

## **Gide and Gray's Inn Essay Prize - 2025 - Runner-up**

### **Advice To Entrepreneur On Setting Up Company Under French Or English Law:**

This essay aims to advise an entrepreneur on setting up a company to develop and sell Artificial Intelligence (AI) products under either French or English law. To give clear guidance, it's essential to examine how each legal system regulates both the creation and distribution of AI technologies. This includes looking at how these products are classified, whether as goods, services, or a mix of the two, and whether they are aimed at domestic or international markets.

The five key areas relevant to an AI start-up: regulatory compliance, liability rules, contract law, intellectual property rights, and dispute resolution, will be discussed in detail before giving a conclusion. These areas not only represent the main legal risks but also the ways in which law can either limit or support innovation.

The French legal system, influenced by the Code Civil and EU legislation, tends to provide detailed statutory rules, strong consumer and data protection, and mandatory duties of good faith. By contrast, English law offers a more flexible common-law approach, giving greater contractual freedom and benefiting from a dispute resolution system that appeals to international investors. These differences reflect the civil law focus on certainty versus the common law emphasis on practical, business-friendly solutions.

The essay's conclusion is deliberately practical rather than definitive. English law may offer better prospects for entrepreneurs seeking flexibility, scalability, and investor trust, while French law could be more suitable for those prioritising regulatory clarity, consumer safeguards, and strong moral rights in intellectual property. As Lord Bingham explained, the rule of law requires everyone in society, whether individuals or public bodies, to be both governed by and able to rely on laws that are clearly published, apply prospectively, and are administered openly by the courts,<sup>1</sup> a foundation that gives businesses the certainty they need to grow and innovate responsibly. Law must not only regulate technological progress but also enable it responsibly, balancing innovation with ethical and commercial safeguards.

**The Regulation of AI products under French and English law** diverges significantly, largely because France remains bound by European Union (EU) legislation, whereas the United Kingdom has taken a more independent approach following Brexit.

<sup>1</sup>Rt Hon Lord Bingham, 'The Rule of Law' (Sixth Sir David Williams Lecture, Centre for Public Law, University of Cambridge, 16 November 2006)  
<https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures/rt-hon-lord-bingham-cornhill-kg-rule-law>.

In France, the EU's comprehensive regulatory framework applies, incorporating the General Data Protection Regulation (GDPR), which governs data processing, lawful bases, and transparency requirements.<sup>2</sup> The French data protection authority, the Commission nationale de l'informatique et des libertés (CNIL), has actively enforced these rules, imposing substantial fines for non-compliance.<sup>3</sup> The EU's Artificial Intelligence Act 2024 ("AI Act") introduces a risk-based regulatory model, classifying AI systems as unacceptable, high, or limited risk.<sup>4</sup> High-risk systems then face obligations such as conformity assessments, transparency measures, and human oversight. While this framework provides legal certainty across the EU, it can be costly for start-ups required to conduct risk assessments, maintain documentation, and engage with regulators.

In contrast, the UK retained the GDPR through the Data Protection Act 2018 and UK GDPR but signalled a move toward a more innovation-focused regulatory approach.<sup>5</sup> The March 2023 AI Regulation White Paper explicitly rejected the EU's prescriptive model in favour of a principles-based framework overseen by existing regulators, including the Information Commissioner's Office (ICO) and the Financial Conduct Authority<sup>6</sup>. For start-ups, this may reduce compliance burdens, increase flexibility, and align with the UK government's strategy to attract AI investment.<sup>7</sup> However, departing from the EU framework could limit access to the Single Market in the future if regulatory alignment becomes a prerequisite.

For entrepreneurs, this means choosing between the EU's certainty at higher compliance cost in France or the UK's lighter, innovation-focused regime with potential future market access barriers.

For **product liability and risk**, under the *Code civil*, strict liability applies when a defective product fails to meet the level of safety the public can reasonably expect.<sup>8</sup> Reflecting the EU Product Liability

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<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1 (General Data Protection Regulation) <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>.

<sup>3</sup> Commission Nationale de l'Informatique et des Libertés (CNIL), 'Sanctions' (CNIL, 2025) <https://www.cnil.fr/en/investigation-powers-cnil/sanctions-issued-cnil>.

<sup>4</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L2024/1689 (Artificial Intelligence Act) <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>.

<sup>5</sup> Data Protection Act 2018, ss 1–3.

<sup>6</sup> Department for Science, Innovation and Technology, *AI Regulation: A Pro-Innovation Approach* (White Paper, March 2023) CP 828. <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper>.

<sup>7</sup> UK Government, 'Pro-innovation Regulation of Technologies Review' (Department for Business, Energy & Industrial Strategy, 2023) <https://www.gov.uk/government/collections/pro-innovation-regulation-of-technologies-review>.

<sup>8</sup> *Code civil* (France) arts 1245–1245-17.

Directive 85/374/EEC,<sup>9</sup> French law holds producers strictly liable for damage caused by product defects, regardless of fault.

While this framework clearly covers physical goods, its application to services or hybrid AI systems is less straightforward. French courts have sometimes extended both contractual and tortious liability to services where safety issues arise,<sup>10</sup> but such decisions remain less consistent than the statutory regime governing goods.

Given that AI systems often combine hardware, software, and self-learning algorithms, classifying them as “products” under French law could expose entrepreneurs to strict liability, even where defects emerge from autonomous system behaviour.

Similarly, the UK Consumer Protection Act 1987 (“CPA”),<sup>11</sup> imposes strict liability on producers for defective products causing personal injury or property damage. In *A v National Blood Authority*, the courts confirmed that “defectiveness” depends on consumer safety expectations rather than any fault on the part of the producer.<sup>12</sup>

However, English law places greater emphasis on contractual freedom, allowing businesses to manage risk through exclusion clauses, indemnities, and insurance, though these remain subject to limits under the Unfair Contract Terms Act 1977.<sup>13</sup> Services, by contrast, continue to be governed largely by negligence principles and contractual obligations rather than strict statutory liability, enabling entrepreneurs to mitigate risk via well-drafted agreements.

Ultimately, French law exposes start-ups to broader strict liability risks, while English law enables clearer risk allocation through contracts, essential for investor confidence and operational predictability.

**The contractual framework**, under the French law, codified in the *Code civil*, emphasises the binding nature of agreements and imposes a broad duty of good faith throughout both the negotiation and performance stages of a contract.<sup>14</sup> Article 1104 also explicitly requires all parties to act in good

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<sup>9</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L210/29, <https://eur-lex.europa.eu/eli/dir/1985/374/oj/eng>.

<sup>10</sup> Paula Giliker, ‘A Role for Tort in Pre-Contractual Negotiations? An Examination of English, French and Canadian Law’ (2003) 52 *ICLQ* 969.

<sup>11</sup> Consumer Protection Act 1987, ss 2–3.

<sup>12</sup> *A v National Blood Authority* [2001] 3 All ER 289 (QB).

<sup>13</sup> Unfair Contract Terms Act 1977, ss 2–3.

<sup>14</sup> *Code civil* (France) art 1103.

faith across the contractual relationship, with this principle considered mandatory and not subject to waiver.<sup>15</sup>

French courts therefore exercise considerable discretion to address unfair terms or significant contractual imbalances, particularly in consumer and standard-form contracts.<sup>16</sup> While this enhances fairness and consumer protection, it can introduce uncertainty for entrepreneurs aiming to allocate risks comprehensively through detailed contractual clauses.

By contrast, English law prioritises contractual freedom, with judicial intervention limited mainly to statutes such as the Unfair Contract Terms Act 1977.<sup>17</sup> In *Cavendish v Makdessi*, the Supreme Court reaffirmed that commercial parties are free to agree on terms, and courts will not interfere unless illegality or overriding public policy concerns are presented.<sup>18</sup>

Moreover, unlike the French legal system, English law does not recognise a general duty of good faith. In *Yam Seng v ITC*, Leggatt J proposed an implied duty of honesty in certain “relational” contracts but declined to endorse a wider doctrine of good faith.<sup>19</sup> This makes risk allocation through contractual drafting more predictable under English law.

This trade-off leaves entrepreneurs deciding between France’s mandatory protections and England’s contractual autonomy, where flexibility often translates directly into commercial advantage.

In commercial success, a huge role is played by effective **intellectual property (IP) protection**, especially when an AI startup is being considered. Under the *Code de la propriété intellectuelle* (“CPI”), French law provides strong author-focused protections.<sup>20</sup> Here, copyright automatically vests in the creator of an original work,<sup>21</sup> and moral rights, including rights of attribution and integrity, are inalienable and perpetual.<sup>22</sup>

However, where AI-generated outputs lack a human author, French law becomes less clear. Courts have yet to recognise AI systems as legal persons, meaning authorship generally defaults to the natural or legal person responsible for directing the creative process.<sup>23</sup> This raises complications when multiple parties contribute to the development, training, and use of AI tools.

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<sup>15</sup> *Code civil* (France) art 1104.

<sup>16</sup> *Code civil* (France), art 1171

<sup>17</sup> Unfair Contract Terms Act 1977, ss 2–3.

<sup>18</sup> *Cavendish Square Holding BV v Makdessi* [2015] UKSC 67, [2016] AC 1172 [35] (Lord Neuberger).

<sup>19</sup> *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB) [120] (Leggatt J).

<sup>20</sup> *Code de la propriété intellectuelle* (France) arts L111-1–L113-9.

<sup>21</sup> *Code de la propriété intellectuelle* (France) art L111-1.

<sup>22</sup> *Code de la propriété intellectuelle* (France) art L121-1.

<sup>23</sup> Chambers and Partners, *Artificial Intelligence 2025 – France* (Chambers and Partners 2025)

For entrepreneurs, the strength of moral rights in France may limit contractual transfers or modifications of AI-generated works, potentially discouraging investors seeking broad commercialisation rights.

In the UK however, the Copyright, Designs and Patents Act 1988 (“CDPA”) protects original literary, artistic, and dramatic works.<sup>24</sup> Crucially, section 9(3) clearly addresses computer-generated works, attributing authorship to the person by whom the arrangements necessary for the creation of the work are undertaken.<sup>25</sup> This gives entrepreneurs greater legal certainty when AI systems autonomously generate outputs.

While moral rights exist under the CDPA, they are significantly weaker than in France: they can be waived and have time limits.<sup>26</sup> English law therefore prioritises commercial flexibility and the ease of assigning or licensing rights, aligning closely with investor needs and modern licensing practices.

In this area of law, French law’s strong moral rights framework protects individual creators but limits contractual freedom and commercial scalability. By contrast, English law, particularly through section 9(3) CDPA, offers greater clarity and flexibility, making it more appealing for entrepreneurs seeking to monetise AI-generated works in international markets.

For technology start-ups, **dispute resolution procedures shape not only litigation risk but also investor confidence, contractual certainty, and the international enforceability of judgments and arbitral awards.** France operates a civil law, judge-led litigation system where professional judges, not juries, handle disputes.<sup>27</sup> Proceedings tend to be slower than in common law jurisdictions but are usually less expensive, with courts granted broad investigative powers. Appeals on both factual and legal grounds are common, often lengthening the resolution process.

Furthermore, France is also a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ensuring that arbitration awards are enforceable across borders.<sup>28</sup> Moreover, Paris hosts the International Chamber of Commerce (ICC), one of the world’s leading arbitration centres, highlighting France’s pro-arbitration stance.<sup>29</sup>

In comparison, English courts are widely respected for their commercial expertise, procedural predictability, and strong support for arbitration agreements. London is home to major arbitral

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<sup>24</sup> Copyright, Designs and Patents Act 1988, ss 1–3.

<sup>25</sup> *ibid* s 9(3).

<sup>26</sup> *ibid* ss 77–89.

<sup>27</sup> Code de l’organisation judiciaire (France), art L111-3.

<sup>28</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

<sup>29</sup> International Chamber of Commerce (ICC), ‘Dispute Resolution Statistics 2024’ (ICC, 2025) <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2024/>.

institutions such as the London Court of International Arbitration (LCIA) and the London Maritime Arbitrators Association (LMAA), making it a key global arbitration hub.<sup>30</sup>

Building upon this, the Arbitration Act 1996 reinforces party autonomy, minimises court intervention, and facilitates the speedy enforcement of arbitral awards under the New York Convention.<sup>31</sup> Features such as confidentiality, procedural efficiency, and specialist arbitrators make English law particularly appealing for resolving international technology disputes.<sup>32</sup>

Evidently, French law offers accessible arbitration through the ICC, its litigation system can be slower and more interventionist. English law, by contrast, combines a highly regarded judiciary with arbitration-friendly legislation, creating a dispute resolution framework that commercial parties and investors favour for its certainty, confidentiality, and global enforceability.

**Taking the comparison of both legal systems into account**, key differences emerge across regulatory compliance, liability, contract law, intellectual property, and dispute resolution.

France operates within a harmonised EU framework through instruments such as the General Data Protection Regulation 2016/679 (GDPR) and the Artificial Intelligence Act 2024 (AI Act), which together provide legal certainty for businesses trading across the Single Market but impose considerable compliance costs on start-ups.

In contrast, the post-Brexit UK regime adopts a more innovation-friendly approach under the Data Protection Act 2018 and the UK Government's AI Regulation White Paper 2023, potentially lowering early-stage compliance burdens but creating future barriers to EU market access. French law also imposes a broader set of strict liability obligations through the Product Liability Directive 85/374/EEC, offering stronger consumer protection and requiring good faith under Article 1104 of the *Code civil*, which limits contractual flexibility and makes risk allocation less predictable.

English law implements the same Directive through the Consumer Protection Act 1987 but confines strict liability to goods. It places greater emphasis on freedom of contract, reinforced in cases such as in *Cavendish*, allowing risk allocation through exclusion clauses and indemnities with minimal judicial interference, thereby enhancing commercial certainty.

Intellectual property and dispute resolution further highlight this divergence. French law, under the *Code de la propriété intellectuelle*, provides strong moral rights protections, which limit the

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<sup>30</sup> London Court of International Arbitration (LCIA), 'About Us' (LCIA, 2025) <https://www.lcia.org/>.

<sup>31</sup> Arbitration Act 1996, ss 1–4.

<sup>32</sup> Global Legal Insights, *International Arbitration Laws and Regulations – England & Wales 2025* (Global Legal Group, 2025).

commercial exploitation and licensing of AI-generated works, while English law addresses computer-generated works directly in section 9(3) of the Copyright, Designs and Patents Act 1988, ensuring ownership clarity and facilitating the monetisation of AI outputs.

In dispute resolution, France offers access to arbitration through the International Chamber of Commerce (ICC) and enforces awards under the New York Convention 1958 but operates a slower, more interventionist litigation system led by professional judges.

English law, on the other hand, benefits from the Arbitration Act 1996, a globally respected commercial judiciary, and major arbitration centres such as the London Court of International Arbitration (LCIA) and the London Maritime Arbitrators Association (LMAA), making it attractive for investors seeking procedural efficiency, confidentiality, and international enforceability. The entrepreneur's choice of jurisdiction is therefore not merely a legal calculation but a strategic decision shaping innovation, investment, and risk on a global scale.

Conclusively, I would advise that for early-stage AI start-ups seeking investment, scalability, and contractual freedom, English law ultimately offers a more commercially advantageous framework for. Its lighter regulatory regime, shaped by the Data Protection Act and the UK Government's AI Regulation White Paper 2023, combines predictable risk allocation mechanisms under the Consumer Protection Act, AI-specific intellectual property provisions in section 9(3) of the Copyright, Designs and Patents Act, and arbitration-friendly dispute resolution through the Arbitration Act 1996 and institutions such as the London Court of International Arbitration. Together, these features create a legal environment designed specifically to support innovation, investment, and global commercial growth.

Whereas, French law, rooted in the GDPR 2016/679, the Artificial Intelligence Act 2024, the Product Liability Directive 85/374/EEC, and the *Code civil*, offers stronger consumer protections, inalienable moral rights under the *Code de la propriété intellectuelle*, and harmonised EU regulatory certainty. These elements make France particularly attractive for enterprises prioritising compliance, ethical safeguards, and seamless access to the EU Single Market.

In my opinion, a hybrid strategy may prove optimal: incorporating under English law to secure investment, contractual freedom, and arbitration advantages, while adopting EU compliance measures for AI products sold in France or across the EU Single Market. This combination would allow start-ups and entrepreneurs to benefit from England's commercial flexibility while staying compliant with Europe's regulatory expectations, creating a realistic path for global growth without legal

surprises. In a rapidly evolving AI landscape, the law that best aligns commercial ambition with regulatory certainty will by all means define the next generation of technological leaders and success.