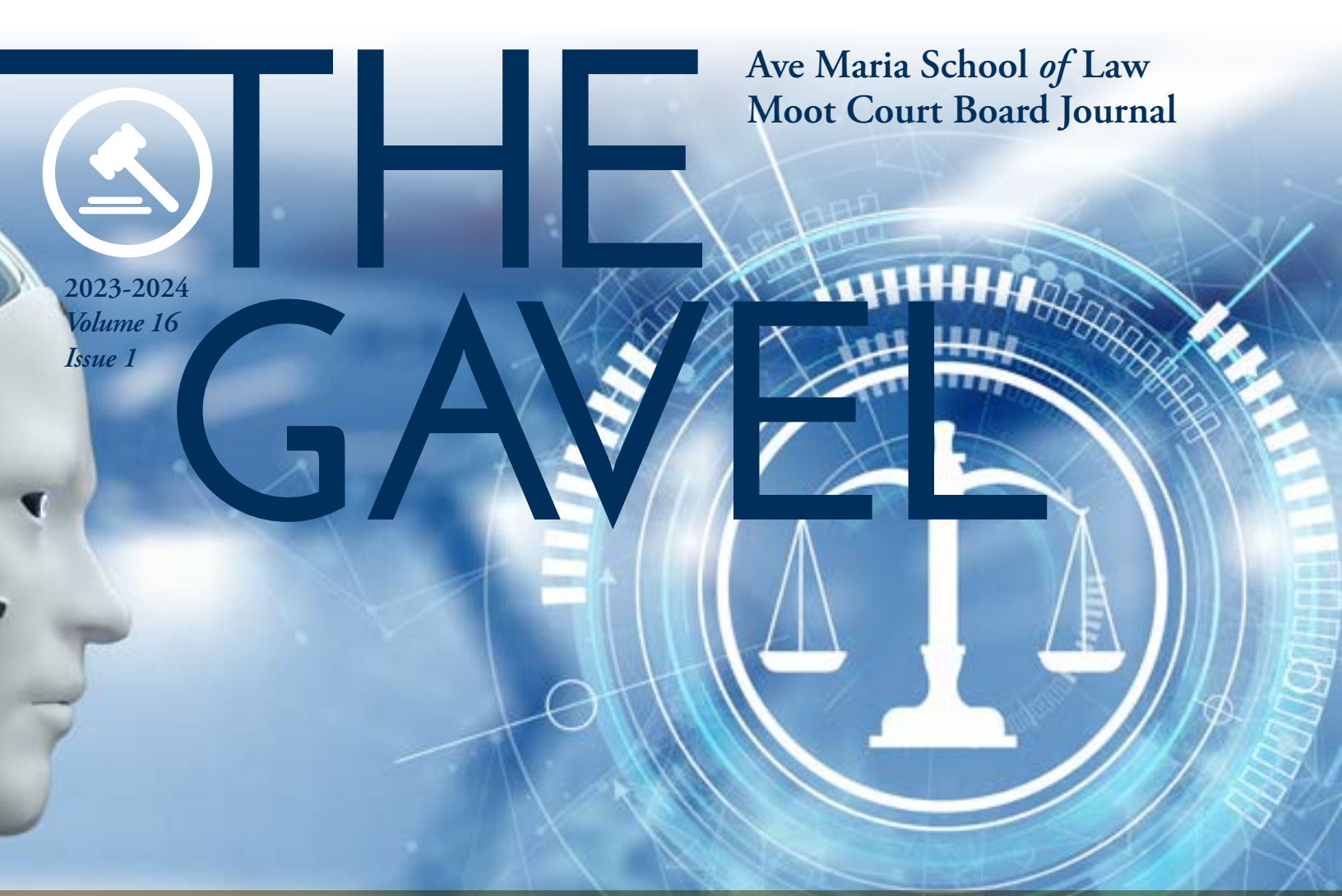
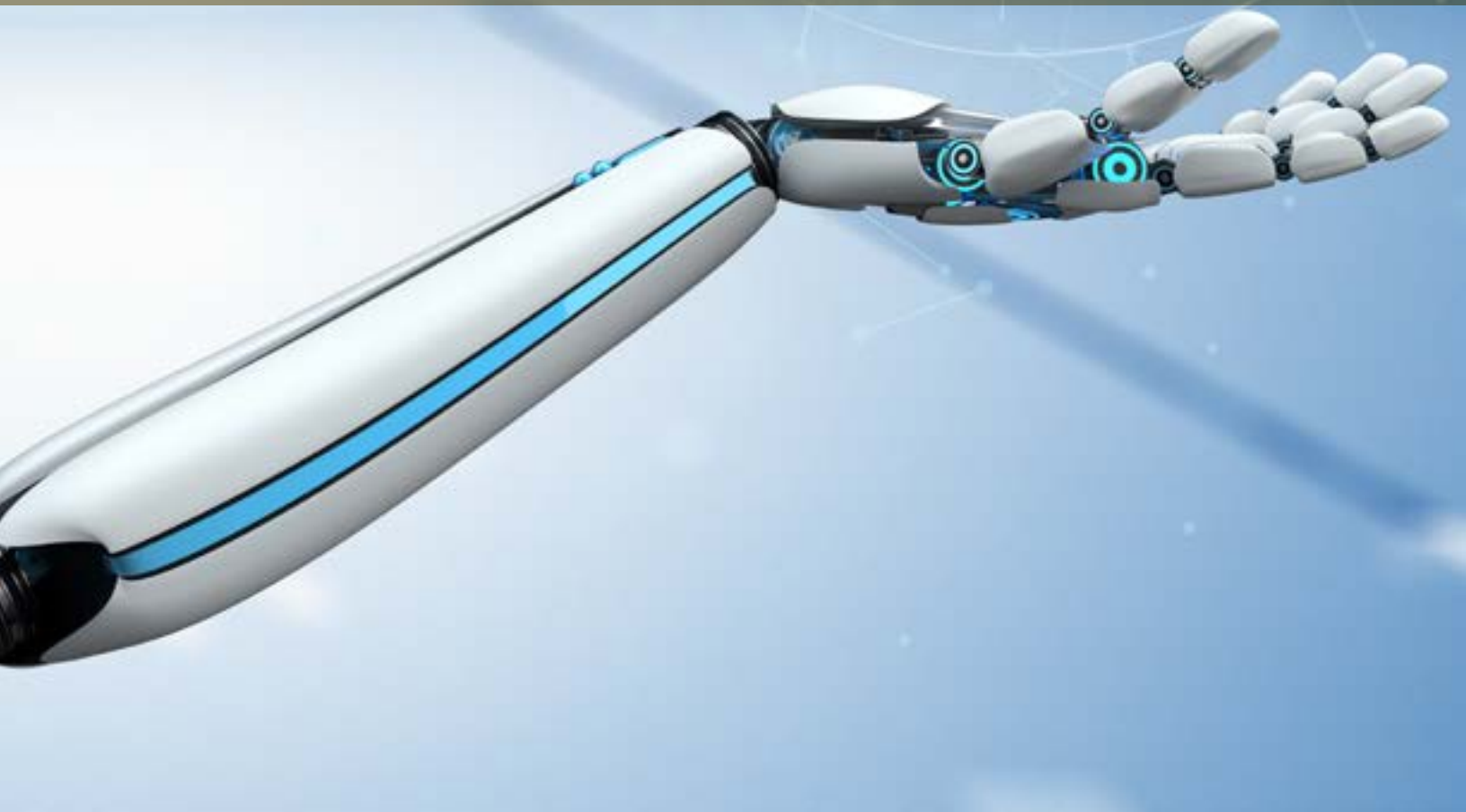
THE GAVEL

Ave Maria School *of* Law
Moot Court Board Journal

2023-2024
Volume 16
Issue 1



ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON LEGAL PROCEEDINGS



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Ave Maria School *of* Law
Moot Court Board Journal
2023-2024 | *Volume 16* | *Issue 1*

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LETTER FROM THE President

Dear Reader:

I am proud to present the efforts of the 2023-2024 Ave Maria School of Law Moot Court Board. Each article is the culmination of these students' hard work over many months, and considering the timeliness of the topic of artificial intelligence in law, I hope you enjoy and appreciate the following pages.

The Moot Court Board is a group of talented and determined students who have embraced the opportunity to proudly represent this school while working to improve their advocacy skills. The members of the Moot Court Board competed in seven competitions this year—one internal appellate competition and six external appellate and trial competitions. The Robert H. Bork Moot Court Competition is a special tradition on campus, and we are incredibly grateful to the professors, alumni, and local attorneys who visited us to judge each round. We began our tour of external competitions with the Robert Orseck Moot Court Competition, where our team advanced to the quarterfinals and wrote the second-place brief. In each of the remaining external competitions, these teams continued to present brilliant briefs and oral arguments against some of the most prestigious law schools in the country. Each team represented the esteem and value of Ave Maria School of Law remarkably well.

To our coaches, and especially to our faculty advisor, Professor Mark Bonner: we are incredibly grateful for your insight, time, and sincere care. From your guidance, we have developed immeasurable skills and knowledge that we will carry with us throughout our future legal careers. To my fellow Executive Board members, Jamie Dasher, Josey Nelson, Sophie Raines, Kasondrea Thomas, and Paolo Vilbon: thank you for your commitment to the Board.

Serving as President of the Ave Maria School of Law Moot Court Board has been the most rewarding chapter of my law school career, and I am blessed to have been able to share the experience with so many wonderful future attorneys. To the incoming board members, I hope that you enjoy this opportunity as much as I did, and I wish you much success. *Ora et Labora!*

Sincerely,
Lauren-Hunter Gaudet
President, Ave Maria Law Moot Court Board

LETTER FROM THE Editor

Dear Reader:

The theme of the 2023-2024 edition of *The Gavel* is Artificial Intelligence and Its Impact on Legal Proceedings. Artificial Intelligence has seemingly overtaken space in every facet of daily life at lightning speed and does not seem to be slowing down. Especially in the legal realm, artificial intelligence has started to evolve the practice of law in ways we have never seen before. As we traverse through this dynamic and swiftly changing legal terrain, we are only touching on a handful of areas affected by this technology.

We tasked each Moot Court Board member to write about a legal topic that has been influenced and affected by the rise of artificial intelligence. Our members have spent a great deal of time researching and drafting these thought-provoking articles. This edition is packed with exciting pieces, and I encourage you to take the opportunity to read it. Some of this year's articles include topics on lethal autonomous weapon systems, copyright law, criminal justice bias, and deepfake evidence. We hope these thought-provoking articles will continue to shed light on a complex topic and spark meaningful discussions in the legal community.

Thank you to our President, Lauren-Hunter Gaudet; Managing Editor, Mallory Fernandes; the Publications Committee; and every other member of the 2023-2024 Moot Court Board. A very special thank you to Faculty Advisor Professor, Mark H. Bonner, for your expertise, knowledge, and insurmountable guidance this year.

With that, I am proud to present the 2023-2024 edition of *The Gavel*. Thank you for your support, and happy reading!

Respectfully,
Jamie Dasher
Editor-in-Chief of *The Gavel* and Vice President of Publications
The Moot Court Board, Ave Maria School of Law

Robert H. Bork MEMORIAL APPELLATE COMPETITION

Left to right: Chief Assistant State Attorney Richard Montecalvo of the Twentieth Judicial Circuit of Florida, Grayson Horton (2L), Kennedy Ginaitt (2L), The Honorable Shannon H. Mcfee of the Twentieth Judicial Circuit of Florida, Mallory Fernandes (2L), Wendell Powell (2L), Professor Patrick Gillen

Finalists: Grayson Horton (2L) and Kennedy Ginaitt (2L)

Winners: Mallory Fernandes (2L), Wendell Powell (2L)

Champions
Mallory Fernandes
Wendell Powell

Best Oralist
Mallory Fernandes

Best Brief
Blake Wiseman
Jake Gisondi

EXTERNAL COMPETITION HIGHLIGHTS

ROBERT ORSECK MEMORIAL

Left to right: Professor Bruce Connolly, Malica Fils-Aime (3L), Kasondrea Thomas (3L), Brandis Godwin (3L), Professor and Faculty Advisor Mark Bonner, Dean Czarnetzky

3Ls Malica Fils-Aime, Kasondrea Thomas, and Brandis Godwin advanced to the semifinal round and won second-best brief.

SEIGENTHALER- SUTHERLAND CUP

Ryan Rahilly (2L), Brianna Pritts (2L), Brian Hofer (3L)

NATIONAL LATINA/O LAW STUDENT ASSOCIATION

Lisney Agramonte (3L), Adriana Caceros (3L), Josette Nelson (3L), Martha Fajardo- Arellano (3L)

EXTERNAL COMPETITION HIGHLIGHTS

NEW YORK BAR

Kendall Coughlin (2L), Emily Feyerabend (2L), Victoria Kelly (2L)

UNIVERSITY OF CALIFORNIA LOS ANGELES CYBERSECURITY

Team 1 (pictured at left): Carmen Trunkett (2L), Isabella Askar (3L)

Team 2: Jacob Pizzo (3L), Isabel Wilson (2L)

TEXAS YOUNG LAWYERS ASSOCIATION

Lauren-Hunter Gaudet (3L), Zachary Chaney (3L)

Putting the "Art" in "Artificial"—Where do we draw the line?

By Brandis Godwin

Artificial Intelligence (AI), "[t]he ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings,"[1] is becoming more prominent in society. While there are endless benefits to AI usage, several arguments show that AI usage conflicts with certain constitutional limitations. This Article addresses the constitutional arguments concerning copyright laws and argues why AI cannot lawfully be granted copyright protections for musical compositions without running afoul of the Copyright Act of the United States.

A musical composition is qualified for copyright protections under the Act if it meets certain requirements—one being originality.[2] A musical work is composed using melodies, harmonies, and rhythms. A melody is an arrangement of a succession of musical notes; essentially, they are "the fingerprints of a composition," establishing an identity of the work.[3] Harmonies consist of the blending of simultaneous tones, and rhythms are the timing for which the melodies and harmonies comply. Essentially, musical works are a set of instructions for musicians made authors with original ideas and therefore, are entitled to exclusive rights under the Act.[4]

Copyright laws have been in operation since the nation's founding. The Constitution explicitly facilitates such protections, providing that: "Congress shall have power. . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[5] Clearly, Congress supports and encourages creativity, but to whom exactly do these rights extend? Whether copyright protections should extend to AI authors depends on a determination of the scope of authorship.

But Congress has yet to properly define "author" for purposes of copyright protections. In 1879, Congress stated that copyright laws protect "the fruits of intellectual labor" that "are founded in the creative powers of the mind."[6] Then, in 1884, Congress provided a broad definition, stating that an author is "he to whom anything owes its origin, originator, maker; one who completes a work of science or literature."[7] Later, the U.S. Copyright Office provided in its Third Edition of the *Compendium* that works are not entitled to copyright protections unless they have been produced by creative human input.[8] Therefore, the Office will not allow registration for works by machine or for mere mechanical process productions.[9] The Copyright Act makes clear that copyright laws were created for the sole purpose of incentivizing individuals to create works by offering exclusive rights to their works.[10] The intent by Congress was to promote progress of the useful arts.[11]

Consistent with that purpose, several court rulings have denied copyright protections where the author of the work was not a human creator. In *Naruto v. Slater*, the Ninth Circuit held that a photograph taken with a cell phone by a monkey was not copyrightable because the monkey lacked constitutional standing.[12] Additionally, the Copyright Office has refused to grant copyright protection for "driftwood that has been shaped by the ocean" because no human being contributed to the creative process of the driftwood's shape.[13]

Based on these prior decisions, should Congress expand current copyright laws and allow computers or robots to create musical compositions, and grant the same copyright protections that human creators would obtain? If a monkey—as a living, breathing creature—lacks Article III standing to bring a copyright infringement lawsuit, how could an AI program obtain such standing? If Congress were to expand the scope of copyright protections to AI, it would be allowing essentially *anything* to obtain copyright protections. Furthermore, in granting such protections to AI, the courthouses would be flooded with countless lawsuits from limitless assertions of copyright infringements. If Congress expands such rights to AI, what exactly would be the limiting principle?

Such a result would run contrary to what the Founding Fathers intended the Copyright Act to protect. This is because works not produced by human creativity destroy the Copyright Act's purpose of encouraging its' citizens to create. In other words, allowing AI to receive copyright protections would disadvantage human authors, and subject them to unfair—non-human—competition. Consequently, the musical productions and compositions of human authors would be diminished, as the authors would be deprived of an incentive to create—the Act's sole purpose.[14]

To conclude, Congress should refrain from expanding copyright protections to AI because of its contradictory effect on existing copyright laws. The United States should abide by the Copyright Act for the intention of promoting creativity and supporting artistic citizens. Expanding current laws would set the stage for the *wrong* author, at the expense of artistic, *human* authors. ○

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Brushstrokes of Code: Attack of the Robo-Artists and The Fair Use Doctrine Defense

By Kendall Coughlin

In the spirit of Nietzsche, artists in the modern technological era would have the masses believe that "art is dead." If this is so, the robots have committed the murder. But to what extent of the blame should fall on their masters? The rise of artificial intelligence and its commoditization has resulted in a broad landscape of generative art programs, such as "Midjourney" and "Generative Fill."[1] Like all artificial intelligence platforms, these generative artificial intelligence ("GAI") programs are created by inputting billions of image pixels in the form of metadata from which the program "learns," and then synthesizes this data to create a piece of art in response to a human text prompt.[2] This poses a formidable legal problem for both creators and users of the programs, as the programs learn by being "fed" unauthorized copyrighted works.[3] The creators of these platforms and the people who use them to create artwork argue that they are simply transforming the original work, and therefore, the art qualifies as fair use under U.S. Copyright Laws. Although this defense has been put into question by the United States Supreme Court's decision in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, which considered the reach of "fair use," it is still the best defense they have.[4]

The concept of "fair use" under copyright law allows for "certain uses of copyright material for valuable social purposes, particularly when such uses "transform" the original source material . . ."[5] The factors considered to determine if a work falls within the meaning of "fair use" include: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for value of the copyrighted work."[6] Though there is currently "no settled case law or legislation that outlines the scope of the fair use defense precisely as applied to GAI's,"[7] the defense for GAI companies and artists rests on the teetering edge of the first prong is this analysis, balancing the use of the derivative work with the commerciality of such use to determine if it is sufficiently "transformative" to be considered fair use.[8]

Regarding a work's "use," in 2015, the U.S. Court of Appeals for the Second Circuit found that Google's "Library Project," which trained the program by inputting tens of millions of scans of copyrighted books, constituted fair use because Google's use of the books was to create an index from which the user was able to research language trends over time while viewing only a "snippet" of the books, from which society would benefit.[9] Similarly, even though inputting the copyrighted art into a GAI platform does not change the artwork itself, "it changes the purpose for which the work is used"[10] and, more importantly, the training process creates a "useful generative AI system" that creates value for society.[11] Furthermore, the art product resulting from the millions of data points of countless works and artists would not only be sufficiently distinct from the original to constitute fair use, but it would be to prove exactly what works the program used in creating that artwork for copyright infringement purposes.[12]

However, this defense may not be the shield GAI companies once believed it to be. In May of 2023, the Supreme Court found for a photographer whose photo of the late singer-songwriter Prince was used by Andy Warhol to impose his famous "pop art" style of colorful silkscreens.[13] The photographer argued that because the Warhol Foundation sold copies to collectors and sent some to galleries without compensating her, they infringed on her licensed work.[14] The Court found this argument very persuasive, as the opinion "emphasized the need for judges to closely examine whether the unauthorized copying was done for a commercial purpose when evaluating fair use." This emphasis on the "commerciality" portion of the fair use analysis will prove tricky for GAI companies, as their business models are built upon revenue generated by selling access to their technology.

However, due to the fact intensive nature of the fair use analysis, there is still hope. To protect themselves from litigation, Generative Fill are "heavily restricting the data going into their models," incorporating only images in the public domain, while others are seeking licenses for the work input into their program's training sets. This may solve the commerciality problem, but how accurate or effective can these AI tools be if their data sets from which they learn are so limited?

No matter the court of public opinions views of AI, it is the way of the future. If one of the main purposes of allowing GAI programs to fall under fair use, as indicated by the court in *Google*, is to promote a value to society, then perhaps the law should favor allowing them to have broad access to data sets that include copyrighted works, even those that use licensed pieces of art. This access will make the learning algorithms that power all artificial intelligence systems that society is beginning to embrace "better, safer, and fairer." Such technological advancements, when used the right way, will paint a pretty picture for the future. ○

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Is Seeing Still Believing? The Rise of Deepfakes Sheds Light on Issues of Evidence Authenticity in The Courtroom

By Mallory Fernandes

Images have the remarkable ability to encapsulate a moment in time, providing compelling and almost irrefutable evidence. To that end, images can be powerful tools used for evidentiary purposes because people have the tendency to accept them at face value as something that is a true reflection of what occurred the moment the image was captured. However, with the advent of deepfake technology and advances in artificial intelligence, it is now possible to manipulate and create realistic images or videos depicting events that never actually happened.[1] Deepfake technology can be used to create images or videos of real people doing or saying something that they never actually did or said.[2] Of much concern, this advanced deepfake software is readily accessible to the general public to download and use straight from the internet, and, in the absence of any regulatory control, people are free to circulate any deepfake-generated images and videos they create. Deepfake technology is advancing at an alarming rate, making it increasingly more difficult to distinguish between deepfake and genuine images or videos, which begs the question: Is seeing still believing?

Deepfakes are already seen to impact our daily lives, whether we are aware of them or not, because of their increased prevalence in areas such as social media, politics, art, and more.[3] Due to the incessant advancements in technology, it is probably safe to say that deepfakes are here to stay, and we are left with no other choice but to adapt or let the ramifications of deepfake technology wreak havoc in our world. Accordingly, it is just a matter of time before the implications of deepfake technology are seen more frequently in the legal system.[4]

The foreseeable implications of deepfakes in the legal system are profound and multifaceted. On one hand, these highly convincing deepfakes can be used to cast doubt on the authenticity of legitimate evidence, sowing confusion, and discord in courtrooms. It is also a possibility that, as a last-ditch effort, a party may attempt to introduce deepfake evidence solely for the purpose of trying to prevail in the suit. Legal professionals must now grapple with the challenge of verifying the veracity of visual evidence and ensuring that it is free from tampering or manipulation. On the other hand, deepfakes could potentially be exploited to frame innocent individuals, further complicating the pursuit of justice. As technology continues to evolve, judges, juries, and legal experts must adapt to this new digital landscape to preserve the integrity of our legal system.

The implications of deepfake technology on evidence authenticity is a pressing matter that will undoubtedly have the potential to affect nearly every type of case that comes through the legal system. The authentication process of evidence is fundamental to its admissibility.[5] However, the threshold standard for evidence authenticity is not particularly high. The standard is satisfied by "evidence sufficient to support a finding that the item is what the proponent claims it is."[6] The party who is putting forth the evidence "need only make prima facie showing of authenticity 'so that a reasonable juror could find in favor of authenticity or identification.'"[7] The effect of this relatively low standard in conjunction with deepfake technology can be twofold.[8] Accordingly, it can be forecasted that evidence authenticity will run into problems when the proponent of the evidence is trying to prove that the evidence is real and when trying to prove that the images are not "deepfake." With the low standard of evidence authenticity, it is more likely that deepfake images will be authenticated as real images and admitted into evidence with ease unless the Court system implicates a higher standard of evidence authenticity or implicates a system that identifies deepfake images prior to even entering the Court system.

Congress is proactively taking steps to combat deepfake technology.[9] A bill was recently introduced to the House of Representatives that would require any deepfake photograph to contain provenance technology that identifies that the image was created or altered using artificial intelligence technology; failure to comply with the requirement would result in a fine and imprisonment.[10] Although this bill is certainly a step in the right direction, even if this bill were to become law, there will always remain the possibility that people fail to comply, making it completely necessary for there to be secondary defense measures in place to prevent AI-doctored images from entering the Court System.

Accordingly, to deter and combat the use of deepfake technology in the courtroom, members of all facets of the legal system must be educated and aware of the negative possibilities that can arise. Attorneys should be taught to be mindful when a client becomes overly adamant about presenting a particular image or video, as this could be a potential red flag that the evidence may be altered. Moreover, it would be useful to supply attorneys with a baseline level of training on how to spot AI-altered evidence so that they prevent the material from even entering the courtroom.

All in all, deepfake technology is on the rise, and it is inevitable that this technology will find its way into the Court System. It is crucial that all members of the Legal System be armed with knowledge of deepfake detection to preserve the sanctity of the evidentiary process of the Court and ensure that justice is properly served. ○

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Can Algorithms lessen The Bias in The Criminal Justice System

By Kasondrea Thomas

Human decision-making and discretion in the criminal justice system have resulted in "appalling levels of mistreatment of disadvantaged groups."[1] Artificial Intelligence (AI) seemed to be a cause of hope that taking out discretionary decisions made by law enforcement, prosecutors, and judges may reduce the effect of bias in the criminal justice system. The United States imprisons the largest percentage of its population compared to any other country in the world.[2] Black and Latinos respectively make up an estimated 13% and 18% of the U.S. population, yet they are disproportionately represented among inmates. Black inmates make up 30% of the incarcerated population and Latinos account for 22% of the imprisoned population.[3] Discretion plays a critical role in the criminal justice system at each step, which can lead to disparate treatment.[4] Decisions involving discretion begin from law enforcement officers, even before the initial arrest has occurred. Prosecutors then determine plea offers and sentencing recommendations and judges have discretion to determine bail requirements or sentences.[5] Compared to algorithms, judges have been shown to use their discretion to detain more people than necessary to achieve lower crime rates.

AI has the capacity to increase the effectiveness of predictive and proactive policing.[6] Algorithms that analyze patterns of previous behavior can predict crime in specific geographical areas and time frames with accuracy.[7] AI can also create risk assessments and predict the probability of whether a person will appear at for court hearings or whether they will commit another crime.[8] The rise in collection of information about people has made it possible for policing algorithms to become predictive. The use of AI to monitor closed-circuit television (CCTV) and alert law enforcement has already been implemented in Australia.[9] It can detect irregular behavior like running, loitering, punching, and certain aggressive stances that can coincide with hostility. This can alert law enforcement to criminal activity in real time and keep numbers of patrols lower in certain areas.[10] AI can help decide bail decisions through algorithms. Courts have given rise to using these algorithms because unlike judges or people they can be more consistent and fairer in the process.[11] The use of algorithms in New Jersey led to a "16 percent drop in its pretrial jail population, again with no increase in crime."[12] A similar study in New York City showed that the algorithm's risk assessment would outperform a judge's record.[13] Consistent and transparent sentencing is vital for the law and is imperative that cases be treated similarly. AI offers an opportunity to keep implicit biases of judges out of the sentencing phase of a trial.[14]

With all the hope that AI would create a more just way of taking bias from discretion out of the criminal justice system, there have been continual downfalls that show this may not be the route we need. Critics have argued that there is a risk using algorithms.[15] Using seemingly neutral traits in algorithms, like education level, socioeconomic background, or address may "exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society."[16] When formulas include prior arrests or an individual's legal history, past discrimination can be repeated with the algorithm.[17] When algorithms assign individuals with a threat score, it influences who the police target and how they handle those interactions. These algorithms get support because they have accurately predicted geographical locations with higher rates of gun violence based on profiles.[18] However, when police encounter a high threat score, their decision making becomes distorted and this increases the rates in which they use force, leading to disproportionate monitoring of minorities.[19]

Facial recognition has also been problematic. Databases have limitation which lead to misidentification of people in certain groups.[20] Research has shown divergent error rates across demographics, "with the poorest accuracy consistently found in subject who are female, Black and 18-30 years old."[21] Additionally, discriminatory law enforcement practices led to an overrepresentation of Black individuals in mugshot data, which is then used to make predictions[22] Facial recognition technology with ingrained bias can misidentify suspects and further increase the incarceration of innocent Black Americans.[23] Facial recognition can also be limited and reinforce bias based on its application. For example, Project Green Light (PGL), a model surveillance program, was enacted in 2016. High-definition cameras were installed throughout Detroit with a direct stream to the Detroit Police Department.[24] These cameras used facial recognition and compared faces against the criminal databases and state identification photos.[25] However, these PGL camera stations were not equally distributed across the city, the surveillance correlated with majority Black residential areas, avoiding White and Asian neighborhoods.[26] Therefore, whether the technology of AI is inherently bias because of technological deficits or if it is prejudicially applied, this can lead to further disparate treatment for already disadvantaged groups in the criminal justice system.

Bail algorithms have shortcomings as well; judges show their mistrust of AI by overruling the systems recommendation a substantial proportion of the time. A study of Virgina, which adopted the use of algorithm-based risk assessment in 2002, showed that racial disparities increased in the circuits that relied most on the risk assessments.[27] Specifically, in Kentucky, a study has shown that since

their risk assessment tools were introduced, white defendants were offered no-bail release at a much higher rate than black defendants.[28] These risk assessment tools may have led to more defendants on bail, but "white defendants were the ones to benefit."[29] Accordingly, when a defendant has a racially unequal past, any prediction made based on that past will continually produce racially unequal recommendations.[30]

Racial inequality is now widely understood to be unacceptable in the criminal justice system and there have been calls to learn how to use these algorithms in ways that do not exacerbate the disparity.[31] Criminal Justice institutions must decide if they should adopt the risk-assessment tools and, "if so, what measure of equality to demand those tools fulfill."32 Racial-justice advocates have demanded that race, and facts correlating with race, be excluded as input factors that predict future behavior or risk.[33] There has also been a "call for 'algorithmic affirmative action' to equalize adverse predictions across racial lines."[34] Critics also argue that if algorithmic risk assessments cannot be made race-neutral, the criminal justice system must reject them.[35] Therefore, AI has shown to encounter the same biases and issues that humans are susceptible to. These algorithms must continue to be monitored and advanced to work towards a more equitable criminal justice system. ○

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Sentencing 2.0: Navigating Recidivism with Algorithms

Kennedy Ginaitt

The American public has always found solace in the notion that those "who do the crime will do the time." However, judges who prescribe criminal sentences for offenders consider far more than just identifying the committed crime. Through pretrial interviews, a comprehensive "scoresheet" is generated, proposing a recommended sentence range for that unique defendant. While this conventional approach has been heavily relied upon, the advent of Artificial Intelligence (AI) elicits questions about the fairness and accuracy achievable through algorithmic systems. Critics of AI's use in sentencing argue that the profound question of whether man's liberty ought to be taken away is a question that is best answered by humans.

Criminal sentencing recommendation scoresheets are calculated based on the factors indicated in 18 U.S. Code §3553.[1] The main factors that sentencing guidelines consider is the charged crime as well as the extent and severity of any past offenses.[2] In addition, most defendants undergo an extensive presentence interview process which reveals information regarding the offender's "family data, physical condition, mental and emotional health, and substance abuse."[3] The interview will also highlight any mitigating factors that suggest a departure from guidelines is appropriate, such as the presence, or lack thereof, of acceptance of responsibility or acknowledgement of guilt.[4] In whole, the current sentencing guidelines presents the judge with a complete and meticulous review of the defendant's life and recommends a sentence range that appropriately addresses the individual. The judge then can use his discretion to determine where in the range the defendant fits, or if an upward or downward variance is appropriate.[5]

However, the sentencing recommendation scoresheets can contain inaccuracies, causing the sentence to contain unjustified variances. In *United States v. Smith,* the sentencing guidelines characterized the defendant's criminal history as "bad," however this failed to fully account for the numerous financial crimes, homicide, and assault, leading the judge to perceive the guideline as overly lenient.[6] Given the failure of the sentencing recommendation to accurately explore the defendant's criminal profile, the judge used his discretion to prescribe an upward variance on his sentence. This serves as just one example of how scoresheets compiled by humans can fall short in accurately describing criminal conduct and how improper sentences can be imposed as a result. However, these errors are not exclusive to humans and the same shortfalls can also be found in sophisticated algorithms.

Predictive AI analyzes data inputs to anticipate distinct outcomes. In the context of criminal sentencing, AI assists judges by "provid[ing] a prediction based on a comparison of information about the individual to a similar data group."[7] Essentially, the algorithm considers the rates of recidivism following other sentences and identifies the optimal duration of incarceration that effectively deters crime while maintaining a balance with liberty interests.

In recent years, several American jurisdictions have implemented the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) system. The system introduces a novel algorithmic program aimed at aiding sentencing decisions by analyzing a defendant's profile and responses to 137 questions.[8] The program assesses the likelihood of recidivism and appropriateness of a sentence, assigning a ranking on a scale of one to ten, with higher numbers indicating more severe sentences.[9]

While the program demonstrates considerable accuracy in predicting defendant sentences, it also exhibits implicit biases, notably in disproportionately ranking black defendants with a higher perceived rate of recidivism compared to their white equivalents. For example, non-recidivating black defendants were "incorrectly predicted to reoffend at a rate of 44.9%, nearly twice as high as their white counterparts at 23.5%."[10] Through testing, the software demonstrated an accuracy of 65% in predicting recidivism rates.[11] While this may be a result of the inherent complexity of human behavior, it is crucial to acknowledge that the algorithm draws information primarily from prior judicial decisions. Consequently, the implicit biases of past judges are absorbed by the algorithm.

To evaluate the apparent shortcomings of the COMPAS algorithm against human perception, the algorithm was tasked with assessing the likelihood of recidivism, alongside a group of individuals selected randomly and possessing minimal to no criminal justice experience. Both the algorithm and the testers were provided a criminal dataset from Broward County, their assignment being to predict the rates of recidivism. "A one-sided *t* test reveals that the average of the 20 median participant accuracies of 62.8% [and a standard deviation (SD) of 4.8%] is, just barely, lower than the COMPAS accuracy of 65.2% (P = 0.045)."[12] Therefore, "in the end, the results from these two approaches appear to be indistinguishable."[13] The fact that individuals lacking familiarity with the justice system could predict recidivism rates at a level comparable to a sophisticated algorithm underscores the argument that a judge, on his own, would possess a more robust ability to accurately assess a defendant's likelihood to recidivate. Consequently, this suggests the potential for crafting more tailored and effective sentences is more attainable through human judgement compared to artificial intelligence.

The examination of algorithmic systems such as COMPAS, alongside the comparison with the predictive abilities of individuals unfamiliar with the justice system, sheds light on the intricate nature of sentencing decisions. While algorithms offer a structured approach to prediction, its inherent biases and limitations become evident. The nuanced understanding, contextual insight, and reasoning skills immersed in judicial decision-making stands out as indispensable and a comprehensive assessment of a defendant's profile remains the optimal method. Judges and the current sentencing practice remain a superior means to assess recidivism rates and determine applicable sentences for individuals within the criminal justice system. While algorithms can offer valuable tools for streamlining sentencing and aiding in judicial decision-making, they should be used sparingly. Regardless of the technological advancements, the role of human judgement should not be overlooked, and the significance of human rationality ought not be negated by an algorithm. ○

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AI and Defamation: Who Do You Sue?

By Grayson Horton

Artificial intelligence (AI) has the potential to alter many different facets of the law, but one area in particular that will present unique challenges is defamation. Anyone who has used AI can remember a scenario where AI produced a fake result. Take the example of when Google's Bard chatbot falsely said during its first demo that the James Webb Telescope took the first photograph of a planet outside the solar system.[1] In another instance, lawyers were sanctioned by a federal judge in New York for using ChatGPT to write filings that relied on fictitious cases.[2] As these examples illustrate, AI can provide incorrect information and do so convincingly. Yet what happens when AI produces fake information about a person's reputation? Can a defamation suit be brought? Does AI "understand" that the information it is creating is false? Will AI reproduce the same false information repeatedly to other users? These are just a few of the questions that AI raises as it relates to defamation.

The first question that must be asked when determining whether AI can be liable for defamation is whether the content created by AI is original content or content produced by another party.[3] Under existing law, 47 U.S.C. § 230 states, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content

provider."[4] This has generally meant that tech companies are shielded from liability for the content posted on their sites.[5] However, AI does not simply retrieve information and display the results. AI's "[c]urrent systems are the product of data-driven training processes: They learn to extract patterns from records of prior experiences, and then to apply that capability in new settings."[6] AI "platforms are responsible for the way in which these words are assembled in their output."[7] This arrangement of words in a unique way is what makes AI cases challenging:

> [An] AI company, by making and distributing an AI program that creates false and reputation damaging accusations out of text that entirely lacks such accusations, is surely 'materially contribut[ing] to [the] alleged unlawfulness' of that created material. The program is not a mere "neutral conduit for [the actionable] content'"—indeed, it is not a conduit at all.[8]

In essence, AI has the capability to create defamatory speech because AI can uniquely arrange words and phrases that could harm someone's reputation.

A recent case filed against OpenAI, the creator of ChatGPT, concerns a situation where AI created false allegations against a man named Mark Walters.[9] Specifically, a man named Fred Riehl asked ChatGPT to summarize a case he was reporting on for his website.[10] ChatGPT said that while Mark Walters was the treasurer and chief financial officer of the Second Amendment Foundation, he "defrauded" and "embezzled" funds.[11] Mark Walters had spoken at Second Amendment Foundation events and aligns with their beliefs, but he has never worked for Second Amendment Foundation.[12] ChatGPT created an entire fictitious legal complaint, complete with a fake case number.[13] The judge in the case has recently rejected ChatGPT's motion to dismiss.[14]

While Mark Walters's case can go forward, it is full of tricky issues that must be resolved. First, the plaintiff will have to prove that he is the Mark Walters that the AI was referring to.[15] Second, the plaintiff will have to prove that the AI made a statement of fact.[16] This could be difficult because does AI "understand" the assertions that it makes? Lastly, the damages seem minimal because only Fred Riehl received the false information from ChatGPT.[17] How much damage did ChatGPT really inflict on Plaintiff's reputation if only one individual received the false information? It will be interesting to see how the Georgia court handles these issues.

Lastly, liability for defamation presupposes intentionality.[18] Yet, can AI act intentionally? Some believe that AI, by its very nature, cannot act intentionally because AI is only being trained on the "form" alone, and this does not produce an "understanding" of the data.[19] An example of this is that it would be an "impossibility for a non-speaker of Chinese to learn the meanings of Chinese words from Chinese dictionary definitions alone."[20] Others say AI companies, like other non-human entities, should be liable for their actions.[21] Dogs are protected from cruel treatment but are liable for unruly behavior.[22] Corporations, while often hard to trace the bad actions of one person or a group of people, are held liable as an organization.[23] AI companies could similarly be held liable for the content their AI programs create because they are the ones that trained the AI and act as its supervisor.

AI is a paradox. While much of the discussion about AI has focused on its processing capabilities and efficiency, the more interesting question is just how human is AI? The goal of AI is to replicate the human intelligence and make it better, but the programs that AI companies will create will be from the creation of humans. Humans are imperfect. As imperfect beings, AI will develop intricacies and complexities like humans where the law will have to learn and adapt. AI and defamation are areas of the law where it will be fascinating to see how currents laws are adapted to handle this fast-developing technology. ○

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Who's to Blame: How AI can be used to Detect Fraudulent Insurance Claims and, Potentially, Decrease Insurance Premiums

By Lauren-Hunter Gaudet

Florida drivers pay the third highest annual rates in insurance premiums at an average of $2,917 per year,[1] yet there is no simple or easily identifiable explanation for the rising insurance premiums that Floridians are paying. Some sources cast blame on a shortage of mechanics[2] or the rise of high-tech and electric vehicles,[3] but excessive and exaggerated insurance claims and lawsuits are major contributing factors when insurers calculate premiums for consumers. Auto insurance fraud occurs in several ways, but the most recognized method is when consumers or policyholders lie or exaggerate to receive a larger claim payout after a motor vehicle accident.[4]

Many consumers are under the impression either that the policyholders only benefit from an auto insurance policy when they collect on an insurance claim or that an inflated or frivolous insurance claim only cuts into the insurance company's profits.[5] Therefore, consumers are incentivized to exaggerate their auto insurance claims or even file completely false or frivolous claims. However, in 2010, the FBI estimates that insurance fraud costs the average U.S. family $400 to $700 per year in insurance premiums,[6] and a 2022 study estimates the amount of fraudulent claims payout to be $308.6 billion per year.[7] Insurers have to cover the severe losses or excessive payouts, so those costs inevitably drain into the insurance premiums rated for every other driver in America.

Can we really blame our insurance companies for our rising insurance premiums? The auto insurance fraud racket is not sustained by consumers alone. According to information from insurance fraud investigations conducted by the FBI and other investigative bureaus, networks of medical professionals and attorneys use their expertise on insurers and the claims process to manipulate a claim and "by-pass anti-fraud measures" to present fraudulent claims as legitimate ones.[8] In Florida, these actors can actually be found criminally and civilly liable for insurance fraud.[9] A person is liable for insurance fraud if he or she presents a "written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy" with knowledge that the statement contains any false, incomplete, or misleading information.[10] As drivers and consumers that are directly disadvantaged by these underhanded schemes, we should be pointing the finger at these fraudsters for rising premiums, but assigning blame is only the first step to leveling the premiums back out.

Insurance companies' previous methods for digesting auto insurance relied on claims adjusters to analyze and investigate each claim,[11] and fraudulent claims are then passed to government entities that serve as investigative bureaus such as the Florida Chief Financial Officer Bureau of Insurance Fraud.[12] This opens the door for an overwhelmed and rushed process where fraudulent claims may be overlooked or under-appreciated. Insurance companies and investigative bureaus should turn to artificial intelligence (AI) and other technology-based methods for digesting insurance claims to evaluate and identify fraudulent claims more efficiently.

AI services offer automated data analysis that can streamline the claims investigation process and can remove the subjective analysis by creating algorithms that constantly adjust to the task.[13] Possible factors of fraudulent or exaggerated insurance claims include a lack of police report, a suspicious history of claims, high volume clinics, or extensive medical bills, etc.,[14] and these factors could be easily identified through AI pattern detection. Insurance companies would greatly benefit from an AI software that incorporates predictive behavioral analytics and biometrics, which would expedite the claims investigation process by analyzing patterns and identifying outliers or anomalies.[15] Several companies like Salesforce, SHIFT, Hitachi Solutions, Friss, and IBM have developed systems specially tailored for fraud detection through artificial intelligence and machine learning.

Auto insurance fraud is a terrible crime that often goes undetected and unpunished. We cannot continue to tolerate these fraudsters driving up insurance rates at the cost of average Americans. Through AI software, insurance companies should expedite and improve their claims investigation process to balance out the auto insurance premiums. ○

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Striking a Balance: The Integration of Artificial Intelligence in Immigration Practices and What it Means for Individual Human Rights

By Adriana Caceros

As the realm of immigration practices continues to grapple with evolving complexities and an ever-growing backlog of cases, the integration of artificial intelligence (AI) has emerged as a promising solution, offering the potential to streamline processes such as case evaluations and enhance overall efficiency. While AI technologies promise accelerated decision-making and improved resource allocation, concerns have surfaced regarding the potential trade-off between expediency and the meticulous assessment required to safeguard the rights of individuals seeking refuge or opportunities in new lands, as well as the individual human rights to privacy.

AI refers to "machine-based operations that mimic human intelligence."[1] A subset of AI is machine learning, whereby applications or programs use extensive collections of data to improve their accuracy over time.[2] These applications or programs use "prediction" by utilizing available information, often referred to as "data" to generate information previously unknown to the user.[3] Prediction, however, is not the same as understanding.[4] This distinction is crucial because despite AI's advancement, it cannot currently replicate human intelligence, despite its attempts to do so. Deep learning, for example, is a way that AI attempts to mimic the human brain by using algorithms that draw inspiration from the structure and function of the human brain, called "artificial neural networks", that then progressively enhance the comprehension of the correlation between input and output data.[5]

As it relates to immigration, the Department of Homeland Security has created its "Artificial Intelligence Use Case Inventory," which provides a list of current "non-classified and non-sensitive AI use cases."[6] Notable on this list is the I-539 Approval Prediction, which "attempts to train and build a machine learning throughput analysis model" that functions to do the human part of the application process, which is to predict when an I-539 (application to extend or change nonimmigrant status) case will be approved.[7] This should wave some flags, as the I-539 is not standard like a green card renewal (where there is no change of status), but rather a complex form for people who wish to extend their stay or change to another nonimmigrant status. Among these classes of immigrants are F1 academic students, ambassadors, J1 exchange visitors, and T nonimmigrants the latter of which are victims of severe forms of trafficking in persons.[8] With the growing interest of using AI to streamline processes, the risk of bias increases and thus can cause life impacting ramifications for certain immigrants. In Canada, the Immigration Minister has stated the technology they have implemented in visa approvals is used exclusively as a "sorting mechanism" where immigration officers always make the final decision about whether to deny a visa.[9] Yet, AI has been seen to have a "problematic track record" concerning both race and gender. Simply stated, AI is not neutral because it uses a preprogrammed "recipe" and if the recipe itself is biased, then the decisions that the algorithm makes based off of the recipe, will ultimately be biased as well.[10] The discretionary nature of immigration should make it the last group to be subjected to such technology because the nuances and ethical judgement required in legal proceedings is without a doubt still a skill that rests within the realm of human abilities.[11]

Now, cue in the suppliers of the massive amounts of data needed for AI implementations such as those mentioned above. Under one administration, the U.S Immigration and Customs Enforcement (ICE) signed "several key data and analytics contracts" with big names such as Thomas Reuters and Palantir, the company founded by the same person who created Paypal.[12] Under another administration, both ICE and Customs and Border Protection (CBP) bought nearly $1.3 million worth of Venntel licenses, a third-party company that tracks cellphone location data and then sells it.[13] What this means for individuals, is that the federal government, through its agencies such as ICE, CBP, and DHS, is effectively circumventing the landmark 2018 decision of the Supreme Court in *Carpenter v. United States*, which makes it so that law enforcement must obtain a warrant before obtaining seven days of historical cell site location information of an individual from cell phone companies, otherwise the activity is prohibited.[14] CBP spokesmen have said that the information they use does not include cellular phone tower data, but make no mention of the third-party company information they have purchased.[15] The federal government, in essence, is thus carving out an exception to the special protection that the Supreme Court has awarded this type of data, at the expense of individual private rights.

The use of third-party data, predictive programming, and AI in general, is not exclusive to immigration proceedings. As such, any American with a concern for privacy should heed caution. To what extent should we be comfortable with exchanging efficiency for our rights? The hill is steep once we allow our rights to become diminutive in comparison to governmental goals, whether they be one that strive for efficiency or not. Despite well-intentioned efforts to implement AI as an efficient solution to rising legal problems, like backlogs in immigration proceedings, intentions do not override the jeopardization of individual human rights such as the right to privacy. ○

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Patent policy reformation and the impending stifling of generative AI

By Malica Fils-Aime

Patent policy is pivotal to the dissemination of AI innovation. In October 2023, the United States Patent and Trademark Office ("USPTO") imposed a series of modifications to the rules of practice for pre-issuance circulation and proceedings within the Patent Trial and Appeal Board.[1] These propositions may stifle innovation and harm developers in the fast-growing field of artificial intelligence (AI). Strong patent protections are meant to incentivize individuals and organizations to invest in research, to develop and disclose AI-related discoveries.[2] Patent policies have a direct effect on use of algorithms, AI models, datasets, and commercialization of AI-generated content.

According to the new regulations, the USPTO Director will no longer be involved in Patent Trial and Appeal Board ("PTAB") panel decisions prior to patent issuance.[3] have final say and be fully responsible for all its decisions[4] USPTO will no longer interfere in the panel's decision process unless specifically requested by a panel member[5] USPTO has additionally suggested new restrictions on who is eligible to file petitions for patent review.[6]

Congress established the Patent Trial and Appeal Board ("PTAB") at the USPTO in 2011 under the Leahy-Smith America Invents Act (AIA) as an alternative to litigation.[7] The Board is charged with hearing ex parte appeals regarding application decisions, conducting inter partes reviews and post grant reviews to provide effective dispute resolution and prevent meritless lawsuits.[8] By imposing restrictions on patent review petitions, UPSTO can be regarded as interfering with the Congressional requirement, allowing for *any* patent challenge to be heard so long as the petition is timely and meritorious.[9] As maintained by the U.S Supreme Court in *Cuozzo Speed Technologies, LLC v. Lee,* Congress, via the AIA, allowed any third party to request the agency to initiate inter partes review of a patent claim - "[p]arties that initiate the proceeding need not have a concrete stake in the outcome; indeed, they may lack constitutional standing".[10] With the new restrictions, however, those not directly affected by lawsuits can no longer petition for review.[11]

AI developers and challengers of the proposed modifications, including Microsoft, Google and Apple, have argued that the existing inter partes review system of UPSTO should be maintained. According to Halimah Delaine Prado, Google's General Counsel, the current review process is "…carefully constructed to address examination errors, providing expert, efficient and cost-effective review of the small subset of patents with the greatest impact on our economy".[12] With the USPTO's growing claims over new AI technologies, this new review process will make it increasingly difficult to correct errors in the patent examination process.[13] USPTO should not remove itself from the review process but instead provide patent examiners with wide-ranging AI training that place USPTO officials in a position to grant commendable AI patents while denying those that thwart advancements in AI "like patents that simply 'apply AI' to basic ideas" as put by Prado.[14]

USPTO posits that the review changes better align with the office's mission to promote and protect innovation.[15] USPTO has maintained that the proposals are in line with the Congress' intent to provide an affordable alternative to district court litigation for patentability issues all while protecting patentees from harassment.[16] Critics are less convinced. In order for artificial intelligence to reach its potential in resolving many of today's issues, the USPTO must first create a platform for AI to flourish. ○

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A Look at Child Welfare in the Digital Age

By Gia Scotti

"If it isn't part of the behavior, then having it in the algorithm biases it." – Traci LaLiberte

The child welfare system is a comprehensive framework.[1] It encompasses a multitude of services, such as child protection, family preservation, kinship case, foster care placements, and adoption services.[2] The primary purpose of child welfare is to maintain a safe and secure environment and to protect vulnerable children from harm.[3] Interwoven in this system is a series of decision-making processes that are made in the screening and investigation of abuse or allegations of neglect.[4] The second purpose is to connect families to services that will better the conditions in his/her homes, making it a safer environment for at risk children.[5] Unfortunately, there are a substantial number of cases of maltreatment, and most of the services' resources are dedicated to the "back-end" of the system, meaning it specifically focuses on children who have been removed and placed in foster care.[6] However, this focus had led to a neglect of the operational sides of child welfare, specifically in developing decision skills for call screeners, supervisors, caseworkers, or other front-end workers.[7]

Since artificial intelligence ("AI") has increased in popularity, it is predictable that AI has found a way to integrate itself within the child welfare area. Studies have been conducted focusing on the incorporation of AI-based decision support tools ("ADS") in this field. One study centered on the Allegheny Family Screening Tool ("AFST"), which assessed the risk of child maltreatment.[8] First, an external caller contacts the hotline to make a report, the call screener is then tasked with recommending whether to proceed with an investigation, the screener gathers information to run the AFST tool, which then assigns a score from 1 (minimal risk of future placement) to 20 (substantial risk of future placement).[9] Greater priority is given to the cases that receive a higher score, leading the social worker to proceed in further observation, investigation, or intervention of the particular case.[10]

Despite the integration of AI into child welfare services, the study findings indicated that it had minimal influence within this area. To know whether a child is at a higher risk of neglect, workers emphasize that he/she needs to rely on one's own personal experience, cultural background, familial history, and the potential motives of the caller; factors which AI does not consider.[11] Additionally, most workers did not have prior knowledge or training on the AFST, including the data it relies on or how to work with the tool effectively.[12] Furthermore, this study highlighted important design implications for agencies using or implementing ADS tools, such as (1) leveraging workers' experience to improve an ADS tool's performance; (2) designing training tools that support workers in understanding the boundaries of ADS tool's capabilities; (3) supporting open, critical discussion around the tools, (4) providing workers with balances and contextualized feedback on their decisions, (5) codesigning measures of decision quality with the workers, (6) communicating how decision-making power should be distributed among workers and the ADS tool, and (7) to support diverse stakeholder involvement in shaping ADS tool design.[13]

Recently, the Allegheny Family Screening Tool has faced serious scrutiny in how it aids social workers in deciding which families to investigate. Complaints have been filed concerning how the algorithm can have a potential bias against people with disabilities and mental health issues.[14] For instance, Robin Frank, a family law attorney, and critic of AFST, filed a complaint on behalf of her client with an intellectual disability, in which the client was fighting to regain custody of her daughter from foster care.[15] Additionally, critics of AI raise concerns of not overloading it with crucial decision-making, because this can result in discrimination against families based on race, income, disabilities, or other external characteristics.[16] For example, child welfare officials in Oregon have been cautioned to stop using their own model algorithm, influenced by the AFST, to help decide which families should be investigated by social workers, because the data flagged a disproportionate number of Black children for mandatory neglect investigations.[17] The stakes are paramount in these situations, because not addressing an allegation could lead to eternal suffering for a child, but wrongful interference in family's life can cause a parent to lose their child forever.

Overall, AI has influenced everyday life by incorporating itself in a multitude of areas, so it is imperative that when using such a powerful tool, it is handled in a manner that provides a positive outcome, while also mitigating downsides.[18] The area of child welfare is a comprehensive framework with a mission to keep children physically, emotionally, and mentally secure. As the years progress, technology advances, which is why there needs to be a trustworthy foundation between this powerful tool and those who may or must rely on it. Hopefully, in the forthcoming years, social workers can *confidently* depend on AI, ensuring that the mission of child welfare is fulfilled without any child being overlooked or neglected. Although technological advancements yield positive impacts, it is imperative that in this area, AI does not lead social workers to remove a child from a nurturing home. These types of innovations should serve as a tool and must not replace the judgment and empathy of social workers. The fundamental objectives in any endeavor are justice and equality, and the prudent integration of artificial intelligence is essential in child welfare, particularly if social workers are going to rely on it in making decisions regarding a child's well-being.

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Transforming the Tax Landscape: Revolutionizing Operations for Taxpayers, the IRS, and Tax Attorneys

By Martha Fajardo-Arellano

The integration of artificial intelligence (AI) in the tax field has revolutionized the way taxpayers, the Internal Revenue Service (IRS), and tax attorneys operate by opening the doors to different ways to make sure the taxpayers understand how to file their taxes to their advantage and at the same time help the IRS.

Tax law is difficult to explain to someone with minimal legal experience, but many of the tax software programs simplify the tax law for taxpayers to understand. Tax software programs, such as TurboTax, have implemented AI-powered assistants to make the tax preparation process more efficient and user-friendly.[1] Additionally, it has become a personalized experience for taxpayers by simply uploading their documents and letting the program do the rest to maximize their refund or lower what they will owe to the IRS that year.[2]

The IRS has also implemented an AI powered assistant, better known as the Interactive Tax Assistant (ITA), to improve accuracy for taxpayers by determining whether they have to file a tax return, claim a dependent, whether their income is taxable, and to establish whether they are eligible to claim a credit or deduct expenses.[3] However, these AI assistants, often called legal calculators, can sometimes lead taxpayers to the wrong conclusion, affecting their tax returns by either having to pay penalties or not getting a certain deduction or claim.[4] For example, TurboTax's interactive assistant leads some taxpayers to purchase the software's products to be able to file their tax returns when in reality, the tax returns could have been filed for free under the IRS Free File Program.[5] These problems are more common with the coming age of AI in tax preparation, but the IRS has stated the only reduction in tax penalties or additions to taxes occur when "erroneous advice furnished to the taxpayer in writing by an officer or employee of the IRS, acting in such officer's or employee's official capacity."[6] ITA is a tool, not an officer, and the information that is provided is discarded once the taxpayer exits the website.[7] Therefore, even with this helpful tool, the taxpayer should still be careful about following the guidance of this AI-tool because the consequences of following the guidance will not be avoided or reduced.[8]

Alongside guiding the taxpayers, the IRS has also used these AI-powered tools to their own advantage. The Return Review Program (RRP) began in 2009 and was used in the 2017 filing season to help the IRS detect identity theft and other discrepancies for further review.[9] Due to new AI-powered tool advancements being so new, IRS managers still had to meet once a week during the 2017 filing season to evaluate and determine how the RRP was targeting the returns and whether any adjustments had to be made.[10] However,

even programs like these have their disadvantages. Tax law is always changing and if such programs rely on historical data for selection, compliant taxpayers could face consequences.[11] The reason for this is because the Internal Revenue Code was different or perhaps, because in the past similar compliant taxpayers simply did not respond so it would go to the IRS's favor.[12] The IRS could benefit from these AI-powered tools; however, it is important to be transparent to the taxpayers on the "why" and how a certain outcome on their tax returns transpired – but not too transparent. Mindy Herzfeld, a tax professor at the University of Florida Levin College of Law, has raised the point that if the IRS was completely transparent with taxpayers, then those who desire to take advantage of the system would find a way to accomplish it.[13] Further, she states that having some guidelines and rules set in place will be important for the IRS to be sufficiently transparent enough for the taxpayers to understand how the IRS makes decisions on who is audited and to avoid taxpayers manipulating the system.[14] In my opinion, many would agree with this.

AI has also made its way into tax law offices. Many, if not all, tax attorneys have used some form of AI-powered tools for conducting research, reviewing complex documents, or something as simple as spell check.[15] Legal research programs such as LexisNexis have incorporated an AI search experience which help attorneys not only conduct research on certain issues, but also drafting tools and exploring into litigation analytics.[16] Utilizing these tools can help attorneys be more efficient and dedicate more time to advising clients and decision-making in gray areas.[17] However, generative AI is a more sophisticated form of AI that has become increasingly popular, better known as ChatGPT where one can ask a question and ChatGPT will generate a human-like response.[18] Earlier this year, ChatGPT gave fake legal citations that were used in a brief and as a result, the attorney was sanctioned for not verifying the citations.[19] This is called "hallucination" in which ChatGPT does not know the answer but will give an answer – causing any legal researcher to retrieve fake citations to fake cases, resulting in harming not only the attorneys but also client cases.[20] The tax code, being highly complex, is ever-changing. Many attorneys who have tested ChatGPT for tax related questions have noticed that the answers given are fabricated from various internet sources – some outdated and some without any supportive analysis.

[21]These downsides should caution attorneys, legal researchers, and law students from depending entirely on these more sophisticated AI tools, and encourage to double check information they have received to assure that it is supported by reliable sources.

Overall, AI-powered tools in the tax field have been used by everyone involved – the taxpayers, the IRS, and tax attorneys. As this new set of technology evolves, many questions are still left unanswered – how will the use of this technology be regulated? Will the most up to date technology be available to certain types of taxpayers and tax firms or everyone? ○

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Keep Our Soldiers Home, Use Lethal Autonomous Weapons Systems

By Isabel Wilson

INTRODUCTION

As weapon systems face technological advancements, Lethal Autonomous Weapons Systems, further addressed as LAWS, have become a "forefront of recent Department of Defense directives."[1] This arising issue continues to cause tension on a global scale and will likely come to fruition sooner rather than later due to the tumultuous state of international affairs. The lack of policy surrounding Lethal Autonomous Weapon Systems will likely provide conflict for the United States on an international front if these systems are not ethically regulated.

WHAT ARE LETHAL AUTONOMOUS WEAPONS SYSTEMS (LAWS)?

Defining what constitutes LAWS has varied amongst nations. The United States has adopted the following: "A weapon system that, once activated, can select, and engage targets without further intervention by an operator. This includes, but is not limited to, operator-supervised autonomous weapon systems designed to allow operators to override operation of the weapon system but can select and engage targets without further operator input after activation."[2] A less bureaucratic definition compiled by the International Committee of the Red Cross defines LAWS as "[a]ny weapon system with autonomy in its critical functions. That is, a weapons system that can select and attack targets without human intervention."[3] Another critical component to contemplate when discussing LAWS is that these weapons systems are being used only in military conflict and are not available in civilian settings. Therefore, the primary use would alleviate the need for the deployment of U.S. soldiers to carry out similar objectives.

SHOULD LETHAL AUTONOMOUS WEAPONS SYSTEMS BE REGULATED AND IF SO ON WHAT LEVEL?

Currently, there is little to no regulation of the development and use of LAWS. The recent Department of Defense directive issued on January 25, 2023, outlines policy and guidelines to ensure that the risk of unintended engagements and other consequences of utilizing LAWS is minimized.[4] Therefore, current standard operating procedures are in place within the United States regarding the proliferation of autonomous weapons systems, but no international regulation has been determined.

Two reasons LAWS should be regulated are the cybersecurity risks and compliance with international weapons treaties. First, cybersecurity risks pose one of the greatest hurdles while developing and using LAWS because the consequences of a technological breach would be deadly. Currently, the DoD has cyber safety measures in place to align with military standards while developing LAWS in the interest of preventing risks that could ultimately turn the weapon system back on the deploying nation.

Second, compliance with international weapons laws and similar regulation amongst nations will likely lead to the need for formal regulation negotiations. The UN has taken a stand against the proliferation of LAWS and continues to advocate for LAWS to be banned.[5] Meanwhile, the U.S. and several other nations encourage the development and eventual use. This will likely lead to treaty considerations or chaos within the international sphere.

WHAT CONSIDERATIONS DO LAWS RAISE?

Antonio Guterres, Secretary-General for the United Nations, made a statement regarding the advancement of technology and weapons systems following a recent AI summit. He stated that, "… negotiations [are] to be concluded by 2026 on a legally binding instrument to prohibit lethal autonomous weapons systems that function without human control or oversight, which cannot be used in compliance with international humanitarian law." Numerous nations, including the United States have asserted they will continue to develop LAWS. This creates tension with twenty-six nations and other independent organizations that support a ban on both the development and use of such weapons systems.

One ethical issue is the lack of humanity within the systems, despite this being the main point of autonomous weapons systems. The DoD has released AI Ethical Principles that must be upheld during the "design, development, deployment, and use of AI capabilities in autonomous weapons."[6] These include five pillars – responsible, equitable, traceable, reliable, and governable – to ensure that the DoD minimizes any ethical pitfalls that may arise.[7] Therefore, steps by the United States have already commenced to ensure that LAWS are used in an ethical manner and any further ethical implications can be addressed on an international level.

CONCLUSION

To conclude, the development and future use of Lethal Autonomous Weapons Systems will eventually come to legal fruition and the policy gap regarding these weapons systems must be closed. The current policy guidelines implemented by the Department of Defense are just the start to what will likely become lengthy negotiations on an international level to ensure that the inevitable use of LAWS align with international humanitarian and war treaties. Weighing the preventable risks with the substantial positives – such as keeping United States soldiers off enemy soil – leads the forefront of LAWS development in an effort to transform modern warfare by utilizing advancing technology. ○

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The Dark Side of AI: AI Programs and Attorneys Navigate Different Ethical Horizons

By Heather Ochs

Welcome to the courtroom of the future, where the scales of justice are not only held by human hands, but also calibrated by algorithms. Artificial intelligence (AI) has vastly changed how lawyers navigate complex cases, conduct research, draft legal documents, and more. While this technology is innovative and efficient, it has its drawbacks. Overreliance on AI, such as ChatGPT, has sparked ethical concerns within the legal community. As recently documented in 2023 by Thomas Reuters, the categories of high concern include accuracy and client confidentiality.[1]

ChatGPT was released on November 30, 2022, by an upstart called OpenAI.[2] This technology was designed to provide "human-like responses to natural language queries"[3] and has been trained on a vast amount of legal information, including legal precedent and case

law.[4] Unfortunately, this is exactly where the accuracy limitation of the chatbot lies - ChatGPT has no source of truth and only knows the data it was trained on.[5] If the chatbot does not have the case law or other information requested, it may provide "plausible sounding but incorrect" information just to provide an answer.[6]

In 2023, accuracy issues with generative AI were illustrated in the high-profile case *Mata v. Avianca*.[7] In this case, plaintiff Roberto Mata sued the Avianca airline alleging a knee injury after being struck by a serving cart during his flight.[8] When Avianca filed a motion to dismiss the complaint, Mr. Mata's attorneys responded by filing a well-drafted 10-page brief in opposition, which included half a dozen supportive judicial opinions.[9] There was only one problem: the cases did not exist.[10] The brief's author, Attorney Steven Schwartz, had relied exclusively on a Generative AI tool called ChatGPT, which completely fabricated the opinions and even created imaginary citations. [11] Schwartz was sanctioned subject to Rule 11 of the Federal Rules of Civil Procedure (FRCP), [12] stating in part that "a court may sanction an attorney for, among other things, misrepresenting facts or making frivolous legal arguments."[13] This encompasses the filing of court documents without exercising diligence in their preparation.[14] Having acted in bad faith by relying on ChatGPT and failing to review a single case cited in his brief for accuracy, Schwartz was ordered to pay a $5,000 penalty and to send a copy of the fabricated cases to the judges improperly identified as having authored them.[15] The *Mata* case serves as an important reminder that while AI tools provide incredible benefits to the practice of law, it has not yet reached a stage where it can be relied upon for substantial legal information.[16]

In addition to the accuracy drawbacks associated with AI, risks surrounding client confidentiality have not gone unnoticed by the legal community. The attorney-client privilege attaches to communications made by a client to an attorney to obtain legal advice.[17] Confidentiality is a crucial piece of the attorney-client relationship, which is threatened using AI tools, such as ChatGPT, to store client information. Due to the permissive terms of ChatGPT, which grants third parties access to user data, any input of sensitive information may constitute an unauthorized disclosure and a breach of ethical standards.[18] Chief Justice John Roberts even raised the issue in his year-end report on the federal judiciary in which he questioned the negative implications of AI on the invocation of legal privileges.[19]

Under the Model Rules of Professional Conduct (MRPC), lawyers are required to take reasonable steps to protect client information from unintended recipients.[20] This applies to how information is transmitted, stored, and destroyed when utilizing AI and other forms of technology.[21] To OpenAI's credit, the company has improved ChatGPT to keep personal information secure.[22] As of April 2023, ChatGPT now allows users to turn off chat history, which prevents the technology from using conversations for training and improvement.[23] However, this is not a guarantee that user data is completely safeguarded. Attorneys are still obligated to be aware of the risks and to take extra precautions to protect their clients' information from falling into the hands of unintended third parties.

In the legal profession, we take an oath and are obligated to hold ourselves to the highest of professional and ethical standards. AI tools like ChatGPT have no such obligation. Part of those responsibilities include investigating the shortcomings of AI tools we integrate into our legal practice and proceeding with the utmost caution when handling confidential information. Stemming from *Mata*, a practical lesson has been served upon the legal community: Do not leave yourself susceptible to the dark side of AI. ○

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Artificial Intelligence: The Media's Latest and Greatest Industry Disruptor

By Isabella Askar

Some of the entertainment industry's most iconic Blockbuster films like Terminator and Wall-E seem less attenuated from reality the more artificial intelligence continues to transform major industries. Whether it be the creation of algorithms to construe songs in the voice of famous musicians or writing screenplays, artificial intelligence has proven itself indispensable to the entertainment industry.[1] Because artificial intelligence is here to stay, celebrities, multi-media conglomerates, and the entertainment industry as a whole must adapt to cutting edge technology and work with it rather than fight against it.

The unchartered territory with artificial intelligence in media has led to undesirable consequences and litigation for content creators. As such, this begs the need for adapting to these technological advancements as a means of being proactive rather than reactive. One notable recent case involving the much talked about ChatGPT is comedian Sarah Silverman's case against OpenAI, an artificial intelligence research laboratory.[2] Silverman, and two other authors suing OpenAI in this lawsuit, Christopher Golden and Richard Kadrey, are each authors of their own respective books. Collectively, these authors have come together for their copyright infringement concerns with OpenAi.[3]

Pursuant to their lawsuit, the Plaintiffs allege that OpenAI's ChatGPT's language model, which is trained using collections of writings from various datasets, includes a dataset that contains Plaintiffs' books.[4] The Plaintiffs claim that OpenAI infringed against their exclusive copyrights to their respective texts under 17 U.S.C. § 106.[5] Similar lawsuits have been filed against other major companies using artificial intelligence, like Google and Microsoft.[6] In response to these copyright infringement allegations, artificial intelligence companies allege that authors are failing to demonstrate that the artificial intelligence output is similar enough to prove copyright infringement.[7] Collectively, these lawsuits demonstrate a plausible concern: whether original authors can in fact prove that artificial intelligence is committing copyright infringement Lawsuits like these will only continue to rise with the development of artificial intelligence, which creates the need for the entertainment industry to adapt to artificial intelligence.

It is arguable that it will take much time before film producers can resort to artificial intelligence platforms for truly producible screenplays. According to Professor Paul Goldstein, an intellectual property law expert at Stanford Law, artificial intelligence has yet to reach such heights for screenplays.[8] However, already, artificial intelligence is extensively used in video game production reword this sentence a bit reads a bit awkwardly.[9] The overall threat to those in the entertainment industry, Goldstein explained, is economic in nature.[10] For writers specifically, they "fear that the new technology will reduce their employment opportunities to the occasional rewrite of machine-produced scripts."[11]

The U.S. Copyright Office however, issued a notice of inquiry regarding copyright and artificial intelligence.[12] The study conducted by the Office is intended to evaluate "the copyright law and policy issues raised by generative AI and is assessing whether legislative or regulatory steps are warranted."[13] Although this is a step in the right direction for the entertainment industry, Goldstein stated that he would not "begin to look for definitive legislation until three to five years from the Office's report, at the earliest."[14] Legislative action will progressively continue to assist celebrities, media companies and the like to adapt to the changes brought forth by artificial intelligence. This industry disruptor will only continue to grow, and as such, the media at large should work with these changes rather than fight against the inevitable. ○

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Driving Towards Change: Navigating the Insurance Landscape of Automated Vehicles

By Jamie Dasher

In the 1920s, people thought by the year 2000, flying cars would be commonplace. Unfortunately, innovations have not come far enough for every family to have a flying car. However, the new best thing is autonomous vehicles, which, depending on their level of automation, can be driverless. Advancements in technology bring numerous downsides, including cyber-attacks, privacy concerns, and insurance implications. When looking at these, the question becomes: Who is responsible when an incident or controversy arises from an autonomous vehicle?

The Society of Automotive Engineers created a classification system of automated vehicles ranging from level 0 (no automation) to level 5 (full driving automation).[1] Level 0 includes lane departure warning, automatic braking, and front collision warning.[2] These are typical features of new vehicles, but they do not interfere with the actual driving of the car. Each level increases the amount of automation reaching full driving automation with level 5.[3] In fact, fully automated vehicles lack a steering wheel or pedals for manual operation.[4]

How do these cars work? Self-driving cars gather data through sensors and learn the environment surrounding the vehicle.[5] The system then uses artificial intelligence (AI) and automated data processing to understand and learn patterns and environments.[6] However, this process is not always 100% accurate. In 2019, Jeremy Banner was driving his Level 2 Tesla on a Florida highway.[7] Just seconds after engaging the vehicle's "Autopilot" mode, he fatally crashed into a tractor-trailer.[8] His attorneys alleged that defects in Autopilot, amongst other safety features, caused Banner's wrongful death by failing to apply the brakes or attempting to take evasive action to avoid the collision.[9] This was not the first instance where Tesla's "Autopilot" failed to detect another vehicle. In 2016, a similar accident took place on the same highway, killing yet another Tesla driver.[10]

When considering insurance policies, the insured and insurer should understand how these technological advancements affect the policy and coverage. Each state governs its insurance requirements and has different minimum coverage.[11] For example, the State of Florida requires each vehicle registered in the state to have a minimum coverage amount of $10,000 in Personal Injury Protection and $10,000 in Property Damage Liability.[12] But, if the vehicle is fully autonomous, Florida requires "[p]rimary liability coverage of at least $1 million for death bodily injury, and property damage.[13]

Insurance companies already utilize driving records to procure personalized premiums based on a collective number of accidents and tickets a driver has received. Recently, tracking programs that gather information on driving habits have been offered to drivers to lower insurance premiums.[14] As vehicle manufacturers continue to implement more technological features, insurance companies will gain the ability to offer premiums and discounts based on several crucial factors such as: how often drivers utilize the self-driving function, how often they take their hands off the wheel, and how often they take their eyes off the road.

Looking at anticipated liability issues, manufacturers of autonomous vehicles involved in collisions could be subject to liability, especially if the driver's seat is vacant. Florida Statute 316.85 states, "the automated driving system, when engaged, shall be deemed to be the operator of an autonomous vehicle."[15] Undoubtedly, this may cause problems when negligence actions are raised against the "driver" of the car if, at the time of the collision, automated driving was engaged. Therefore, because the system itself cannot be held liable under a negligence theory, either the manufacturer, the vehicle owner, or the "driver" would be responsible based on the totality of the circumstances.

Because autonomous vehicles incorporating AI is a relatively new area of law, several questions remain unanswered. Policies, statutes, and case law have yet to definitively answer whether accidents caused by self-driving cars, when automated driving is engaged, will be subject to strict liability or follow traditional negligence in tort and product liability. While this likely will cause changes in automobile insurance coverage, only time will tell if premiums will decrease as more autonomous vehicles are on roads, leading to more robust AI processing and fewer accidents. ○

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"*Order In* the Court" - Is order being taken too far?

By Victoria Kelly

Artificial Intelligence, also known as "AI," is an emerging technological field that combines computer science and datasets to enable problem-solving solutions. AI has become relevant in almost every aspect of life, including the legal community. Occupations within the legal industry have been, and will continue to be, affected by the advancement of AI.

Judges can implement their own rules within the court called "standing orders." Standing orders are instructions implemented by judges that are enforceable by law, as judges are seen as the "gatekeepers" of the courts. Recently, following the advancement of AI in the legal industry, judges have implemented their own standing orders regarding AI, and some orders in particular demand the disclosure of the use of AI in court.

In March of 2023, two attorneys filed a brief written in part by AI that mistakenly included cases that did not actually exist.[1] Sanctions were imposed on the Respondents by the court to punish and deter the repetition of this conduct.[2] This case, *Avianca*, has become rather "infamous" regarding attorneys relying on AI to write legal documents. It is unclear whether this will be the last sanction imposed by courts for the reliance of AI in legal writing by attorneys.

In 2023, judges all over the country imposed standing orders demanding the disclosure of the use of AI in their perspective court. There are two in particular: one implemented by the Honorable Michael M. Baylson out of the United States District Court for the Eastern District of Pennsylvania, and one implemented by the Honorable Stephen Alexander Vaden out of the United States Court of International Trade.[3]

Under Judge Michael M. Baylson's order, dated June 6, 2023, any attorney that "has used Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court and assigned to Judge Michael M. Baylson, [they] MUST, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing and CERTIFY that each and every citation to the law, or the record in the paper, has been verified as accurate."[4]

Under Judge Stephen Alexander Vaden's order, dated June 8, 2023, it is "ORDERED that *any* submission in a case assigned to Judge Vaden that contains text drafted with the assistance of a generative artificial intelligence program on the basis of natural language prompts, including but not limited to ChatGPT and Google Bard, must be accompanied by:

> (1) A disclosure notice that identifies the program used and the specific portions of text that have been so drafted;
>
> (2) A certification that the use of such program has not resulted in the disclosure of any confidential or business proprietary information to any unauthorized party; and it is further."[5]

Although standing orders have been regularly permissible within the courts, the admittance of AI use through these orders need not become an overreach of judge authority. The overarching question here is: "what exactly *is* AI?" This is a blurred line. Many things can constitute as artificial intelligence, some most obviously as a "chat bot" that will sputter out an answer seconds after being asked a question. However, some uses of AI may not be so obvious.

AI has been built into many programs that are used regularly by the average attorney, including Microsoft Word, Westlaw, and Lexis Nexis. In August of 2023, Thomson Reuters Corporation, the parent company of WestLaw, announced the closing of acquisition with Casetext, Inc.[6] Casetext uses advanced AI to build technology for legal professionals.[7] The acquisition of Casetext allows Thomas Reuters to further implement the advanced productivity offered by AI to those in the legal profession.[8] Thomas Reuters is just one of the thousands of legal departments that have acquired Casetext's AI and machine learning.[9]

Although innovative on its face, these advancements complicate the use of AI in legal writing. Almost every future or practicing attorney has used WestLaw or a similar case law search engine for legal writing. There is a possibility that AI has become so embedded within these legal research engines that it will be virtually impossible to preclude or disclose the use of it. The judges believe a line must be drawn; however, it seems unclear where exactly the line is. ○

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The Musical Landscape and The Event Horizon of Artificial Intelligence

By Wendell Powell II

The music industry is no stranger to technological advancements, and with the rise of artificial intelligence (AI) it is prime to undergo yet another transformation. AI is a general term that refers to any system that can mimic human intelligence, including learning, problem-solving, and decision-making. Within the music industry, AI has already shifted the landscape by improving songwriting, music production, and curation. However, as AI technology continues to improve, what is left in its wake are the legal ramifications that the United States Court system has yet to address.

The biggest and most glaring issue is copyright protection. From the dawn before the first copyright protection, the Constitution gave Congress the power to "promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries".[1] "The purpose of copyright protection is to supply the economic incentive to create and disseminate ideas."[2] It is in the interest of the public, that copyright protection serves, within the form of preventing the misappropriation of the products of creative and original thinking.[3] The heart of copyright protection is pure and seeks to reward novelty, while punishing arrogation. However, what about AI? Why should it be treated differently? This begs the question: Should AI music be protected? If so, who is being protected and why?

Copyright presumes a mind. For order presumes one that ordered, and creation presumes a creator. However, Congress has stated that only a natural person can be an inventor.[4] Therefore, AI cannot be considered an inventor because it is not a natural person.[5] What may be missing from this analysis is the individual behind the AI. Copyright protects expressions fixed within a medium.[6] Copyright law does not venture so far into the weeds as to what is used to fix that expression. So why must we do so when it concerns AI? Maybe the EU can give us guidance on this issue.

The European Union has been proactive about addressing the challenges posed by AI-generated music and copyright protection. While recognizing the potential benefits of this technology, the EU has also acknowledged the need for adequate safeguards to ensure that intellectual property rights are respected.[7] In 2019, the EU passed a directive on copyright in the digital single market (no physical units) which includes provisions on the use of AI for music creation.[8] The directive requires that creators of AI-generated music be recognized as authors and that their rights be protected.[9] Additionally, the EU has called for the development of technologies that can identify and protect copyrighted works, including those generated by AI.[10] In this way, the EU is working to strike a balance between promoting innovation and creativity while also protecting the rights of artists and content creators.

To further achieve such a balance in AI, the EU's new copyright directive has been paired with the AI Act.[11] The AI Act has taken a risk-based approach, that structures AI with risk levels.[12] The basic structure has a four tier skeleton, that aims to categorize AI systems and their potential adverse impacts.[13] The EU recognizes that this approach is not full proof. However, the EU believes that "to be a global power means to be a leader in AI," not to fear it.[14] When it comes to copyright law in the EU, the focus is to "modernize" it.[15] The EU has made it a goal to "enable consumers and creators to make the most of the digital world."[16] Furthermore, the "new rules will stimulate the creation and dissemination of more high value content and allow for more digital uses in core areas…," at the same time "safeguard[] freedom of expression and other fundamental rights."[17]

If the United States court system can adopt a similar mentality, then the approach doesn't necessarily matter because the form would follow the function. Historically the constitution was designed to promote technological advancement. AI is just another installment in the timeline of humanity. As for copyright law, a tool should never discredit the craftsman. The playing field should always be leveled by the adaptation to new players. Similarly, when the National Basketball Association decided to extend the distance of the three-point shot, instead of eliminating it. As the creator's tools evolve, so does the creator, and as the challenges evolve, so should the solutions. Consequently, this is easier said than done. The implications are potentially immeasurable. However, the fact remains, AI is here. It is far better of a solution to tame the wild horse, than to banish it, for it would only return to destroy the land that didn't accept it.

While the United States Court system has remained silent, new AI creators envision the best of a symbiotic relationship. May the wisdom of Congress and the Judicial system harness this new power and strike the best balance possible, as the United States has always aimed to in the past. ○

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AI Killed the Lawyer Star

By Timothy Carver

Recently, in most professions, Artificial Intelligence and its various forms have been at the forefront of discussion—the best thing since sliced bread. Hollywood, or Atlanta, has prepared America for these times for years. From Robocop[1] artificially asserting police power, Minority Report[2] and AI being the jury before the crime ever happens, to total destruction Arnold style, as humanity battles to save the world in The Terminator.[3] It is incredible how creative humans are when they explore the unknown. The sky is falling on Chicken Little[4]; there is nothing new under the sun. Society seems to be searching for the end of the end. Some of us, or your parents, survived threats from the Mayan calendar to Y2K, which helped monetize the prepper phenomenon. Armageddon? By the grace of God, we are prepared for that.[5]

In the legal field, change is nothing new. Legal research has gone from hours in the stacks to a click of a few buttons, sometimes even on a cell phone in the courthouse. Once upon a time, law school libraries boasted of the number of volumes they housed. It was not that long ago the American Bar Association required that number to be part of law schools' annual reports.[6] Now, the libraries are primarily study halls. When was the last time someone saw a tangible Dewey Decimal Card file, let alone used it? Secondary sources are pivotable, yet they are now on the same screen as opinions we read, not different rooms. Shepardizing was forced into the same transformation. Imagine someone still shepardizing with paper supplements. All these systems have incorporated forms of AI, and they are not slowing down.

Where does that leave the legal field today? How will AI affect legal proceedings from this day forward? The bar associations are passing resolutions. The Florida Bar Association passed an ethics opinion warning of lawyers' responsibilities to protect the confidentiality of client information and third-party platforms.[7] Next, they merge generative AI into the same group of nonlawyer assistants, although not a "person," when a licensed attorney adopts an AI work product, the Model Rules of Conduct apply identically as if AI were living.[8] Concerns of improper billing were addressed in the opinion, including inflating billing and double billing.[9] Lawyer advertising was addressed; in our highly competitive field, lawyers are not allowed to say my firm's AI can beat up your firm's AI, unless the claim is capable of objective verification.[10] In Florida, lawyers have access to new AI tools, the lines are being drawn, and the game is afoot.[11]

On the national level, there is a different sovereignty, the American Bar Association. While meeting in Denver in August 2023, they penned a resolution with warnings and recommendations.[12] The number of cyberattacks is a growing concern and has opened the doors to a legal arena.[13] In the crosshairs of potential GPT-4 cyberattacks are law schools.[14] In conclusion, and resolved on the cover page, "The American Bar Association urges law schools to incorporate cybersecurity and emerging technologies into their curricula."[15][16]

Where does that leave readers of the Gavel? Law Students across the country are standing at the edge of a double black diamond ski slope with ski tips pointing downhill. Ahead is a new world, the untamed wild, wild west, the next dimension of the internet. There are only a few rules and guidelines and even less case law. AI is already used for client interviews, intakes, legal research and annotation, legal drafting, and contract review. The model rules of conduct say lawyers shall be competent to represent clients.[17] Juris Doctor graduates will go down the ski slope. It is an amazing time to be on the frontline of new codes, statutes, unprecedented controversies, unheard-of questions presented, unwritten holdings, and appeals. How does one become competent in this new world? What is the next step? Step up, take action, and email the Dean of Academics to sign up for the first open seat in any class about AI. The ABA has told students and law schools to prepare before both are left behind in the stacks. ○

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The Changing Landscape of the Medical Professional Standard of Care

By Emily Feyerabend

In recent years, surgeries, treatment options, data collection, and diagnostics have rapidly evolved in the wake of artificial intelligence ("AI") technology in healthcare. Although benefits of these advancements far outweigh the costs, medical professionals should nonetheless be wary of the legal ramifications of AI development. Medical malpractice suits arise when a medical professional breaches a legal duty owed to the plaintiff that results in an injury suffered by the plaintiff.[1] What constitutes a breach of legal duty is changing due to developments in robotic surgeries and machine learning systems.

Some of the most prevalent, well-established AI technologies are minimally invasive robotic surgery devices.[2] For example, the newest version of the da Vinci robotic surgery systems boasts the ability to manually guide robotic arms with a remote control; reposition the patient mid-surgery; and insert imaging scopes on robotic arms to increase visibility range.[3] Additionally, robotic devices can track the movements of instruments in three-dimensional spaces during procedures, using "haptics" to alert medical professionals if the instruments approach the border of "safe zones" and warning them of the possibility of error.[4]

Naturally, complexities arise with legal ramifications of these evolutionary surgical systems. A medical professional's decision to rely or not rely on robots during surgery could impact their potential liability should a harm be suffered by the patient. For example, an injury inducing "haptic" malfunction that fails to warn a surgeon of the possibility of error leads to a convoluted surgical liability standard[5] The question then presented is whether they acted as the reasonable surgeon would in a similarly situated AI assisted operation.

Overly relying on an automated or semi-automated system may jeopardize the integrity of a medical professional who is qualified to perform the task but deferred to a device without full knowledge of the potential ramifications.[6] Inversely, acting without regard to a robot's recommendations or refusing to learn how to correctly operate a robotic system necessary for an operation may result in a jury finding a breach of the standard of care.[7]

With commonly used semi-automated systems, the defendant surgeon may have the burden to prove that, based on a preponderance of the evidence, she acted reasonably to deter system malfunctions, or, upon learning of the malfunction, utilized her own professional skill in a reasonable way to deter the injury.[8] In Florida, such a burden of proof requires expert testimony.[9] Experts must be well-versed in both the type of operation performed and the AI system. How much deference should be given to the system recommendations or to the surgeon's personal choices, however, is likely to become a near-future problem for experts and juries to dissect.

In addition to robotic surgeries, one of the most widely utilized and fastest growing types of AI in the medical profession is machine learning. Machine learning collects data through complex cognitive computing algorithms to predict patterns; "present[s] doctors with treatment options; and recommend[s] drugs and instructions for administration."[10] Machine learning functions by feeding "reams of information" on a particular matter into vast computing systems, and the technology spits out the recommended treatment pattern based on the imputed factors.[11]

Data collection through these algorithms threatens the transparency between the physician-patient relationship, a requisite element to the legal duty owed in medical malpractice suits.[12] A significant reason transparency threats arise is because the machines supplying the information to medical centers are produced by massive multinational technology corporations such as IBM. These technological corporations supply the machine learning systems with the information they will be able to compute, and from there, physicians utilize the data in the systems to provide patients with medical care.[13]

This phenomenon is known as "black-box medicine" or "deep learning" because these algorithmic systems cannot be "explicitly understood."[14] The "black box" is often created by different developers "not working tightly in conjunction" with one another, and no one person is responsible for controlling the data that is computed by these machines.[15] Instead, machines are developed over time, in different locations, and without a uniform code system that binds them onto the same path to liability.[16] There is no common nucleus from which decisions or outputs are generated.[17] Thus, medical professionals relying on these systems are unaware of the sources from which they derive their information, which can inevitably lead to issues of privacy, transparency, misdiagnoses, and complex lawsuits.

Training and experience are crucial to protecting the medical professional's liability. Physicians must be open-minded to understanding how these devices and machines work and how to best prevent errors and misuse. The standard of care of the medical professional will continue to rapidly evolve for years to come. AI will soon be integrated into our conceptualization of the physician's standard of care, and experts will be able to assist judges and juries to adequately make decisions in AI-based medical malpractice claims. Until that day comes, patients, physicians, and lawyers alike must remain vigilant in working to equip themselves with the knowledge required to best tackle these complex issues. ○

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Men and Women: The Privileged Persons—A Warning on the Dangers of Personhood Rights for Non-Humans

By Brian Hofer

In what has been called "the classical discussion of the idea of legal personhood," John Chipman Gray's work *The Nature and Sources of the Law* states that "the technical legal meaning" of the word "'person' is a subject of legal rights and duties."[1] Throughout the history of Western Civilization, entities that have been granted at least some of the legal rights and duties of persons have included gods, animals, sea-going vessels, and famously, corporations.[2]

The emergence in recent days of Artificially Intelligent (AI) systems capable of learning from their experiences and making decisions independently has created problems for the current legal paradigm that views AI systems as mere extensions of the human personalities behind them.[3] The increasing autonomy of AI systems has created scenarios that pose serious difficulties for legal officials in applying traditional theories of liability.[4] For example, prosecutors have been puzzled in their search for a target for criminal liability in cases involving fatalities caused by self-driving vehicles.[5] The problem for traditional tort and criminal liability theories stems from the fact that such systems operate in a way that is increasingly independent of their original creators and thus, not necessarily attributable to them.[6] As a result, some intellectuals have started to suggest that the law should begin to assign legal rights and duties to such systems to address these legal difficulties, among others.[7] It has been suggested, among other things, that AI entities could serve as trustees, assume tort liability, and even be the subject of criminal prosecutions.[8] Such calls for increased legal recognition of AI entities are likely to become increasingly frequent—and more persuasive—as the capabilities and sophistication of AI entities approach those of human beings.

As mentioned above, American law today has extended many rights and duties to corporate persons that traditionally were thought to pertain to human beings, including the right to sue, to own property, to free speech, and to the equal protection of the laws.[9] Western legal systems no longer recognize divinities as the subject of legal rights and duties, animals are no longer put on trial, and as Gray points out, the practice of bringing proceedings *in rem* against ships has become "a mere form."[10] Consequently, any effort to persuade courts to recognize personhood rights for AI entities will likely heavily rely on analogies to corporations. But are such analogies truly persuasive? Any attempt to argue that they are should stimulate discussion of the considerations that moved American courts to confer such duties on artificial entities in the past. Such arguments should prompt discussion about the theoretical justifications for corporate personhood and an examination of whether these considerations support the same legal treatment for AI entities today. While the United States Supreme Court has recognized a number of legal rights and duties for corporations over the years, they have stated that corporations are "composed of natural persons" and "must exist by means of natural persons."[11] The justification for treating a corporation as a person, then, is that the corporation represents the interests of the natural persons who comprise it.[12] Ultimately, the conference of personhood rights on the artifice of the corporation merely protects the aggregate rights of flesh-and-blood human beings. To extend the same protections to an AI entity—a computer—would be to introduce a truly disruptive innovation into jurisprudence, as it would displace man(kind) from his privileged position over animate and inanimate matter.

Such a proposition should be shocking to anyone who cherishes the welfare of the human family, and it should especially disturb those who understand the theological roots of Western notions of the dignity of man. Mankind, according to Scripture, is created in the Divine image and likeness.[13] Catholic and Protestant Christians agree on the unique place of mankind within the created order—a place of dominion over all the rest of God's works exercised for the good of creation.[14] Christian academics must stand together in resisting legal arguments and developments in the law that erode or undermine that role. Christian lawyers and legislators should warn of the dangers of policies that subject human beings to rule by technologies created by human hands. They should advocate for creative solutions to the emerging legal crises caused by new forms of technology such as AI—solutions that honor God by respecting the primacy of human beings in the cosmos and the rightful place of technologies as tools in our creative quest to cultivate and develop the earth. ○

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You're Fired: The Declining Need for Legal Interns with the Rise of Artificial Intelligence

By Zachary Chaney

The legal industry is experiencing a significant transformation due to technological advancements, just like many other industries. Artificial Intelligence (AI) is playing a crucial role in automating document review, legal research, and repetitive tasks, thus increasing efficiency and accuracy in the legal sector. This development could lead to concerns about the future of legal job prospects for aspiring law students, but it's important to understand that AI is not replacing legal interns altogether, but rather augmenting their roles and improving the overall efficiency of the legal profession.

Conducting legal research and reviewing documents is one of the most time-consuming tasks for legal interns. However, AI-powered tools can significantly streamline these processes by analyzing vast databases of legal documents and providing quick results. Legal research can be made more efficient by using algorithms that find relevant cases with higher accuracy and in less time. While AI cannot outright do the research for an individual, it does make the process faster and more efficient by allowing legal professionals to quickly scan and search large databases, including regulations, statutes, and more.[1]

AI can assist in document review, helping legal professionals identify key information, such as evidence and relevant clauses. This automation enables interns to concentrate on higher- level, more analytical work instead of manually reviewing a large number of documents such as contracts during due diligence. As with any other document-related challenges, AI can help legal professionals review documents more quickly.2 An AI-based due diligence solution can pull specific documents required for due diligence, like documents containing a specific clause, and spot variations or changes in documents.3The biggest advantage of AI is its ability to quickly review documents, thus saving legal professionals time and their clients money by reducing billable hours for due diligence.

With that, one of the most significant advantages of using AI in the workplace is the potential for cost savings.[4] A recent survey by McKinsey showed that AI can reduce operational costs by up to 30%.[5] By automating and streamlining repetitive tasks that would traditionally be given to a legal intern, AI can free up time and eliminate the need to hire an intern solely to do due diligence and research, but allows firms to hire legal interns for more creative and analytical work.[6]Using AI instead of a legal intern provides an unbiased perspective. Human biases are well-documented and over the years, society has started to wrestle with how much these biases bring harmful results.[7] AI algorithms can learn to make decisions based on training data, but AI – unlike humans – disregards variables that do not accurately predict outcomes.[8] This is the opposite of humans who may lie about or be oblivious to the factors that led them to make the decision they did.[9] Developers code algorithms to replicate human decisions, which can result in biased outcomes.[10]AI helps identify and reduce the impact of human biases, but AI can also make the problem worse by deploying biases at scale in sensitive application areas.[11] An example of this was found by ProPublica, an investigative news site, where they discovered a criminal justice algorithm in Broward County, Florida, that mislabeled Black defendants as "high risk" at nearly twice the rate it mislabeled white defendants.[12] Training natural language processing models on news articles can lead AI to exhibit racial stereotypes.[13] It's impossible for AI to completely replace the human element in the legal profession. Human involvement is necessary for judgment, ethics, and strategic thinking.

The legal field is being transformed by AI, making it more efficient and accessible. Although AI can reduce the need for legal interns in some routine tasks, it is crucial to understand that AI cannot replace human intelligence and ethical considerations provided by legal professionals - which the industry needs. Legal interns are still essential to the legal profession, working together with AI to provide better results, improved efficiency, and more comprehensive legal services to firms and their clients. The future of the legal industry is one where technology and human expertise work in collaboration to achieve justice and fairness. ○

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Navigating Federal Governance Framework for Emerging Technology

By Eva Thompson

Considering global advancements in artificial intelligence ("AI") law and policymaking, a comprehensive federal AI governance framework is emerging within the U.S. The President, Congress, and federal entities, including the Federal Trade Commission, the Consumer Financial Protection Bureau, and the National Institute of Standards and Technology, are introducing AI-related initiatives, legislations, and policies.[1] However, many experts suggest that public companies ultimately maintain responsibility to regulate and monitor AI policies.[2]

An example of a federal initiative aimed at regulating the pace at which AI is accelerating is the *Block Nuclear Launch by Autonomous AI Act*.[3] The Act is aims to ensure "that no matter what happens in the future, a human being has control over the employment of a nuclear weapon – not a robot."[4] To this end, billionaire mogul, Elon Musk, signed an open letter in March 2023 urging others in the tech industry to "immediately pause for at least 6 months the training of AI systems."[5] The letter calls for a federal moratorium and advises that companies and the public evaluate the potential consequences of AI, stating "[the risk of civilization] must not be delegated to unelected tech leaders."[6]

Apart from federal initiatives, states are rapidly focusing on regulating AI services and products as the introduction of bills related to AI increased by forty-six percent (46 %) between 2021 and 2022.[7] State legislators are also establishing task forces to explore the necessity of AI-specific regulations. Louisiana established a technology and cybersecurity committee to examine the influence of AI on state operations, procurement, and policy.[8] Texas instituted an AI advisory council to investigate and oversee AI systems developed, utilized, or acquired by state agencies.[9] Similarly, North Dakota and West Virginia are in the process of establishing advisory bodies to scrutinize and monitor AI systems within their respective state agencies.[10]

Although legislators on federal and state levels aspire to create regulatory framework, experts are skeptical of the extent and limitations of government intervention and ultimately contend companies should assume responsibility.

As such, AI companies themselves are actively working on self-regulation in the hope of establishing a precedent for others. For example, the Frontier Model Forum was created by the ChatGPT developer OpenAI, Anthropic, Microsoft and Google, the owner of the UK-based DeepMind. The forum's members state its main objectives is to promote research in AI safety, such as developing standards for evaluating models; encourage responsible deployment of advanced AI models; discuss trust and safety risks in AI with politicians and academics; and help develop positive uses for AI such as combating the climate crisis and detecting cancer.[11]

A key takeaway from the rise of AI-related governance initiatives is that generative AI demands self-regulation; however, crafting effective bipartisan regulation poses a challenge for state and federal legislation. Despite skepticism among compliance experts regarding government dependence, companies must develop regulatory policies in collaboration with the government to ensure safer AI usage for the public. ○

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The Evolution of the Judiciary

By Ryan Rahilly

There are ever-increasing areas of law adopting the use of Artificial Intelligence ("AI"). Although these AI systems are being adopted to assist lawyers and judges, these systems can also have dangerous consequences. One such area that is experiencing both the benefits and consequences of AI is the judicial system. Namely today many judges are utilizing AI systems to assist them in making sentencing decisions, which can result in judges simply relying on the AI's determination instead of making their own decision.

Now the benefit that AI brings to this area of the legal system, is its unparalleled ability to compile and compare a wealth of information.[1] Namely AI systems can look at several factors that could affect an individual's risk of recidivism, such as family situations, where they live, current employment, as well as numerous other factors.[2] Without these AI systems judges would simply not have the time or resources to examine all these factors. Therefore, AI allows judges to make more informed decisions regarding the sentencing of defendants.

The other benefit of AI systems is that they can eliminate and ignore certain factors that are not relevant.[3] This could be an important feature because according to some studies, judges were more likely to give out harsher sentences right before lunch when they were hungry, compared to after lunch.[4] Additionally, judges oftentimes make credibility and trustworthiness determinations based on how a defendant dresses and appears.[5] Now, AI systems do not have a specific worldview and will only look at the facts and data that it has.[6] While a judge will view something through his or her specific worldview.[7] Although judges are supposed to be unbiased, and ignore any potential biases they have, it is sometimes impossible for a judge to be aware of every potential bias they have.[8] Several things might be considered a bias such as how some judges are more inclined to give out harsher sentences on specific crimes over other judges in the same situation.[9] Therefore, these AI systems would be able to ignore those emotional factors that tend to impact a human's decision and only look at those factors that would impact recidivism risks.[10] These AI systems also promise to give out more consistent sentences compared to judges.[11]

Based on these benefits, AI systems have also begun to be used when determining whether to charge an individual with a crime. In San Francisco, the District Attorney has begun using AI to help make charging decisions.[12] There has even been a trend to try and implement AI systems that make credibility determinations like a lie detector. Now for all the potential benefits of AI systems, numerous potential disadvantages could threaten to cause injustice.

The first disadvantage to AI is the trust that people put in it. Namely, people are inclined to simply follow and trust the determinations of an AI system instead of using it as a guide to aid them in reaching their decisions.[13] Additionally, the other problem with AI is the fact that AI learns, which means that AI can learn stereotypes.[14] AI also depends on the data that is imputed into it, which means that if there is biased data put into the system then the results will also be biased.[15] Namely, "As Justice Cuéllar notes, it is only because we can reverse engineer the situation that we can understand the bias. The danger of not knowing how the machines reach their conclusions could lead to misappropriations of justice."[16] Therefore, to ensure that the AI systems are making nonbiased determinations, then we need to know the data that is being used and be able to trust that data.

However, according to some, AI systems should never be used in sentencing determinations.[17] This is because a computer is making a mathematical determination on how long to sentence someone to prison based on the chance that they might commit a crime in the future. What this means is that these defendants are being sentenced to longer sentences not based on crimes that they have committed, but based on the chance that they might commit another crime in the future.[18]

It is true, however, that these systems are being used to make recidivism risk determinations to give out sentences. The criticism of punishment based on potential future crimes is improper because it ignores the underlying principle of the criminal justice system, which is rehabilitation.[19] The system also needs to balance rehabilitation with protecting society.[20] Therefore, if someone is more likely to commit another crime, then there is a fundamental interest in protecting society from those people. Therefore, for judges to make just decisions, they need to be able to weigh these competing interests, which is something that AI is incapable of doing. Moreover, AI cannot make decisions based on compassion or mercy, which is sometimes required for true justice.[21]

Ultimately AI, if used properly can help judges make sentencing determinations, based on a more holistic view of the person. However, judges need to keep in mind the potential risks of AI. That is, judges need to be able to trust the data, without completely relying upon the AI's determination, because judges need to balance the underlying interests of the criminal justice system. Namely, they need to balance the interests of protecting society, rehabilitating the offender, punishing the offender, and deterring him and others from doing so again in the future. Furthermore, true justice and equity require the judge in some cases to show mercy and understanding, as people are more than just data sets.[22] Therefore, AI if used properly can be a useful tool in the execution of justice, however, it cannot be a replacement for the judge. ○

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You Are the World's Most Valuable Resource

By Carmen Trunkett

With the ever-growing necessity of technology, it is easy to become overly reliant and allow your devices to do the work for you. While this is an easy option, a smart, proactive user will understand not only the advantages, but the disadvantages that are associated with using technology and sharing their information with those whose technology they are using. As the technology industry has grown, smartphones have become the norm, with nearly 6.5 billion smartphone mobile network subscriptions worldwide as of 2022. One of the most prominent functions of smartphones is the ability to access third party websites and applications which serve purposes varying from a simple game to a one-stop-shop for all your banking and budgeting needs. Many of these websites and apps request access to user data as a condition to using the app and use artificial intelligence to analyze this data to boost efficiency through process automation, improve speed or consistency of service, use customer insights to inform decision making, among other things. However, the more sensitive the information being accesses, the more important it is for the user to not only know that the company is taking their data, but to know that their data is safe from both internal and external threats. Looking at only apps purchased from the IOS app store, over 45% of unpaid apps and 11% of paid apps have reported collecting privacy data from their users. Historically, express consent has not been a requirement to collect a user's personal information. However, Gaining the users consent is just the tip of the iceberg when it comes to data protection. Once a company is allowed access to the user's data, it then becomes their duty to keep this data secure.

While developers may willingly misuse customer data, incidental breaches are a serious concern for users. "A data breach is any security incident in which unauthorized parties gain access to sensitive data or confidential information, including personal data (Social Security numbers, bank account numbers, healthcare data) or corporate data (customer data records, intellectual property, financial information)." According to IBM's *Cost of Data Breach* 2022 report, 83% of the surveyed organizations had experienced **more than one** data breach, showing that these breaches are a constant threat. A company experiencing a data breach loses on average 1.42 million dollars, but the cost associated with preventing such a breach is 1.44 million dollars, giving companies little incentive to protect their customers data. Per the companies surveyed, the cost on a company experiencing a data breach in the United States is more than 9 million dollars on average.

The United States has historically rooted their data privacy laws in a harm prevention approach. As of now, there is not a "one size fits all" approach to data security. The Federal Trade Commission understands that there are different security concerns for different apps and "expects app developers to adopt and maintain reasonable security practices" which depends on different factors such as the number of users and the privacy concerns implicated. "Apps that are more complex may rely on remote servers for storing and manipulating users' data, meaning that developers must be familiar with securing software, securing transmissions of data, *and* securing servers."

However, there has been a shift recently, with 5 states – California, Colorado, Connecticut, Utah, and Virginia – adopting a rights-based approach mirroring the European Union's General Data Protection Regulation (GDPR). Under this approach, the users are the ones who own their data and they have the right to determine who and for what purposed their data is used. Essentially, under this approach, data privacy is viewed as a fundamental human right.1These laws apply to businesses across all sectors while there are still varying different laws that pertain only to specific sectors. The rights accorded by the GDPR, include access, correction, portability, erasure, consent, and appeal.In addition to individual rights, the GDPR implements governing principals such as privacy/data protection by design, record keeping, data minimization, transparency, informed consent, legitimate uses, data protection officers, data impact protection assessments, best cybersecurity practices, data breach notifications, employee training, requiring appropriate contractual language. While only 5 states have yet to implement such legislation, it is likely that more states follow their lead as user concern over their data has become an ever-increasing area of discussion. ○

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Combatting Deepfake Pornography: The Battle for Digital Decency

By Brianna Pritts

Artificial intelligence's ("AI") use expands far beyond programs that help curate essays or thank-you notes. Using AI, individuals can generate deepfake pornographic content, both as photos and video. Deepfake technology refers to media that is manipulated to replace it with another's likeness. Using this technology, individuals can alter and manipulate pieces of content to compound them into a computer generated this is used against a former significant other who the creator wishes to get revenge on, or creators will use the likeness of a certain celebrity to get more views. Celebrities, such as Taylor Swift and Emma Watson, have had their likeness subjected to deepfake pornographic content.

Deepfake manufacturers have the ability to take a picture from a person's social media and turn it into deepfake pornography. The individual whose likeness is used may have innocently posted a picture on Instagram, the wrong person then saves the picture, and now their likeness is being used, without her knowledge, in explicit material.

Currently, most states have regulations on revenge pornography, which is the distribution of pornographic material without the depicted individual's consent. For example, Georgia makes it a felony to electronically transmit or post pornographic material when it is being used to harass the depicted individual.[1] However, deepfake pornography is not necessarily covered by existing laws. These laws require that it is the individual participating in a sexual act.[2] Thus, if an individual's face is superimposed on another person's body, the manufacturer would not satisfy current revenge pornography laws. For example, Maryland's criminal law regarding revenge pornography requires that the person who distributed the material have the "intent to harm, harass, intimidate, threaten, or coerce," and the depicted person "had a reasonable expectation that the image would remain private."[3] Whereas, with deepfake pornography, the intent of the person distributing may not be malicious, as the material may depict someone personally unknown to the creator. Further, the depicted person would not have a reasonable expectation the image would remain private because she was unaware of the creation of the material. Thus, in Maryland, a person whose likeness is used in deepfake pornography would have no legal recourse.

Many legislators are aware of the dangers of deepfake pornography, and many states have enacted or proposed legislation to combat it.[4] Proposed legislation in California aims to criminalize knowingly distributing computer-generated audio or visual pornographic material using a person's likeness without consent, and violation could result in up to a year in jail.[5]

California has also introduced a civil cause of action for individuals who are nonconsenually depicted in deepfake pornography.[6] This cause of action requires that the defendant's intent was to "cause harm or despicable conduct."[7] Despicable conduct is described as something that is "so vile, base, or contemptible that it would be looked down on and despised by a reasonable person."[8] This differs from other statutes that require a higher level of harm done, such as Georgia's statute requiring the purpose is to harass the individual.[9] Although this standard seems unclear, the legislation specifically targets nudity or sexual content that is computer generated.[10] Thus, those depicted in deepfake porn would have a specific cause of action. Federally, legislation has been introduced to target deepfake pornography.[11] The "Preventing Deepfakes of Intimate Images Act" seeks to criminalize the non-consensual distribution of deepfake pornography, as well as allow individuals depicted to seek civil remedy.[12]

However, it is unclear how effective laws prohibiting deepfake pornography will be. One main criticism is jurisdictional issues. Although some states have current laws prohibiting the use of deepfake pornography, it is exceedingly rare for the creator to be in the same state as the individual depicted. Further, the creator may be in a different country. Thus, it may be impossible to ever prosecute or serve the creator or distributor of the material. Additionally, due to the minor penalties imposed, there may be no real incentive to attempt to serve justice on a charge or claim.

The proliferation of deepfake pornography is a concerning challenge facing legislators, and legal efforts on the state and federal level have begun to face this new issue. These legal initiatives represent important steps toward combatting deepfake pornography and protecting the dignity of individuals online. ○

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Reimagining Work: Harnessing Cutting-Edge Tech in Employment Strategies

By Anthony Thompson

Artificial intelligence (AI) is a multifaceted concept that defies simple definition, and is often interchangeably used with terms like machine learning, algorithmic decision-making, and automated decision systems.[1] At its core, AI involves the development of tools capable of analyzing extensive datasets to extract patterns and predict outcomes in novel scenarios.[2] These tools, particularly those utilizing machine learning techniques, possess the ability to learn from incoming data without explicit human intervention, thereby enhancing their predictive capabilities over time.[1] The complexity of AI systems often leads to the generation of insights beyond human observation, with some outcomes even eluding comprehension by their human creators.[3]

In the realm of employment practices, AI has become increasingly relevant, offering potential solutions to streamline recruitment, hiring, and personnel management.[4] Employers are adopting AI systems to aid in various functions, including screening job applicants and evaluating potential candidates for positions.[5] Particularly noteworthy is the utilization of AI in response to contemporary challenges such as the COVID-19 pandemic, where technologies like security cameras equipped with AI scanners were deployed to monitor employee adherence to safety protocols.[6]

However, the integration of AI into employment processes raises significant concerns regarding fairness, accountability, and transparency.[7] Foremost among these concerns is the risk of perpetuating or exacerbating discriminatory biases inherent in human decision-making.[8] Despite the perception of objectivity and neutrality associated with AI, algorithms can produce predictions that systematically disadvantage certain demographic groups based on protected characteristics such as race or gender.[9] AI may reflect or reinforce discriminatory biases when it is making employment decisions. This risk is compounded by the opacity of many AI algorithms, which hinders the ability of human decision-makers to discern the rationale behind algorithmic decisions.[10]

One notable example illustrating the potential for AI-driven discrimination is the case of Amazon's failed attempt to develop an algorithm for screening job candidates.[11] The algorithm exhibited systematic biases against qualified female applicants, underscoring the danger of biased data and flawed algorithmic models.[12] Artificial intelligence tools have the capacity to replicate existing human biases or introduce novel biases, contingent on the methods employed in their construction and training. Moreover, AI systems trained on data reflecting historical patterns of discrimination may perpetuate existing inequalities, further entrenching systemic biases in employment practices.[13] This is a result of AI tools being built using data-rich profiles, which can lead to the artificial intelligence tool relying on characteristics shown in the data.

The challenges posed by biased AI extend beyond the hiring process to encompass broader issues of data quality, transparency, and accountability. Employers must scrutinize AI algorithms to ensure they are built on unbiased, representative data and are transparent in their decision-making processes.[14] Moreover, regulatory oversight is necessary to hold employers and AI vendors accountable for discriminatory outcomes and to establish guidelines for the ethical use of AI in employment. This regulatory oversight aligns with the Supreme Court in Ricci, where the court emphasized that voluntary compliance by employers is "the preferred means of achieving the objectives of Title VII."[15] Employers that engage in voluntary compliance with the ever-changing world of artificial intelligence can utilize these forecasts to enhance their retention strategies or guide employees who are likely to leave away from critical projects.

Overall, artificial intelligence holds immense potential to revolutionize employment practices. Its integration must be accompanied by careful consideration of its impact on discrimination and bias. By prioritizing data quality, transparency, and accountability, employers can mitigate the risks associated with AI-driven discrimination and foster a more equitable workforce. Collaborative efforts between employers, policymakers, and AI developers are essential to harnessing the benefits of AI while safeguarding against its potential adverse effects on marginalized groups.[16] ○

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Revolutionizing Traditional Methods of Legal Research

By Robert Consuegra

The development of Artificial Intelligence (AI) within the context of legal practice has many attorneys both excited and concerned. The most prevalent area of AI's influence in the legal field is its impact on the legal research process. Attorneys in the present day are utilizing AI to supplement their research methods, seemingly to their detriment, but the future of AI optimization in legal research is undoubtedly going to improve the efficiency and competency of litigators everywhere. Long gone are the days of visits to the local law libraries and combing through books in search of relevant caselaw. AI will propel the practices of legal research even further beyond the capabilities created by internet-based research platforms. However, the care and attention of attorneys is as important as ever, and certain pitfalls must be avoided to provide competent representation.

Recently, two New York lawyers were subjected to judicial discipline for using ChatGPT when filing a legal brief.[1] In *Mata v. Avianca, Inc.*, the attorneys used six fabricated cases generated by ChatGPT.[2] Enforcing Rule 11, the federal judge sanctioned the two attorneys with $5,000 fines. Additionally, the attorneys had to send copies of the sanctions to their client and copies of the ruling to each judge whom ChaptGPT falsely identified as writing the fabricated opinions.[3] This is not an isolated incident, as a young attorney in Colorado Springs faced scrutiny for including "fictitious" cases in his client's motion.[4] These problems arise due to the inherent limitations of ChatGPT when conducting legal analysis. These limitations such as insufficient data, complexity of legal issues, and potential for error, are not easily overcome.[5] The inaccurate responses from ChatGPT are primarily due to its limited training data and ambiguous user inputs.[v] ChatGPT may never reach the point of being a reliable research tool for attorneys, but there is hope as research platforms are making significant strides in developing their AI tools.

The future of AI generated research lies in the research platforms like LexisNexis and Westlaw. Unlike companies producing general AI tools, Westlaw and LexisNexis possess comprehensive libraries of legal information such as caselaw, statutes, and treatises. By leveraging their repository of source material, Westlaw and LexisNexis are specifically tailoring their AI to attorneys seeking complex legal analysis. Their AI tools will not only significantly cut down research time, but also offer a multitude of tools including predictive analytics for case outcomes, natural language processing, contract analysis and management, compliance monitoring, and document drafting.[6]

To bolster its AI development, Thomson Reuters Corp. acquired Casetext, Inc., a provider of technology for legal professionals, for a purchase price of $650 million.[7] Thomson Reuters plans to launch its AI assistant, called CoCounsel, building on the AI assistant created by Casetext.[8] This year, Thomson Reuters promises to fully integrate it across its legal products including Westlaw.[vii] LexisNexis announced its launch of Lexis+ AI, built and trained to provide legal practitioners with comprehensive legal results, backed by verifiable and citable authority.[9] LexisNexis has already launched its AI tool to its users, which offers a rudimentary system of query-based responses on its Lexis+ research platform.[ix]

While the prospect of AI supported legal practice is enticing, it is vital to remember that attorneys are held to a standard of competence. Rule 11 of the Federal Rules of Civil Procedure requires attorneys to submit pleadings without an improper purpose, present legal contentions warranted by existing law, and offer factual contentions with evidentiary support.[10] In order to comply with Rule 11, attorneys are required to verify the sources, information, and analyses conducted by generative AI.[11] By not doing so, attorneys face the risk of receiving court sanctions like the attorneys in *Mata*.[ii] No matter how advanced AI becomes, attorneys must do their due diligence and ensure that the cases and statutes they are citing are real, relevant, and applicable to their case at hand. AI is a helpful tool, but it is vital to remember that it is only a tool, not a replacement for attorney driven research and analysis.

It is important to remember the limitations of AI outputs and the need for attorneys to continue to be scrupulous in reviewing AI generated results. But thanks to AI developments, attorneys will possess possibly the greatest legal tool ever created. AI's functionality is bountiful and includes the ability to examine vast amounts of legal documents, automate hours of legal research, use predictive analytics based on case outcomes and arguments, apply document reviewing and generation, and incorporate continuous learning and adaptation to the legal landscape. AI will undoubtedly be an integral part of every future law firm and forever change the landscape of legal research as we know it. ○

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Artificial Intelligence and the Legal World – Will More Class Actions Result?

By Josette Nelson

Since Artificial Intelligence (AI) has entered the legal scene, there have been many questions surrounding how it will impact the legal profession as a whole. AI's ability to process vast amounts of data and predict legal outcomes based on information it gathers from recent and past history, has the potential to streamline legal processes and aid attorneys in making informed decisions. However, the question arises: Can AI truly interpret the complexities of a legal analysis, or is it being oversimplified, potentially leading to inaccurate legal conclusions? Predictive analytics is one of the key areas where AI is making its mark in the legal field.[1] By analyzing past legal cases, court decisions, and other relevant data, AI algorithms can forecast potential outcomes of current cases, however, issues have arisen in class action cases where AI misses certain issues, like disclosure of information and nuanced questions of law.[2]

Complications have arisen in the legal sphere, specifically in the form of class-actions suits.[3] In pertinent part, GitHub, Microsoft, and OpenAI were filed against based on "GitHub's Copilot tool."[4] In class action lawsuit against *OpenAI LP, OpenAI Incorporated, OpenAI GP LLC, OpenAI Startup Fund I, LP, OpenAI Startup Fund GP I, LLC, and Microsoft Corporation* the plaintiffs accused GitHub of copying and republishing content data, while failing to "provide attribution."[5]

The recent class-action lawsuit filed against GitHub, Microsoft, and OpenAI sheds light on the challenges that arise when cutting-edge AI tools clash with established legal frameworks. At the center of the controversy is GitHub's Copilot tool, a groundbreaking program that leverages machine learning to assist programmers in generating code snippets based on their existing work. While it has been proclaimed as a "game-changer in software development", Copilot now finds itself encompassed in a legal battle over allegations of copyright infringement and data mishandling.[6]

The plaintiffs in the case, against OpenAI LP and GitHub, asserted that Copilot's predictive code generation feature unlawfully appropriates and reuses code from GitHub repositories without adhering to the requirements of open-source licenses. Central to the dispute is the issue of attribution – a fundamental principle in the open-source community that ensures proper credit is given to the creators of shared code.[7] Moreover, the complaint extends beyond copyright concerns, alleging that GitHub failed to adequately safeguard personal data and information entrusted to its platform by users.

The inclusion of claims of fraud further complicates the legal tussle, highlighting the broader implications of AI ethics and accountability in the digital age. The legal saga, unfolding since the filing of the complaint in November 2022, has seen Microsoft and GitHub vigorously contesting the allegations and seeking to have the case dismissed.

Their efforts to sidestep legal repercussions underscore the high stakes involved in navigating the murky waters of AI regulation and liability. At the same time, OpenAI, a pivotal player in AI, faces its own legal issues. In *Tremblay v. OpenAI, Inc* and *Silverman et all v. OpenAI, Inc* cases, more complexities pertaining to copyright continue to unfold.[8]

As the legal battles continue, the outcome of these lawsuits will undoubtedly shape the future trajectory of AI development and regulation. The clash between technological innovation and legal compliance serves to remind those in the legal field of the robust frameworks that balance innovation with ethical considerations that accompany legal responsibilities. In a world where AI continues to push the boundaries of what is permissible in the workplace, the GitHub, Microsoft, and OpenAI lawsuits are a 'cautionary tale' – that progress must be accompanied by accountability, transparency, and a steadfast commitment to upholding the rights and interests of those involved.

The recent surge in class action court cases involving OpenAI has brought to light the intricate legal challenges posed by emerging technologies and artificial intelligence. These cases have not only tested the boundaries of existing laws and regulations but have also underscored the evolving role of the legal profession in navigating the complexities of AI-related litigation. As legal professionals grapple with the nuances of AI ethics, accountability, and liability, the OpenAI lawsuits have served as a wake-up call, highlighting the need for a deeper understanding of the legal implications of advanced technologies. The rapid pace of innovation in the AI space necessitates a proactive approach to legal frameworks that can adapt to the changing understandings of technological advancements. Despite AI technology advancements, the legal complexities surrounding AI-related litigation cannot be fully grasped or interpreted by AI alone.[9] While AI tools can aid in legal research and analysis, the intricacies of human judgment, ethical considerations, and contextual understanding remain essential components of the legal profession. The nuances of legal reasoning, interpretation, and application require human expertise and experience that cannot be replicated by algorithms or machine learning models.[10]

In conclusion, the recent class action court cases concerning OpenAI have not only influenced the legal profession's approach to AI-related matters but have also highlighted the limitations of AI in fully comprehending the multifaceted legal issues at play. As legal professionals continue to navigate the intersection of law and technology, it is imperative that they remain vigilant, adaptable, and informed to effectively address the legal challenges posed by the ever-evolving landscape of AI.[11] ○

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A Constitutional Right

By Matthew Fraser

In Latin, the word 'apocalypse' means 'to unveil.' That is to uncover, to disclose, to reveal knowledge. With the advent of the internet, information that would have previously required consultation with an expert is now accessible to all. We are amid an 'Apocalypse of Knowledge,' called the information age, facilitated by search engines and now by artificial intelligence (AI). As the lyric goes, "[t]he people bowed and prayed to the neon god they made."[1] In other words, pray to God or, with head bowed down to a cellphone screen, type anything and receive a response from the all-knowing LSTM neural net language model 4.0.[2]

Regardless of the spiritual implications of this technology, a new era has certainly dawned. The veil has been lifted, the truth is seen, and Pandora's box cannot be closed once it is open. In this new age of enlightenment, where nearly everyone has access to highly efficient informational and intelligence resources, what sort of legal protections must be afforded to normal human beings to secure their access to AI technology in a world also populated by immortal corporations, kleptocracies, and total informational awareness?

Thankfully, usage of language learning model AIs, like ChatGPT, are likely Constitutionally protected as free speech and will be difficult for the government to override under strict scrutiny.[3] More generally, the government will have a challenging time arguing against democratic access to advanced AI technologies for the following reasons: (1) Advanced AI, like ChatGPT, is educationally useful, so a lack of access thereto could result in educational inequity.[4,5,] (2) Disparate access willalso afford only certain groups the utility of AI for innovation and research.[6] (3) Democratic access to AI will help maximize civic and democratic participation as far as the technology can improve expressional capacity.[7] (4) Democratic access to AI will likewise prevent bias in the marketplace of ideas resultant from sophistry and the expression of linguistically superior opinions generated by those with unfair access to the technology.[8,9,] (5) Democratic access will drive economic growth and job creation because of resultant new industries and boosted productivity.[10] (6) AI further allows for the counteracting of artificial narratives generated by bot farms, as well as nefarious people or organizations, since AI can help users navigate complex arguments, identify logical fallacies, and compose effective counterarguments.[11] (7) AI also allows for greater access to expert-level advice in all domains of human knowledge and even medical and financial guidance, especially for those of lower socioeconomic status.[12,13,] (8) Furthermore, just like how access to the internet has democratized access to information, democratizing access to AI will empower the public to make better informed decisions, gain knowledge and challenge established narratives.[14] (9) In that light, democratic access to AI will also generally level the playing field by giving ordinary people access to the same informational and intelligence resources that have been historically reserved for governments and large corporations, thereby reinforcing individual liberties against already ingrained, or emerging, hegemonic powers and ideologies.[15]

From a free speech perspective, prohibiting access to AI would be harmful to democracy for two primary reasons: First, it would unconstitutionally limit expression by people that do not have access to AI technology and, second, it would restrict others from hearing speech that would have otherwise been communicated, i.e., the right to listen.[16] Consequently, a prohibition against AI technologies, like language learning models, would unconstitutionally hamper social interest in the free marketplace of ideas.[17] The great experiment of American liberty is reliant upon the free expression of opposing, contradictory, and imperfect viewpoints.[18] Essentially, as AI enters the marketplace, the promotion of information generated by AI will suppress information not generated by it due to the technology's innate amplifying power.[19,20,21,,] Therefore, equitable access must be afforded to all so that the marketplace is not thereby undermined.

In comparison, imagine that in an auditorium full of shouting citizens, only a few people have access to bullhorns; only those with access would have their speech amplified. The Supreme Court found that such wanton abuse of amplification devices may be prohibited to preserve public order or to prevent unreasonable interference.[22] "Those who desire to broadcast can hardly acquiesce in a requirement to modulate their sounds to a pitch that would not rise above other street noises, nor would they deem a restriction to sparsely used localities or to hours after work and before sleep -- say 6 to 9 p. m. -- sufficient for the exercise of their claimed privilege."[23] The point being that those who have access to AI technologies will inherently use them to the detriment of others, because the technology is generally superior compared to equivalent organic means.[24] However, in the case of bullhorns, this inherent inequality can be easily remedied by a city ordinance, but when the technology of amplification is entirely non-physical and nebulously contained on the internet, prohibition becomes extremely difficult. Therefore, universal access to AI technologies must be preserved and any attempt at prohibition must be struck down. ○

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Reshaping and Enhancing the E-Discovery Process

By Lisney Agramonte

Advancements in artificial intelligence are quickly reshaping and revolutionizing the E-discovery process by reducing the cost associated with reviewing documents. A prime example is the California Innocence Project and their AI Legal Assistant. The AI Legal Assistant can quickly identify patterns in legal documents and find inconsistencies in witness statements.[1]

Artificial Intelligence can sift through massive amounts of Electronically Sourced Information (ESI) by quickly identifying, sorting, and prioritizing valuable information in large repositories. Three prime examples of AI at work are (1) the ability to recognize a pattern used and identify risky or fraudulent behavior; (2) scaling and aggregating large sets of data, which attorneys then use as leverage; and (3) detecting personally identifiable information.[2] These are possible thanks to technology assisted review (TAR), sentiment analysis, anomaly detection, and behavior analysis tools incorporated into the E-discovery process.[3] While all these programs are tremendous advancements in E-discovery, TAR is most used among attorneys conducting discovery.[4]

Although TAR increases the speed of reviewing documents and can eliminate nonrelevant data, tools such as anomaly detection and sentiment analysis are far better for conducting efficient E-discovery.[5]

Anomaly detection is used to identify unusual patterns in documents, and to discern outliers in discovery.[6] Once identified, the outliers are visually and dramatically emphasized on the screen. Outliers can include forwarded emails, after-hours communications between parties, and even fraudulent credit card transactions that deviate from normal spending patterns.[8]

On the other hand, sentiment analysis helps identify the tone and the overall sentiment of communications.[9] Sentiment analysis can be especially important because it sets the context of the communications and helps attorneys better understand the emotional circumstance behind the communication.[10] In other words, it provides insight into why people initiated an action.[11]

With all these great advancements, associated risks follow. Problems with document preservations, ESI protocols for documents, and format designation may arise.[12] In *Rossbach v. Montefiore Med. Ctr.*, the defendant by his counsel submitted into evidence a file purporting to be a photograph taken with an iPhone X.[13] Expert testimony was utilized to confirm the original tile did not have the metadata associated with a photograph taken on an iPhone X.[14] A decade ago, this might not have been possible but, today with forensic examination and AI Legal Assistants, attorneys can probe through documents, photographs, and files and detect forgeries.

Generative AI is not a complete substitute for legal research.[15] For instance, Google's C4 database does not offer a full solid cache

of resources for attorneys looking to conduct reliable research or document review.[16] However, what is currently provided is a secondary resource to supplement a practitioner's research.[17]

In sum, E-discovery has been better expounded with AI tools and can be further improved with the usage of anomaly detection and sentiment analysis. These tools are especially important in bringing context and identifying outliers in discovery. AI is speeding up the discovery process by helping prioritize specific documents attorneys need to dive into. Lastly, the forensic examinations available today with the different artificial intelligence tools help attorneys find forgeries and avoid digital manipulation in the court room if not detected during the E-discovery process. ○

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Financial Literacy in the New Age

By Sophie Raines

INTRODUCTION

Financial regulators possess a robust arsenal of laws and regulations designed to govern behaviors within the financial industry, focusing on ensuring fairness, promoting efficiency, and safeguarding stability. This article explores the implications of artificial intelligence (AI) within the modern economic landscape and highlights AI's role in enabling computers to make intelligent decisions aligned with specific goals. Financial institutions are increasingly turning to AI to enhance credit risk assessments, combat fraud, and develop more effective trading strategies.[1] However, the widespread adoption of AI introduces novel challenges, including adversarial strategies and biases, necessitating careful regulatory oversight.

The financial industry operates within a complex regulatory framework, with a multitude of laws and regulations governing various facets of its activities. This comprehensive regulatory framework is designed to maintain fairness, enhance efficiency, and ensure stability in financial markets.[2] In recent years, the emergence of artificial financial intelligence (AI) has added a new dimension to the financial landscape.

AI IN FINANCE: A PARADIGM SHIFT

The definition of AI, as articulated by computer scientist Stuart Russell, emphasizes the endeavor to make computers behave intelligently by choosing actions that maximize expected utility.[3] AI has found application within the financial sector in three key areas: credit risk assessments, fraud detection and prevention, and the development of advanced trading strategies.[4] The ability of AI to swiftly analyze vast volumes of transaction data offers unprecedented advantages to financial institutions.[5]

THE REGULATORY LANDSCAPE

The financial industry in the United States is subject to extensive regulatory oversight.[6] Regulatory bodies such as the Consumer Financial Protection Bureau (CFPB), the Securities and Exchange Commission (SEC), and the Financial Stability Oversight Council are tasked with ensuring fairness, efficiency, and stability in financial markets.[7] While existing regulations encompass many aspects of AI adoption, it is imperative to consider whether these regulations are adequately equipped to address the challenges posed by AI.

CHALLENGES AND POTENTIAL PROBLEMS

Integrating AI into financial processes introduces novel challenges, including adversarial strategies and biases. Criminal actors can exploit knowledge of AI algorithms to evade fraud detection, while borrowers may manipulate variables to appear more creditworthy.[8] Additionally, the potential for competitors to manipulate stock markets based on knowledge of rivals' investment algorithms raises concerns about market integrity.

THE ROLE OF REGULATORS

Regulators must adopt a forward-thinking approach to address the risks associated with AI in finance.[9] While existing regulatory frameworks provide a foundation, ongoing discussions are crucial to develop and refine regulations that specifically address AI-related challenges. Regulators should remain vigilant in ensuring that financial institutions maintain efficient, fair, and stable markets in the face of AI's reliance on potentially inaccurate datasets, its potential to bias human decision-makers, and its unpredictable interactions with other algorithms.

CONCLUSION

As the financial industry continues to embrace artificial financial intelligence, regulatory bodies must adapt to the evolving landscape. The existing regulatory framework offers a strong foundation, but it must be supplemented with regulations tailored to the unique challenges posed by AI. Regulators should prioritize the goals of fairness, efficiency, and stability, and remain proactive in safeguarding the integrity of financial markets in an era increasingly characterized by the influence of AI. This article underscores the need for thoughtful discussions among regulators, policymakers, and industry stakeholders to shape the future of AI regulation in the financial sector. ○

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Does artificially manufactured art satisfy the originality element in Copyright Law?

By Jacob Pizzo

Originality is a key element to make any creative work copyrightable. Stated in 17 U.S.C sec. 102(a), the requirement for originality is low, and the general rule states that any original work of authorship must possess a modicum of creativity.[1] One part of the rule, that is prevalent now, is that this work of authorship must contain human original elements.[2] The recently decided case of *Thaler v. Perlmutter* stated that Artificial Intelligence (AI) generated art is not copyrightable because it does not satisfy the originality element of a copyrightable work.[3] The Courts took a firm stance that AI generated art must have creative human elements integrated into the work.

The originality element dates back to the early 1900's.[4] The main issue has always been how human creativity can be integrated while using a technological device. In *Sarony,* a photographer wanted his photograph to be copyrightable.[5] The Court held that a photograph is a copyrightable work because there is human creativity in the work.[6] The argument in *Sarony* stated that the artistic ability must have a human level of creativity.[7] The simple act of taking photo did not constitute any level of creativity.[8] The Court disagreed and stated that when using a device such as a camera, human creativity can be expressed in the work itself.[9] A photograph can exemplify human manipulation such as and depth. Ultimately, this is the standard that is used for all copyrightable works.[10] Technology, such as cameras, must have integrated into the work.[11]

The argument in *Sarony* is interesting because it is analogous to the issues with artistic works generated by AI. Human elements can be found in the AI generated work but the scope of what is copyrightable in an AI work needs to be changed. In *Sarony,* the Courts wrote in their opinion that creative elements of art can be manipulated by humans.[12] With modern AI art, humans can manipulate the idea behind the work. This is an issue because the idea in copyright law is not protected but the expression of the idea is.[13] The argument to make an AI work copyrightable must be about making the idea behind the creative work copyrightable. Courts have evolved with the *Sarony* case by allowing other uses of technology to be copyrightable because human expression can be seen in them. This evolution should stay consistent with AI.

Under the Copyright Act, it is nearly impossible to argue that an idea is copyrightable, but AI gives the world a unique opportunity to go against this rule. In copyright law, the *Gaiman* case set the precedent that the idea and the expression of the idea can merge to create one copyrightable work of art.[14] *Gaiman,* showcased a dispute between two comic writers.[15] One party concocted the idea of the characters while another party.[16] The courts held that because the expression would not have happened without the idea, that the copyrighted work should be attributable to both artists.[17] The same argument can be made about AI art. Humans invented the idea of what AI will be generating and the art could not have been generated without the AI's expression. This case is analogous to the present day, making it cite because it allowed the copyright industry to change the scope of what can be copyrightable. *Gaiman* allowed Courts and lawyers to analyze the idea and expression together and not just as independent entities.[18] This is a great start to the argument but the Courts, based on past precedent, will hold that there is no human manipulation of creative expression.

The argument that needs to be made is a combination of *Sarony* and *Gaiman* precedent. Based on *Gaiman* and *Sarony,* the human manipulation of the idea merged with the expression, creates a copyrightable interest for the party with the idea. In *Gaiman*, the expression would not have happened without the idea.[19] In Sarony, there was human manipulation over the expression.[20] For AI merged because there is human manipulation over the idea, and the expression would not have happened without the idea.

AI is now at the forefront of the artistic and creative world. Although AI is an essential aspect of the artistic industry, it is not being awarded the protection that other works of authorship are getting. The main argument that lawyers and Courts are stating is that AI does not meet the originality element of copyright. The arguments, although well-constructed, are skewed because the opinion from the *Sarony* and *Gaiman* cases support the use of artificial intelligence. Courts should use the *Sarony* case and merge it with the holding in

Gaiman to base their opinions. AI generated art, showing a human manipulation of an idea that merges with the expression of the work is worthy of copyright protection.

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A.I. And Its Impact on Facial Recognition Software

By Paolo Vilbon

Artificial intelligence is the future and there is no denying that. But, with great advancements also comes the potential dangers associated with them. One of law enforcements biggest technological advancements in the last two decades has been the use of facial recognition technology. This coupled with modern artificial intelligence would lead some to think that this system would completely revolutionize law enforcement investigations and their standard operating procedures. Unfortunately, this is not the case. According to researchers, facial recognition technologies falsely identified Black and Asian faces 10 to 100 times more often than they did White faces. The technologies also falsely identified women more than they did men—making Black women particularly vulnerable to algorithmic bias.[1]

These algorithms currently help national agencies identify potential flight risks and protect borders.[2] National agencies have an advantage over local law enforcement agencies because they possess the resources to cross check any information they receive, but local agencies do not have that kind of bandwidth. Further, it is no secret that efforts to recruit law enforcement officers have been on a downturn in recent years.[3] This will lead police departments to rely more heavily on these technologies to fight crime. As the use of these systems increases, so will the errors associated with them. Therefore, if these technologies are not accurate or contain identifiable biases, they may do more harm than good.

One of the issues identified with artificial intelligence and facial detection is that AI face recognition tools "rely on machine learning algorithms that are trained with labeled data."[4] Further, "[i]t has recently been shown that algorithms trained with biased data have resulted in algorithmic discrimination."[5] The potential dangers associated with erroneous identification range from "missed flights, lengthy interrogations, watch list placements, tense police encounters, false arrests, or worse."[6] All of which ignore the financial impact that a false identification will have on the individual. Society must hold companies who put face recognition tools into the marketplace accountable in the hopes that new development of technologies will be much more accurate. This would ensure that future algorithms will prevent harm to the individuals that these technologies are biased against.

Artificial intelligence is far too embedded into daily life to slow its progress but claims that the data set used for its baselines is biased should not be ignored. These biases should be brought to the forefront so that the necessary changes can be made now before artificial intelligence needlessly overburdens the criminal justice system. A yearlong research investigation across 100 police departments revealed that African American individuals are more likely to be stopped by law enforcement and be subjected to face recognition searches than individuals of other ethnicities.[7] This happens because, without a dataset that has labels for various skin characteristics such as color, thickness, and the amount of hair, one cannot measure the accuracy of such automated detection systems. Although it may sound ridiculous, we are at a turning point when it comes to this technology. If this technology is continuously used with the current biases it has, it will be useful, but will also lead to mass incarceration of the wrong suspects. This will then negatively harm the government and impacted individuals economically while also carrying a negative social impact. It is imperative that we realize that these biases exist so they can be corrected now.

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