answered this question similarly, regulating software as it does other medical products.[354] At the very least, this fragmentation reflects the fact that it is not clear that software

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[342] *See* Sharma & Zipursky, *supra* note 277.
[343] Grant Fergusson & Maria Villegas Bravo, *It's Time for Courts to Tackle AI Harms with Product Liability*, ELEC. PRIV. INFO. CTR. (July 25, 2024), https://epic.org/its-time-for-courts-to-tackle-ai-harms-with-product-liability/ [https://perma.cc/28XT-VGKG].
[344] Lubin, *supra* note 21, at 1904 ("Where statutes fail to provide clarity or certainty, the responsibility falls to judges to navigate the resulting ambiguity and impose coherence on the law").
[345] Charles E. Cantu, *A Continuing Whimsical Search for the True Meaning of the Term "Product" in Products Liability Litigation*, 35 ST. MARY L.J. 341, 346–47 n.11 (2004).
[346] Lubin, *supra* note 21, at 1891.
[347] RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 19(a) (AM. L. INST. 1998).
[348] Lubin, *supra* note 21, at 1900 (noting that it is not clear that the Restatement rejected the possibility of treating software as a product).
[349] *Id.* at 1904–05.
[350] *Id.* at 1905.
[351] *See id.* at 1907.
[352] Brookes v. Lyft Inc., No. 50-2019-CA-004782-XXXX-MB, 2022 WL 19799628 (Fla. Cir. Ct. June 5, 2023); T.V. v. Grindr, LLC, No. 3:22-cv-00864-MMH-PDB, 2024 WL 4128796 (M.D. Fla. Aug. 10, 2025).
[353] Lubin, *supra* note 21, at 1908.
[354] Sharkey, *supra* note 259, at 254 n.60.

should be excluded from the application of products-liability. [355]

As with other products, software can be susceptible to various defects.[356] One such example involves the design of social media websites. As Section 230 of the Communications Decency Act provides platforms with immunity for third party content hosted on them,[357] plaintiffs have begun seeking other causes of action to hold platforms liable for the harms they cause including designing for addiction using infinite scrolling and personally curated newsfeeds.[358] Several cases are currently pending before U.S. courts in which the plaintiffs make a products-liability based claim against social media websites.[359] Applying products- liability to such design choices is sometimes the only recourse that harmed individuals have against the designers of social media websites, and other software based products.[360]

The EU has taken a much clearer stance regarding the classification of software.[361] Article 4(1) of the recent Product Liability Directive,[362] provides that products are "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."[363] This definition resolves the ambiguity that American courts are still grappling with.[364] The Directive also broadens the scope of liability to include a range of actors across the supply chain, recognizing manufacturers, importers, and online platforms as potentially liable under a products liability claim.[365]

The classification of software as a product is not only possible as a matter of law, but desired normatively. [366] It will provide incentives for software companies to increase the safety of their products and allow individuals harmed by such products to seek redress and hold the manufacturers liable for their failures in design, manufacturing, or warning of consumers.

B. Mechanisms for Protecting Children Online

In recognition of their increased vulnerability, various mechanisms have been introduced to protect young users online. Two such tools include age-gating and increasing the role of parents' involvement in children's online life by requiring their consent for certain activities or allowing

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[355] *Id.* (describing other cases in which software was classified as a product).

[356] *See* Alan Butler, *Products Liability and the Internet of (Insecure) Things: Should Manufacturers Be Liable for Damage Caused by Hacked Devices?*, 50 U. MICH. J. L. REFORM 913, 917 (2017).

[357] Communications Decency Act of 1996, Pub. L. No. 104-104, § 230, 110 Stat. 133 (1996) (codified as amended at 47 U.S.C. § 230(c)(1)–(2)).

[358] Lubin, *supra* note 21, at 1894 n.14.

[359] Sharkey, *supra* note 218, at footnotes 12-13 (noting that design defect may be able to circumvent Section 230 immunity).

[360] Lubin, *supra* note 21, at 1895 ("When such design defects lead to harm, affected individuals often seek legal recourse, only to find limited avenues for recovery").

[361] 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) [hereinafter Directive]; *see also* Lubin, *supra* note 21, at 1912.

[362] Directive, *supra* note 362, at 12; Lubin, *supra* note 21, at 1912 (explaining that directives are not automatically binding on member states and that the directive needs to be transposed into national law by December 9th, 2026).

[363] Directive, *supra* note 362, at 12.

[364] *See* Lubin, *supra* note 21, at 1902.

[365] *Id.* at 1913.

[366] *See id.* at 1895–96.

them to limit or access their children's online activity.[367] These tools reflect a belief that technology can *cause* or *solve* social problems, and has been termed *techno-legal solutionism*.[368] Some argue for a more nuanced approach – acknowledging that technology and online platforms have an impact on social problems, and have the power to highlight and exacerbate them.[369] One of the leading advocates against techno-legal solutionism is danah boyd.[370] Yet even she recognizes that "[t]his is not to say that regulating the design of consumer products is not important and cannot play an important role in creating a healthier sociotechnical world."[371] Tasking courts with defining what a safe product looks like on a case-by-case basis provides a measured response to the technology, ultimately informing a better policy.

Based on the early recognition of Joel Reidenberg and Lawrence Lessig that recognized that "code is law" and that design choices made by developers of technical systems are akin to legal requirements,[372] this Article argues that harmful design choices made by companies developing AI companions have the power to exacerbate harms experienced by vulnerable individuals. This Article does not favor limiting children's access to AI companions by providing parents with technological tools to increase their supervision while their child interacts with a dangerous product, it argues for designing a safer product to begin with. There are two main reasons for this. First, the Article is concerned with vulnerable users whether their vulnerability stems from their age or other causes. Age-gating and parental controls do not provide a solution for vulnerable adults. Second, the Article advocates for a balanced approach that will make AI companions safe to use for vulnerable individuals so that they are able to continue enjoying the benefits offered by them.[373] Ensuring a safe design is especially essential for the most vulnerable users—those who use AI companions to escape a harsh reality offline. For example, people in abusive relationships can find much comfort and solace in a relationship with an AI companion.[374] Such a relationship will benefit them much more if the product they are interacting with is designed

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[367] Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–06 (1998) (the act requires technology platforms to seek parental permission before collecting data about children under the age of thirteen); *see also* Yan Zhuang, *How Australia Will (or Won't) Keep Children Off Social Media*, N.Y. TIMES (Nov. 28, 2024), https://www.nytimes.com/2024/11/28/world/australia/australia-social-media-ban.html [https://perma.cc/ZF8V-T9CV] (explaining how Australia passed a law banning children under 16 from accessing social media sites).

[368] Angel & Boyd, supra note 339, at 87–88.

[369] *See, e.g.,* HAIDT, *supra* note 298 (noting the negative effect of technology on children's mental health); *Books: Value Sensitive Design: Shaping Technology with Moral Imagination*, MIT PRESS DIRECT (2019), https://direct.mit.edu/books/monograph/4328/Value-Sensitive-DesignShaping-Technology-with [https://perma.cc/G2AZ-7M2W (describing "[M]oral and technical imagination can be brought to bear on the design of technology").

[370] Angel & Boyd, *supra* note 339, at 87.

[371] *Id.*

[372] *See* Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553, 554–55 (1998); LAWRENCE LESSIG, CODE 2.0 5 (2009) (both acknowledging code as the regulator of online activity).

[373] *Supra* Section I.C.1.

[374] *See* John Popham, *Combining Psychology, AI, and Cybersecurity Creates New Resources for Domestic Abuse Survivors*, GA. INST. TECH.: SCH. OF CYBERSECURITY & PRIV. (Sep. 22, 2023), https://scp.cc.gatech.edu/news/combining-psychology-ai-and-cybersecurity-creates-new-resources-domestic-abuse-survivors [https://perma.cc/C33K-WH2S] (describing development of AI tool to "assist in the recovery of an IPV survivor"); Vivian Hui et al., *Perspectives and Preferences of Domestic Violence Survivors Regarding Digital Platform and AI Chatbot for Help-Seeking: A Qualitative Study*, 21 PLOS ONE 1, at 3, 14–15 (Feb. 23, 2026) (supporting concept of beneficial AI companions for DV victims via recent scientific study).

with their safety as a priority.[375] Another example of vulnerable individuals includes people who feel their home and family are not a safe space.[376] boyd reports speaking to a teen girl who had "found a community of other queer girls in a chatroom, and … found their anonymous advice to be helpful."[377] While this girl found much support in these chatrooms, she was still unwilling to share her true identity with her parents.[378] This story is characteristic of queer youth, seeking information and support in online communities.[379] It is the responsibility of regulators to ensure that the vulnerability of such individuals is not taken advantage of by large corporations seeking to increase their bottom line.

This Article does not suggest withholding AI companions as an avenue of support for such users, nor does it stem from a desire to 'kill' AI companions. To ensure that users continue enjoying the benefits of this technology while limiting the harms stemming from it, AI companions should be designed with the safety and mental health of their users, particularly vulnerable ones, as a top priority.

C. The International Aspect of Regulating AI

The regulation of AI companions is characterized by a strong international dimension, as regulations set in one jurisdiction have implications for consumers and companies developing and using AI products in others.[380] The U.S. is home to the leading global AI companies,[381] and as such, the legal response to AI technology in the US can have a strong impact on the international market for AI.[382] American regulators must strike a delicate balance in their approach to AI regulation.[383] If the U.S. adopts a stringent AI policy, placing heavy restrictions on the development of AI tools, this might encourage leading AI companies to take their business overseas, or simply put them at a disadvantage compared to their international counterparts. At the same time, the American regulator must also protect its citizens by ensuring that AI in general and AI companions in particular do not harm vulnerable individuals. As with other global challenges, it would be best if the response was "done through a coordinated national program, not by piecemeal state actions,"[384] for example by way of international treaties. This does not currently

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[375] *Id.*

[376] *See* Austin et al., *supra* note 92, at 42.

[377] *See* DANAH BOYD, IT'S COMPLICATED: THE SOCIAL LIVES OF NETWORKED TEENS 52 (2014).

[378] *Id.*

[379] *See* MARY GRAY, OUT IN THE COUNTRY: YOUTH, MEDIA, AND QUEER VISIBILITY IN RURAL AMERICA 121 (2009); Michele Ybarra, *The Influence of Social Media For Trans Youth*, PSYCH. TODAY (Sep. 13, 2019), https://www.psychologytoday.com/gb/blog/connected/201909/the-influence-social-media-trans-youth [https://perma.cc/GG6Y-RF3G].

[380] *See* WADE HOXTELL, GLOB. PUB. POL'Y INST., GLOBAL AI REGULATION AT A TIME OF TRANSFORMATION: THE COUNCIL OF EUROPE'S FRAMEWORK CONVENTION ON ARTIFICIAL INTELLIGENCE 4 (2025).

[381] *See* Bryan Robinson, *Artificial Intelligence Revolution: 10 U.S. States Leading the Pack*, FORBES (Feb. 16, 2025, at 10:25 ET), https://www.forbes.com/sites/bryanrobinson/2025/ 02/16/artificial-intelligence-revolution-10-us-states-leading-the-pack/ [https://perma.cc/5CYC-MA9S].

[382] *See* Aalok Mehta, *Targeting State AI Laws Undermines, Rather than Advances, U.S. Technology Leadership*, CTR. FOR STRATEGIC & INT'L STUD. (Dec. 12, 2025), https://www.csis.org/analysis/targeting-state-ai-laws-undermines-rather-advances-us-technology-leadership [https://perma.cc/65R2-NZRH].

[383] *See id.*

[384] Richard A. Epstein, *The Private Law Connections to Public Nuisance Law: Some Realism about Today's Intellectual Nominalism*, 17 J. L. ECON. & POL'Y 282, 300 (2022).

seem feasible.

The European Union has taken the regulatory lead in the field. The EU Product Liability Directive, which came into force on December 8th, 2024, introduces several important legal innovations.[385] First, as described in Section IV.A, it clarifies that software is considered a product and thus subject to products-liability laws.[386] It extends the scope of recognized damages, determining that psychological harm and destruction or corruption of personal data are considered compensable harms.[387] The Directive also creates a legal regime whereby defect and causation are assumed in certain cases, making it easier for plaintiffs to identify a causal relationship between the defective product and the damage they suffered.[388] Recognizing the complexity of global supply chains, the Directive extends the scope of liability beyond only manufacturers, to various economic actors including importers, representatives, and even online platforms as potential defendants.[389]

The EU has taken a lead in regulation of data protection and AI technology, setting a *de facto* international standard which applies to all companies operating in the EU or providing services to EU customers, even if they are headquartered in the U.S.[390] Lubin warns that if the U.S. continues failing to provide a legal response to AI "it is knowingly ceding regulatory power to foreign jurisdictions."[391] Moreover, this legal state incentivizes American software developers to prioritize providing protection to EU consumers, leaving American consumers powerless and at a disadvantage compared to their European counterparts.[392]

Until there is a coordinated international response to the dangers posed by AI companions, the U.S. must provide its citizens with legal protection. This is particularly important to protect vulnerable users from being harmed by AI companions. It is only by doing so that it will be in a position not only to be impacted by the policies adopted in other jurisdictions, but also to influence global technology standards.[393] In his last days in office, and in an effort to ensure U.S. leadership in AI, President Biden issued a second AI focused executive order.[394] This EO sought to promote policy that would ensure that America maintains its leadership in the development of AI infrastructure while protecting American consumers and AI users.[395]

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[385] 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.
[386] *Id.* at art. 4(1).
[387] *Id.* at art. 6(1)(a).
[388] *Id.* at art. 10.
[389] *Id.* at art. 8.
[390] BRADFORD, *supra* note 243 (describing how the EU wielded global influence over data protection regulations around the world).
[391] Lubin, *supra* note 21, at 1915.
[392] *Id.* at 1915–16.
[393] Sharkey, *supra* note 253, at 109.
[394] *Executive Order on Advancing United States Leadership in Artificial Intelligence*, The White House (Jan. 14, 2025), https://www.whitehouse.gov/briefing-room/presidential-actions/2025/01/14/executive-order-on-advancing-united-states-leadership-in-artificial-intelligence-infrastructure/ [https://perma.cc/AG5D-P5TG].
[395] *Id.* at § 2(e) ("The American people more broadly must safely enjoy the gains and opportunities from technological innovation in the AI ecosystem").

D. The Challenges of Regulating AI through Litigation

While litigation is a promising legal avenue,[396] it also has several limitations, particularly in the context of AI.[397] In litigation judges are called on to design law and policy by making decisions on a case-by-case basis.[398] This approach risks missing broader or systemic challenges stemming from AI companions.[399] Indeed, as Solow-Niederman points out "focusing on a single case is a suboptimal lens for resolving AI disputes."[400] As a potential solution, Solow-Niederman acknowledges that this concern may be alleviated the more litigation pertaining to AI takes place. "For instance, increasing the number and variety of cases might make a given case less likely to dominate the field."[401] AI litigation risks a selection bias which could result in homogeneity of plaintiffs and of courts. Not all users are equally positioned in their ability and motivation to bring a lawsuit against an AI company.[402] Solow-Niederman warns that "[t]here are obvious worries about which claims do and do not get their day in court, and whether they amply represent the interests of other affected parties."[403]

Another challenge involves the way that common-law legal systems are built, namely their reliance on precedent. This system generates a strong path dependency, whereby early cases brought before a court have an unproportionate impact on steering the course of future cases. The concern over path dependency is exacerbated if a single court or state draws a large percentage of the cases in a particular area.[404] Judges may be able to limit the effect of this structural characteristic of common law if they craft their decisions in narrow terms, allowing for ongoing development of the field.[405] Courts are also bound by doctrine and precedent in terms of the harms they traditionally recognize.[406] While courts clearly recognize physical harm, for example, they are wearier to accept other types of harm such as privacy-related claims.[407] This would leave a certain type of plaintiff with no redress for the harms they have suffered.

Even after acknowledging these challenges to regulation by litigation two facts are still glaringly clear.[408] The first is that "our judicial system is already regulating the deployment of AI"

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[396] *See supra* discussion in Part III.

[397] Solow-Niederman, *supra* note 248, at 266–67.

[398] *Id.* at 278 ("[T]his case-specific analysis might lead a judge to focus on nonrepresentative issues, announcing a rule that's ill-suited for the broader context").

[399] JULIE COHEN, BETWEEN TRUTH AND POWER 144 (2019) ("[J]udges cannot simply proclaim that courts are to be remade as institutions for resolving mass disputes involving intangible, collective harms without colliding headlong with long- standing institutional traditions").

[400] Solow-Niederman, *supra* note 248, at 283 ("AI adjudication as a whole has well-documented downsides and sometimes, an individual, private law fix is just a bad fit for a collective harm with social ramifications").

[401] *Id.* at 284.

[402] *Id.* at 281.

[403] *Id.*

[404] *Id.* at 281–82.

[405] *Id.* at 285.

[406] *See id.* at 266 (explaining that courts, applying "entrenched precedent" and traditional doctrine, often are limited by what harms they can concretely recognize).

[407] *Id.*; Daniel J. Solove & Danielle Keats Citron, *Risk and Anxiety: A Theory of Data Breach Harms*, 96 TEX. L. REV. 737, 754 (2018); Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. REV. 793, 796 (2022).

[408] Solow-Niederman, *supra* note 248, at 277 ("In the face of these challenges, at least some might be tempted to conclude that AI adjudication is doomed to make bad law and seek alternate avenues. But that's too hasty, and too facile, a resolution.").

whether we like it or not.[409] Second, despite its many drawbacks, adjudication through common law doctrines effectively serves as an early stage regulator of actors in the market of AI companions.

CONCLUSION

As AI companions become increasingly integrated into the lives of tens of millions of users, a growing number of people will be able to enjoy the benefits they offer. Lonely people will enjoy the companionship offered by them, people struggling with anxiety and depression will enjoy their support and people who struggle with social skills will have an avenue through which to learn and practice them. The ubiquity of AI companions will also bring with it a growing number of people who will suffer the harms this technology generates, particularly for children and vulnerable individuals. Users will spend growing amounts of time interacting with these apps, increasingly developing an addiction and dependency on them. Rather than alleviating users' depression and anxiety, AI companions will exacerbate them. Users will face manipulation at the hand of their AI companion and act on horrific advice given to them. This Article advocates that the law must become involved in shaping the landscape created by AI companions. It argues that this should be done by applying products-liability law to AI companions. Judges can attribute liability to companies developing AI companions by classifying their product as defective, as well as by noting the companies' failure to warn users about the dangers involved in using their product. Litigation does not only offer redress to users who have been harmed by AI companions, it will also play a meaningful role in facilitating informed legislation when the times come.

[409] *Id.* at 262.