

# Lawyer Insights

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## The uncertain products liability landscape of 3D printing

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There is general consensus that 3D printing has potentially revolutionary implications for industry and, along with it, for the law. Its consequences for consumers injured by 3D-printed products are potentially just as far-reaching.

Consider this fact pattern: A plumbing parts manufacturer makes CAD files available to plumbing stores so that they may 3D print replacement parts on demand and on-site in response to customer requests. A plumbing store sells such a 3D-printed part to a customer, but the part malfunctions, causing significant damage to the customer's home.

In this fact pattern, the injured consumer may have recourse against the plumbing parts manufacturer and the plumbing store, although the manufacturer and store are likely to have agreements with indemnification and liability provisions.

But now consider this fact pattern: A company in China uploads a file for the 3D printing of a product and offers it for sale; an individual in the United States purchases the file and 3D prints the product at a local store that prints from customer files; the individual sells it to another, who then is injured by the product.

What recourse is available to the injured consumer? Against whom? For what? Will U.S. law even apply? And where can a suit be filed? A consideration of these issues suggests the consumer will have few options under current U.S. law and suggests that there may be a movement towards legislative change.

### The U.S. individual who 3D-printed the product and sold it

The injured consumer is not likely to recover against the person from whom he purchased the product. Strict liability won't apply unless the seller is a "commercial seller", i.e., a person engaged in the business of selling products, like a manufacturer, distributor, or retailer. It does not apply to the occasional seller, such as someone who downloads 3D files, prints products for personal use, and only occasionally sells a product.

While the injured consumer might pursue the individual seller for negligence, he would have to prove that the seller caused his injury, rather than the print store, the printer, the CAD file, or any other cause. And, even if successful, his victory would be hollow if the individual seller has limited resources.

### The local store that 3D-printed the product

The injured consumer also is not likely to recover against the local store that 3D-printed the product. The store basically provides customers access to a 3D printer (i.e., a service) to print individuals items from

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CAD files they provide. The local store does not sell 3D products, so is not engaged in the “sale of goods” as defined by the UCC. Thus, the local store likely has little exposure – if any – to strict liability, implied warranty, and negligence claims. At best, the injured consumer might have claims for the negligent maintenance of the 3D printers, but only assuming that their insufficient maintenance actually contributed to his injuries.

### **The 3D printer manufacturer**

The injured consumer will likely have a tough road against the 3D printer manufacturer, as well. To recover against the manufacturer, the consumer would need to prove (1) that the printer was defective in manufacturing or design when it left the manufacturer’s possession and control, or was sold with inadequate instructions or warnings, and (2) that this defect was the cause of his injuries, rather than any conduct of the Chinese downloader, the US seller, or the local print store. These are difficult elements of proof.

### **The Chinese company that sold the file**

The injured consumer’s likelihood of recovery against the Chinese company that sold the CAD file also is remote because products liability law applies only to the sale of products. A product generally is defined as “tangible” personal property; “intangible” personal property is not a product. While caselaw is not definitive, it seems unlikely that CAD files would be considered tangible products. In analogous contexts, courts have held that information in media, like information in books, is intangible personal property. So the Chinese company’s CAD file likely would be deemed a service, not a product, and another party in the 3D supply chain would avoid liability.

And even if viable legal theories existed against the Chinese entity, its involvement in the 3D supply chain raises key jurisdictional and choice of law issues: Could a U.S. court even obtain personal jurisdiction over it? And, if so, would it apply U.S. or Chinese law? And, would jurisdiction and a judgment be in vain if the Chinese company merely defaulted and a judgment could not be enforced against it? All of these questions likely leave the injured consumer empty handed against the Chinese entity.

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As can be seen, the non-traditional supply chain – one that is likely to become more common as 3D printing’s ubiquity grows – is likely to make recovery difficult for consumers injured by 3D printed products. The question, then, is whether this state of affairs leads to legislative change? And, if so, will that legislative change have unintended consequences for legitimate companies that participate in a more traditional supply chain? Companies need to be aware of these changes in the marketplace and monitor legislative efforts that may have negative impacts on their own, legitimate business.

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