SMART LIABILITY FOR SMART PRODUCTS

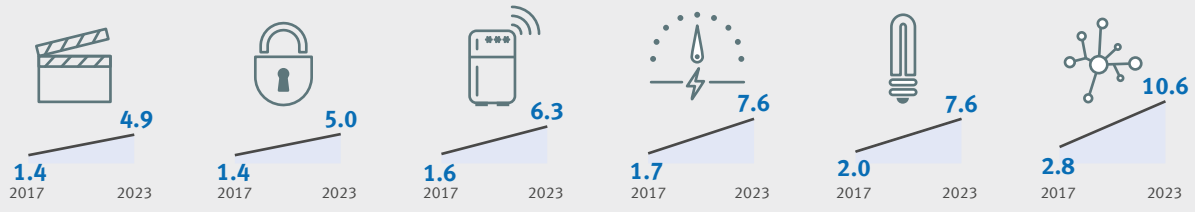
Digital voice assistants, robot vacuum cleaners and smart TVs: Devices connected to the internet have long been part of our everyday lives. However, security varies widely from model to model – for example, the device may have been programmed wrongly or it can be easily hacked. If damage occurs, the consumer is often left to foot the bill because it is not clear who is liable. The Product Liability Act is now 30 years old – and it's in need of urgent reform.

The Product Liability Act determines when manufacturers are liable for damage caused by faulty products. It is based on a directive passed in 1985; and at that time, there were no digital voice assistants or devices connected to the internet. Consequently, the legal situation today is unsatisfactory. Only devices are explicitly regarded as goods. The directive does not specify whether or not software falls under this category. Moreover, the directive as it stands only covers damage to people or objects. It is not clear who is liable for loss of data or infringements of privacy law. This is why the European Commission is currently evaluating whether or not the directive has to be revised. The German government has also declared its intention to regulate liability issues with digital products.

The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) is calling for a fundamental reform of product liability law. To ensure that consumers are protected, the current rules must be adapted to meet the requirements of the digital world.

HOUSEHOLDS ARE GETTING SMARTER

Estimated number of households in Germany that will use certain smart home applications (millions).



Source: Statista Digital Market Outlook 2018

VZBV'S POSITION

Extend liability law to cover digital services: The scope of product liability law must also include software that is not permanently integrated into a product. It must be updateable and extendable to new technologies – and not just devices but also algorithms and artificial intelligence.

Define loss: The legislators must specify the type of faults and the type of damages for which manufacturers are liable. Rules must be defined clearly in order to determine when a smart device is functioning properly and to ascertain the special requirements that apply to self-learning software.

Reverse the burden of proof: Devices and services that function in a digital network make it difficult for consumers to identify the cause of damage, so the burden of proof must be laid squarely upon the manufacturer, provided of course that the product has been used as intended. In case of doubt, it would then be up to the manufacturer to prove that no damage has been caused by a software error.

Protect against digital harm: As it stands, product liability law only applies if persons or objects are physically harmed. However, in the future, it should also apply to intangible damage such as loss of data or data protection breaches.

FACTS AND FIGURES

Smart home applications are becoming increasingly popular with consumers. In 2018, the smart home market was worth around 2.8 billion euros – and the forecast is 7 billion euros by 2023. Smart household appliances and services to regulate energy consumption and home security are particularly in demand.[1]

By 2008, there were already more internet-enabled devices than people on the planet. The number of such devices is expected to rise to around 50 billion in 2020.[2]

49 percent of consumers who do not use connected devices are discouraged by the lack of data protection, while 47 percent fear hacker attacks and other disruptions caused by criminals. the lack of data protection.[3]

Attackers are gearing up: In the first half of 2018, smart devices around the world had been attacked by more than 120,000 different types of malware – three times as many as in the entire previous year.[4]

DOMESTIC TECHNOLOGY 2.0 – LIABILITY LAW 1.0?

Having had a new door lock system installed at her home, Jennifer was looking forward to a nice relaxing beach holiday. The smart system had been fitted to all the doors and hooked up to the Wi-Fi and could be monitored via an app from wherever Jennifer was in the world. With this peace of mind, Jennifer set off on holiday. Every other day, she checked the app to make sure everything was okay at home. However, when she arrived home, she got a nasty surprise: every room had been ransacked and all her valuables had been stolen. The loss ran to four figures. The locks showed no evidence of a break-in. According to the police, the smart locking system had failed and either a software malfunction or a hacker attack had caused the doors to open.

It is not clear where the blame lies

Jennifer believed that the person who sold her a faulty or unsafe product was liable for the damages, so she went to the manager of the electronics store where she bought the locking system. He told her to contact the manufacturer. However, he also turned her away, saying that the retailer was responsible, and in any case, other devices in her home network could have caused the problem. Jennifer now feels helpless – she cannot understand how the locks could have been opened, and she cannot prove that the retailer or the manufacturer are to blame. It is obvious to her that current product liability law does not offer adequate protection for new, connected devices. Too late though – she has to bear the cost of the break-in herself. Jennifer is disappointed: She quite naturally assumed that the liability law was as up to date as the technology.

Contact:
Florian Stößel
Policy Officer
Team Legal Affairs and Trade
Recht-und-Handel@vzbv.de

1 de.statista.com/outlook/279/137/smart-home/deutschland
2 www.statista.com/statistics/471264/iot-number-of-connected-devices-worldwide/
3 www.vzbv.de/sites/default/files/downloads/2018/12/18/18-12-19_smart_home_grafiken.pdf
4 www.trojaner-info.de/daten-sichern-verschluesseln/aktuelles/kaspersky-studie-offenbart-wachsende-gefahr-fuer-iot-geraete-6849.html

verbraucherzentrale
Bundesverband

Verbraucherzentrale Bundesverband e.V. (vzbv)
Federation of German Consumer Organisations
Rudi-Dutschke-Straße 17, 10969 Berlin
Phone +49 30 258 00-0
Recht-und-Handel@vzbv.de

Responsible for the content:
Klaus Müller, vzbv Executive Director
Copy and Design: Atelier Löwentor GmbH
Infographic, p. 1: dpa Infografik
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