



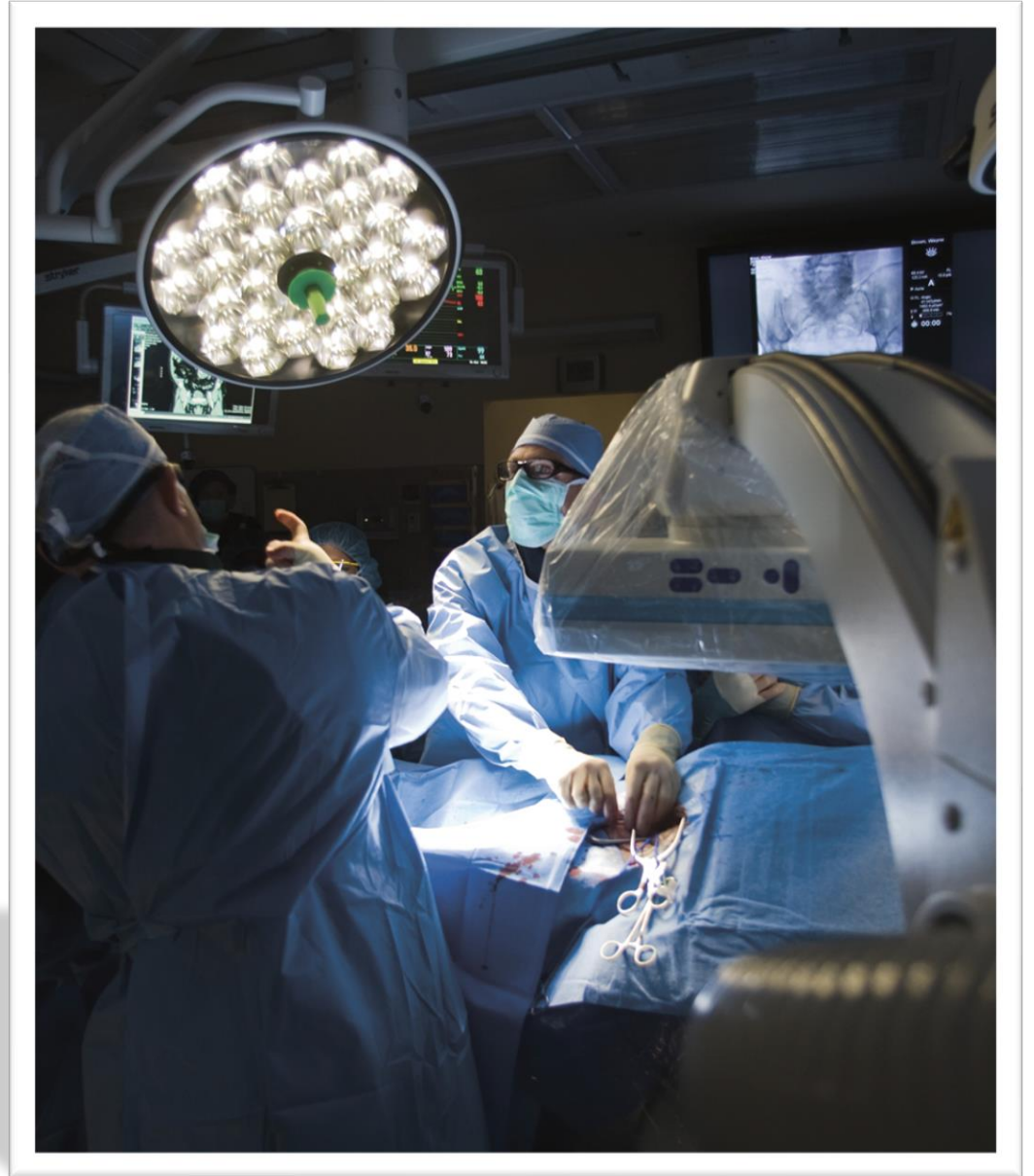
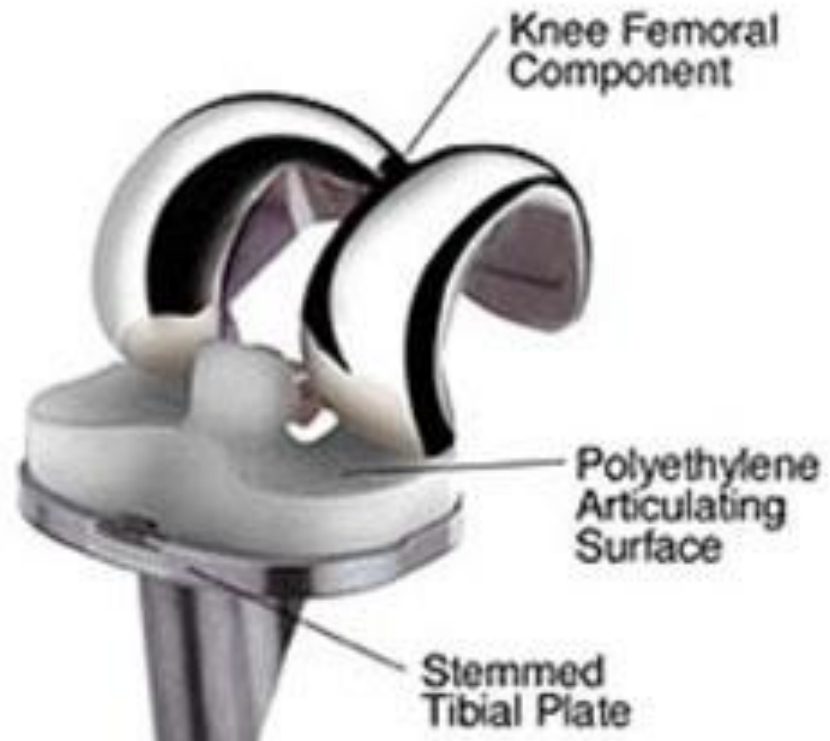
Redefining “products” in the digital age

Software and social media liability risks

Kelsey Tavares



Knee implant hypo



What is a “product?”

Ideas and expressions as products

- Courts have declined to extend liability in actions based on ideas and expressions, even in tangible formats
 - *James v. Meow Media, Inc.*, 300 F.3d 683, 701–2 (6th Cir. 2002) (“video games, movie[s], and internet sites” are not “products”)
 - *Winter v. G.P. Putnam’s Sons*, 938 F.2d 1033, 1034–36 (9th Cir. 1991) (information in an encyclopedia not a product)
 - *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 172–74 (D. Conn. 2002) (an interactive media game is not a product)
 - *Cardozo v. True*, 342 So. 2d 1053, 1056 (Fla. Dist. Ct. App. 1977) (thoughts and ideas in a book are not a product)



Software as a “product”

Approach to software

- **UCC approach**
- **Rejection of software as a product**
 - *Rodgers v. Christie*, 795 F. App'x 878, 880 (3d Cir. 2020) (AI software is not a product)
 - *Quinteros v. Innogames*, 2022 WL 898560 (W.D. Wash. 2022) (online game is not a product)
 - *Doe v. Uber Tech. Inc.*, 2020 WL 13801354, at *6–7 (Cal. Super. Ct. 2020), aff'd on other grounds, 294 Cal. Rptr. 3d 664 (Cal. Ct. App. 2022) (Uber application is not a product)
- **Acceptance of software as a product**
 - *Hardin v. PDX, Inc.*, 173 Cal. Rptr. 3d 397, 406-7 (Cal. Ct. App. 2014) (drug distribution software may be a product)
 - *Corley v. Stryker Corp.*, 2014 WL 3375596, at *1 (W.D. La. 2014), adopted, 2014 WL 3125990 (W.D. La. 2014) (software used with physical implants is a product)
 - *Brookes v. Lyft Inc.*, 2022 WL 19799628 (Fla. Cir. Ct. 2020) (Lyft app is a product)

Social media and algorithms as a “product”

Approach to social media and algorithms



- Declining to address the issue
 - *Doe v. Twitter, Inc.*, 555 F. Supp.3d 889, 929-30 (N.D. Cal. 2021)
 - *Williams v. Apple, Inc.*, 2020 WL 1296843, at *2-4 (S.D. Tex. 2020)
 - *Herrick v. Grindr, L.L.C.*, 306 F. Supp.3d 579, 592 n.9 (S.D.N.Y. 2018)
- Rejection of social media as a product
 - *In re Coordinated Proceeding Special Title Rule 3.550 Social Media Cases*, No. JCCP 5225, 22ST-CV-21355 (Cal. Super. Oct. 13, 2023)
 - *Doe v. Facebook, Inc.*, No. 2019-16262 (151st Dist. Ct., Harris Cty., 2019)

Social media and algorithms as a “product”

Social media MDL

- *In re Soc. Media Adolescent Addiction/Pers. Inj. Prod. Liab. Litig.*, No. 4:22-MD-03047-YGR, 2023 WL 7524912, at *20 (N.D. Cal. Nov. 14, 2023)
 - Declined to consider social media platforms products
 - Considered the allegedly defective “functionalities” of the social media sites and found these functionalities *were* products



Thank you