

# Courts Must Stick To The Science On Digital Addiction Claims

By **Christopher Gismondi and Allen Waxman** (January 22, 2025)

In recent years, there has been an ongoing series of personal injury and product liability lawsuits alleging that the use of certain digital products and services is causing plaintiffs to develop behavioral addictions, including to social media and video games.

These cases raise threshold questions that have yet to be addressed — including whether frequent use of social media or video games is even an addiction, and if so, whether such an addiction is a compensable injury.

In 2023, in *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, the U.S. District Court for the Northern District of California skipped this foundational inquiry, and went straight to allegations regarding causation: "The allegations are rooted in academic studies empirically demonstrating causal connections."<sup>[1]</sup>

As a result, the litigation survived a motion to dismiss, and is now in fact discovery.

But early last year, in *Mai v. Supercell Oy*, the U.S. Court of Appeals for the Ninth Circuit pointed out, in dicta, that "gaming addictions" are "intangible harms" and might not be "cognizable" injuries.<sup>[2]</sup>

Eventually, a plaintiff claiming to suffer from digital addiction will be required to submit expert evidence establishing that they suffer from that condition, and that exposure to the product or service at issue caused the development of the condition. While there may be some academic studies discussing the potential for digital addiction, frequent digital use patterns are not currently recognized as an addiction or disease.

The concern in the medical community is that there is a profound risk of overdiagnosing frequent digital use as addiction through biased self-assessments, an overemphasis on dopamine release, and a faulty comparison between the potential negative effects of spending too much time using digital products or services — e.g., bad grades — with the consequences associated with alcohol and drug addiction — e.g., jail, homelessness, overdose.

## Digital Addiction: Not Recognized in the DSM

The uncertainty over recognizing frequent digital use as an injury is perhaps best reflected by its treatment in the authoritative text for evaluating behavioral issues and mental health disorders: the Diagnostic and Statistical Manual on Mental Health Disorders. The DSM is what diagnosticians, regulators and courts often reference in determining whether to recognize a mental health disorder.

For example, many federal and state benefits for mental health conditions require a DSM diagnosis.<sup>[3]</sup> The Reference Manual on Scientific Evidence also instructs courts that the "standard nomenclature and diagnostic criteria for mental disorders" "are embodied in the"



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DSM.[4]

The DSM has never recognized frequent digital or internet use as a disease or addiction. The DSM-5, the most recent edition of the manual, intentionally omitted frequent video game use as a mental health condition or addiction, finding that "internet gaming disorder" neither "merit[s] as an independent disorder," nor should be included within the definition of an existing disorder, such as gambling disorder.[5]

Instead, internet gaming disorder is a condition that requires further study because there is insufficient evidence to classify excessive gaming as a mental health disease. A "condition for further study" is "not intended for clinical use" because there is "insufficient evidence to warrant inclusion" as an official mental disorder.[6]

The proposed criteria for a "condition for further study" are only "intended to provide a common language for researchers and clinicians who are interested in studying these disorders" for "possible placement in forthcoming editions of DSM."[7]

The DSM also does not recognize social media use, or compulsive use of the internet more generally, as a mental health condition or addiction.[8] In fact, the DSM even rejects this use pattern as "analogous to internet gaming disorder."[9]

As with internet gaming, debate in the scientific community continues. Some studies have been published claiming that problematic internet usage, particularly social media use, can be classified as a mental health condition.[10]

Most of these studies argue that there is a similar neurological reaction involving dopamine release in response to substance use and the use of social media. But dopamine release is not the equivalent of addiction, and is caused by all sorts of everyday behavior, including through the simple act of being kind.[11]

Studies suggest that continued use of digital products in the face of negative consequences, like bad grades and strained family relationships, is the hallmark of internet-based addictions.[12] But even these studies recognize that "it is particularly important not to exaggerate or globally pathologize intensive patterns of use."[13]

### **Insufficient Scientific Evidence to Support Digital Addiction Claims**

The courts should be cautious in permitting digital addiction claims to proceed, given the uncertainty in the medical community. As former U.S. Circuit Judge Richard Posner stated in 1996, in his frequently cited U.S. Court of Appeals for the Seventh Circuit decision, *Rosen v. Ciba-Geigy Corp.*, "the courtroom is not the place for scientific guesswork, even of the inspired sort. Law lags science; it does not lead it."

The law requires that scientific evidence must be the product of a reliable methodology appropriately applied to the facts at issue in the case.

Indeed, the federal rule of evidence on the admission of expert testimony was recently clarified to highlight the court's obligation to act as a gatekeeper of scientific evidence, and to deny entry of expert evidence "unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements" — including that the opinion is the "product of reliable principles and methods."[14]

In its 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, the U.S. Supreme

Court provided four factors to consider when assessing the admissibility of scientific evidence:

- Whether the expert's technique or theory can be tested and assessed for reliability;
- Whether the technique or theory has been subject to peer review and publication;
- The known or potential rate of error of the technique or theory; and
- Whether the technique or theory has been generally accepted in the scientific community.[15]

And as the U.S. District Court for the Southern District of Illinois noted last year in *In re: Paraquat Products Liability Litigation*, "when an expert purports to apply principles and methods in accordance with professional standards, and yet reaches a conclusion that other experts in the field would not reach, the trial court may fairly suspect that the principles and methods have not been faithfully applied." [16]

Here, there is a threshold question of whether the science supporting social media and video game addiction is reliable enough to be presented in court, given the lack of recognition by the field's authoritative text. [17] Courts have differed on whether a lack of recognition in the DSM is enough to exclude expert testimony on a mental health condition. [18]

But the courts should give significant pause and invite substantial scrutiny to any expert's conclusion that frequent digital use is an addiction, given the lack of scientific consensus. Further, assuming a court were to entertain testimony on these claimed addictions, there is still the hurdle of diagnosing the plaintiff with these conditions.

Some researchers have developed scales, such as the Bergen Social Media Addiction Scale, to attempt to diagnose social media addiction. But these scales are based entirely on subjective, self-reported questionnaires, which have not been accepted as diagnostic tools in the larger medical community.

Such questionnaires have significant limitations, including sample bias (i.e., people using these tests are more likely to have significant use of the internet) and reporting bias (self-reported questionnaires are by definition vulnerable to reporting bias). [19]

The diagnostic criteria being studied in reference to internet gaming disorder are similarly limited by sample and reporting bias, and lack the objectivity associated with the criteria for substance abuse and gambling addiction.

As a result, there are no standard approved diagnostic tools to determine if a person is addicted to social media or video games, or simply uses the products too frequently, for any variety of personal reasons. [20] To that end, a consensus is emerging that criteria such as tolerance and preoccupation cannot properly be applied to such activities, and doing so may result in improper diagnoses and pathologizing. [21]

Even the hallmark negative consequences of these alleged addictions — like isolation, bad grades, bad attitudes and problems with parents — may simply be indicative of being an adolescent, and are not comparable to the distinctive consequences of existing addictive diseases, like alcoholism, drug addiction or gambling addiction.

As a result, the expert may have to apply a methodology that has never been applied, or that only has been applied to other conditions — e.g., the diagnostic criteria for gambling or addiction to nicotine. This is a "transdiagnostic" process, in which the traditional diagnostic criteria for mental health conditions are loosened or abandoned and replaced by identifying a psychological mechanism or symptom that may be present across a spectrum of mental health conditions.[22]

Proponents for the use of such methodologies argue that mental health problems are properly understood as existing on a continuum, rather than in separate categories, and therefore, pure diagnostic criteria should not be strictly relied on.[23] But courts have been correctly hesitant to allow for the application of transdiagnostic methodologies, because of the use of different end points for the diagnostic criteria.[24]

Further, the 2022 revision of the DSM flat out rejects the application of gambling and substance abuse criteria to internet gaming, stating that it considered "more than 240 articles and found some behavioral similarities of Internet gaming to gambling disorder and to substance use disorders," but also that "the literature suffers ... from a lack of a standard definition from which to derive prevalence data," and that while literature "continues to accumulate," "many of the issues remain unresolved." [25]

And so-called social media addiction fares even worse in the DSM, which states that it is "not considered analogous to Internet gaming disorder." [26] Further, even the studies that have attempted such a comparison have noted the limitations of such an application, cautioning against the risk of overpathologizing and discussing the need for further research.

As a result, it is unclear how any expert can show that the methodology used to diagnose social media or gaming addictions is generally accepted by the scientific community.[27]

## **Conclusion**

Whether a plaintiff can ultimately establish a claim for digital addiction remains to be seen. But under the current state of the science, it is clear that courts must carefully scrutinize the basis for such claims, and not gloss over self-serving allegations of digital addiction as sufficient to establish an injury.

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[1] In re: Soc. Media Adolescent Addiction/Personal Inj. Prods. Liab. Litig., 2023 U.S. Dist. LEXIS 203926, \*109 (N.D. Cal. Nov. 14, 2023).

[2] Mai v. Supercell Oy, See 2024 US App. LEXIS 11317, \*4 (9th Cir. Apr. 2, 2024). Ultimately, the Ninth Circuit did not have to address this tenuous theory of liability because the plaintiffs had not alleged that they were addicted to the game. But the decision raises important questions of whether a court even has jurisdiction over claims alleging digital addiction as the injury.

[3] See, e.g., *Martinez-Bodon v. McDonough*, 28 F.4th 1241 (Fed. Cir. 2022); Ark. Code Ann. § 11-9-113 (LEXIS 2024); Cal. Welf. & Inst. Code § 5600.3 (LEXIS 2024); Conn. Gen. Stat. Ann. § 38a-488a (LEXIS 2024).

[4] Reference Manual on Scientific Evidence: Third Edition, at 828 (The National Academies Press 2011).

[5] DSM-5-TR, P. 916.

[6] *Id.* at p. 903.

[7] *Id.* In 2019, the World Health Organization adopted the 11th version of the International Classification of Diseases, a standardized system for coding and classifying diseases relied upon by the WHO, which included a category of "disorders due to addictive behaviors," with financial gambling and internet gaming listed. However, while the ICD recognized internet gaming disorder as a classification of addiction, this conclusion was rejected in the revised DSM-5, published in 2022.

[8] DSM-5-TR, P. 914-916.

[9] *Id.* at 916.

[10] See, e.g., Andreassen, C.S., Online Social Network Site Addiction: A Comprehensive Review. *Current Addiction Reports*, 2, 175-184 (2015).

[11] See, e.g., Practice the Art of Kindness - Mayo Clinic Health System.

[12] Pachke, et al., ICD-11-Based Assessment of Social Media Use Disorder in Adolescents: Development and Validation of the Social Media Use Disorder Scale for Adolescents, *Frontiers in Psychiatry* (2021).

[13] *Id.*; see also Bottel, et al., Predictive power of the DSM-5 criteria for internet use disorder: A CHAID decision-tree analysis, *Frontiers in Psychology* (2023) ("it is important to have precise and valid diagnostic criteria to ensure suitable treatment for those affected and avoid over-pathologization").

[14] Committee Note, 2023 Amendment to Federal Rules of Evidence 702. State courts are also required to vet expert testimony prior to permitting it to be introduced to the jury.

[15] *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579, 593-94 (1993).

[16] *In re Paraquat Prods. Liab. Litig.*, 2024 US Dist LEXIS 70452, \*125, (S.D. Ill. April 17, 2024) (quoting Fed R. Evid. 702 advisory committee's note to 2000 amendments).

[17] Even if the introduction of a diagnosis is permitted by a court, the expert will still have to establish that the addiction was caused by the service or product at issue, as opposed to the content, the sense of belonging and community, and genetics (to name just a few examples of what might be driving compulsive social media and video game usage).

[18] *In U.S. v. Ray*, the defense sought to introduce expert testimony regarding the defendant's "delusion-like beliefs." 583 F. Supp.3d 518, 525 (S.D.N.Y. 2022). At a Daubert hearing, the expert conceded that the defendant did not have a "formal diagnosis" of a

"mental disorder included in the DSM," but that he identified "a constellation of symptoms" of "delusion-like beliefs and belief in primarily a conspiracy theory." *Id.* (citations and quotations omitted). The court excluded the expert because, among other reasons, having "delusion-like beliefs" "is not a syndrome or formal mental disorder, but a symptom that does not itself establish a mental disorder." *Id.* at 542. But a number of courts have refused to exclude expert testimony under Daubert where the expert has failed to strictly adhere to the DSM. See, e.g., *Pena v. Clark Cnty.*, 2023 US Dist. LEXIS 79114 (W.D. Wa. May 5, 2023) (court refused to exclude an expert diagnose of trauma where the claimed trauma, microaggressions and betrayal trauma, were not recognized forms of trauma in the DSM); *S.M. v. J.K.*, 262 F.3d 914, 921-22 (9th Cir. 2001) ("[A] variance from the DSM's diagnostic criteria will not automatically result in an unreliable diagnosis," but instead such shaky science goes to the weight of the evidence); *Mancuso v. Consolidated Edison Co.*, 967 F. Supp. 1437, 1454 & n.20 (S.D.N.Y. 1997) (refusing to exclude testimony relying on clinical opinions rather than the DSM). Of course, these opinions all involve a mental health condition that is recognized by the DSM, and predate the clarification of FRE 702.

[19] See, e.g., *Psychometric Properties of the Bergen Social Media Addiction Scale in Korean Young Adults* - PMC.

[20] See DSM-5-TR, at p. 543.

[21] *Bottel, et al., Predictive power of the DSM-V criteria for internet use disorder: A CHAID decision-tree analysis*, *Frontiers in Psychology* (2023).

[22] See, e.g., *Transdiagnostic Approaches to Mental Health Problems: Current Status and Future Directions* - PMC (nih.gov).

[23] *Id.*

[24] See, e.g., *In re Acetaminophen – ASD-ADHD Prods. Liab. Litig.*, 707 F.Supp.3d at 339-341 (excluding expert's use of a transdiagnostic approach to establish that prenatal exposure to acetaminophen can cause ASD and/or ADHD based on studies involving different neurological disorder end points).

[25] DSM-5-TR, p. 914.

[26] DSM-5-TR, p. 916.

[27] See *In re Acetaminophen – ASD-ADHD Prods. Liab. Litig.*, 707 F.Supp.3d at 334.