THE TIMES THEY ARE A CHANGIN’

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he emergence of 3D printing is interesting for many reasons and is sure to impact many areas of the law. The purpose of this article is to provide an overview of the potential impact 3D printing may have on product liability law as an increasing number of products are able to be manufactured by people at home using 3D printers.

For several decades we have understood that manufactured products which are put into the stream of commerce are subject to the doctrine of strict liability. Strict liability means that a manufacturer is liable for a defective product that injures a person or property without a finding of fault (such as negligence) by the manufacturer. For a business to be subject to strict liability, that business must have placed a defective product into the stream of commerce. Case law in California explains that the stream of commerce approach includes those who are in “the overall producing and marketing enterprise.”

In terms of businesses or other entities manufacturing products via 3D printers and putting those products into the stream of commerce, one would not expect to see a change from how product liability law applies to products manufactured by other means such as injection molding. For example, if Company ABC manufactured Widget Y in its factory and then put Widget Y into the stream of commerce and someone is harmed by a defective Widget Y, a consumer may bring a product liability action against Company ABC and the law applies a strict liability standard. If Company ABC made Widget Y by means of a 3D printer and put Widget Y into the stream of commerce and defective Widget Y hurt someone, we would still expect the consumer to be able to bring a product liability lawsuit and, again, strict liability would apply. In other words, the mode of manufacturing and the fact that the product was made on a 3D printer does not change the legal analysis.

Things become a bit more complex when imagining scenarios in which products previously made by manufacturers now are being produced and sold by 3D printing enthusiasts using at-home 3D printers. Consider the following two scenarios.

Paul Parent has a child in elementary school and as an increasing number of products are able to be manufactured by people at home using 3D printers. Consider the following two scenarios.

First, product liability law applies only to products. The Third Restatement of Torts defines “products” as “tangible personal property distributed commercially for use or consumption.” The Restatement’s notes identifies information in media, like the information in books, as intangible personal property. Courts have found that under the Uniform Commercial Code, mass-marketed software is a “good” while software developed for a particular consumer has been held to be a “service.” How courts will categorize models and code for 3D printing remains to be seen. The second issue is with the fact that it may be hard to pinpoint where in the process the defect occurred and thus difficult to determine who is liable. Was there a defect in the digital design, in the digital file, or perhaps in human error in implementing the digital design? The point at which the defect occurred could determine whether (and to whom) product liability law applies.

Again, one of the bag clips is defective and breaks injuring someone. Assuming manufacturing these bag clips is a rare or occasional event for Paul Parent such that he does not qualify as a commercial seller, any action brought by the injured party against Paul Parent for his defective clip would not be a product liability action subject to strict liability.

The second scenario of Paul Parent manufacturing and selling his own product presents an interesting proposition: As more and more products can be manufactured by persons not in the “overall production and marketing enterprise” what happens to product liability law and will it undergo changes in order to address the new 3D technology? Stanford law professor Nora Engstrom considers this and discusses the possibility of 3D printing making product liability suits obsolete in her article 3-D Printing and Product Liability: Identifying the Obstacles. While the future remains to be seen, under the current state of the law it is clear that strict liability does not apply to a casual user or hobbyist like Paul Parent. But, if a product liability suit will fail against an individual who is casually manufacturing products on a home printer, is there some other entity against whom it will succeed or is it possible that we will see an overall decrease in the cases to which product liability law applies? This is another question raised by Professor Engstrom in her article, and the answer is maybe.

For example, the person injured by Paul’s defective clip might try to sue the printer manufacturer, the manufacturer of the plastic that was used to make the clip (the component part), or the designer of the model or code used to create the clip. An injured party’s chances of recovering against the first two entities -- the printer manufacturer and the plastic maker -- will depend on whether the printer and plastic were themselves defective. Assuming those parties did not produce defective products, that leaves the persons on the chain related to the creation of the model, code, and files that were used by the printer to make the product as the possible remaining “deep pockets.”

3D printing works when the printer reads code and then prints the product. The models that contain the code that the printer uses can be bought or, depending on the product desired and a person’s skill level, can be created on one’s own. Whether the persons and companies that create these models and their code might be subject to the strict liability of product law is an interesting question and the answer is, at this point, unclear. The reason is twofold. First, product liability law applies only to products. The Third Restatement of Torts defines “products” as “tangible personal property distributed commercially for use or consumption.” The Restatement’s notes identifies information in media, like the information in books, as intangible personal property. Courts have found that under the Uniform Commercial Code, mass-marketed software is a “good” while software developed for a particular consumer has been held to be a “service.” How courts will categorize models and code for 3D printing remains to be seen. The second issue is with the fact that it may be hard to pinpoint where in the process the defect occurred and thus difficult to determine who is liable. Was there a defect in the digital design, in the digital file, or perhaps in human error in implementing the digital design? The point at which the defect occurred could determine whether (and to whom) product liability law applies.

While it’s too early to tell how these scenarios will play out, it is important to recognize the product liability issues that will arise as 3D printing becomes more wide spread and continues to infiltrate the market.

2. For purposes of this example, assume that there are no issues (e.g. intellectual property) with the fact that Paul Parent is direct purchaser of the clips.