

The Ghost in the Machine: A Comparative Critique of AI ‘Legal Personhood’ and Liability Attribution in Autonomous Vehicle Torts (EU vs. US)

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Abstract: This article critiques the viability of granting legal personhood to Artificial Intelligence (AI) within the context of SAE Level 4/5 Autonomous Vehicle (AV) liability. By contrasting the European Union’s 2024 Revised Product Liability Directive—which cements a strict liability "product" approach following the 2025 withdrawal of the specialized AI Liability Directive—with the United States’ emerging reliance on mass tort litigation (e.g., the 2025 LoSavio certification), it argues that "electronic personhood" is a legally redundant fiction. Instead, the article proposes a "functional entity" model that harmonizes the US "enterprise risk" doctrine with the EU’s "presumption of defectiveness," ensuring victims are compensated without anthropomorphizing code.

Introduction: The Liability Gap in the Algorithmic Age.

The rapid deployment of SAE Level 4 and Level 5 Autonomous Vehicles (AVs) has precipitated a crisis in tort law not seen since the industrial revolution introduced the steam engine to common law courts.[1] As the "dynamic driving task" shifts from carbon to silicon, the traditional nexus of liability—human negligence—dissolves. When a self-driving vehicle strikes a pedestrian, the absence of a human tortfeasor creates a "retribution gap,"[2] leaving courts to decide whether the crash was a failure of product, a failure of oversight, or the act of an independent legal entity.

This article explores the divergent legal responses to this crisis in the European Union and the United States. While the EU has moved towards a centralized, legislative framework that modernizes strict product liability via the **Revised Product Liability Directive (2024)**,[3] the United States largely relies on a fragmented common law evolution, attempting to shoehorn algorithmic decision-making into century-old negligence doctrines.

Central to this debate is the provocative, yet legally perilous, concept of "AI Legal Personhood." Proponents have long argued that granting AI independent legal status—akin to a corporation—solves the liability gap by creating a distinct entity to be sued.[4] However, following the European Commission’s withdrawal of the **AI Liability Directive** in February 2025,[5] the political appetite for such novelties has collapsed. This article argues that recognizing AI as a legal person is a "doctrinal escape hatch" that would allow manufacturers to externalize risk.[6] Through a comparative analysis of the 2025 *LoSavio* class action in the US and the new EU strict liability regime, it is demonstrated that a robust "enterprise liability" model is the only mechanism capable of ensuring equitable victim compensation.

The European Framework: The Triumph of "Product" over "Person"

The European Union's approach to AV liability has been defined by a tension between the desire to foster innovation and the precautionary principle. This tension was resolved in late 2024 and early 2025 with a decisive pivot away from specialized "AI law" and toward a strengthened product liability regime.

The 2024 Revised Product Liability Directive (PLD) For decades, the EU relied on Directive 85/374/EEC, which struggled to categorize software as a tangible "product." The **Revised Product Liability Directive (Directive 2024/2853)**, adopted in late 2024, explicitly closes this loophole. Article 4 of the new PLD categorizes software, AI systems, and digital services as "products" subject to strict liability.[7]

Crucially, the new PLD introduces a "rebuttable presumption of defectiveness" (Article 9) and a "presumption of causality" (Article 10).[8] This is a direct response to the "Black Box" problem, where a plaintiff cannot explain *why* a neural network decided to swerve. Under the new regime, if a claimant faces "excessive difficulties" in proving the technical defect due to the system's complexity, the burden shifts to the manufacturer to prove the AI acted correctly. This effectively creates a strict liability standard for AV crashes, treating the AI not as an agent, but as a dangerous instrument under the manufacturer's control.

The Withdrawal of the AI Liability Directive (AILD) The most significant recent development was the European Commission's decision in February 2025 to withdraw the proposed **AI Liability Directive**. [9] The AILD had proposed a complex system of fault-based liability that some scholars argued implicitly treated AI as a quasi-agent. Its withdrawal signals a legislative consensus: AI is not a special category of actor; it is a product. By scrapping the AILD, the EU rejected the "electronic personhood" pathway, reinforcing that liability rests solely with the human or corporate entities (manufacturers, operators) that place the system on the market.

The United States Framework: Regulation by Litigation

In stark contrast to the EU's legislative foresight, the United States has regulated AV liability through the "laboratory of the states" and high-stakes retrospective litigation. The result is a patchwork where liability depends heavily on jurisdiction and the specific framing of the tort.

The "LoSavio" Precedent and the Fraud Doctrine The certification of the class in *LoSavio v. Tesla* (N.D. Cal. Aug. 2025) marked a turning point in US liability theory.[10] Rather than relying solely on product defect theories, the plaintiffs successfully argued a "fraud-on-the-market" theory regarding the capabilities of "Full Self-Driving" (FSD) systems. The court's acceptance of this theory suggests that US courts are bypassing the question of "who drove the car" (the AI or the human) and focusing on "who sold the dream."

This shifts liability from *operational negligence* (driving errors) to *informational negligence* (marketing errors). If an AI "hallucinates" and causes a crash, the US legal system increasingly views this not as the AI's fault, but as the manufacturer's fraud for promising capability that did not exist.

Negligence vs. Strict Liability Outside of fraud claims, US plaintiffs still face the hurdle of the *Risk-Utility Test*. In the 2025 Miami verdict, where a jury awarded \$243 million against an AV manufacturer,[11] the plaintiff prevailed not by proving the AI was a "bad driver," but by proving the *human-machine interface (HMI)* was defective for failing to keep the human driver engaged.

This reveals a persistent US adherence to the "Human-in-the-Loop" fallacy. Even in Level 4/5 contexts, US courts seek a human agent—either the remote operator or the distracted passenger—to assign comparative fault.[12] Unlike the EU's new PLD, which presumes the manufacturer is liable for the "product," US law allows manufacturers to argue that the human user "misused" the AI, a defense that remains a formidable barrier to recovery.

Comparative Analysis: The Fallacy of AI Personhood

The divergence between the EU and US highlights the redundancy of "AI Legal Personhood." Theoretical proposals to grant AI personhood usually rest on two pillars: (1) autonomy (the AI acts independently) and (2) solvability (the AI can pay damages). Both legal systems have now implicitly rejected these pillars.

The Solvency Problem If an AI is a legal person, it must own assets to be sued.[13] Without a mandatory insurance scheme where the AI itself is the policyholder—a concept distinct from the owner's insurance—a judgment against an AI is worthless. The EU's rejection of the AILD confirms that the legislator sees no value in creating a "shell entity" (the AI) when the "deep pockets" (the manufacturer) are already available under the Product Liability Directive.

The "Slavery" Argument Scholars such as Pagallo have drawn parallels between AI and Roman *servi* (slaves), who were agents but not persons.[14] However, this analogy fails in the context of modern corporate law. Granting personhood to AI would effectively allow corporations to pierce their own corporate veil, shielding the parent company from liability by offloading it onto an insolvent software entity.

The US "Enterprise Liability" doctrine and the EU's "Strict Liability" effectively achieve the same goal without the metaphysical baggage of personhood: they internalize the cost of accidents into the price of the technology. The 2025 US verdicts demonstrate that juries are willing to punish corporations for algorithmic failures without needing to pretend the algorithm is a person.

Conclusion: Toward a Functional Entity Model

The legal developments of 2024-2026 demonstrate that the "Electronic Person" is a dead letter. The European Union has chosen a path of **comprehensive strict liability**, treating AI as a high-risk product where the manufacturer bears the burden of the "Black Box." The United States has stumbled toward a similar outcome through **punitive mass torts**, punishing manufacturers for over-promising autonomy.

References:

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