Abstract

# Proposal Toward "No-Fault" Civil Liability Regulation following Artificial Intelligence Evolution in Health-Care

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## Abstract:

Civil liability may be understood as indirect market regulation, since the risk to incur in liability for damages provide an incentive to invest in safety. Such an approach is inappropriate in markets of artificial intelligence devices. The current paradigm of civil liability allows redress only insofar "somebody" is identified as liable to pay it (either because of a fault or pursuant to a strict liability rule). However, robots and programs may "behave" far independently from instructions initially provided by programmers and constructors. This represents a disincentive to new technologies (artificial intelligence etc.) insofar as this determines charging producers and/or programmers with liability even if the damage derives from a perfectly "correct" functioning of algorithms and robots. This would not foster safety with respect to technological issues, because there would be no "fault" to blame or prevent. Instead, it would expose producers and programmers to unforeseeable liability, which would disincentive them from entering into the market or developing it, thus hindering technological evolution. Therefore, I think that artificial intelligence requires that redress obligations following damages not caused by negligence, imprudence or unskillfulness (i.e.: when producers and programmers complied with scientifically validated standards) should move from an issue of civil liability into one of financial management of losses. This could mirror, I propose, the current "no-fault" schemes adopted, with respect to, e.g., medical civil liability, in very few jurisdictions such as New Zealand. My paper focuses, in particular, on the market of health-care. (Up to 250 words)

## Biography:

Emiliano Marchisio is associate professor (qualified as ordinary from 2018) of commercial law; earned his law degree and Ph.D. in Italy, his LL.M. in London. He wrote three monographs and more than 60 articles on commercial law, civil liability and civil regulation of markets. In 2015 he was member of the Commission for the reform of medical liability in Italy; from 2014 he is director of the research on "Defensive Medicine" at CEIS "Tor Vergata" University, Italy; from 2017 to 2019 he was advisor to the Italian National Agency for Regional Health Services.

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