ARTIFICIAL INTELLIGENCE AND LEGAL PRACTICE

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Abstract

Nowadays, artificial intelligence is one of the most significant tools for changing industries and improving the efficiency of professional occupations that utilize artificial intelligence in their practice. However, the integration of artificial intelligence tools in areas like economics, the internet, and e-commerce, environmental protection, cyber security, computer science, finance, government, health, chemistry, and biology exposes the incredible power of artificial intelligence.

The article focuses on the analysis of the legal regulations regarding the utilization of artificial intelligence systems and their role in legal research and legal practice. Particular attention is devoted to the risk management associated with the use of artificial intelligence. Therefore, the significant limitations of utilizing artificial intelligence systems and the avoidance and circumventing of these systems by legal professionals are explained.

Key words: Artificial Intelligence, AI Act, AI Tools, Risk Management, Generative Systems, High Risks, Minimal Risks, Legal Practice, Technologies.

Introduction

The field of Artificial Intelligence has undergone remarkable evolution over the past several decades. From its early beginnings to the present day, AI has transformed the way we interact with technology and the world around us. In recent years, AI systems have made significant strides. Language and image recognition capabilities now rival those of humans. AI generative systems can generate photorealistic images and interpret complex language. These advancements have revolutionized industries, from healthcare to finance. Looking to the future, experts predict that by 2040, we may witness a transformative AI system—one that matches the cognitive abilities of the human brain. As AI continues to shape our lives, understanding of its future risks for human rights, fundamental values, democracy and rule of law is crucial.

Artificial intelligence (hereinafter - AI) has become ubiquitous. It is a topic of extensive discussion among scientists and practitioners across various fields. AI is revolutionizing nearly every industry, including the legal sector. Chatbot-based AI systems automate routine tasks, enhance efficiency, and have the potential to transform legal drafting and document

creation. Consequently, lawyers can concentrate on strategic, high-value work while minimizing costs[1].

Furthermore, the adoption of AI has the potential to transform the legal profession. It can reduce the human force advantage of large firms, alter the revenue models of law firms, affect the overall number of lawyers, and influence their work locations[2].

The term 'artificial intelligence' (AI) does not specifically refer to particular techniques; instead, it encompasses a broad objective of using tools to automate activities previously performed by humans. AI includes various techniques and products designed to replace or enhance specific human capabilities, such as processing natural language content in documents[3].

Based on a recent report from Goldman Sachs, approximately 44% of legal tasks could be handled by AI. This percentage surpasses that of any other occupation surveyed, except for clerical and administrative support[4].

I. Notion of Artificial Intelligence

AI systems have multiple definitions. It is essential to precisely define what constitutes an "AI system", as this determination plays a crucial role in allocating legal responsibilities within the AI framework. For example, the European Union's legal definition of an "AI system" closely aligns with the definition used by the OECD. According to this definition, an AI system is software developed using specific techniques and approaches (as listed in Annex 1). It can generate outputs—such as content, predictions, recommendations, or decisions - that influence the environments, with which it interacts, all based on human-defined objectives[5].

On March 13, 2024, the European Parliament passed the EU Artificial Intelligence Act (hereinafter referred to as "AI Act"). The legal basis for the Artificial Intelligence Act is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which provides for measures to ensure the establishment and functioning of the internal market, and Article 16 TFEU on artificial intelligence. This law is not only the first horizontal law to regulate comprehensive rules for the application of artificial intelligence, but also a landmark legal bill for the EU and its member states. The horizontal effect requirements are fully consistent with existing EU legislation applicable to areas and sectors where high-risk AI systems are already used and expected to be deployed in the near future.

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[1] The Ultimate Review of AI-Powered Legal Tech Tools, 08 November 2023. Mode of access: https://getlegalbuddies.com/blog/the-ultimate-review-of-ai-powered-legal-tech-tools/

[2] Generative AI could radically alter the practice of law, 06 June 2023. Mode of access: https://www.economist.com/business/2023/06/06/generative-ai-could-radically-alter-the-practice-of-law

[3] Peter Homoki. Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU 2022. Mode of access: https://berlineranwaltsblatt.de/ce/guide-on-the-use-of-ai-based-tools-by-lawyers-and-law-firms-in-eu/detail.html

[4] Ibid.

[5] Annexes to the Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts, Brussels, 21.4.2021. Mode of access: https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_2&format=PDF

It should be noted that the consistency of the Artificial Intelligence Act with the EU Charter of Fundamental Rights and existing secondary EU law on data protection, consumer protection, non-discrimination, gender equality, etc. is guaranteed. In terms of biometric rights, the Artificial Intelligence Law complements the General Data Protection Regulation (Regulation (EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) regarding the use of certain high-risk artificial intelligence systems and regulations that set limits on certain behaviours. Use of remote biometric identification systems.

Annex 1 outlines a comprehensive list of techniques and approaches currently employed for AI development. According to this definition, an "AI system" encompasses various software-based technologies, including "machine learning", "logic and knowledge-based" systems, and "statistical" approaches. This broad definition covers AI systems that can function independently or as part of a larger product. Additionally, the proposed legislation aims to be forward-looking, addressing both current and future AI technological advancements. To achieve this, the European Union Commission plans to supplement the Annex 1 list with emerging approaches and techniques for developing AI systems through delegated acts (Article 4)[6].

Additionally, Article 3 includes an extensive set of definitions, encompassing terms such as "provider" and "user" of AI systems (applicable to both public and private entities), as well as "importer", "distributor", "emotion recognition", and "biometric categorization"[7].

In US literature, there exists an alternative definition of AI[8]. AI refers to computer systems and applications capable of performing functions typically associated with human intelligence, such as abstraction, reasoning, problem solving, learning, and more[9]. AI applications utilize algorithmic models that process substantial amounts of data and are trained to recognize patterns, enabling them to automate repetitive tasks and make informed judgments and predictions.

The primary purpose of AI definitions is to encompass both existing AI technologies and those that may emerge in the near future[10].

Like any technology or tool, AI can be harnessed for positive purposes, but it also carries risks[11]. While AI presents new opportunities, it also poses challenges related to safety, liability,

[6] The EU Artificial Intelligence Act. Mode of access: - https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI%282021%29698792_EN.pdf?ref=biodaily.it

[7] The EU Artificial Intelligence Act. Mode of access: - https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI%282021%29698792_EN.pdf?ref=biodaily.it

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[11] Ruschemeier, H. AI as a challenge for legal regulation – the scope of application of the artificial intelligence act proposal. *ERA Forum* 23, 361–376 (2023). https://doi.org/10.1007/s12027-022-00725-6

security, bias, and discrimination[12]. Consequently, regulating its application becomes essential. Various attempts to regulate AI have been made in the United States, China, Great Britain, and other countries[13].

However, the European Union (EU) has taken a pioneering step by working on the first legal act aimed at comprehensively regulating AI. The draft of the Artificial Intelligence Act is set to be enforced soon. This legislation will provide a consolidated framework covering various aspects of AI regulation within the EU and potentially beyond[14].

The primary objective of this document is to integrate it into existing legal frameworks, creating a comprehensive legal mechanism to regulate human activities in this domain. The draft AI Act serves as a horizontal EU legislative instrument, applying to all AI systems marketed or used within the Union. It outlines distinct requirements and obligations for developing, marketing, and using AI systems in the EU. The central goal is to harmonize the legal framework for civil liability claims and impose strict liability on operators of high-risk AI systems[15].

The document emphasizes the EU's unified approach to AI across intellectual property, criminal law, education, culture, and audiovisual domains, as well as civil and military applications. However, the draft regulation excludes AI systems developed or used solely for military purposes, public authorities in third countries, and international organizations or authorities utilizing AI systems under international agreements for law enforcement and judicial cooperation[16].

II. The risk-based approach to AI

When discussing the legal regulation of AI systems, we can identify three main groups of legal norms: those defining the concept of AI, those governing risks associated with AI use, and those regulating the responsibilities of AI providers and users.

[12] Dr. Sampath Lonka Navigating Challenges in AI Regulation: Insights from the European AI Act. Mode of access: https://www.azoai.com/news/20231123/Navigating-Challenges-in-AI-Regulation-Insights-from-the-European-AI-Act.aspx
[13] Margot E. Kaminski. Regulating the Risks of AI // Boston University Law Review. Vol. 103:1347, https://www.bu.edu/bulawreview/files/2023/11/KAMINSKI.pdf

[14] European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)) - https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.html
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A crucial aspect of EU AI regulation focuses on risk management. The recently introduced EU rules impose obligations on providers and users based on the level of risk posed by artificial intelligence. Even AI systems with minimal risk must undergo assessment[17].

There are particular risks under the AI Act. One of them are unacceptable risks.

Unacceptable risk AI systems are those considered a threat to people and will be prohibited. These systems encompass cognitive behavioral manipulation of individuals or specific vulnerable groups. For instance, voice-activated toys that encourage dangerous behavior in children fall into this category.

Some exceptions may be allowed for law enforcement purposes. “Real-time” remote biometric identification systems will be allowed in a limited number of serious cases, while “post” remote biometric identification systems, where identification occurs after a significant delay, will be allowed to prosecute serious crimes and only after court approval.

High risk AI systems poses a threat to safety or fundamental rights will be classified as high risk and divided into two categories: a) AI systems used in products subject to the EU’s product safety legislation. This encompasses toys, aviation, cars, medical devices, and lifts; b) AI systems falling within specific domains that will require registration in an EU database."

High-impact general-purpose AI models that might pose systemic risk, such as the more advanced AI model GPT-4, would have to undergo thorough evaluations and any serious incidents would have to be reported to the European Commission.
Limited risk AI systems should adhere to minimal transparency requirements, enabling users to make informed decisions. After interacting with these applications, users can decide whether they wish to continue using them. Additionally, users should be aware when interacting with AI, including systems that generate or manipulate image, audio, or video content (such as deepfakes).

It should be noted that the use of artificial intelligence and the systems it generates may affect many of the fundamental rights and freedoms set out in the Charter of Fundamental Rights of the European Union. It is therefore necessary to ensure a high level of protection of fundamental rights, taking into account current and future sources of technological risks. First, it concerns the following rights: the right to human dignity (Article 1), respect for private life and protection of personal data (Articles 7 and 8), non-discrimination (Article 21) and equality between men and women (Article 7 and 23).

Its purpose is to avoid a chilling effect on the rights to freedom of expression (Article 11) and freedom of assembly (Article 12) and to ensure the protection of the right to an effective remedy and a fair trial. Presumption of innocence (Articles 47 and 48) and general principles of good administrative conduct.

According to the EU Charter of Fundamental Rights, artificial intelligence law will cover the rights of certain special groups. For example, the inclusion of persons with disabilities (Article 26 of the EU Charter), the rights of children (Article 24 of the EU Charter), the right of workers

[17] Proposal for a Regulation of the European Parliament and of the the Council on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts, Brussels, 21.4.2021
COM (2021) 206 final. Mode of access: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206

to fair and just working conditions (Article 31 of the EU Charter), the right to health and the right to environmental protection (Article 37 of the Charter of the European Union).

III. The Use of Artificial Intelligence by Lawyers

The use of AI systems in the legal field comes with its own set of challenges. On one hand, AI systems have significant potential to provide instant access to information, assist in legal research, draft legal documents, and offer substantial efficiencies for legal practitioners.

On the other hand, legal professionals may encounter significant "limitations" when using AI systems. The most critical of these pertains to information accuracy. This refers to the AI tools' capacity to generate false responses, often referred to as "hallucinations". When an AI system "hallucinates", it can fabricate content or cite non-existent cases. Consequently, any content produced by AI must be meticulously scrutinized and independently verified.

Another "limitation" is related to confidentiality. AI systems have the potential to expose confidential information. This could include questions posed to the tool by other users or other personal data, such as email addresses. There is also a risk of violating non-disclosure agreements or client agreements that expressly prohibit the use of AI technologies.

One additional limitation pertains to privacy. When using AI tools, lawyers should be aware that disclosing personal information is punishable in various jurisdictions. There is a growing concern about the use of copyright and intellectual property by AI tools. Currently, AI systems do not provide source references or explanations for their output, which poses risks for users.

To mitigate these limitations and associated risks, lawyers should take precautions. One such precaution is independent verification—critical legal information from reputable and up-to-date legal sources should always be verified before using it in legal work.

Additionally, regarding data protection, it is crucial to refrain from entering any client information or confidential details into AI systems.

When using AI tools, it is crucial to stay informed about copyright laws. Always be mindful that utilizing data generated by AI could inadvertently result in copyright violations.

AI tools rely on extensive training data, which often includes copyrighted material. Currently, ChatGPT does not offer source references or explanations for its output, posing risks for practitioners who rely on this data. Additionally, users may inadvertently violate copyright laws when using the tool's responses.

Practitioners should also be mindful that AI products can collect information about the user.

There are also the potential pros and cons of lawyers using AI. Advantages of implementing AI in a law firm include timesaving efficiency, cost reduction, improved access to legal services for the public, enhanced accuracy, and better client experiences. However, there are also disadvantages, such as limited contextual understanding, reduced human interaction, and ethical considerations etc.

Conclusion

AI technologies are advancing rapidly. However, this technological progress comes with various challenges and ethical considerations. Issues such as algorithmic bias and striking the right balance between human expertise and AI capabilities are central to discussions about integrating AI into legal practices.

ChatGPT and generative AI technologies tailored for legal professionals are advancing rapidly. Practitioners have both professional and ethical obligations to their clients, necessitating the safeguarding of client confidentiality and privacy. It is crucial for practitioners to thoroughly review, consider, scrutinize, and adapt content. While this article was grounded in research from various reliable sources as of May 2024, practitioners should remain informed about ongoing technological advancements, case law, and legislative changes.

Artificial intelligence in legal research offers efficiency, accuracy, cost-effectiveness, and personalization, among other benefits. These advantages position AI as an invaluable asset in the legal industry, fundamentally altering how legal research is conducted and elevating the overall quality and effectiveness of legal services.

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