

Adhesive Terms and Liability for AI Agents

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AI promises to be one of humanity's most consequential technologies. Much of the media attention has been focused on large language models, commonly referred to as chatbots, but more recently, it has turned to AI agents. While chatbots respond to prompts, AI agents can perform tasks autonomously, like a competent assistant. Companies claim that these AI agents can perform a wide range of functions and will make businesses and individuals more productive.

Yet, an important question remains: Who is liable for the acts of these agents?

AI's vast potential and advanced capabilities have generated excitement but also trepidation among the public. Some industry insiders have even issued dire warnings of artificial intelligence systems running amok. Despite these concerns, companies that stand to profit from building AI continue to move at full speed.

Courts and legislators have yet to determine who will be responsible when AI agents act in a way that causes harm to their users or third parties. Polls have indicated that the public wants the government to regulate AI. However, it is probable that the most common way AI will be regulated in the immediate term is through unilaterally drafted terms of service.

The most dominant players in the tech industry wield fine print and *click to agree* terms to enact private laws and impose norms. The surveillance economy was enabled by terms of service because lawmakers and courts were cowed by fears of stifling innovation. These same corporations are now turning to terms of service to facilitate fast, widespread adoption of AI systems. These fine print terms reallocate rights from the user to the company and shift legal liability from the company to the user.

This Article proposes a framework for evaluating the enforceability of digital adhesive terms. This framework requires: first, categorizing terms depending on whether they assert the company's property rights or diminish the other party's existing rights; second, identifying the nature and cause of the harm; and third, applying property-asserting terms to user harms but applying strict liability to third party harms.

Companies should not be permitted to shape industry norms through fine print and escape liability for their offerings; however, they should be permitted to establish codes of conduct for the uses of their products and services. My proposal balances a company's need to set codes of conduct and use for its products with society's need to ensure corporate accountability and product safety for mass scale technology.