International Bar Association

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Guidelines and Regulations to Provide Insights on Public Policies to Ensure Artificial Intelligence's Beneficial Use as a Professional Tool

IBA Alternative and New Law Business Structures Committee

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Acknowledgments

The Artificial Intelligence Working Group of the Alternative and New Law Business Structures (ANLBS) Committee of the International Bar Association (IBA) is proud to present this first handbook, which covers the main topic for a number of jurisdictions around the globe.

This project is the first IBA publication on the existing guidelines and statutory regulations on the use of artificial intelligence (AI) as a professional tool. As a publication of the ANLBS Committee, it is intended to be updated every two years, and it has coverage of all the listed jurisdictions.

We are thankful for the contributions from all participant firms, which made a tremendous effort not only to cover the legal aspects but also to work together in the best interest of our legal community.

We are particularly thankful to the IBA Technology Law Committee, the IBA North American Regional Forum and the AI and Ethics group of the Future of Legal Services Commission for their active involvement in this project and for their contributions, without which this project would not be possible.

In this context, we believe that this publication is an important tool to provide insights on public policies to ensure AI's beneficial use as a professional tool, particularly for the legal profession in the jurisdictions considered.

We also thank the IBA for its continuing support of this initiative, and encourage the members of the IBA ANLBS Committee, the IBA Technology Law Committee, the IBA North American Regional Forum and the AI and Ethics group of the Future of Legal Services Commission to contribute to future editions.

If any IBA member is interested in contributing to drafting a country chapter not yet included in this publication, please do contact Riccardo G Cajola (rgc@cajola.com).

Disclaimer

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Anna Yamaoka-Enkerlin

White & Case*

In January 2020, Google Chief Executive Officer (CEO) Sundar Pichai made waves when he declared that 'there is no question in my mind that artificial intelligence needs to be regulated', and called 'international alignment critical'.[1]

Three years later, as discussed at length below, we can take stock and say that progress is underway. But at the same time as the critical need for ethical AI standards is clearer than ever, the prospect of seamless 'global' alignment on AI regulation seems more unlikely than ever.[2]

Events over last three years – from Russia's invasion of Ukraine to the banning of China's Huawei from the 5G networks of many Western countries – have also heightened the sense in which the future may be shaped by a struggle that is as strategic as it is ideological. AI will shape, facilitate, and accelerate this struggle. Although standard setting may convey a sense of neutrality, this disguises an intense ethical, commercial and geopolitical struggle to control the future of AI.[3] Worldwide acceptance of one's proposed standard, especially when that standard tracks a company's proprietary technology, allows that company or country to reap commercial rewards and set the norms for the future development of AI; the emergence of global standards 'not only impacts the power of nation-states, but also changes the power of corporations'.[4]

The aim of this chapter is to highlight briefly some of the most critical intergovernmental AI policy initiatives currently underway. Most deal in high-level, generally applicable principles rather than being tailored to the context of AI use in legal or other professional contexts. But a sense of the multilateral efforts taking place in this area should be relevant to all professionals who have an interest in anticipating the future of technological progress, incoming regulation and possible liability while leveraging the ethical use of AI as a competitive advantage.

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* Many thanks to Sofya Cherkasova for her research assistance in updating the second edition of this chapter.

1 Sundar Pichai, 'Why Google thinks we need to regulate AI', *Financial Times* (London, 20 January 2020), see www.ft.com/content/3467659a-386d-11ea-ac3c-f68c10993b04 accessed 2 July 2020.

2 See EU special committee on Artificial Intelligence in a Digital Age, Artificial Intelligence Diplomacy, June 2021, https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662926/IPOL_STU(2021)662926_EN.pdf; Joseph Bouchard, 'AI Strategic Competition, Norms, and the Ethics of Global Empire', The Diplomat, (Arlington , 1 December 2021) https://thediplomat.com/2021/12/ai-strategic-competition-norms-and-the-ethics-of-global-empire accessed 12 February 2023.

3 Alan Beattie, 'Technology: How the US, EU and China compete to set industry standards', *Financial Times* (London, 24 July 2019) www.ft.com/content/0c91b884-92bb-11e9-aea1-2b1d33ac3271 accessed 26 July 2020.

4 Aynne Kokas, 'Cloud Control: China's 2017 Cybersecurity Law and its Role in US Data Standardization', 29 July 2019, see https://ssrn.com/abstract=3427372 or http://dx.doi.org/10.2139/ssrn.3427372 accessed 26 July 2020.

Organisation for Economic Co-operation and Development (OECD)

The OECD's Principles on Artificial Intelligence – the first intergovernmental standards on AI – were adopted by 42 countries on 22 May 2019.[5]

Although these principles are meant to apply across all sectors, the possibility of overlap with other professional regulation is acknowledged by the preamble, which 'underlines' that 'certain existing regulatory and policy frameworks already have relevance to AI, including those related to [...] responsible business conduct'.[6]

Contained within the OECD Council Recommendation on AI, the principles are delivered in two sections. The first section, 'principles for responsible stewardship of trustworthy AI', elaborates on five 'complementary value-based principles':

1. inclusive growth, sustainable development and wellbeing;
2. human-centred values and fairness;
3. transparency and explainability;
4. robustness, security and safety; and
5. accountability.

The second section, 'national policies and international cooperation for trustworthy AI', explicates five 'recommendations' for signatories:

1. investing in AI R&D;
2. fostering a digital ecosystem for AI;
3. shaping an enabling policy environment for AI;
4. building human capacity and preparing for labour market transformation; and
5. international cooperation for trustworthy AI.

The OECD Committee on Digital Economy Policy is responsible for monitoring the implementation of these recommendations, as well as the development of more practical guidance through fostering international dialogue at the OECD AI Policy Observatory.[7]

Although OECD recommendations are not binding, they 'are highly influential', and in the past, have formed the starting point for government negotiations on

5 OECD, 'OECD Principles on Artificial Intelligence', see www.oecd.org/going-digital/ai/principles accessed 2 July 2020.

6 OECD, 'Recommendation of the Council on Artificial Intelligence' (2019), see https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449 accessed 2 July 2020.

7 OECD, 'Artificial Intelligence', see www.oecd.org/going-digital/ai accessed 10 July 2020.

national legislation, as seen by the influence of the OECD Privacy Guidelines on privacy legislation worldwide.[8]

The influence of the OECD's recommendations is also instantiated by two other intergovernmental pacts on the responsible development and use of AI: The G20's 'Osaka Leaders' Declaration' and associated initiatives, and the Global Partnership on Artificial Intelligence (GPAI).

The G20

In June 2019, the Group of Twenty (G20) issued the 'Osaka Leaders' Declaration' on the digital economy. Along with pushing for concepts such as cross-border 'Data Free Flow with Trust', the G20 committed to a 'human-centred approach to AI' and welcomed the 'non-binding' G20 AI principles, which are drawn from the OECD principles.[9] In 2021 G20 Digital Minsters issued a Declaration, reaffirming their commitment to these AI principles and issued the 'G20 Policy Examples on How to Enhance the Adoption of AI by MSMEs and Start-ups'.[10]

The Global Partnership on Artificial Intelligence

The Global Partnership on Artificial Intelligence (GPAI) stems from a pledge by Canada and France to bridge the theory and practice of 'a vision of a human-centric artificial intelligence'.[11] GPAI was inspired in part by the Intergovernmental Panel on Climate Change (IPCC) to develop global governance of AI.[12] Founding GPAI parties, including Australia, France, Germany, India, Italy, Mexico, Singapore, Slovenia, South Korea, the United Kingdom, the United States, and the European Union, have pledged to 'support the responsible and human-centric development and use of AI in a manner consistent with human rights, fundamental freedoms, and our shared democratic values, as elaborated in the OECD Recommendation on AI'.[13]

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8 OECD, 'OECD Principles on Artificial Intelligence', see www.oecd.org/going-digital/ai/principles accessed 10 July 2020.

9 Government of Canada, Global Affairs, 'G20 Osaka Leaders' Declaration', see https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g20/2019-06-29-g20_leaders-dirigeants_g20.aspx? accessed 29 June 2019.

10 G20, 'Declaration of G20 Digital Ministers: Leveraging Digitalisation for a Resilient, Strong, Sustainable and Inclusive Recovery', 5 August 2021, see http://www.g20.utoronto.ca/2021/210805-digital.html accessed 28 June 2022.

11 'Innovation, Science and Economic Development Canada', Joint Statement from Founding Members of the Global Partnership on Artificial Intelligence, see https://www.canada.ca/en/innovation-science-economic-development/news/2020/06/joint-statement-from-founding-members-of-the-global-partnership-on-artificial-intelligence.html accessed 14 June 2020.

12 Nicolas Miailhe, 'Why We Need an Intergovernmental Panel for Artificial Intelligence', *Our World*, 21 December 2018, see https://ourworld.unu.edu/en/why-we-need-an-intergovernmental-panel-for-artificial-intelligence accessed 14 June 2020.

13 See n 8 above.

Hosted by the OECD in Paris, GPAI has focused its initial efforts on four working group themes:

1. Responsible AI – studying the effects of social media recommender systems on users[14] and elaborating on recommendation for government action in the area of climate change and AI.[15]

2. Data governance – producing guidance for policymakers in the sphere of data justice and highlighting the potential of data trusts to address social issues and climate change.[16]

3. The future of work – analysing 'how AI can be used in the workplace to empower workers'.[17]

4. Innovation and commercialisation – examining the adoption of AI by small and medium-sized enterprises (SMEs) and ways to protect AI innovation and intellectual property.[18]

The United Nations

The UN is engaged in AI-related activities across the entire organisation,[19] but the following are stand-out efforts at global coordination to secure the beneficial use of AI, in particular to achieve the Sustainable Development Goals (SDGs).

International Telecommunications Union (ITU)

The ITU is a specialised UN agency for information and communications technology (ICT). A public-private membership that includes 193 Member States and over 900 companies, universities, and international and regional organisations, its functions include developing ICT policies and internationally interoperable technical standards.

Although two private regulatory standard networks – the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) – are the leading bodies for standard setting in digital technologies, the ITU is the only

14 GPAI, 'Responsible AI for Social Media Governance: A proposed collaborative method for studying the effects of social media recommender systems on users' (November 2021), see https://gpai.ai/projects/responsible-ai/social-media-governance/responsible-ai-for-social-media-governance.pdf accessed 28 June 2022.

15 GPAI, 'Climate change and AI: Recommendations for government action' (November 2021), see https://gpai.ai/projects/responsible-ai/environment/climate-change-and-ai.pdf accessed 28 June 2022.

16 GPAI, Working Group on Data Governance, see https://gpai.ai/projects/data-governance accessed 28 June 2022.

17 GPAI, Working Group on the Future of Work, see https://gpai.ai/projects/future-of-work accessed on 28 June 2022.

18 GPAI, Working Group on Innovation and Commercialization, see https://gpai.ai/projects/innovation-and-commercialization accessed 28 June 2022.

19 ITU, 'United Nations Activities on Artificial Intelligence (AI)' (2021), see https://www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-UNACT-2021-PDF-E.pdf accessed 28 June 2022.

treaty-based organisation with Member States.[20] To a greater degree than ISO, IEC, and prominent industrial associations and consortia such as the Institute of Electrical and Electronics Engineers (IEEE)[21], the ITU's standards are notable for being driven by corporate and national interests outside of North America and the EU. The standards that it produces are particularly influential in the developing world.[22]

Relevant ITU focus groups include the ITU Group on Machine Learning for Future Networks and on AI for Autonomous and Assisted Driving.[23] In line with China's strategy to become the world's standards supplier,[24] Chinese companies have been particularly active in the ITU, gaining acceptance for their standards proposals in the areas of facial recognition and other types of visual surveillance.[25] The ITU also convenes the AI for Good Global Summit, the 'leading UN platform for global and inclusive dialogue on AI', which collaborates with public and private bodies, as well as over 37 UN agencies to 'identify strategies to ensure that AI technologies are developed in a trusted, safe and inclusive manner, with equitable access to their benefits'.[26] Finally, it hosts an 'AI repository' to gather information on AI-related projects that aim to advance progress on the UN SDGs.

UN Educational, Scientific and Cultural Organization (UNESCO)

On 24 November 2021 UNESCO adopted the Recommendation on the Ethics of Artificial Intelligence, 'the first global standard-setting instrument on the ethics of artificial intelligence'.[27] A first draft of the Recommendation was proposed by an Ad-Hoc Expert Group for the Recommendation on the Ethics of AI composed of 24 specialists in AI and Ethics,[28] and was then developed after a consultation process that included: (1) public online consolation; (2) Regional and Sub-regional

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20 Jeffrey Deng, 'Balancing Standards: U.S. and Chinese Strategies for Developing Technical Standards in AI', *NBR*, 1 July 2020, www.nbr.org/publication/balancing-standards-u-s-and-chinese-strategies-for-developing-technical-standards-in-ai accessed 10 July 2020.

21 For an important contribution to the development of ethical AI standards with recommendations for implementation developed by over 700 global experts, see Kyarash Shahriari and Mana Shahriari, 'Ethically aligned design: A vision for prioritizing human wellbeing with artificial intelligence and autonomous systems', IEEE, 2017, https://ieeexplore.ieee.org/document/8058187 accessed 12 February 2023.

22 Anna Gross, Madhumita Murgia and Yuan Yang, 'Chinese tech groups shaping UN facial recognition standards' *Financial Times* (London, 1 December 2019), see www.ft.com/content/c3555a3c-0d3e-11ea-b2d6-9bf4d1957a67 accessed 10 July 2020.

23 ITU, 'International Standards for an AI-Enabled Future', *ITU News*, 6 July 2020, see https://news.itu.int/international-standards-for-an-ai-enabled-future accessed 10 July 2020.

24 Matt Sheehan, Marjory Blumenthal And Michael R Nelson, 'Three Takeaways From China's New Standards Strategy', *The Carnegie Foundation*, 28 October 2021, https://carnegieendowment.org/2021/10/28/three-takeaways-from-china-s-new-standards-strategy-pub-85678 accessed 12 February 2023.

25 See n 22 above; see also Asia Society Policy Institute, 'Stacking the Deck: China's Influence in Digital Rules Setting', 30 November 2021, https://asiasociety.org/policy-institute/events/stacking-deck-chinas-influence-digital-rules-setting accessed 12 February 2023.

26 AI for Good Global Summit 2020, see https://aiforgood.itu.int accessed 10 July 2020.

27 UNESCO, 'Recommendation on the Ethics of Artificial Intelligence', see https://unesdoc.unesco.org/ark:/48223/pf0000381137 accessed 28 June 2022.

28 UNESCO, 'Composition of the Ad Hoc Expert Group (AHEG) for the Recommendation on the Ethics of Artificial Intelligence' https://unesdoc.unesco.org/ark:/48223/pf0000372991 accessed 12 February 2023.

consultations co-organised with host countries around the world, and (3) multi-stakeholder workshops in 25 countries.[29] The Recommendation, which was endorsed by 193 countries, 'aims to provide a basis to make AI systems work for the good of humanity'.[30] It establishes the values that serve as benchmark for any AI system: respect, protection and promotion of human rights, environment and ecosystem flourishing, ensuring diversity and inclusiveness, living in peaceful, just and interconnected societies. Building on these values, the Recommendation outlines 11 areas of policy action: Ethical Impact Assessment, Ethical Governance and Stewardship, Data Policy, Development and International Cooperation, Environment and Ecosystems, Gender, Culture, Education and Research, Communication and Information, Economy and Labour, Health and Social Well-Being.

UN Convention on Certain Conventional Weapons (CCW)

States which are parties to the UN Convention on Certain Conventional Weapons (CCW) have been discussing the regulation of emerging lethal autonomous weapons systems (LAWS), with the UN Secretary-General repeatedly calling on states to conclude a new relevant international treaty.[31] In 2017, a Group of Governmental Experts was established to assess emerging legal questions related to LAWs. In 2019, at the recommendation of the Group, the 2019 Meeting of the High Contract Parties to the CCW adopted 11 guiding principles on LAWs.[32] These principles: affirm the applicability of international law – including international humanitarian law – to the development, acquisition, and deployment of LAWs; highlight the need to consider the risks of proliferation, including acquisition by terrorist groups; and call for retaining human responsibility and accountability across the entire life cycle of the weapons systems – all while recognising the need to balance military necessity and humanitarian considerations. But apart from the publication of these principles, substantive progress on a binding international treaty has been stalled by opposition from military powers such as China, Russia, the UK and the US.[33]

29 UNESCO, Recommendation on the Ethics, 'Ethics of Artificial Intelligence', https://en.unesco.org/artificial-intelligence/ethics#recommendation accessed 13 September 2022.

30 *Ibid*.

31 'Autonomous weapons that kill must be banned, insists UN Chief', *UN News*, 25 March 2019, see https://news.un.org/en/story/2019/03/1035381 accessed 10 July 2020.

32 UN, 'background on LAWS at the CCW' https://www.un.org/disarmament/the-convention-on-certain-conventional-weapons/background-on-laws-in-the-ccw accessed 18 September 2022.

33 Zelin Liu, and Michael Moodie, 'International Discussions Concerning Lethal Autonomous Weapon Systems', see Reuters, 'U.N. talks adjourn without deal to regulate 'killer robots' https://www.reuters.com/world/un-talks-adjourn-without-deal-regulate-killer-robots-2021-12-17; US Congressional Research Service, 'International Discussions Concerning Lethal Autonomous Weapon Systems', 21 December 2021 https://sgp.fas.org/crs/weapons/IF11294.pdf accessed 12 February 2023.

UN Centre for Artificial Intelligence and Robotics (UNICRI)

Launched in 2015, UNICRI's aim is to 'enhance understanding of the risk-benefit duality of Artificial Intelligence and Robotics through improved coordination, knowledge collection and dissemination, awareness-raising and outreach activities'.[34] UNICRI has partnered with INTERPOL to study the impact of AI in law enforcement and to develop the 'Toolkit for Responsible Artificial Intelligence Innovation in Law Enforcement', which is expected to be presented to experts in late 2022.[35] UNICRI has also launched the AI for Safer Children initiative, and has worked with the UN Counter-Terrorism Centre to analyse the use of AI in counter-terrorism activities.

The European Union

The European Union has been prolific in its development of AI policy initiatives, in part because the absence of a common EU framework for addressing the challenges posed by AI risks fragmenting its internal market. The EU's AI policy development is included in this chapter on multi-lateral initiatives because EU technology policy precedent affects not only all the EU Member States but also has proved highly influential globally.

In April 2021 the EU Commission launched its proposal for a 'Regulation for Laying Down Harmonised Rules on Artificial Intelligence' (the AI Act) following various EU policy initiatives focused on Ethical AI. One of the stated aims of the AI Act is to 'position […] Europe to play a leading role globally'. The EU has recognised as a priority 'the need to act as a global standard-setter in AI', explicitly recognising that falling behind in the race for global tech leadership will leave room for the adoption of standards developed in non-democratic countries to dominate.

On 6 December 2022, the European Council – a body that includes ministers from each EU Member State – finalised its modifications to the EU Commission's proposal (compromise text). As of the time of writing, the next step is for the European Parliament to adopt its own position. To that end, the Parliament is reportedly working through 3,300 proposed amendments, many focused on the definition of AI, the high-risk categorisation of certain AI systems (discussed below) and the governance scheme that the Commission's AI Act proposes. Once the Parliament finalises its own position, the Council of the EU and the European Parliament are likely to hold negotiations with the EU Commission (the 'trilogue') before a final text is decided on and adopted by both the Council and the Parliament. The AI Act will is likely to be passed in early 2024. The main features of the Act are summarised below.

34 UNICRI Centre for Artificial Intelligence and Robotics, The Hague, https://unicri.it/in_focus/on/unicri_centre_artificial_robotics, accessed 10 July 2020.

35 UNICRI, 'UNICRI and INTERPOL formally kick-off next phase of work on Toolkit for Responsible AI Innovation in Law Enforcement with funding from the European Commission', 29 November 2021, see https://unicri.it/News/Toolkit-AI-Law-Enforcement-INTERPOL-EC-UNICRI, accessed 28 June 2022.

The definition of AI

One of the more contentious aspects of the Act is the definition of AI to be adopted. The challenge is deciding on a definition not only captures the range of the 'high-risk' AI that the EU wants to target and is flexible enough to accommodate new AI techniques, but also avoids being so over inclusive as to impose undue burdens on innovation. The Commissions' draft Act defines AI systems as a 'software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with'. Annex I features three categories: machine learning approaches, logic and knowledge-based approaches, and statistical approaches. Finally, AI systems that are developed exclusively for use by the military (itself a contentions term) are excluded from the Act – a move which may seem out of step with the thrust of the AI Act as an instrument expounding AI ethics, leaving a gap that remains to be filled.

The European Council, concerned that the AI's definition unnecessarily captures many software applications that should not be burdened with compliance under the Act, has proposed a definition which is narrower in some respects, but which also removes the explicit reference to humans in 'human-defined set of objectives.' The Council has also commissioned a group to study the definition of AI relation to general purpose AI (GPAI). Opinion remains divided as to how the AI act should approach the unique opportunity, and regularity challenges, that GPAI poses. Finally, the Council has proposed adding a clause that excludes, along with AI developed exclusively for military purposes, AI that is developed exclusively for national security purpose.

Subjects of regulation

The proposed AI Act imposes new duties on various players in the 'AI value chain' including AI 'providers' who place on the market or put into service AI systems within the EU – irrespective of their locations – provided that 'the output produced by the system is used in the EU.' Providers can be natural or legal persons that are public or private. AI users will also incur duties under the act, except when using an AI system in the course of a non-professional activity. Under both the Commissions' Draft AI act and the Council's comprise text, importers and distributors will be treated as 'providers' under the legislation if, among other circumstances, they place on the market a high-risk AI system under their name, if they modify the purpose of a high-risk AI system that is already placed on the market or put into service, or they make a substantial modification to the high-risk system. In these cases, the original provider will be relieved of its obligations as a provider.

The proposed extraterritorial dimension of the AI Act – applying as it does to any provider or user so long as the relevant AI system 'output produced by those system is used in the EU' may, like similar provisions in the General Data Protection Regulation (GDPR), help to drive a 'Brussels Effect'. The Brussel's Effect refers to the way regulatory globalisation is caused by the extraterritorial influence of EU law. The GDPR achieved the 'Brussels Effect' through the territoriality provisions of its Article 3, which clarify that the GDPR's provisions apply to the processing of personal data of data subjects who are in the EU by a controller or processor not established in the EU. Furthermore, by conditioning personal data law transfers out of the EU on an 'adequacy' assessment – where 'adequate' means 'essentially equivalent' – the EU has secured leverage to demand that its international trading partners replicate its policy vision. Many jurisdictions have taken the GDPR as a starting point for designing their own legislation.

EU lawmakers have referred to the Brussels Effect as a reason to pass the AI Act quickly, although opinion is split as to whether, or how far, the EU will achieve this effect. Arguably we are already seeing tangible examples of the Brussel's Effect on AI regulation in action, as reflected in its influence on Brazil's forthcoming AI legislation.

Duties imposed

To achieve the EU's aim of fostering innovation and protecting EU values and fundamental rights, the European Commission adopted a 'risk' based approach, meaning that different levels of regulation will be applied depending on the level of risk that an AI system is considered to pose to individuals and society.

First, there are AI applications and systems that are considered under the Act to create unacceptable risks of violating EU values or fundamental rights. This includes subliminal manipulation resulting in physical or psychological harm, exploiting children or mentally disabled persons resulting in physical or psychological harm, general purpose social scoring, and remote biotitic identification by law enforcement in publicly accessible spaces (with exceptions.)

Second, there are AI applications and systems that are considered 'high-risk'. Under the Commission's proposal, whether an AI application or system is 'high risk' is determined based on the 'intended purpose of the system and on the severity of the possible harm and the probability of its occurrence'. Examples of 'high-risk' applications fall into two groups: AI involved in safety components of regulated products (eg, medical devices) which are subject to third-party assessment under the relevant sectoral legislation; and certain standalone systems that fall under various categories. The proposed categories include law enforcement, management and operation of critical infrastructure, education and vocational training, employment and worker management, migration and asylum, access to essential private services and public services, and administration of justice.

Given the extensive regulation of 'high-risk' AI, and the associated costs there is considerable debate about the scope of this category. The European Commission's impact assessment proposes that only five-to-15 per cent of currently available AI applications are 'high-risk' under the draft regulation. That number may increase if the EU more directly targets GPAI, where much research, product development – and hype for the future of AI – currently lies.

AI that is considered 'high risk' will only be allowed to be marketed by a provider if the providers conforms with a suite of legal requirements, including, but not limited to: the use of high-quality datasets; data and record-keeping to enhance traceability; the adoption of human oversight measures and implementation of high standards of algorithmic interpretability; accuracy; robustness; and cybersecurity, as well as technical documentation demonstrating compliance.

To govern the regulation of 'high-risk' AI, the Act also introduces a mandatory certification system. Under the draft regulation, before placing a high-risk system on the market, AI providers must ensure that the design and development of the system complies with the AI regulation, perform a conformity assessment to document this compliance, notify national authorities that will be tasked with administering an AI certification scheme, and then obtain a certification.

The AI Act also registers importers as enforcers, requiring that importers ensure that the relevant creator/provider of the high-risk AI system that the importer intends to place on the market has carried out a conformity assessment and obtained the required certification. If the importer finds that the creator/provider of the high-risk AI system is non-compliant, they must refuse to place the system into the market and, where there is a risk that this AI will be introduced to the market even if the importer refuses to do so, the importer must inform the AI provider and the market authorities.

The third category addressed by the proposed regulation is AI activity perceived to present a lower level risk, which will be subject only to minimal transparency requirements. Transparency obligations will apply for systems that: (1) interact with humans; (2) are used to detect emotions or determine association with (social) categories based on biometric data; or (3) 'deep fakes', which are defined as audio or video content that 'appreciably resembles existing persons, objects, places or other entities or events and would falsely appear to a person to be authentic or truthful generate or manipulate content ("deep fakes").' The requirement to label deep fakes does not apply to deep fakes authorised by law enforcement or where relevant rights, such as the freedom of expression guaranteed in the Charter of Fundamental Rights of the EU – leaving the scope of this requirement still unclear.

The fourth category of AI applications perceived to present low or no risk has no mandatory requirements although voluntary compliance will be encouraged.

Penalties

Individuals and companies who violate the act by, among other things, engaging in forbidden practices, failing to meet their obligations for high-risk systems, or not cooperating with the competent national authorities will be subject to penalties. Under the legislation, the penalty incurred will depend on the type of violation, and the identity of the party that commits the violation (ie, whether they are a provider, importer, distributer, user, etc and, where relevant, the size of the company found to be infringing the Act). The most severe fines would be levied for breaches of the ban on AI systems that pose an unacceptable risk (such as creating a social scoring system) which can reach a maximum of €30m or six per cent of the violator's annual revenue. Companies which fail to meet their obligations with regards to High-Risk AI will face fines of up to €20m or four per cent of their total annual revenue. For small and medium-sized enterprises (SMEs) and start-ups, the fines can be up to two per cent of their annual revenue.

Fostering innovation

As part of the EU's commitment to fostering innovation, and avoiding undue burdens imposed by the Act, the proposed regulation includes provisions for the creation of regulatory sandboxes, which are testing grounds for AI applications that operate under specific, limited conditions. These sandboxes, which start-ups and SMEs would be given privileges access to provided they meet certain criteria, would be used to foster innovation by allowing companies and researchers to test and develop new AI technologies in a controlled environment, without the full burden of compliance with all existing regulations. The idea, which is already being piloted , is to provide a safe space for experimentation, learning, and development of best practices, while still protecting the public interest and ensuring that AI is used in a responsible manner.

The regulatory framework has attracted various criticisms, including for undue vagueness and insufficient regulation of algorithmic fairness. Another challenge going forward – which may ultimately be the key to the Act's success or failure – will be operationalising the Act's Requirements and distilling them into technical standards; a task already being taken up by EU standard setting organisations. Even so, it is a ground-breaking regulation that is already affecting AI deployment and accelerating discussions about ethical AI worldwide.

Conclusion

The intergovernmental efforts described above could genuinely be criticised as overly vague 'ethics-washing',[36] with minimal substantive influence on design – not least because by the time regulations and standards have been finalised, they may well be out of date. At worst, one might think that attempts to regulate AI will inevitably have a stifling effect on technological progress. Others think that AI policy is best left to the private sector alone. But Pichai, at least, would appear to disagree. Without minimising the considerable work that needs to be done in operationalising these myriad principles and developing ways to verify compliance, even these high-profile efforts should not be simply dismissed. It is not only the end-result, but also the process – in particular sharing and testing of ideas across silos that accompanies these regulatory efforts – which itself advances progress towards ethical AI.[37] We have also seen in the past how 'soft law' has led to transformed 'hard law', as with the influence of the OECD privacy principles on privacy legislation around the world, as well as how ethical considerations are affecting the development of technical standards. In an area as economically and geopolitically fraught as the future of AI development, cooperation towards the mission of steering AI embodied in these multilateral efforts is cause for optimism.

36 Karen Hao, 'In 2020, let's stop AI ethics-washing and actually do something', *MIT Technology Review*, 27 December 2019, see www.technologyreview.com/2019/12/27/57/ai-ethics-washing-time-to-act accessed 2 July 2020.

37 eg, although the AI Act has not yet passed, researchers at the University of Oxford are already using available information to develop a conformity assessment procedure for AI systems, see, Luciano Floridi et al, 'capAI – A Procedure for Conducting Conformity Assessment of AI Systems in Line with the EU Artificial Intelligence Act', SSRN, 23 March 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4064091 accessed 12 February 2023.

Argentina

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1. What is the understanding or definition of AI in your jurisdiction?

Although the concept of artificial intelligence (AI) does not have a uniform definition under Argentine law, it is addressed and mentioned throughout several 'soft law' regulations, most of them issued during 2023. There is currently no clear-cut or generally agreed upon definition of the term 'AI' – just as for other modern technological concepts such as 'Big Data' and 'machine learning'. However, we can find a first definition outline in Order No 2/2023 issued by the Argentine Chief of the Ministerial Cabinet's IT Subsecretariat,[38] which states that:

> 'artificial intelligence currently groups together a set of technologies and is called an ability that was long considered unique to people: intelligence. At the time when this set of technologies was baptized with that name, the concept of intelligence was quite different from the ideas and theories that are currently discussed about what we now understand by human intelligence.'

On the other hand, scholars' legal doctrine has generally stated that AI may be defined as a device that can function in a similar manner to human intelligence, with the ability to learn, reason and outdo itself. To this end, it uses algorithms, machine learning or deep learning and neural networks to develop solutions. In general terms, it is agreed that AI implies that a system collects large amounts of data and, on the grounds of such data, draws conclusions or makes autonomous decisions replicating human intelligence – or at least developing rational thought in search of the best possible results. It is generally agreed that AI has certain degrees of autonomy in decision-making as opposed to machine learning, for example.

As in many other jurisdictions, the legal definition of 'AI' and its precise scope will be a key factor in determining the application of any future regulation about it.

38 Order No 2/2023. This Order approves the 'Recommendations for a Reliable AI'. These recommendations contain a series of non-mandatory ethical principles, general and board guidelines about AI. For more information, the Order is available in Spanish at https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384656/norma.htm.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Yes, there are many. The following are just a few examples of AI tools specifically designed for legal purposes:

Prometea[39]

The public sector and the Public Prosecutor's Office of the Autonomous City of Buenos Aires (the 'Prosecutor's Office'), along with the Laboratory of Innovation and Artificial Intelligence at the Faculty of Law of the University of Buenos Aires, created a system named 'Prometea'. Prometea is aimed at providing a predictive tool to the judiciary and public administration for the resolution of cases and administrative documents. Prometea is able to create reports, segment documentation according to its content, download files where relevant information is found, create indicators with comparative graphics and automatically provide answers from a given input, among many other tasks. Nowadays, Prometea is fully operational in the Prosecutor's Office for cases involving low amounts and similar characteristics, such as traffic accidents, to determine tort liability.

Retrieval-augmented language model[40]

The Argentine researcher's team of the Applied Artificial Intelligence Laboratory (AAIL) – part of the Department of the Departamento de Computación (Computor Department) at the University of Buenos Aires and the Instituto de Investigación en Ciencias de la Computación – together with law professors at Torcuato Di Tella University are developing an AI assistant expert in legal issues. The intention is for the application to be able to answer complex legal questions and do it rigorously from a real database of Argentine case law. To this extent, the team of researchers implemented a new technique called retrieval-augmented language modeling to use GPT-4 as a service. The added value of this technique is to include real information from a database for the answers generated, since GPT-4 cannot provide references for the sources from which it seeks information to generate its answers.

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39 Related information from the Ministerio Público Fiscal (MPF) is available at https://mpfciudad.gob.ar/institucional/2020-03-09-21-42-38-innovacion-e-inteligencia-artificial#:~:text=En%20la%20actualidad%2C%20Prometea%20se,%2C%20Corrientes%20y%20Santa%20Fe).

40 See "Un asistente de inteligencia artificial para el derecho argentino" "An artificial intelligence assistant for Argentine law"* (*Publisher's translation) (Universidad Torcuato di Tella, 29 August 2023), www.utdt.edu/ver_nota_prensa.php?id_nota_prensa=21515&id_item_menu=6 .

Legal One[41]

Thomson Reuters Argentina, supported by Thomson Reuters Canada, developed a management software for lawyers: 'Legal One'. Legal One uses AI to provide tools for the efficient management of law firms of different sizes. It intuitively responds to the information needed by lawyers by providing suggestions and integrating doctrine, legislation, jurisprudence and digital books related to the content of the files with which professionals work. It also automates the firm's operational tasks such as the drafting of pleadings, procuration and presentations.

Velox[42]

Velox is a prototype that arises from a proof of concept developed in the period 2020–2021 in the scope of the Prosecutor's Office, as a result of exploring AI techniques that assist attorneys in the preparation of tax reviews issued by the prosecutor in administrative proceedings, prior to deciding on the files in which the payment of interest for late payment in the cancellation of invoices is claimed. This prototype, developed by AAIL, applies two AI techniques: (1) automation with reduced human intervention for the generation of tax hearings, court documents and communications; and (2) intelligent prediction of the content of documents.

Rulings rendered with AI tools[43]

Local courts in the Río Negro Province implement AI-based tools issue rulings in tax foreclosure cases. The system is used for standardised and repetitive processes, in which AI makes it possible to replace a formal control previously performed by an employee with a higher degree of accuracy.

In addition, there are other cases where AI-based services and/or AI based tools are being used by local courts when issuing a ruling, but in all cases, they are used only to issue the latter in an easy-to-read format, so as to allow readers to understand the ruling in a clearer way.[44] These local courts do not use such AI-based services/tools in order to solve cases and have not issued any sentence deciding whether it is legal to provide legal services using AI.

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41 "Legal One" (Thomson Reuters), www.thomsonreuters.com.ar/content/dam/ewp-m/documents/argentina/es/pdf/white-papers/brochure-legal-one.pdf.

42 Cervellini et al, "VELOX: Inteligencia artificial aplicada a las vistas" (2023) 22(2) EJS 221–242, https://drive.google.com/file/d/1Ll745gcQRTAo8GFrnZ7cmt7LUbXoepmp/view.

43 "El Poder Judicial incorpora inteligencia artificial para el dictado de sentencias monitorias" "The Judiciary incorporates artificial intelligence for the issuance of monitoring sentences"* (*Publisher's translation) *Comunicación Judicial*, 23 February 2023, https://servicios.jusrionegro.gov.ar/inicio/comunicacionjudicial/index.php/noticias/item/4580-el-poder-judicial-incorpora-inteligencia-artificial-para-el-dictado-de-sentencias-monitorias.

44 The judgment is available in Spanish, "Dictan sentencia en lenguaje claro tras utilizar Inteligencia Artificial" "They pass sentence in clear language after using Artificial Intelligence"* (*Publisher's translation) (21 July 2023), https://documento.errepar.com/actualidad/dictan-sentencia-en-lenguaje-claro-tras-utilizar-inteligencia-artificial.

DoctIA[45]

This is a widely used application for legal professionals, which uses AI to search for case law of the Supreme Court of Justice of the Argentine Nation (CSJN), allegedly without inventing material – as some generative AIs tend to do. DoctIA works by copying the legal text you are working on and recommending relevant CSJN case law to cite, providing a direct link to the original sentence.

3. If yes, are these AI tools different regarding • independent law firms; • international law firms; and • in-house counsel; and what are these differences?

The use of these tools varies depending on whether they are aimed at the judiciary or private lawyers. In broad terms, a differentiation could be made between AI tools for the public sector and AI tools for the private sector.

Regarding the latter, and always focusing on AI tools for legal purposes, no clear distinctions could be made between in-house counsels and law firms. However, it may be worth mentioning that, as in most jurisdictions, international law firms tend to use more AI tools than local, independent firms.

4. What is the current or planned regulatory approach on AI in general?

With a new, recently elected government (December 2023), the current regulatory approach related to AI is still not clearly defined in Argentina. Since 2017, many 'soft laws' have established guidelines and generic principles that are not currently reflected in binding regulations (this is the case of the National Big Data Observatory created by Executive Order 11/2017 or the Argentine Digital Agenda created by Executive Order 996/2018).

Since 2022, several AI-related resolutions have been enacted in Argentina by different official entities. Moreover, a newly approved Provincial Constitution in the Province of Jujuy expressly addresses AI.[46] Even though this constitutes an improvement in Argentina's AI regulatory landscape, the aforementioned laws are merely declarative, as they do not contain concrete and binding actions towards establishing a proper regulatory landscape regarding the use of the AI in Argentina, its development and its effects. Examples of these regulations are the following:

45 See "JurisprudencIA" *Diario Judicial*, 23 November 2023, www.diariojudicial.com/news-96493-jurisprudencia.

46 Constitución de la Provincia de Jujuy s.76, www.convencionconstituyente.jujuy.gob.ar/files/documents/34623500-2a9b-4d40-ac8f-8690a0173517_constitucion_jujuy_2023_10-07-2023_103501.pdf.

(i) Order No 268/2022 issued by the Argentine Ministry of Economy's Knowledge Economy Secretariat;[47]

(ii) Order No 2/2023 issued by the Argentine Chief of the Ministerial Cabinet's IT Subsecretariat;[48]

(iii) Order No.44/2023 issued by the Chief of the Ministerial Cabinet's Public Innovation Secretariat;[49]

(iv) Order No 94/2023 issued by the Argentine Data Protection Authority (DPA);[50] and

(v) Order No 161/2023 issued by the Argentine DPA.[51]

In addition, the Executive Order No 70/2023[52] issued by Argentina's Executive Branch in December 2023, modifies the Argentine Aeronautical Code by means of which AI-driven aircrafts become expressly allowed in the country. However, the Executive Order states that these aircrafts shall be subject to specific regulations, which, at the time of writing, have not been defined.

Although Argentina has not enacted a general comprehensive AI act, some proposed bills[53] were introduced to the national congress, which, at the time of writing, have not been analysed by the latter. These proposed bills aim to set regulations on the investigation, development and use of the AI in Argentina to protect Argentine citizens' human rights, privacy and security.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

On a legislative level, and with a recently elected President, there does not seem to be an organised regulatory plan on the general use of AI or machine learning systems, at least

47 Order No 268/2022. This Order states that software development for AI Systems, is an activity to be included that falls within the scope of the Argentine Promotion of Knowledge Economy Regime, https://servicios.infoleg.gob.ar/infolegInternet/anexos/375000-379999/376758/norma.htm.

48 Order No 44/2023. This Order approves the 'Recommendations for a Trustable AI'. These recommendations contain a series of non-mandatory ethical principles, general and board guidelines about AI, https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384656/norma.htm.

49 Order No 44/2023. This Order approves Argentina's Second National Strategy on Cybersecurity, stating that it is necessary due to the development of new AI Systems, cybersecurity shall be a priority for all levels of government, https://servicios.infoleg.gob.ar/infolegInternet/anexos/385000-389999/389245/norma.htm.

50 Order No 94/2023. Argentine DPA's 2022–2026 Strategic Plan. One of the strategic aims considered by the Argentine DPA is to develop and implement an AI and Data Governance Program https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384189/norma.htm.

51 Order No 161/2023. Argentine DPA's Data Protection and Transparency use of the AI Program, https://servicios.infoleg.gob.ar/infolegInternet/anexos/385000-389999/389231/norma.htm.

52 Executive Order No 70/2023, https://servicios.infoleg.gob.ar/infolegInternet/anexos/395000-399999/395521/norma.htm.

53 eg, Bill No 2505-D-2023 introduced on 8 June 2023, which aims to create a legal framework to regulate the development and use of AI in Argentina. For more details about this Bill see, www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2023/PDF2023/TP2023/2505-D-2023.pdf.

so far. Most of the recently enacted regulations (such as the ones referred to in Question 4) set forth declarative generic guidelines, principles and/or recommendations, without concrete binding implications or effects in real practice.

Considering the lack of specific legislation on this matter, legal principles of generic legislation (such as the Civil and Commercial Code, Personal Data Protection Law, Trademark, Intellectual Property and Consumer Defence Regimes) are applicable to analyse and/or decide any AI related controversies.

Data protection and privacy

The primary legislation governing data protection in Argentina is the Argentine Personal Data Protection Act No 25.326 (PDPA),[54] its Regulatory Executive Order No 1558/2001[55] and complementary regulations from the Agency of Access to Personal Information (AAIP), the enforcement authority of the PDPA. During 2023, the Personal Data Authority issued Regulation 161/2023 creating the Program of Data Protection and Transparency in the use of the AI.[56] However, the program was not further regulated and to date it has no practical implications. Nevertheless, Argentine data protection regulations are one of the key areas of law to be analysed when considering using AI tools in Argentina.

Automatised processing of personal data

Moreover, another issue to be considered under Argentine law and the PDPA, is the processing of personal data through electronic or automatised means; the processing of 'informatised data' as the term is defined on the PDPA, and automatised decision-making, as when using AI technology. In these regards, the AAIP issued certain criteria for the better interpretation of the PDPA, and through Order No 4/2019,[57] and with regard to automatised processing of personal data, determined that the data subject shall have the right to obtain from any data controller an 'explanation about the logic applied to an automatized decision', when the data controller makes decisions based only on the automatised processing of personal data, and such a decision produces the data subject's 'pernicious legal effects' or affects them negatively in a significant way. This shall be considered when processing personal data in Argentina, including AI systems. Also, in 2019, Argentina executed Convention 108[58] of the Council of Europe, which is a binding multilateral instrument on data protection related to

54 Argentine Personal Data Protection Act No 25.326, https://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm.

55 Regulatory Executive Order No 1558/2001, http://ceic.org.ar/integrated_chart_Act_25326.pdf.

56 Regulation 161/2023, www.boletinoficial.gob.ar/detalleAviso/primera/293363/20230904.

57 Order No 4/2019, https://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/318874/norma.htm.

58 Convention 108 of the Council of Europe, Strasbourg, 28 January 1981. For the full text see, https://rm.coe.int/16806c1abd.

the automatised processing of personal data for members of the Convention. Moreover, in November 2022, Argentina's Federal Congress enacted Act No 27,699 by means of which Argentina executed the modernised version of the latter, the Convention 108+[59] of the Council of Europe. The latter updates principles related to the automatised processing of personal data.

Torts and liability

In the case of AI, IT systems' capacity to make autonomous decisions seems to pose the greatest potential impact in terms of liability. The application of causation principles and determining who shall be considered liable for the fault that causes damages seems a crucial legal challenge, particularly if a negligence regime (as opposed to strict liability) is applicable.

Intellectual property rights

In Argentina: (1) Intellectual Property Act No 11,723,[60] as amended by Software Act No 25,036, applies to computer programs, and rules the rights of intellectual property and the use of software products, and Executive Order No 165/94 rules the use of software and its reproduction and databases; (2) Act No 22,326 rules Trademarks; and (3) Act No 24,481, Invention Patents and Utility Models,[61] is applicable to AI technology, even though it makes no express reference to it and its implementation. In March 2024, a draft bill was introduced to the Federal Congress.[62] This bill expressly addresses intellectual property rights related to AI. Nevertheless, this bill has not yet been analysed by the Federal Congress.

So far, Argentine case law has not faced controversy cases involving AI and Intellectual property rights, as it is currently happening in other jurisdictions (ie, the US and EU).

Consumer rights

In general, and with regard to AI, it should be noted that in Argentina's legal order and in the framework of consumer relations, sections 2 and 40 of the Consumer Defense Act No 24,240[63] state the responsibility of the entire chain of commercialisation for damages resulting from the provision of their products and/

59 Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, Elsinoe, Denmark, 17–18 May 2018. For the full text see, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf.

60 Intellectual Property Act No.11,723www.wipo.int/wipolex/en/text/584401.

61 Act No.24,481, www.argentina.gob.ar/normativa/nacional/ley-24481-27289/texto.

62 Bill 1013-D-2024. For full the text see, www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2024/PDF2024/TP2024/1013-D-2024.pdf.

63 Consumer Defense Act No.24,240, https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/638/texact.htm.

or services and the defects or risks and warranties derived from them. Therefore, at least in theory, any individual who is part of such chain of commercialisation may be deemed responsible for the provision of the AI System, defects, risks and warranties even if such individual did not develop the AI System but participated in its commercialisation.

6. Is free data access an issue in relation to AI?

Yes, as in most countries with data privacy law in force, access to data by AI tools (typically to use them as 'training data') is a crucial legal issue taken into account when using such tools; and one of the most carefully considered clauses when discussing contracts which involve acquiring AI products and/or the provision of services involving AI technology. Currently, the local data protection agency has an ongoing investigation against Worldcoin (quite well known because similar proceedings against the company are taking place in other jurisdictions) precisely because of an alleged illegal access and processing of users' data.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the best of our knowledge, as of April 2024, there are not yet any legal cases in Argentina regarding the provision of legal services specifically related to the use of AI or judicial decisions concerning legal services provisions through the use of AI.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

Although there are no formal rules about it – neither legal rules nor rules form the local bar associations – in practice, many lawyers and law firms use AI tools in their daily practice (some generic AI tools, like ChatGPT or Copilot; and some specifically designed for the legal industry, such as the ones mentioned in response to Question 2.

In recent months in the public sector, there seems to be an intention to promote and regulate the use of AI. On 9 April 2024, the Argentine Justice Ministerium issued Order No 111/2024[64] by means of which the Comprehensive National AI in Justice Program was created. Some of the key aims foreseen in the Program are to promote any necessary AI-use related actions in order to improve the administrative and court proceedings and to efficiently implement AI-related

64 Order No 111/2024, www.boletinoficial.gob.ar/detalleAviso/primera/305645/20240411.

tools in order to optimise the work carried out by everyone that is involved in administrative and court proceedings.

9. What is the role of the national bar organisations or other official professional institutions?

The Bar Association of the Autonomous City of Buenos Aires conducts training and periodic courses on the use of AI technology and the use of different tools in the exercise of the legal profession. However, it is a topic that has been addressed in many meetings and conferences considering the increasing importance it has in our profession. In addition, within the services available to the enrollee, bonuses and discounts are offered for the 'LegalRun' tool, a robotic and AI solution for tracking and managing judicial processes in Latin America.

There are also other professional associations that offer their lawyers training and congresses related to the subject, such as the Bar Association of Lomas de Zamora, the Bar Association of La Plata and the Bar Association of the Judicial Department of Azul. In addition, the Corrientes Bar Association developed the first postgraduate degree in Medical Law and Artificial Intelligence.

Artificial Intelligence Work Group Project

Australia

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1. What is the understanding or definition of AI in your jurisdiction?

There is no legal definition for artificial intelligence (AI) in Australia. Although some Commonwealth legislation explicitly refers to the use of technology or computer programs in order to permit the use of AI under that legislation,[65] no piece of Commonwealth, state or territory legislation[66] uses or defines the term 'artificial intelligence'.

The Australian Government's most recent discussion paper relating to AI regulation, *Safe and responsible AI in Australia*, proposes the following definition for AI:

> 'An engineered system that generates predictive outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives or parameters without explicit programming. AI systems are designed to operate with varying levels of automation.'[67]

The definition goes on to distinguish between machine learning and generative AI models.

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65 There are several examples of Commonwealth legislation specifically permitting administrative decisions to be made by computers, with these decisions deemed to have been made by the department official. Examples include the Social Security Administration) Act 1999 (Cth) s 6A, Migration Act 1958 (Cth) s 495A and Veterans' Entitlements Act 1986 (Cth) s 4B.

66 Australia has a federal system of government, with law-making powers divided between the Commonwealth (the federal, national government) and each state and territory.

67 *Safe and responsible AI in Australia – Discussion Paper* (Australian Department of Industry, Science and Resources, June 2023), https://storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/Safe-and-responsible-AI-in-Australia-discussion-paper.pdf accessed 29 May 2024.

The definition has been adopted in other discourse, including by Australia's eSafety Commissioner, in its *Tech Trends Position Statement on Generative AI*.[68] However, the definition has not yet been adopted uniformly across government, and there is more than one definition in use in legal policy and reform discussions on AI in Australia. For example, the previous working definition for AI was developed by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and adopted by the Australian Government in its AI Action Plan[69] (which set out a framework for Australia's vision for AI). It defined AI as:

> 'A collection of interrelated technologies used to solve problems autonomously, and perform tasks to achieve defined objectives, in some cases without explicit guidance from a human being.'[70]

Other national bodies have preferred to adopt internationally recognised definitions. For example, the Australian Human Rights Commission (AHRC) refers to the definition for AI developed by the Organisation for Economic Co-operation and Development (OECD) Group of Experts in its *Final Report on Human Rights and Technology* (the 'Final Report').[71] The OECD definition (which has been updated since the publication of the Final Report) for an AI system is a:

> 'machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.'[72]

The above OECD definition has also been adopted by the International Organisation for Standardisation and endorsed by Australia's member body, Standards Australia.[73]

This lack of consistency in a legal and policy context in Australia in adopting definitions for AI and AI systems is also characteristic of evolving industry practice in Australia. Across the market, there is a spectrum of use cases for the term 'AI system', with one end of the spectrum referring to systems that use less

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68 'Tech Trends Position Statement – Generative AI' (eSafety Commissioner, 15 August 2023), www.esafety.gov.au/sites/default/files/2023-08/Generative%20AI%20-%20Position%20Statement%20-%20August%202023%20.pdf accessed 29 May 2024.

69 *Australia's AI Action Plan* (Department of Industry, Science, Energy and Resources, June 2021), https://webarchive.nla.gov.au/awa/20220816053410/https://www.industry.gov.au/data-and-publications/australias-artificial-intelligence-action-plan accessed 30 May 2024.

70 S A Hajkowicz, S. Karimi, T Wark, C Chen, M Evans, N Rens, D Dawson, A Charlton, T Brennan, C Moffatt, S Srikumar and K J Tong, 'Artificial Intelligence: Solving problems, growing the economy and improving our quality of life' (CSIRO Data61 and the Department of Industry, Innovation and Science, Australian Government, 2019), p 2.

71 *Human Rights and Technology: Final Report* (Australian Human Rights Commission, 2021), https://humanrights.gov.au/our-work/technology-and-human-rights/publications/final-report-human-rights-and-technology, p 17, accessed 19 May 2024.

72 'OECD AI Principles Overview' (OECD, AI Policy Observatory), https://oecd.ai/en/ai-principles.

73 ISO/IEC 22982:2002 Information Technology – Artificial Intelligence – Artificial Intelligence Concepts and Terminology. As identically adopted by Standards Australia under AS ISO/IEC 22989:2023 Information Technology – Artificial Intelligence – Artificial Intelligence concepts and terminology.

sophisticated technology, such as systems which perform primarily document or workflow automation functions using decision logic. In these contexts, the use of the term 'AI' or 'AI system' is a more expansive or generous use of the term than that adopted by other market players and technical AI experts, who would consider a system to be an 'AI system' only where that system was performing a more sophisticated human-like function using AI concepts such as natural language processing and machine learning algorithms, beyond basic decision logic.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Since the public release of ChatGPT in November 2022, Generative AI ('GenAI') has rapidly evolved to becoming considered a business-critical technology in Australia. The proliferation of GenAI applications, and the increasing capability of the large language models (LLMs) that underpin them, mirrors the ever-increasing interest and usage of GenAI across both public and enterprise domains.

By early 2024, reportedly 50 to 66 per cent of Australian lawyers were utilising GenAI tools for professional purposes.[74] While it is likely the majority of these users are leveraging 'generalist' tools such as ChatGPT and Microsoft Copilot, it is likely lawyers will increasingly use these generalist GenAI tools together with adopting new, legal-specific GenAI tools and functionality.

From transactional AI tools to legal AI assistants and enhanced productivity

Before the arrival of GenAI capability, AI tools for legal services were typically focused in the Australian market on due diligence processes or contract reviews. Until recently, the transactional AI products most commonly used in the Australian market included Kira and Luminance.[75] These transactional AI tools were trained on a set of documents (either public or private clause banks), whereby certain clauses of a contract are tagged, curated and maintained. This training model helps the tool automatically classify documents by type, identify relevant clauses and potential risks (eg, due to the absence of a particular clause, or due to a significant variation identified in a particular type of clause), and extract clauses in a table where a user may compare all similar clauses side by side.

While these transactional AI products remain in the market, the arrival of GenAI has expanded the capability for AI to assist with a broader spectrum of legal tasks.

74 'Generative AI and the future of the legal profession – 2023-2024 ANZ AI Sentiment Survey Findings' (London: LexisNexis, 2024), p 5; Sarah Mateljan, '2/3 Australian lawyers are using ChatGPT for legal work' *Lawyers Weekly* (28 March 2024), www.lawyersweekly.com.au/biglaw/39363-2-3-australian-lawyers-are-using-chatgpt-for-legal-work accessed 30 May 2024.

75 We note Luminance has also developed GenAI capability, including its end-to-end contract negotiation tool Luminance Autopilot (currently in Beta). J Goodman, 'Generative AI – one year on' *The Law Society Gazette* (1 December 2023), www.lawgazette.co.uk/features/generative-ai-one-year-on/5118084.article accessed 30 May 2024.

In addition to document review and extracting key data/contract information, new GenAI tools with a focus on the legal industry leverage LLM capabilities and legal-specific training[76] to perform a range of 'legal AI assistant' tasks:

- creating first drafts of documents and correspondence;
- analysing and editing contracts;
- searching databases; and
- summarising document(s).

Products being used in the Australian market include CoCounsel,[77] Lexis+ AI, Harvey, Spellbook and Robin AI. Such tools have only recently come to the Australian market, with larger law firms typically leading the adoption, experimentation and live matter usage (for now).

In addition to these new GenAI tools, a range of existing legal technologies already present in the Australian legal market have augmented their tools with GenAI functionality, enhancing the productivity uplift already being delivered to lawyers. For example:

1. Workflow automation platforms such as Checkbox and Josef have added GenAI capability to their chatbot/Q&A tools (named AI Chatbot Assistant and Josef Q, respectively), allowing users to submit legal queries that are answered using an organisation's underlying policies and playbooks.

2. Document management systems including NetDocuments (via its PatternBuilder MAX suite) and iManage (in development) are adding GenAI capabilities to their platforms to enable enhanced information retrieval, management and analysis.

3. Contract Lifecycle Management platforms such as Ironclad, ContractPodAi, Juro and Henchman are now integrating GenAI to assist contract review, negotiation, redlining, analysis and data extraction.

Litigation

AI has been in use in Australia in various forms for large scale document review for the past ten to 15 years.

76 See Question 6 for more detail.

77 Thomson Reuters acquired Casetext Inc in August 2023 for US$650 million, including its flagship GenAI tool CoCounsel. See 'Thomson Reuters Completes Acquisition of Casetext Inc' (Thomson Reuters, 17 August 2023), www.thomsonreuters.com/en/press-releases/2023/august/thomson-reuters-completes-acquisition-of-casetext-inc.html accessed 30 May 2024.

Litigation AI tools are often used in very large matters where millions of documents (and many types of file formats, such as emails) may need be reviewed, for example, to assess which specific documents among a larger group may need to be produced to a court in connection with legal proceedings, or to a regulator in connection with a regulatory investigation. Generally, these 'eDiscovery' AI tools are used to predict the relevance or responsiveness of documents to a certain production request. They are therefore trained for a bespoke project based on training provided by lawyers coding an initial set of documents.

The eDiscovery tools most commonly used in the Australian market include Nuix (previously Ringtail), Relativity and Reveal. Relativity and Reveal have both added GenAI capabilities to their solutions, named aiR and Ask, respectively.[78]

Legal research

Online legal research solutions are evolving with ever-increasing sophistication, and the most significant recent development has been the integration of GenAI. Two key products in the Australian market will be Lexis+ AI by LexisNexis[79] and Westlaw by Thomson Reuters.[80]

These platforms will combine GenAI functionality with their respective legal content repositories, meaning lawyers can ask conversational research questions and receive curated responses with citations. For example, Lexis+ AI spans 1.23 million documents in seconds and is 'anticipated to save Australian lawyers an average of 11 hours per week across research, drafting, client communications, and case summarisation activity'.[81]

Knowledge management

Knowledge management (KM) AI tools have emerged in legal practice in Australia (primarily used within law firms, rather than by in-house counsel). Categories of KM tools in use in Australia include:

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78 C Coyer, 'Relativity Announces Upcoming Gen AI "Relativity aiR" Products, RelativityOne Updates' (*Law.com*, 29 January 2024), www.law.com/legaltechnews/2024/01/29/relativity-announces-upcoming-gen-ai-relativity-air-products-relativityone-updates/ accessed 30 May 2024; 'Reveal Launches "Ask": A Game-Changing Generative AI Tool for the Legal Sector' (*AIM Research*, 11 January 2024), https://aimresearch.co/generative-ai/reveal-launches-ask-a-game-changing-generative-ai-tool-for-the-legal-sector accessed 30 May 2024.

79 At the time of writing, Lexis AI+ is currently in commercial preview, with a full market release expected in 2024.

80 At the time of writing, Westlaw's GenAI-assisted research product has been launched within Westlaw Precision for the US and within Westlaw Edge for the UK.

81 'LexisNexis unveils the most comprehensive legal generative AI solution in the world – Australian commercial preview' (LexisNexis, 7 February 2024), www.lexisnexis.com.au/en/insights-and-analysis/media-release/2024/lexisnexis-unveils-the-most-comprehensive-legal-generative-ai-solution-in-the-world-australian-commercial-preview accessed 29 May 2024.

- AI enterprise search solutions that allow for unified searching across multiple systems/repositories of both structured and unstructured data in an organisation; and

- AI tools that assist providing contemporaneous clause/drafting recommendations to lawyers based on existing data available to the firm.

While there is significant potential for these kinds of KM AI tools, in order for them to be useful there must be precision of data. This presents a challenge for most legal practice contexts, where data is not often consistently captured. Without clean, structured data, the capability and potential of these kinds of tools is significantly hampered. As a result, while there has been a slow uptake by Australian organisations in using these tools, there has not been significant progression or infiltration of these tools in the market. It will be interesting to observe whether the above obstacles can be overcome by KM AI tool providers uplifting their products with GenAI functionality (for example, in 2023 DraftWise incorporated GenAI into its product).[82]

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

Typically, the underlying AI tools will be technically similar regardless of whether the 'customer' is a law firm or in-house counsel.[83] In each case, the AI tool will essentially be performing the same task (whether that is data extraction and labelling, summarising key terms from a contract set, creating a chronology from a correspondence dataset, etc). The main distinction is between AI tools that are tailored to, or better assist, the work performed by law firms and the work performed by in-house teams. For example, law firms will primarily make use of the AI tools for large-scale document reviews, while in-house teams are more likely to embrace AI tools in the context of matter intake/management and contract lifecycle management.

For tools that can be leveraged by both law firms and in-house teams, the user interface and specific use case for these AI tools may be distinct depending on the user and workflow process. For example, whereas law firms may use transactional AI tools to conduct a due diligence contract review for a client's transaction to

82 'Legal Tech Startup DraftWise Brings Secure Generative AI to Law Firm Intelligence' (*accesswire.com*, 6 June 2023), www.accesswire.com/759324/legal-tech-startup-draftwise-brings-secure-generative-ai-to-law-firm-intelligence accessed 30 May 2024.

83 We note that we have observed no distinction between the use cases for AI tools in independent law firms compared to international law firms and have considered these two categories as a combined category for the purpose of our response.

identify key provisions in material contracts, an in-house team may use the same AI tool to perform contract lifecycle management, applying the AI tool to identify upcoming termination dates to input into a contract management system. Larger in-house teams may also use these AI tools to expedite and improve their review of largely standardised contracts. For example, some larger Australian and international in-house teams use AI tools to identify whether the clauses of a contract align with the current protocols or standard positions adopted in their organisation. While this application of AI in an in-house context remains in its infancy, it may be bolstered by the increasing number of GenAI tools coming to market.

Lastly, law firms typically have greater resources to invest in AI tools compared with in-house legal teams, in addition to access to significant volumes of diverse data, often stored in enterprise-wide document management systems. The particular challenge facing law firms is how to structure the vast quantities of data that they hold to maximise the potential of their AI tools (including both specialty legal AI tools and enterprise AI capability such as Microsoft Copilot). By comparison, in-house teams typically did not have the resources to invest in speciality legal AI tools but are now able to leverage GenAI within enterprise technology (eg, Microsoft Copilot) and/or as new functionality integrated into existing platforms (such as contract lifecycle management).

4. What is the current or planned regulatory approach on AI in general?

Australia has signalled a risk-based approach to regulating AI.[84] In its interim response to its discussion paper on supporting safe and responsible AI ('Interim Response'), the Australian government indicated that it is currently evaluating approaches to the regulation of AI,[85] including:

- the creation of a voluntary 'AI Safety Standard' to assist industry (largely the private sector) to implement safe and responsible AI through practical guidance;
- a consideration of further guardrails and safeguards for the design, development, deployment and use of AI in 'high-risk' contexts and in frontier or general-purpose AI-models, where the risks of harm may be likely, significant and difficult to reverse. This consideration includes how 'high risk' contexts might be defined, whether the guardrails and safeguards would be mandatory or voluntary, and how they would be implemented (for example, whether through adapting existing laws or through new specific legislation); and

84 *Safe and responsible AI in Australia Consultation – Australian Government's interim response* (Department of Industry, Science and Resources, 17 January 2024), https://consult.industry.gov.au/supporting-responsible-ai accessed 30 May 2024.

85 *Safe and responsible AI in Australia Consultation – Australian Government's interim response* (Department of Industry, Science and Resources, 17 January 2024).

- options for voluntary labelling or watermarking of AI generated material in 'high-risk' settings.

The Australian Government's wider reform agenda includes reforming existing areas of law that are impacted by AI, in particular online safety reform and privacy reform (discussed in greater detail in the following section), and international cooperation, consistent with Australia's commitments under the Bletchley Declaration,86 and as part of the Global Partnership on AI.

Australia also has a set of voluntary principles (the 'AI Ethics Principles'), which may be used by business or government when designing, developing, integrating or using AI systems.[87] As the principles are voluntary, there is no requirement that government or businesses must consider or comply with the principles in respect of any proposed use or development of AI.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

As noted above, the Australian Government is currently developing a voluntary AI Safety Standard and considering what guardrails and safeguards may be further needed for the design, development, deployment and use of AI in 'high-risk' contexts. In addition, there are existing legal regimes (eg, privacy) that have an impact on the use of AI.

In September 2023, the Australian eSafety Commissioner registered an industry code[88] (the 'Search Code'), under the Online Safety Act 2021 (Cth) (OSA). From 12 March 2024, the Search Code has imposed mandatory online safety obligations on providers of search engines (such as Google and Bing), including express contemplation of how GenAI is integrated into such services. The Search Code requires applicable services to take steps to reduce end-user risk concerning materials generated by AI, including by researching detection technologies capable of assisting end-users to identify deepfake images on the service, ensuring that AI-generated results do not contain child sexual exploitation material and ensuring that end users are aware when they are interacting with GenAI features. A wider statutory review of the OSA is also currently underway to ensure that the harms of GenAI are accounted for in legislation.[89]

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86 'The Bletchley Declaration by Countries Attending the AI Safety Summit' (Policy Paper, November 2023).

87 *AI Ethics Principles* (Department of Industry, Science, Energy and Resources), www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles accessed 15 May 2024.

88 'Internet Search Engine Services Online Safety Code (Class 1A and Class 1B Material)' (*onlinesafety.org.au*, September 2023), https://onlinesafety.org.au/wp-content/uploads/2023/09/230912_6_Seach-Schedule_REGISTERED-120923.pdf accessed 16 May 2024.

89 *Terms of Reference – Statutory Review of the Online Safety Act* (Department of Infrastructure, Transport, Regional Development, Communications and the Arts, February 2024), www.infrastructure.gov.au/sites/default/files/documents/tor-statutory-review-online-safety-act-2021-8Feb.pdf accessed 30 May 2024.

The Australian Government has agreed to implement a number of proposals from the Privacy Act Review Report[90] that touch on the development, deployment and use of AI. For example, entities subject to the Privacy Act 1988 (Cth) that collect, use or disclose personal information for the purposes of substantially automated decision making with legal or similarly significant effects on an individual, will be subject to mandated transparency requirements,[91] as well as meeting explainability principles.[92] Furthermore, entities that use facial recognition technology and other uses of biometric information with AI systems will be required to conduct enhanced risk assessments as part of privacy impact assessments[93] (among other matters).

Other reform processes include developing a regulatory framework for automated vehicles,[94] and consultation on the implications of AI on intellectual property law.[95]

A number of government and organisational bodies are also producing guidance to assist government and industry. The Australian Signals Directorate has released guidance for organisations on threats related to AI systems (such as data poisoning, input manipulation attacks and model stealing), prompts to consider and steps to engage with AI while managing risk,[96] and guidelines for secure AI systems development.[97] The Digital Platform Regulators Forum (composed of the ACCC, ACMA, eSafety Commissioner and OAIC) has developed guidance on harms and threats of algorithms in digital platform technologies, particularly when used in content moderation, recommender systems and targeted advertising[98] and on large language models.[99] The eSafety Commissioner has also released a position statement on GenAI.[100]

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90 *Government Response – Privacy Act Review Report* (Attorney-General's Department, 2023), www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF accessed 30 May 2024. The next step for the 'agreed' proposals is for them to be implemented in draft legislation.

91 *Government Response – Privacy Act Review Report* (Attorney-General's Department, 2023), Proposal 19.1.

92 *Government Response – Privacy Act Review Report* (Attorney-General's Department, 2023), Proposal 19.3.

93 *Government Response – Privacy Act Review Report* (Attorney-General's Department, 2023), Proposal 13.2.

94 *Automated vehicles* (Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 21 February 2024), www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/office-future-transport-technology/automated-vehicles accessed 30 May 2024.

95 *Copyright and AI reference group to be established* (Attorney-General's Department, 5 December 2023), https://ministers.ag.gov.au/media-centre/copyright-and-ai-reference-group-be-established-05-12-2023 accessed 30 May 2024.

96 'Engaging with Artificial Intelligence (AI)' (Australian Cyber Security Centre, Australian Signals Directorate, 24 January 2024), www.cyber.gov.au/resources-business-and-government/governance-and-user-education/governance/engaging-with-artificial-intelligence accessed 30 May 2024.

97 'Guidelines for secure AI system development' (UK National Cyber Security Centre (NCSC) and the US Cybersecurity and Infrastructure Security Agency (CISA), 27 November 2023), www.cyber.gov.au/about-us/view-all-content/advice-and-guidance/guidelines-secure-ai-system-development accessed 30 May 2024.

98 'Literature summary: Harms and risks of algorithms' (Digital Platforms Regulators Forum, 29 June 2023).

99 'Examination of technology: Large Language Models' (Digital Platforms Regulators Forum, 25 October 2023).

100 'Tech Trends Position Statement – Generative AI' (eSafety Commission, 15 August 2023), www.esafety.gov.au/sites/default/files/2023-08/Generative%20AI%20-%20Position%20Statement%20-%20August%202023%20.pdf accessed 30 May 2024.

Other Australian initiatives[101] have previously been conducted to contribute to the discussion on the future of Australia's regulatory approach on AI. Notably, this includes the AHRC project on Human Rights and Technology (the 'Project'). The Project was a three-year project, which involved research, public consultation and the publication of papers on proposed legal and policy areas for reform, including an initial Issues Paper,[102] a White Paper on AI Governance and Leadership,[103] a Discussion Paper[104] and a Technical Paper on algorithmic bias.[105] On 27 May 2021, the AHRC's Final Report for this Project was published.[106] The Final Report focused on ensuring that there is effective accountability in those circumstances where AI may be used to make decisions that have a legal or similarly significant effect on individuals ('AI-informed decision-making'), whether those decisions are made by government or non-government entities.

The AHRC made recommendations for the creation of a new AI safety commissioner to support regulators, policymakers, government and business to develop and apply policy, law and other standards.[107] The AHRC also recommended introducing new legislation for regulating AI, particularly regarding AI-informed decision-making. The Final Report also called for a moratorium on the use of this technology in AI-informed decision-making until such legislation is enacted.[108] While these recommendations of the AHRC were submitted to the government, to date they have not been adopted.

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101 We note that we have not referred to all completed or ongoing Australian inquiries and initiatives which have been conducted, including those that have contributed to the conversation regarding how Australia may adopt further standards and guidelines to inform government and business use of AI. In particular, we note that Standards Australia has published a report on how Australia may actively contribute to the development of, and implement, International Standards that enable 'Responsible AI'. Australia has taken an active role in the international committee on AI, ISO/IEC JTC 1/SC 42, which is involved in the development of international AI standards. According to the report, Australia intends to directly adopt some International Standards to promote international consistency of AI Standards. See *Standards Australia, Final Report – An Artificial Intelligence Standards Roadmap: Making Australia's voice heard*, www.standards.org.au/getmedia/ede81912-55a2-4d8e-849f-9844993c3b9d/R_1515-An- Artificial-Intelligence-Standards-Roadmap-soft.pdf.aspx accessed 1 June 2021.

102 *Human Rights and Technology Issues Paper* (Australian Human Rights Commission, July 2018), https://humanrights.gov.au/sites/default/files/document/publication/AHRC-Human-Rights-Tech-IP.pdf accessed 30 May 2024.

103 *Artificial Intelligence: governance and leadership – White Paper* (Australian Human Rights Commission, 2019), https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wef_white_paper_online_version_final.pdf accessed 30 May 2024.

104 *Human Rights and Technology – Discussion Paper* (Australian Human Rights Commission, December 2019), https://humanrights.gov.au/our-work/technology-and-human-rights/publications/discussion-paper-human-rights-and-technology accessed 30 May 2024.

105 *Using artificial intelligence to make decisions: Addressing the problem of algorithmic bias – Technical Paper* (Australian Human Rights Commission, 2020), https://humanrights.gov.au/sites/default/files/document/publication/ahrc_technical_paper_algorithmic_bias_2020.pdf accessed 30 May 2024.

106 *Human Rights and Technology – Final Report* (Australian Human Rights Commission, 2021), https://humanrights.gov.au/our-work/technology-and-human-rights/publications/final-report-human-rights-and-technology accessed 30 May 2024.

107 *Human Rights and Technology – Final Report* (Australian Human Rights Commission, 2021), Recommendation 22.

108 *Human Rights and Technology – Final Report* (Australian Human Rights Commission, 2021), Recommendations 19, 20.

6. Is free data access an issue in relation with AI?

Free data access is an issue in the use of AI tools in the provision of legal services in Australia. The success of an AI tool will be determined by the size and diversity of the sample data which is used to train that tool. For ML-based tools, such training can be based on vendor supervised 'out-of-the-box' capability, unsupervised learning over the course of a customer's use of the tool, or supervised learning facilitated by the customer. In contrast, the performance of GenAI tools is based on a broader training and capability that is the sum of many parts, including the tool's underlying LLM and to what extent additional enhancements/training has been provided by way of prompt engineering, Retrieval Augmented Generation (RAG) and/or LLM fine-tuning. Regardless of the AI tool, training data is an essential input for success. There are a number of factors that contribute to free data access challenges in Australia; generally, these factors apply across the spectrum of different categories of AI tools discussed in Question 2. These include:

- *Use of confidential or protected data*: as is the case in other jurisdictions, the data used to teach AI tools in a legal practice is often confidential or subject to other usage restrictions. This means, in a transactional context for example, that the AI tools may be restricted from applying learning obtained from one matter to another matter, as the previous learning was informed by confidential information. These restrictions inhibit the progressive learning, and therefore potential, of these tools.

- *Security settings and data structure of adjacent systems*: the systems that are used to store data and to which AI tools may be applied often have inbuilt security features which can further restrict the usability of that stored data. For example, the security settings and permissions set by a data room or document management system will apply to stored documents and can act to limit how the data contained within those documents can be used (for example clauses contained within those documents may be unable to be extracted). Alternatively, systems may store unstructured data. In a knowledge management context, for example, if documents contain only unstructured or imprecise data, or if back-end data is locked down, the AI tool will be unable to conduct searches and function properly (or at the very least with GenAI tools, unable to improve its results by grounding LLMs with legal organisational know-how through effective RAG).

- *Limited public data*: Australia has very limited freely available, public legal data and this restricts the potential for supervised learning of AI tools in legal practice. For example, information that is filed with courts through court registries or with regulators is not made publicly

available and free to search in Australia. This is a distinction which can be drawn between Australia and other jurisdictions, such as the United States, who have implemented a public company filing and search system (EDGAR). Whether for transactional or litigious matters, the inability to harvest public legal data poses a limitation on the potential of future AI tools which could otherwise be greatly enhanced using this data if it was made freely available.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Prior to the arrival of GenAI, a number of court decisions in Australia had endorsed the use of non-GenAI in legal proceedings to assist with discovery processes and document review.

An example includes a decision from the Supreme Court of Victoria in 2016, *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd (No 1)*.[109] In this case, a construction firm (the plaintiff) commenced proceedings against an insurer in an insurance claim relating to the design and construction of a natural gas pipeline. The plaintiff identified at least 1.4 million documents that required review to determine discoverability. It was identified that a manual review process for these documents would take over 23,000 hours. The parties could not agree how to conduct discovery and the court was required to make an interlocutory decision. In his decision, Vickery J endorsed the use of technology-assisted review (TAR) in managing discovery and identified that a manual review process risked undermining the overarching purposes of the Civil Procedure Act[110] and was unlikely to be either cost effective or proportionate.[111]

Subsequently, TAR was explicitly endorsed in Victorian Supreme Court practice notes for cases involving large volumes of documents.[112] This is also now the case in many other jurisdictions in Australia where the use of technology, including in civil procedure processes such as document discovery, has been endorsed as facilitating and improving the efficiency of litigation and supporting other overarching purposes of civil procedure such as cost-effectiveness.[113]

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109 *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd (No 1)* [2016] VSC 734.

110 Civil Procedure Act 2010 (Vic), which provides a legal framework for achieving the just, efficient, timely and cost-efficient resolution of issues in dispute (s 7(1)).

111 *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd (No 1)* [2016] VSC 734 at [7].

112 Supreme Court of Victoria, Practice Note SC Gen 5, *Technology in Civil Litigation*, p 6.

113 See, eg in the Federal Court (Technology and the Court Practice Note (GPN-TECH)), in New South Wales (Practice Note SC Gen 7: Supreme Court – Use of technology), Queensland (Practice Direction Number 10 of 2011: Supreme Court of Queensland Use of technology for the efficient management of documents in litigation), the Australian Capital Territory (Supreme Court of the Australian Capital Territory Practice Direction No 3 of 2018 – Court Technology) and Tasmania (Supreme Court of Tasmania – Practice Direction No 6 of 2019).

More recent court decisions have also continued to endorse the use of TAR in document discovery and review processes. In 2020, in the Federal Court of Australia, Justice Beech in *ViiV Healthcare Company v Gilead Sciences Pty Ltd (No 2)*[114] considered how the use of a TAR method which used predictive coding with continuous active learning technology could assist in relieving the burden of discovery which may imposed on a party to that proceeding. In separate proceedings, judges have also made orders regarding proposed document management protocols which have included the use of TAR,[115] as well acknowledging the ability of TAR to contribute towards time- and cost-efficient and effective discovery processes.[116] In some cases, courts have also been inclined to reject arguments that seek to resist discovery on the basis of the assistance that can now be provided by TAR or predictive coding.[117]

While the problem of GenAI hallucinated content, such as fake case citations, being incorporated into filed court documentation has been spotlighted over the past year in US,[118] UK[119] and Canadian[120] cases, similar cases have not occurred to date in Australia.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There is currently no legal profession-specific regulation planned for AI. The focus remains on developing a more generally applicable framework and standards for AI systems in Australia.

9. What is the role of the national bar organisations or other official professional institutions?

There is a wide range of activity being undertaken by national bar organisations and other professional institutions in Australia in relation to AI and its adoption by the legal industry. This includes:

- The contributions being made by these organisations towards public debate on the issues presented by AI, including submissions made to government and other inquiries. As an example, the Law Council of Australia has provided submissions to various inquiries, including

114 *ViiV Healthcare Company v Gilead Sciences Pty Ltd (No 2)* [2020] FCA 1455.

115 *Parbery v QNI Metals Pty Ltd* [2018] QSC 83.

116 *Crawford v Australia and New Zealand Banking Group Ltd* [2021] VSC 578.

117 *Jenkins Sh v Australia Council for the Arts* [2024] FCA 309 at [11], referring to an interlocutory decision of Registrar Edwards.

118 *Mata v Avianca Inc* 22-cv-1461 (PKC).

119 *Harber v Revenue and Customs Commissioners* [2023] UKFTT 1007 (TC).

120 *Zhang v Chen* 2024 BCSC 285.

to the Department of Industry, Science and Resources' Discussion Paper on Safe and Responsible AI in Australia,[121] the AHRC's White Paper on AI governance and leadership,[122] the Department of Industry, Innovation and Science's Discussion Paper on Australia's AI Ethics Framework[123] and the Department of Industry, Innovation and Science's Discussion Paper regarding Australia's AI Action Plan.[124]

- The establishment of committees and working groups. For example, the New South Wales Law Society has established a specific taskforce, the Taskforce on AI and other tools and trends shaping the legal profession, to assist and provide expert advice, guidance, and output on the use of AI in the legal industry. The New South Wales Bar Association has established a specialist Media and Information Law and Technology Committee that monitors and maintains active participation in developments in matters such as artificial intelligence.[125]

- The publication of guidance and thought leadership relating to the use and adoption of AI in legal services. For example:

  – the Australasian Institute of Judicial Administration has released AI guidelines for judges, tribunal members and court administrators, which consider the use of Gen AI.[126] Australian courts have not yet provided either informal guidance/ guidelines nor mandatory practice notes on the responsible use of GenAI;

  – the New South Wales Bar Association has developed a guide for barristers in relation to GenAI and how the use of GenAI may impact on their legal practice, particularly in relation to

121 Submission to Department of Industry Science and Resources: 'Safe and responsible AI in Australia' (Law Council of Australia, 17 August 2023), https://consult.industry.gov.au/supporting-responsible-ai/submission/view/504 accessed 30 May 2024.

122 Submission to the Australian Human Rights Commission: 'Artificial Intelligence: Governance and Leadership' (Law Council of Australia, 18 March 2019), www.lawcouncil.asn.au/publicassets/38636f04-4a5b-e911-93fc-005056be13b5/3602%20-%20AHRC%20Artificial%20Intelligence%20Governance%20and%20Leadership.pdf accessed 30 May 2024.

123 Submission to the Department of Industry, Innovation and Science: 'Artificial Intelligence: Australia's Ethics Framework' (Law Council of Australia, 28 June 2019), www.lawcouncil.asn.au/publicassets/afebc52d-afa6-e911-93fe-005056be13b5/3639%20-%20AI%20ethics.pdf accessed 30 May 2024.

124 Submission to the Department of Industry, Innovation and Science: 'An AI Action Plan for All Australians: A Call for Views' (Law Council of Australia 17 December 2019), www.lawcouncil.asn.au/resources/submissions/an-ai-action-plan-for-all-australians-a-call-for-views accessed 30 May 2024.

125 Some state-based bar associations have established more general committees on the use of emerging technologies. eg the New South Wales Bar Association has established a specialist Media and Information Law and Technology Committee that monitors and maintains active participation in developments in matters including artificial intelligence.

126 *AI Decision-Making and the Courts – A guide for Judges, Tribunal Members and Court Administrators* (Australasian Institute for Judicial Administration and UNSW Faculty of Law and Justice, December 2023), https://aija.org.au/wp-content/uploads/2023/12/AIJA_AI-DecisionMakingReport_2023update.pdf accessed 30 May 2024.

their duties under the barristers' legal conduct rules in New South Wales;[127] and

– similarly, the Law Institute of Victoria and Law Society of New South Wales and have published articles on the responsible use of AI in legal practice, in line with solicitors' conduct rules.[128]

127 'Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice' (NSW Bar Association, 12 July 2023), https://inbrief.nswbar.asn.au/posts/9e292ee2fc90581f795ff1df0105692d/attachment/NSW%20Bar%20Association%20GPT%20AI%20Language%20Models%20Guidelines.pdf accessed 30 May 2024.

128 'A solicitor's guide to responsible use of artificial intelligence' *Law Society Journal Online* (14 November 2023), https://lsj.com.au/articles/a-solicitors-guide-to-responsible-use-of-artificial-intelligence; 'Young Lawyers: Artificial Intelligence in legal practice' (Law Institute of Victoria, October 2022), www.liv.asn.au/Web/Law_Institute_Journal_and_News/Web/LIJ/Year/2022/10October/Young_Lawyers__Artificial_Intelligence_in_legal_practice.aspx accessed 30 May 2024.

Bolivia

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1. What is the understanding or definition of AI in your jurisdiction?

Bolivia's current legislation does not include a statutory definition of artificial intelligence (AI). However, recent initiatives[129] by the Telecommunications Regulatory Authority (Autoridad de Regulación y Fiscalización de Teleomunicaciones y Transportes) have been trying to publicise its benefits and potential risks (personal data theft and false impersonation) without providing an official definition. Bolivia does not have a specific data protection law, and the last legislation passed regarding technological matters dates from 2011.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

No, any AI legal tech tool that is currently being used in Bolivia comes from other jurisdictions – thus, its application is limited.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**
- **and what are these differences?**

Not applicable.

4. What is the current or planned regulatory approach on AI in general?

There is no current or planned regulatory approach on AI in general.

The current regulatory framework in Bolivia dates from 2011 with the enactment of the General Telecommunications Information and Communications Technologies Law (8 August 2011). The above referred legal framework requires updates and amendments to include specific data protection regulation, and to account for new concepts such as AI.

129 'La ATT socializa los beneficios y riesgos de la Inteligencia Artificial en la Expocruz 2023' (Autoridad de Regulación y Fiscalización de Teleomunicaciones y Transportes, 23 September 2023), www.att.gob.bo/index.php/la-att-socializa-los-beneficios-y-riesgos-de-la-inteligencia-artificial-en-la-expocruz-2023 accessed 30 May 2024.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

There are no current or planned regulations on the general use of AI or machine learning systems. Bolivia's pending regulations include specific data protection laws and laws on new concepts and technologies, such as AI.

Privacy and data protection concerns are mainly regulated by general constitutional and civil rights and laws and some scant sectorial regulation.

6. Is free data access an issue in relation with AI?

Yes. Due to the lack of a specific data protection law, data access relating to AI processes faces challenges from a regulatory point of view. This results in risks and concerns for AI users, since data protection regulation is very scarce and/or outdated.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

From a limited investigation on the matter, we have not identified any court decisions on the provision of legal services using AI, nor decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There is no planned, discussed or implemented sectorial legislation regarding the use of AI in the legal profession. Lawyers may freely use AI tools provided they comply with the formalities and/or specific requirements applicable to legal procedures.

9. What is the role of the national bar organisations or other official professional institutions?

The Ministry of Justice has not yet issued any instruction and/or recommendation on the matter. Private regional lawyers' associations are also yet to issue opinions and recommendations on the matter.

Bosnia and Herzegovina

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1. What is the understanding or definition of AI in your jurisdiction?

While there is no specific legal definition of artificial intelligence (AI) within the legislative framework of Bosnia and Herzegovina, the concept generally aligns with international standards. AI is broadly understood as the field of computer science dedicated to creating intelligent systems capable of simulating human-like behaviour and decision-making processes. The only direct mention of AI in legislation currently exists within the 2021–2027 Development Strategy adopted by the Parliament of the Federation of Bosnia and Herzegovina.

According to this strategy, AI refers to systems that display intelligent behaviour by analysing their environment and taking actions, with some degree of autonomy, to achieve specific goals. This definition encompasses AI-based systems that can be purely software-based, such as voice assistants and image analysis software, or embedded in hardware devices such as advanced robots and autonomous cars. However, the strategy's definition lacks specificity, necessitating further clarification and refinement within the legislative framework.

Regarding data protection and General Data Protection Regulation (GDPR) compliance, Bosnia and Herzegovina has adopted laws in alignment with EU standards, particularly the Law on the Protection of Personal Data, which ensures the lawful processing of personal data. Compliance with these regulations is essential for AI initiatives to protect individuals' privacy and data rights effectively.

As AI technologies continue to evolve, ongoing efforts are needed to update legal definitions and frameworks to address emerging challenges and opportunities in Bosnia and Herzegovina's AI landscape. It is crucial for policymakers and stakeholders to collaborate in refining the understanding and definition of AI within the jurisdiction, considering its implications for various sectors and ensuring alignment with international best practices and standards.

This iterative process will contribute to establishing a robust legal framework that fosters responsible AI development and deployment while safeguarding the rights and interests of individuals and businesses in Bosnia and Herzegovina.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

The adoption of AI tools within the legal sector of Bosnia and Herzegovina is still in its infancy compared to more technologically advanced jurisdictions. While there is a growing interest in leveraging AI to enhance legal services, the implementation remains limited. Some law firms may utilise basic legal technology (legaltech) tools, such as document management systems and legal research platforms, but the integration of advanced AI applications is relatively rare. To ensure compliance with data protection regulations, legal professionals must exercise caution when utilising AI tools that involve the processing of personal data. It is crucial to conduct thorough assessments of the AI systems' data handling practices to mitigate risks of non-compliance with GDPR and other relevant laws. Efforts to promote AI literacy among legal professionals and provide access to training programmes and resources can facilitate the adoption of AI tools and foster innovation within Bosnia and Herzegovina's legal sector.

In addition to the limited integration of legal tech tools, there are few actual AI tools or use cases in practice for legal services in Bosnia and Herzegovina. The complexity of legal processes and the cautious approach towards AI adoption contribute to this scenario.

However, some early adopters are exploring AI applications for tasks such as contract analysis, due diligence and legal research. Despite these initiatives, widespread adoption faces hurdles such as concerns about job displacement and the need for tailored solutions that align with the country's legal framework and language. Collaborations between legal experts, AI developers and regulatory authorities are essential to address these challenges and unlock the full potential of AI in the legal sector. Furthermore, establishing clear guidelines and standards for AI deployment in legal services can build trust and confidence among stakeholders, paving the way for broader implementation in the future.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

Differences in AI tool utilisation in legal services are evident based on the type and size of legal entities. These disparities arise from varying resource availability, specific needs and exposure to international best practices.

Smaller, independent law firms in Bosnia and Herzegovina typically employ AI in a more limited capacity. Common uses include basic document automation and

management systems, which streamline the handling of legal documents. Budget constraints may prevent investment in more advanced AI technologies.

International law firms, benefiting from their international scope, synergies within larger groups and greater financial resources, can implement sophisticated AI systems. These may include advanced legal research tools that use machine learning to analyse case law and predict outcomes, and complex case management systems integrating various aspects of legal work. These firms are also more likely to utilise AI for more complex processes such as predictive analytics for litigation and transactions, as well as risk assessment tools requiring significant computational power and advanced algorithmic support.

In-house legal departments within corporations leverage AI tools differently, focusing primarily on efficiency and risk mitigation. Common AI applications include contract management systems automating the creation, review and monitoring of legal agreements, and compliance tools ensuring adherence to regulations and standards. Tailored to optimise operational efficiency and support strategic business decisions, these AI systems directly align with business goals.

Common AI applications encompass contract management systems automating the creation, review and monitoring of legal agreements, alongside compliance tools ensuring adherence to regulations and standards. These AI systems are tailored to optimise operational efficiency and support strategic business decisions, directly aligning with business goals.

It is essential for all legal entities to prioritise data protection measures and ensure GDPR compliance when integrating AI into their practices. Collaborative initiatives involving legal professionals, technology providers and regulatory bodies can facilitate knowledge sharing and best practices dissemination, contributing to a more equitable adoption of AI tools across diverse segments of Bosnia and Herzegovina's legal ecosystem.

Additionally, legal firms in Bosnia and Herzegovina remain cautious about the use of AI due to concerns regarding data processing generated within AI systems and the sensitivity of data processed by different AI tools. As legal professionals navigate the integration of AI into their workflows, they must carefully consider data privacy and security implications, ensuring that AI tools adhere to strict data protection standards and mitigate risks associated with handling sensitive information. This cautious approach underscores the importance of comprehensive assessments and ongoing monitoring to safeguard the integrity and confidentiality of client data in the evolving landscape of AI-driven legal services.

4. What is the current or planned regulatory approach on AI in general?

Within the Government Development Strategies, strategic initiatives and measures are outlined to foster the development of artificial intelligence. The emphasis is on AI's strategic importance for economic growth, efficiency improvements and innovation across various sectors. Additionally, there is recognition of AI's potential to enhance public administration through the analysis of large datasets generated by digitalisation efforts.

However, despite these proactive measures and strategic considerations, there is a notable absence of specific legislative initiatives or regulatory frameworks dedicated to AI within Bosnia and Herzegovina. While acknowledging the importance of AI and proposing supportive measures, there is no indication of concrete steps towards establishing legal frameworks or regulations governing AI development and deployment in the region.

While efforts are being made to promote AI development within Bosnia and Herzegovina, there is currently a gap in translating these intentions into concrete legislative actions or regulatory policies specifically addressing AI.

In Bosnia and Herzegovina, all efforts to promote and advance artificial intelligence mostly come from individual enthusiasts, university professors or individual companies in the information technology (IT) industry, as well as specific industries developing technologies to advance their sector (eg, the agricultural industry).

Due to the complex political system in Bosnia and Herzegovina, the rapid adoption of regulatory frameworks providing clear guidance for the development of AI is not expected. However, given Bosnia and Herzegovina's recent approach to negotiations with the EU, alignment of the legislative framework with EU directives is anticipated.

This process of alignment may be challenging due to the specificities of the Bosnian legal system and differences in the development of technological infrastructure and economy compared to EU Member States. Nonetheless, alignment with EU regulations brings advantages such as strengthening trade relations, facilitating access to EU funds and promoting innovation and competitiveness in Bosnia and Herzegovina.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

In Bosnia and Herzegovina, the regulatory landscape regarding the general use of artificial intelligence (AI) or machine learning systems is currently sparse. The government has devised a Development Strategy effective until 2027, which serves as a guiding framework. However, beyond this strategy, there are no specific regulations governing the broader use of AI or machine learning systems.

The absence of dedicated legislation highlights the need for comprehensive laws addressing the ethical, legal and societal implications of AI adoption. Any future regulations should harmonise with existing data protection laws, including those aligned with the GDPR, to ensure consistent standards in AI applications involving personal data processing. Collaborative efforts involving government agencies, industry stakeholders and civil society organisations are crucial for developing regulatory frameworks that encourage innovation, safeguard individual rights and cultivate public trust in AI technologies.

Currently, the legal landscape in Bosnia and Herzegovina lacks specific provisions tailored to AI and machine learning technologies. The absence of dedicated regulations raises concerns regarding the potential risks and ethical considerations associated with the widespread adoption of AI systems across various sectors. While the Development Strategy provides a strategic vision for fostering technological advancement in the country, it falls short of addressing the nuanced challenges posed by AI deployment.

One of the primary challenges in regulating AI lies in striking a balance between fostering innovation and ensuring responsible and ethical use of technology. As AI applications become increasingly integrated into various aspects of society, including healthcare, finance, transportation and governance, the need for robust regulatory frameworks becomes imperative. Without adequate regulations, there is a risk of unchecked proliferation of AI systems, potentially leading to privacy violations, algorithmic bias and other ethical dilemmas.

Moreover, the absence of clear guidelines on AI regulation may deter investment and hinder the development of AI-based industries in Bosnia and Herzegovina. Investors and businesses often seek regulatory certainty to mitigate legal risks and ensure compliance with applicable laws. Therefore, the development of comprehensive AI regulations is not only essential for safeguarding public interests but also for fostering a conducive environment for technological innovation and economic growth.

To address these challenges, Bosnia and Herzegovina could draw inspiration from international best practices and initiatives aimed at regulating AI and machine learning technologies. Countries such as Canada, Japan and the US have been actively exploring regulatory frameworks to govern AI deployment while balancing innovation and ethical considerations. By studying these approaches and adapting them to the local context, Bosnia and Herzegovina can develop tailored regulations that promote responsible AI development and deployment.

Furthermore, collaboration between government entities, industry stakeholders, academic institutions and civil society organisations is crucial for formulating effective AI regulations.

In addition to legal and regulatory measures, capacity-building initiatives and public awareness campaigns can play a significant role in fostering responsible AI adoption.

By educating policymakers, businesses and the general public about the benefits, risks and ethical considerations associated with AI technologies, Bosnia and Herzegovina can create a more informed and engaged society capable of navigating the complexities of the digital age.

Looking ahead, it is imperative for Bosnia and Herzegovina to prioritise the development of comprehensive AI regulations that address the unique challenges and opportunities posed by artificial intelligence. By proactively shaping the regulatory landscape, Bosnia and Herzegovina can harness the transformative potential of AI while mitigating risks and safeguarding the interests of its citizens. Through collaborative efforts and a commitment to responsible innovation, Bosnia and Herzegovina can emerge as a leader in AI governance, setting a positive example for other countries in the region and beyond.

6. Is free data access an issue in relation to AI?

Free data access poses several challenges, especially regarding intellectual property protection and personal data security.

The substantial data requirements for AI systems raise concerns about accessing data while respecting privacy laws and intellectual property rights. Accessing large datasets can bring up complex intellectual property issues, especially if they contain proprietary information.

In Bosnia and Herzegovina, as in the EU, there is a need to balance data availability for AI development with data owners' rights. Unauthorised data usage can infringe on copyright or trade secrets, hindering innovation and discouraging creators if not adequately protected. Bosnia and Herzegovina enforces stringent data protection requirements. AI developers must handle any personal data used in training and deploying AI systems according to strict privacy standards, including obtaining appropriate consents, minimising data and securing it against unauthorised access.

Protecting the right to data privacy is crucial, as any breach could lead to legal repercussions and undermine public trust in AI technologies. The legal framework in Bosnia and Herzegovina must provide clear guidelines on data access for AI use while protecting intellectual property and complying with privacy regulations. This balancing act presents policymakers with a delicate challenge. Effectively addressing these issues is vital for fostering a robust and responsible AI ecosystem that can innovate freely.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Currently, Bosnia and Herzegovina does not have public court cases directly applicable or relevant to the use of AI in the provision of legal services. The integration of AI within the legal sector is still in the early stages and, as such, precedents specifically addressing AI's role in legal processes have not yet been established.

However, the recent involvement of regulatory bodies in addressing issues related to AI technologies, such as data protection and consumer rights, highlights a broader regulatory interest that could be applicable to AI in legal contexts. Regulatory agencies may issue guidelines or rulings that indirectly impact AI applications in legal services.

These actions underscore the importance of regulatory compliance and ethical considerations in the development and deployment of AI technologies across various sectors. As AI continues to evolve and its applications in legal services expand, it is likely that Bosnia and Herzegovina will witness the emergence of legal precedents and regulatory frameworks specifically tailored to address AI-related challenges and opportunities in the legal domain.

As Bosnia and Herzegovina navigates the evolving landscape of AI integration in legal services, it is essential to recognise the multifaceted implications that AI brings to the legal sector. While there may not yet be direct court decisions addressing AI's role in legal services, the global legal community is actively engaging in discussions around AI's impact on legal practice, ethics and regulation.

In addition to regulatory bodies, legal scholars, professional organisations and industry stakeholders are also contributing to the dialogue surrounding AI in the legal sector. Their insights and perspectives help shape the direction of future regulations and policies governing AI applications in legal services.

Furthermore, the absence of specific court decisions in Bosnia and Herzegovina underscores the need for proactive measures to address potential legal challenges and ethical considerations associated with AI adoption in the legal profession. This could involve developing guidelines for AI usage, establishing ethical standards for AI developers and legal practitioners, and fostering interdisciplinary collaborations between legal experts and AI technologists.

By fostering a collaborative and forward-thinking approach, Bosnia and Herzegovina can position itself to leverage the benefits of AI while mitigating risks and ensuring the integrity of its legal system. As AI technologies continue to evolve and permeate various sectors, including law, proactive engagement and thoughtful regulation will be crucial to harnessing AI's potential for the betterment of society.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

As of now, there are no enacted laws specifically regulating the use of AI in legal services in Bosnia and Herzegovina. However, discussions around AI adoption in the legal profession are gaining traction, prompting considerations for potential regulatory frameworks. Educational and professional initiatives are underway to equip legal professionals with the necessary knowledge and skills to leverage AI tools effectively.

These initiatives aim to bridge the gap between technological advancements and legal practice, ensuring that lawyers can harness AI's potential while upholding ethical and legal standards. Alignment with international standards, particularly those outlined in the EU AI Act and the GDPR, is crucial for shaping future regulations in Bosnia and Herzegovina.

As the country strives to harmonise its legal framework with EU directives, it is expected that forthcoming regulations will address AI's role in legal services, including issues related to accountability, transparency and ethical use. The involvement of national bar organisations and professional institutions is essential in guiding the development of sector-specific regulations and promoting responsible AI adoption within the legal profession.

9. What is the role of the national bar organisations or other official professional institutions?

In Bosnia and Herzegovina, national bar organisations, including the Bar Association of the Federation of Bosnia and Herzegovina and the Bar Association of Republika Srpska, serve as vital entities in the oversight and regulation of the legal profession. These organisations undertake multifaceted responsibilities aimed at upholding professional standards, safeguarding the interests of legal practitioners and fostering ethical conduct within the legal community. Their significance becomes even more pronounced as the legal landscape continues to evolve, particularly with the increasing integration of AI technologies.

One of the primary functions of national bar organisations is to establish and enforce professional standards. Through rigorous accreditation processes and ongoing monitoring, these bodies ensure that individuals entering the legal profession possess the requisite qualifications and adhere to prescribed ethical norms throughout their careers. By setting clear guidelines for education, training and professional conduct, they contribute to the maintenance of high-quality legal services and the protection of client interests.

Moreover, national bar organisations serve as advocates for their members, advocating for their rights, interests and welfare. They provide a platform for legal professionals to voice concerns, seek redress for grievances and access resources necessary for their professional development. Through collective bargaining and engagement with relevant stakeholders, these organisations strive to create a conducive environment for legal practitioners to thrive and excel in their respective fields.

As AI applications become more prevalent in various facets of legal practice – including case management, document review and predictive analytics – concerns arise regarding their potential impact on professional standards, client confidentiality and access to justice.

To address these concerns, national bar organisations can play a pivotal role in formulating guidelines and regulations governing the ethical use of AI in legal services. By collaborating with experts in AI ethics, legal scholars and relevant stakeholders, they can develop comprehensive frameworks that promote responsible AI adoption while mitigating potential risks and biases. These frameworks may encompass principles such as transparency, accountability, fairness and non-discrimination, guiding legal practitioners in the ethical development, deployment and evaluation of AI systems.

Furthermore, national bar organisations can serve as catalysts for dialogue and collaboration among different professional institutions involved in the legal ecosystem. By forging partnerships with notary chambers, judicial councils and other relevant bodies, they can facilitate knowledge exchange, coordinate regulatory efforts and promote a cohesive approach to AI regulation. Through collective action, these organisations can address cross-cutting issues, harmonise standards and ensure consistency in the application of AI regulations across the legal profession.

By leveraging their expertise, authority and networks, these organisations can contribute to the development of a robust regulatory framework that fosters innovation, protects fundamental rights and upholds the rule of law in the digital age. Through proactive engagement and collaboration, they can empower legal practitioners to harness the potential of AI technologies responsibly, thereby enhancing the delivery of legal services and promoting public trust in the legal profession.

Brazil

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Introduction

In the last few years, the growth in the use of artificial intelligence (AI) has been consolidated on several fronts, including important advances in:

- pattern recognition and information extraction from unstructured texts;
- generation of texts, images, videos and sounds through data mining;
- image processing with relevant applications in medicine;
- anti-money laundering resources; and
- automation of legal compliance.

However, to avoid violations against fundamental rights, the dissemination of AI technologies requires extensive regulation.

For instance, the use of AI to filter content on social networks has raised ethical questions on transparency, boosting a legislative initiative in Brazil with the approval in the Brazilian Chamber of Deputies of the PL 2.630/2020 – the so-called 'Fake News Act'. Such imposition reflects a 'regulatory turn' regarding AI and shows that Brazil is trying to introduce new legislation capable of ending the 'soft law' era in AI regulation, along with its abstract ethical principles.

In September 2021, the Brazilian Chamber of Deputies approved PL 21/2020 as the 'Legal Framework for Artificial Intelligence'. Contrary to the international hard law shift, this initiative still compiled abstract ethical principles without establishing binding obligations for public and private sectors, except for a couple of feeble recommendations around impact and risk analysis. PL 21/2020 was then sent to the Senate, where another important bill was drafted on the same subject in May 2023 (PL 2.338/2023).

Both PL 21/2020 and PL 2.338/2023 – along with eight other bills regarding the AI theme – are being analysed by the Internal Temporary Committee on Artificial Intelligence in Brazil (the 'Committee'), which wishes to ensure the effective

development of reliable AI as a consequence of the insertion of a minimum set of binding governance standards for high-risk systems.[130]

Therefore, through the enactment of the Legal Framework for Artificial Intelligence, the Committee intends to set an era of 'hard law' regarding the use of AI systems in Brazil, establishing procedural obligations reflecting best practices in system development, such as impact and risk analysis, intellectual property protection, governance over data, transparency and tests on accuracy.

The improvement of legal parameters for AI applications becomes more pressing as the sector progresses in Brazil, affecting the lives of millions and raising questions about how the law should regulate new technologies.[131] This chapter provides an overview of the regulatory framework regarding the use of AI applications in Brazil, as well as their use by public institutions which govern the legal system, and by companies, associations and individuals that provide legal services in this jurisdiction.

1. What is the understanding or definition of AI in your jurisdiction?

The latest report of the Committee[132] presents the following definition in Article 4:

'For the purposes of this Law, the following definitions are adopted:

I – artificial intelligence system (AI): system based on a machine that, through different degrees of autonomy and for explicit and implicit purposes, infers from a database or information received how to generate results, especially, predictions, recommendations or decisions that may influence the real or virtual environment.'

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already current AI tools or use cases in practice for legal services?

In recent years, several of Brazil's companies, as well as international companies operating in the Brazilian market, have been marketing technological products aimed at the legal sector. Research points to a popularisation of the use of techniques based on machine learning, a factor that is motivated at least in part by the policy of open access to judicial data. The website of the Brazilian Association

130 See 'Diretrizes para o aperfeiçoamento do marco legal da IA no Brasil' ('Guidelines for improving the legal framework for AI in Brazil'*) (*Publisher's translation) (Consultor Jurídico, 2 September 2021), www.conjur.com.br/2021-set-02/opiniao-diretrizes-aperfeicoamento-marco-ia-brasil accessed 26 April 2024.

131 See 'Inteligência artificial aplicada ao direito e o direito da inteligêcia artificial' ('Artificial Intelligence applied to law and the law of artificial intelligence'*) (*Publisher's translation) (Suprema, 30 June 23021) https://suprema.stf.jus.br/index.php/suprema/article/view/20 accessed 26 April 2024.

132 See Internal Temporary Commission on Artificial Intelligence in Brasil, https://legis.senado.leg.br/comissoes/arquivos?ap=8139&codcol=2629 accessed 26 April 2024.

of Lawtechs and LegalTechs[133] reveals that, in March 2024, around 200 companies in the legal sector offered products or solutions aimed at the legal sector in a broad sense. Although not all these companies make use of AI, some of them are specifically dedicated to this type of application, as smart technology providers for the public sector or as data analysis and jurimetrics providers.[134]

In Brazil, several public institutions have been investing in the development of AI with the primary objective of speeding up their procedures. In recent years, more than 58 AI projects have been implemented in Brazilian courts.[135] Furthermore, in 2022, there were 64 new initiatives, with applications ranging from the transcription of hearings and drafting suggestions to the judgment of admissibility of appeals and the calculation of the probability of decision reversals. This digitisation trend is increasingly necessary for managing the efficiency of the courts, considering that Brazil is unique in terms of court litigation with a very expressive number of lawsuits: around 81.4 million, according to a survey carried out by the National Council of Justice (CNJ).[136]

The robots Victor and VitórIA, for example, streamlined the running of the Supreme Court of Brazil (Supremo Tribunal Federal or STF). The first machine helps in the resolution of cases through the analysis of requirements of general repercussions for the extraordinary appeals that arrive at the STF, while the second tool organises and gathers cases with the same subjects. Through these systems, the STF has achieved a huge improvement in efficiency in carrying out both admissibility and final judgments. AI also helps standardise the STF's case law, systematising understanding.

Parallel to the movement inside public institutions, many law firms have invested in AI resources to optimise their time, avoid repetitive tasks and reduce operating costs through tools which offer:

- automated assistance in litigation;
- automatic generation of drafts of legal motions and contracts;
- automatic translation of documents;
- research of case law;
- jurimetrics; and
- analysis and reorganisation of case portfolios.

133 'Radar de Lawtechs e Legaltechs' ('Lawtechs and Legaltechs Radar'*) (*Publisher's translation) (AB2L), https://ab2l.org.br/radar-lawtechs/ accessed 26 April 2024.

134 See 'Inteligência artificial aplicada ao direito e o direito da inteligêcia artificial' (Suprema, 30 June 23021).

135 See 'Artificial Intelligence: Technology applied to conflict resolution in the Brazilian Judiciary' (FGV Conhecimento), https://repositorio.fgv.br/items/89149bfb-04df-4260-8a6c-6d5729cd622a accessed 26 April 2024.

136 Marcela Bocayuva and Rebecca de Souza Paiva 'Uso da IA no sistema de Justica e um dos grandes desafios do seculo' (Consultor Juridico, 5 April 2024)https://www.conjur.com.br/2024-abr-05/uso-da-ia-no-sistema-de-justica-e-um-dos-grandes-desafios-do-seculo/ accessed 14 June 2024.

3. What is the current or planned regulatory approach on AI in general?

Such advances in the adoption of technological tools by law firms and other legal sectors have given rise to the need to discuss the ethical limits of this use. Outdated formulas in legal practices result in slowness, bureaucratisation and injustice, making the advantages of applying AI technologies to the law obvious. There are, nevertheless, important risks in implementing this new model – regarding, for example, copyright or personal data protection – which requires a public debate on this paradigm shift.

On 6 April 2021, the Brazilian Strategy for Artificial Intelligence (EBIA) was published through Ordinance No 4617 of the Ministry of Science, Technology and Innovation (MCTI). According to Stanford University's 2021 Artificial Intelligence Index, Brazil is the 31st country to outline such a national strategy.[137]

The EBIA was developed in three stages. The first step was hiring a specialised AI consultancy, with the objective of carrying out a study on the potential social and economic impacts of the large-scale use of AI tools and the presentation of proposals to mitigate any negative effects arising from this use. The second consisted of research into international best practices, covering topics such as general productivity gains, consequences for the labour market, education and professional requalification policies, and incentives for research, development and innovation, with the application of AI in areas such as health, urban mobility and public safety. The third stage was carried out through a public consultation which received over 1,000 contributions.[138] Based on these studies, research and recommendations, the EBIA was established with three transversal axes and six vertical axes.

The three transversal axes, which are to be considered in all AI applications, are:

1. *Legislation, regulation and ethical use*: legal, regulatory and ethical parameters for the development of AI.

2. *AI governance*: a governance structure that promotes methods and procedures to ensure compliance with AI principles when developing solutions with this technology.

3. *International aspects*: cooperation and integration platforms for exchanging information, experiences, regulations and good practices in conducting AI on the world stage.

The six vertical axes, which define the priority areas for applying AI, are:

137 See 'A Estratégia Brasileira de Inteligéncia Artificial' ('The Brazilian Artificial Intelligence Strategy'*) (*Publisher's translation) (MIT Technology Review, 23 April 2021), https://mittechreview.com.br/a-estrategia-brasileira-de-intelligence-artificial/ accessed 26 April 2024.

138 *Ibid*.

1. *Education*: qualifying and preparing current and future generations for the changes in AI.

2. *Workforce and training*: preparing workers for the transformation of the labour market, with the replacement of jobs through automation and for the emergence of new positions, professional qualification and requalification.

3. *Research, development, innovation and entrepreneurship*: promoting public and private investments in research and development (R&D) to encourage AI innovation in a holistic way – including technical, social, legal and ethical aspects.

4. *Application in productive sectors*: promoting the use of AI in different sectors of the economy to improve the efficiency of Brazilian companies.

5. *Application in the public sector*: promoting the ethical use of AI by the public institutions to improve the quality of services provided to society, prioritising economy and efficiency.

6. *Public safety*: encouraging the non-discriminatory use of AI in the area of public safety, respecting the right to privacy and protection of the data subject's image, with supervisory monitoring mechanisms to ensure its ethical use.

In addition, the EBIA has six initial strategic objectives that should be divided into specific actions:

1. contribute to the elaboration of ethical principles for the development and use of responsible AI;

2. promote sustained investments in AI R&D;

3. remove barriers to innovation in AI;

4. train professionals for the AI ecosystem;

5. encourage innovation and development of Brazilian AI in an international environment; and

6. promote an environment of cooperation between public and private entities, industry and research centres for the development of AI.

The EBIA represents the beginning of a conversation on a topic of enormous importance. However, it lacks solidity and a more detailed action plan. There are no clear budget guidelines for implementing its recommendations, nor has there been a risk-based debate on the application of AI technologies. The strategy touches on ethical aspects

in a very superficial way, without offering objectives, standards, procedures or ground rules for regulating the use of such tools in Brazil.[139]

Nonetheless, the Committee – responsible for discussing the recent bills aiming to regulate AI in the country – brought more solidity to the ethical issues raised by EBIA in 2021. For instance, in its preliminary report presented on 24 April 2024, the Committee suggests the creation of a National Artificial Intelligence Regulation and Governance System, which shall evaluate the risks of implementing an AI project before its introduction in the Brazilian market.[140]

Furthermore, based on the EBIA's guidelines, the Committee established the following principles for AI regulation:

1. human being centralisation;
2. respect of human rights and democratic values;
3. free speech and development of personality;
4. environment protection;
5. equality, non-discrimination, plurality and diversity;
6. social rights;
7. economic, scientifical and technological development;
8. free market and costumer defence;
9. privacy and personal data protection;
10. information and data access;
11. cultural rights protection and artistic/historical goods promotion;
12. education on how to use AI;
13. information and data integrity and reliability;
14. hate speech and fake news combat;
15. intellectual property protection;
16. cybersecurity;

139 See 'Inteligencia Artificial no Brasil ainda precisa de uma estrategia' (FGV, 11 May 2021) https://portal.fgv.br/artigos/inteligencia-artificial-brasil-ainda-precisa-estrategia accessed 16 June 2024.

140 See 'IA: relator apresenta proposta alinhada com regulamentos da Europa e dos EUA' ('IA: rapporteur presents proposal aligned with European and US regulations'*) (*Publisher's translation) (Senadonoticias, 24 April 2024), www12.senado.leg.br/noticias/materias/2024/04/24/ia-relator-apresenta-proposta-alinhada-com-regulamentos-da-europa-e-dos-eua accessed 26 April 2024.

17. legal compliance;

18. transparency and auditability of the AI system;

19. accountability, responsibility and reparation of damages; and

20. prevention and mitigation of risks.

Finally, during the presentation of the report, the Committee argued that AI regulations need to protect fundamental rights without hindering the innovation and development of new technologies in Brazil.

4. What are the current or planned regulations on the general use of AI or machine learning systems?

Three months after the EBIA was published, the Brazilian Chamber of Deputies took its first step towards a bill that creates a Legal Framework for Artificial Intelligence. In September 2021, the House approved PL 21/2020, whose objective was to determine the principles, rights, duties and governance instruments for the development of AI technology in Brazil.

In May 2023, another important bill was drafted by the Senate (PL 2.338/2023) and, since it had the same purpose as PL 21/2020, they were both sent to the Committee responsible for analysing the bills and preparing a final text and report regarding AI regulation.[141]

The latest report of the Committee provides for some noteworthy rules – one of which is the attribution of responsibility for damages to 'artificial intelligence agents', who are either the developers (programmers) or those responsible for monitoring the software's implementation. It is a controversial option, considering that it may inhibit the implementation of AI systems. The Committee's report contains uncontroversial positions too, such as the compulsory documentation of steps and decisions in the software's development cycle and related prior impact analysis, effective for prevention of liability for damages. In this sense, the regulatory agencies will create certification procedures to establish quality and certification marks for AI applications.

Apparently, in view of such a system of liability to be adopted in Brazil, victims of torts caused by AI will be able to pursue damages from the technology manufacturer. Here we see a delicate issue, considering the possibility that, when acting autonomously, the AI tools perform acts not originally considered by their manufacturer and/or developer. Even though the involved parties use maximum diligence, the results arising from the use of AI are not fully predictable in its current state. Therefore, there is a need to discuss regulatory alternatives for civil

141 *Ibid*.

liability regarding unpredictable results of the implementation of AI applications in the country.

With respect to the users of the AI systems, the Committee's report establishes that the public administration shall institute programmes aimed at teaching individuals how to properly use such technologies, explaining how AI systems work and the benefits and risks of the tools available in the Brazilian market.

5. Is free data access an issue in relation to AI?

Article 20 of the General Data Protection Law (LGPD, Law No 13.709/2018)[142] attempts to address this issue, providing for the right of holders to request the review of automated decisions of personal data when these affect their interests. This includes the mapping of personal, professional, costumer and credit profiles, as well as any aspects of personality.[143]

Moreover, in Article 20 section 1, the LGPD also determines that the controller of systems that make decisions based solely on the automated processing of personal data must provide information regarding the criteria and procedures used for the automated decision. However, as AI applications' choices are defined over detectable properties based on the data, machine learning systems do not consider normative justifications for decision making,[144] which brings about a technical struggle to comply with the principles of the law.

Furthermore, with respect to generative AI, the preliminary report of the Committee establishes that the AI system provider shall inform which copyrighted contents were included in the AI database or used in the AI training to generate text, images, audio, video or software codes. Nevertheless, the automatic generation of content through copyrighted databases shall not constitute a violation when used for research, journalistic, cultural or educational purposes, provided it has no commercial goals.

6. Are there already current court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Case law understandings and common views on the subject are yet to be suitably established in Brazil.

142 See General Data Protection Law (LGPD, Law No 13.709/2018), www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm accessed 26 April 2024.

143 See 'A Estratégia Brasileira de Inteligéncia Artificial' (MIT Technology Review, 23 April 2021).

144 See 'Inteligência artificial aplicada ao direito e o direito da inteligêcia artificial' (Suprema, 30 June 23021).

7. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

The CNJ has issued Resolution 332/2020 establishing ethical, transparency and governance requirements that must be observed in the use of intelligent systems in judicial contexts. In view of the importance of access to data for the development of machine learning, the CNJ also established, through Resolution 334/2020, the Advisory Committee on Open Data and Data Protection within the scope of the Brazilian judiciary. The Committee's objective is to assist the CNJ in the construction of data access policies that balance the demands of transparency and technological development on the one hand, and, on the other, the need to protect the data of individuals mentioned in the context of court documents, establishing standards and technical and administrative measures for the proper processing of judicial data.[145]

Regarding the use of AI in the services rendered specifically by lawyers, there is no applicable legislation since AI regulation is still being discussed by the Brazilian National Congress.

8. What is the role of national bar organisations or other official professional institutions?

In 2018, the Brazilian National Bar Association (OAB) announced the creation of the Artificial Intelligence Coordination to regulate the use of AI in the legal profession. At the time, there was an institutional concern regarding the launch of AI tools for legal assistance in cases without the involvement of lawyers through 'virtual robots'. The main objective of the initiative was to ensure coordination between legal professionals and technological development, rejecting 'opportunists' who would subordinate the role of attorneys to 'a marginal role through the disorderly and unruly massification' of AI tools.[146] The entity pointed out that the Brazilian Statute of Law provides that the activities of legal consultation are private activities of lawyers duly registered at the National Bar Association.

To contribute to the modernisation of law in Brazil, the Federal Council of the OAB currently offers OABJuris, an AI application made available free of charge to registered professionals. The tool helps attorneys across the country to find the most appropriate case law, to have reliable information about the recent decisions of the courts, and to make better decisions about whether to appeal.[147]

145 See 'Diretrizes para o aperfeiçoamento do marco legal da IA no Brasil' (Consultor Jurídico, 2 September 2021).

146 See 'OAB cria grupo para regulamentar inteligéncia artificial' ('OAB creates group to regulate artificial intelligence'*) (*Publisher's translation) (Mgalhas, 3 July 2018), https://www.migalhas.com.br/quentes/282968/oab-cria-grupo-para-regular-inteligencia-artificial accessed 26 April 2024.

147 See 'OAB cria grupo para regulamentar inteligéncia artificial' (Mgalhas, 3 July 2018).

Canada

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Tommy Newton, Aird & Berlis, Toronto[149]

1. What is the understanding of AI in your jurisdiction?

In recent years, the concept of artificial intelligence (AI) has come to encompass an array of technological advancements in the legal field. Due to the evolving regulatory landscape surrounding AI, there is currently no consensus on what the term entails.

Canada is actively engaging in discussions on a new definition of an 'AI system' at global forums such as the Organisation for Economic Co-operation and Development (OECD) and in discussions at the G7 (Group of Seven intergovernmental political and economic forum) on an international code of conduct for advanced AI systems.[150] As a signatory to the OECD's *Recommendation of the Council on Artificial Intelligence*,[151] Canada has embraced the OECD's definition of an AI system in its proposed AI legislation[152] (further discussed below) and during the work completed by its AI working group.[153]

The OECD defines an AI system as:

> 'a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or

148 Articling student at Aird & Berlis.

149 Articling student at Aird & Berlis.

150 Minister of Innovation, Science and Industry, www.ourcommons.ca/content/Committee/441/INDU/WebDoc/WD12751351/12751351/MinisterOfInnovationScienceAndIndustry-2023-11-28-Combined-e.pdf accessed 18 April 2024, p 6.

151 *Recommendation of the Council on Artificial Intelligence* (OECD), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449 accessed 18 April 2024.

152 Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022). See www.parl.ca/Content/Bills/441/Government/C-27/C-27_1/C-27_1.PDF accessed 18 April 2024.

153 *Report of the Public Awareness Working Group* (Innovation, Science & Economic Development Canada), https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en/public-awareness-working-group/learning-together-responsible-artificial-intelligence accessed 18 April 2024.

virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.'[154]

This definition, which, as mentioned above, Canada has considered in developing its regulatory framework, underscores the multifaceted nature of AI and its potential impact on society as a whole.

Moreover, the OECD definition, adopted in certain Canadian contexts, is supported by the Law Society of Ontario (LSO) *Technology Task Force Update Report*, which posits that there are at least three generally accepted understandings of AI: (1) it is a branch of computer science that focuses on the simulation of intelligent behaviour in computers; (2) it is a machine's capability of imitating intelligent human behaviour; and (3) it is a collection of processes and techniques.[155] However, recognising the need for a cohesive understanding, the LSO proposed a 'generally acceptable' definition of AI as 'the ability for computers to accomplish tasks normally associated with the intelligent actions of human beings'.[156]

Achieving a consensus on the definition of AI remains an ongoing endeavour, particularly concerning the integration of AI within Ontario's legal sector. However, the OECD definition has since become the leading characterisation of AI at the federal level, thus providing a common language to navigate the intersection of AI and the law.

2. In your jurisdiction, besides legal tech tools, are there already actual AI tools or use cases in practice for legal services?

Examples of AI's common uses among legal professionals include:[157]

- document discovery and due diligence;
- assistance with routine legal or business questions;
- outcome prediction;
- contract analysis;
- legal document generation; and

154 Stuart Russell, Karine Perset and Marko Grobelnik, *Updates to the OECD's definition of an AI system explained* (OECD, 29 November 2023), https://oecd.ai/en/wonk/ai-system-definition-update; see also ISO/IEC 22989:2022 (International Organisation for Standardisation (ISO)), www.iso.org/standard/74296.html accessed 23 April 2024. The ISO definition of 'AI system' adopts the OECD definition and is referenced in the Office of the Privacy Commissioner's *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (7 December 2023).

155 *Technology Task Force Report* (Law Society of Ontario, 2019), https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2019/technologytaskforce-report-en.pdf.

156 *Technology Task Force Report* (Law Society of Ontario, 2019), p 7.

157 *Technology Task Force Report* (Law Society of Ontario, 2019), p 9.

- judicial analytics.[158]

Certain law firms have already begun implementing in-house AI tools and programs to navigate any confidentiality issues that arise by using open-source AI software.[159]

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

The use cases for different AI tools vary between law firms and in-house counsel primarily due to their differing needs and resources. Smaller law firms often face higher hurdles in adopting AI tools due to significant initial investment costs and the need to configure new technologies to existing systems.[160] These firms may use AI more conservatively, primarily for enhancing legal research and managing large volumes of document review during litigation.[161] For example, AI applications such as predictive coding in electronic discovery would be beneficial in managing extensive electronic record reviews with limited resources.[162] Larger law firms may employ AI tools more extensively, both because they have the resources to invest in them and because the complexity and size of the files they handle can greatly benefit from them. For example, sophisticated AI contract analysis tools are typically used for due diligence in mergers and acquisitions (M&A) transactions. Firms may also make use of predictive analytics tools that assess the potential outcomes of litigation based on historical data and patterns in case law.[163]

The use cases for AI tools appear to differ when used by in-house counsel. The use of AI tools in corporate legal departments is primarily helpful for cost reduction

158 Jena McGill and Amy Salyzyn, 'Beyond the Numbers: Statistical and Data Literacy, Domain Literacy and Supreme Court of Canada Data Analytics' (SCLR Constitutional Cases Conference, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568213 accessed 16 April 2024; Sean Rehaag, 'Luck of the Draw III: Using AI to Examine Decision-Making in Federal Court Stays of Removal' (Centre for Refugee Studies, Refugee Law Lab and Osgoode Hall Law School, 11 January 2023), https://ssrn.com/abstract=4322881; Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), https://ssrn.com/abstract=3733957; Ignacio Cofone, 'AI and Judicial Decision-Making' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), https://ssrn.com/abstract=3733951 accessed 17 April 2024.

159 Robyn Doolittle, 'McCarthy Tetrault experiments with AI tools expected to reshape how law firms operate' *The Globe and Mail* (Ontario, 3 March 2024), www.theglobeandmail.com/business/article-ai-law-firms-mccarthy-tetrault/ accessed 6 June 2024; Steve Lohr, 'A.I. Is Coming for Lawyers, Again' *The New York Times* (New York, 10 April 2023), www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html accessed 6 June 2024.

160 Gillian Scott, 'What is Legal Automation? How Law Firms Use AI to Increase Efficiency and Add Value for Clients' (Lexpert, 1 November 2021), www.lexpert.ca/legal-insights/what-is-legal-automation-how-law-firms-use-ai-to-increase-efficiency-and-add-value-for-clients/361108 accessed 6 June 2024.

161 Amy Salyzyn, 'AI and Legal Ethics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), https://ssrn.com/abstract=3733952 accessed 6 June 2024.

162 Amy Salyzyn, 'AI and Legal Ethics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

163 Maria Mahmoudian, 'Eclipse of tradition: AI's ascendancy in the legal era' (Law360, 11 April 2024), www.law360.ca/ca/articles/1823826?scroll=1&related=1.

and enhancing productivity.[164] Where AI is used by in-house counsel, it would typically be for automating repetitive tasks such as contract review, drafting and compliance monitoring.[165] As is the case with AI adoption and use in the law firm setting, the use cases for in-house applications are expected to be impacted by the budgetary considerations of each entity.

4. What is the current or planned regulatory approach on AI in general?

Regulation of AI in Canada is still at an early stage.[166] However, there are several government initiatives and commitments that offer insight into how Canada is approaching the technology.

In 2019, Canada launched an Advisory Council on Artificial Intelligence[167] consisting of researchers, academic scholars and business executives to advise Canada on the future of AI and its impact and opportunities in key economic sectors.[168] The following year, the council published its findings regarding the commercialisation and adoption of AI technology in Canada. The report stated that in order for Canada to fulfil the economic promise of AI (ie, higher productivity, market growth, new products and services and job creation), it must 'act quickly to put in place the right factors for AI sector growth and competitiveness'.[169]

In response to the report, the Canadian Federal Budget in 2021 ('Budget 2021') proposed a renewed commitment and expansion to the Pan-Canadian AI Strategy (PCAIS) which was first launched in 2017. The objectives of PCAIS include collaborating on policy initiatives, both domestic and international, which encourage the responsible, ethical and economic stewardship of AI.[170] In Budget 2021, nearly CA$440m (approximately US$351.5m)[171] was allocated to projects

164 *Using AI in Law Departments* (Practical Law Canada), https://ca.practicallaw.thomsonreuters.com/w-028-6768 accessed 19 April 2024.

165 *Using AI in Law Departments* (Practical Law Canada).

166 Teresa Scassa, 'Regulating AI in Canada: A Critical Look at the Proposed Artificial Intelligence and Data Act' (2023), Vol 101 (No 1) *Canadian Bar Review*, https://cbr.cba.org/index.php/cbr/article/view/4817/4539 accessed 18 April 2024.

167 *Advisory Council on Artificial Intelligence* (Innovation, Science and Economic Development Canada), https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en accessed 18 April 2024.

168 *Government of Canada Creates Advisory Council on Artificial Intelligence* (Innovation, Science and Economic Development Canada, 14 May 2019), www.canada.ca/en/innovation-science-economic-development/news/2019/05/government-of-canada-creates-advisory-council-on-artificial-intelligence.html accessed 6 June 2024.

169 *Commercialisation Working Group Final Report* (Advisory Council on Artificial Intelligence, Innovation, Science and Economic Development Canada, February 2020), https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en/commercialisation-working-group/commercialisation-working-group-final-report-february-2020 accessed 6 June 2024.

170 *The Pan-Canadian AI Strategy* (Canadian Institute for Advanced Research (CIFAR), https://cifar.ca/ai/ accessed 18 April 2024.

171 The currency conversion from CA$ to US$ is based on the Bank of Canada exchange rates published 19 April 2021 which is the date Budget 2021 was released by the Government of Canada; www.bankofcanada.ca/rates/exchange/currency-converter/ accessed 30 April 2024.

initiated by the PCAIS to enable Canada to maintain its leadership in AI.[172]

In a similar fashion, the Canadian Government continues to make ongoing investments in AI governance.[173] The Canadian Federal Budget 2024 (Budget 2024) earmarked CA$5.1m (approximately US$3.69m)[174] in 2025–26 for the Office of the AI and Data Commissioner to equip it with enforcement resources under the proposed Artificial Intelligence and Data Act (AIDA).[175] The investment aims to guide AI innovation while protecting Canadians from potential risks by ensuring the responsible adoption of AI by businesses.[176] Budget 2024 also included a CA$3.5m (approximately US$2.53m)[177] investment over two years, starting in 2024–25, to advance Canada's leadership role with the Global Partnership on Artificial Intelligence (GPAI). The GPAI works with international partners to support responsible AI development and use.[178]

The OECD has recently developed an initiative focused on public safety regulations. The initiative, adopted by Canada, focuses on ensuring: (1) that AI programming benefits the public; (2) that AI programming respects the rule of law, human rights, democratic values and diversity; (3) to maintain transparency and responsible disclosure; (4) to maintain robust, secure and safe functioning of AI systems; and (5) to ensure accountability on behalf of organisations and individuals involved in AI.[179]

In February 2020, the OECD released a framework for classifying AI systems to encourage policy makers and legislators to assess opportunities and weigh the risks of utilising AI systems to inform their national AI strategies.[180] The framework allows programs to be compared for their capabilities and drawbacks to help regulators characterise AI programs in their specific contexts based on their global impact. The goal of the framework is to provide the public with a common understanding of AI and, in particular, risk assessment and AI accountability. The framework dimensions included are:[181]

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172 *The Pan-Canadian AI Strategy* (Canadian Institute for Advanced Research (CIFAR).

173 Between 2017–2024, the Government of Canada has invested over CA$2bn towards AI in Canada. An additional CA$2.4bn in funding was announced in Budget 2024 for AI investment initiatives related to governance, research and development and innovation across Canada. See *2024 Budget Report*, *Chapter 4: Economic Growth for Every Generation,*(Government of Canada), https://budget.canada.ca/2024/report-rapport/chap4-en.html accessed 18 April 2024.

174 See n 22 above.

175 *2024 Budget Report*, *Chapter 4: Economic Growth for Every Generation* (Government of Canada).

176 *Securing Canada's AI Advantage* (Prime Minister of Canada, 7 April 2024), www.pm.gc.ca/en/news/news-releases/2024/04/07/securing-canadas-ai.

177 See n 22 above.

178 *Minister Champagne Presents Global Partnership on Artificial Intelligence Priorities for 2021* (Government of Canada, 30 June 2020), www.canada.ca/en/innovation-science-economic-development/news/2021/06/minister-champagne-presents-global-partnership-on-artificial-intelligence-priorities-for-2021.html accessed 18 April 2024.

179 *Forty-two Countries Adopt New OECD Principles on Artificial Intelligence* (OECD), www.oecd.org/science/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm accessed 18 April 2024.

180 *OECD Framework for the Classification of AI Systems: a tool for effective AI policies* (OECD), https://oecd.ai/en/classification accessed 18 April 2024.

181 *OECD Framework for the Classification of AI Systems: a tool for effective AI policies* (OECD).

- *data and input*: provenance, collection and nature of data, as well as rights and identifiability (its data source), appropriateness and quality;
- *people and the planet*: determining users of the system and affected stakeholders, addressing any human rights issues (including privacy), that impact wellbeing and environment and the AI's displacement potential;
- *economic context*: AI's impact on the industrial sector, its business function and model, critical function, scale and maturity;
- *AI model*: its characteristics, evolution technique, capabilities and use; and
- *task and output*: the system task, action and autonomy level.

The Government of Canada is credited with providing noteworthy consultation to the OECD for its AI framework initiative, indicating their support for the development of a strong infrastructure for AI growth.[182] Although not legally binding, the recommendations provided by the OECD emphasise the important values of facilitating investment in research and development, fostering accessible AI ecosystems, ensuring policy environments that facilitate the deployment of trustworthy AI systems and cooperating across borders and sectors to ensure responsible stewardship of trustworthy AI.[183]

5. What are the current or planned regulations on the general use of AI or machine learning systems?

The Canadian regulatory landscape continues to develop in response to the use of AI technology.

Federal Directive on Automated Decision-Making

In April 2019, the Government of Canada issued its Directive on Automated Decision-Making (the 'Directive'). The Directive was amended in April 2023, following the third review of the instrument.[184] The Directive is aimed at ensuring that automated decision-making systems used by the federal government are 'deployed in a manner that reduces risks to Canadians and federal institutions, and leads to more efficient, accurate, consistent, and interpretable decisions made pursuant to Canadian law'.[185] Notably, the Directive only applies to the

182 'OECD Framework for the Classification of AI systems' *OECD Digital Economy Papers No 323*, (OECD Publishing, 2022), https://doi.org/10.1787/cb6d9eca-en accessed 18 April 2024.

183 *Forty-two Countries Adopt New OECD Principles on Artificial Intelligence* (OECD).

184 *Responsible Use of AI* (Government of Canada), www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai.html#toc1 accessed 23 April 2024.

185 *Directive on Automated Decision-Making* (Government of Canada), www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32592 accessed 18 April 2024.

federal government's use of systems that provide external services, specifically, federal institutions referenced in the Policy on the Management of Information Technology. It does not apply to the use of AI or machine learning systems in the private sector or to provincial governments directly.

Federal Guidelines on Generative AI

Similar to the Directive, the Government of Canada published its 'Guide on the Use of Generative AI' (Generative AI Guide). The publication provides guidance to federal institutions on their use of generative AI tools in the public sector.[186] The Generative AI Guide was released in September 2023 and has since been updated in February 2024 to include feedback from targeted stakeholder engagement and enhanced definitions for FASTER (fair, accountable, secure, transparent, educated and relevant) principles on generative AI.[187] The Generative AI Guide addresses several policy considerations and establishes best practices for the use of generative AI tools. For example, the guide applies administrative use of generative AI technology that is otherwise not subject to the Directive on Automated Decision Making.

Government of Canada establishes guiding principles on responsible AI

The federal government sets out 12 guiding principles on 'Responsible use of artificial intelligence' applicable to both the Directive and Generative AI Guide.[188] To ensure the effective and ethical use of AI, the government's core values are:

1. promoting openness about how, why and when AI is used;
2. prioritising the needs of individuals and communities, including Indigenous peoples, and considering the institutional and public benefits of AI;
3. assessing and mitigating the risks of AI to legal rights and democratic norms early in the lifecycle of AI systems and following their launch;
4. ensuring training or other input data used by AI systems is lawfully collected, used and disclosed, taking account of applicable privacy and intellectual property rights;
5. evaluating the outputs of AI systems, including generative tools, to minimise biases and inaccuracies and enabling users to distinguish between AI and human outputs;

186 *Guide on the use of generative AI* (Government of Canada), www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/guide-use-generative-ai.html accessed 23 April 2024.

187 *Guide on the use of generative AI* (Government of Canada).

188 *Guide on the use of generative AI* (Government of Canada).

6. publishing legal or ethical impact assessments, source code, training data, independent audits or reviews or other relevant documentation about AI systems, while protecting privacy, government and national security and intellectual property;

7. explaining automated decisions to people impacted by them and providing them with opportunities to contest decisions and seek remedies, which could involve human review, where applicable;

8. encouraging the creation of controlled test environments to foster responsible research and innovation;

9. establishing oversight mechanisms for AI systems to ensure accountability and foster effective monitoring and governance throughout the lifecycle;

10. assessing and mitigating the environmental impacts of the training and use of AI systems, and where appropriate opting for zero-emissions systems;

11. providing training to civil servants developing or using AI so they understand legal, ethical and operational issues, including privacy and security, and are equipped to adopt AI systems responsibly; and

12. creating processes for inclusive and meaningful public engagement on AI policies or projects with a view to raising awareness, building trust and addressing digital divides.[189]

Existing privacy legislation applicable to AI and proposed reforms

The use of AI is currently regulated through the Personal Information Protection and Electronic Documents Act (PIPEDA), which generally applies to all organisations in the private sector that collect, use or disclose personal information in the context of commercial activities.[190] PIPEDA is 'technologically neutral', meaning that AI is 'governed by the same rules as other forms of processing'.[191] However, PIPEDA was not created specifically to deal with AI or machine learning systems. The Office of the Privacy Commissioner of Canada (OPC) has expressed the view that PIPEDA, in its current iteration, is insufficient to govern the application of AI systems.[192] As such, the OPC has developed principles for the development,

189 *Guide on the use of generative AI* (Government of Canada).

190 *PIPEDA in brief*, (Office of the Privacy Commissioner of Canada), see www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/ accessed 23 April 2024.

191 *Consultation on the OPC's Proposals for ensuring appropriate regulation of artificial intelligence* (Office of the Privacy Commissioner of Canada), www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-ai/pos_ai_202001 accessed 23 April 2024.

192 *Consultation on the OPC's Proposals for ensuring appropriate regulation of artificial intelligence* (Office of the Privacy Commissioner of Canada).

provision and use of generative AI systems.[193] In 2020, the OPC made the following 11 proposals for key reforms to PIPEDA:

1. Incorporate a definition of AI within the law that would serve to clarify which legal rules would apply only to it, while other rules would apply to all processing, including AI.

2. Adopt a rights-based approach in the law, whereby data protection principles are implemented as a means of protecting a broader right to privacy – recognised as a fundamental human right and as foundational to the exercise of other human rights.

3. Create a right in the law to object to automated decision-making and not to be subject to decisions based solely on automated processing, subject to certain exceptions.

4. Provide individuals with a right to explanation and increased transparency when they interact with, or are subject to, automated processing.

5. Require the application of Privacy by Design and Human Rights by Design in all phases of processing, including data collection.

6. Make compliance with purpose specification and data minimisation principles in the AI context both realistic and effective.

7. Include in the law alternative grounds for processing and solutions to protect privacy when obtaining meaningful consent is not practicable.

8. Establish rules that allow for flexibility in using information that has been rendered non-identifiable, while ensuring there are enhanced measures to protect against re-identification.

9. Require organisations to ensure data and algorithmic traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle.

10. Mandate demonstrable accountability for the development and implementation of AI processing.

11. Empower the OPC to issue binding orders and financial penalties to organisations for non-compliance with the law.[194]

193 *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada), www.priv.gc.ca/en/privacy-topics/technology/artificial-intelligence/gd_principles_ai/ accessed 23 April 2024.

194 *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada).

Bill C-27 ushers in new era of AI legislation for Canada

As Bill C-27, the Digital Charter Implementation Act, was proposed on 16 June 2022, the proposals to reform PIPEDA may be implemented through legislative reform. If passed, the Bill will repeal PIPEDA with three separate statutes that will govern AI regulation in Canada.

First, there will be a new Consumer Privacy Protection Act (CCPA). The CCPA's aim is to protect the personal information of individuals while acknowledging organisations' need to collect or disclose personal information.[195] For example, the CPPA prescribes that an organisation's policies and practices surrounding the use of any automated decision system, such as AI or machine learning technologies, must be made readily available.[196] Under the CPPA, if an automated decision system is used to make a prediction, recommendation or decision about an individual that could have a significant impact, the organisation must provide an explanation upon request.[197]

Second, Bill C-27 will create the Personal Information and Data Protection Tribunal Act (the 'Tribunal Act'), which posits creating a new administrative tribunal responsible for oversight of personal information and data protection. The tribunal established under the act will rule on appeals or penalties made under the CPPA.[198] The tribunal's decisions will be final and binding and are not subject to appeal or review by any court other than judicial review.[199]

Third, Bill C-27 will implement the Artificial Intelligence and Data Act to regulate the responsible development of AI systems in Canada's marketplace.[200] The AIDA will also regulate international and interprovincial trade and commerce in AI by requiring businesses to adopt measures to mitigate risks of harm and biased outputs that could result from high-impact AI systems. The AIDA will further require recordkeeping and public reporting of decision-making measures and reasons related to AI systems.[201] The use of an AI system that could result in harm will be prohibited under the AIDA.[202]

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195 *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada).

196 CPPA ss 62(1) and 62(2)(c).

197 CPPA ss 63(3) and (4).

198 *Legislative Summary of Bill C-27*, (Library of Parliament), https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/441C27E#a2-4 accessed 21 April 2024.

199 *Legislative Summary of Bill C-27*, (Library of Parliament).

200 *New laws to strengthen Canadians' privacy protection and trust in the digital economy* (Government of Canada), www.canada.ca/en/innovation-science-economic-development/news/2022/06/new-laws-to-strengthen-canadians-privacy-protection-and-trust-in-the-digital-economy.html accessed 18 April 2024; see also *Legislative Summary of Bill C-27* (Library of Parliament).

201 Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022) s 10.

202 Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022) s 12.

The OPC has put forward 15 recommendations on Bill C-27 with the potential to reform Canada's regulatory approach to AI and data privacy:

1. Recognise privacy as a fundamental right.
2. Protect children's privacy and the best interests of the child.
3. Limit organisations' collection, use and disclosure of personal information to specific and explicit purposes that take into account the relevant context.
4. Expand the list of violations qualifying for financial penalties to include, at a minimum, appropriate purposes violations.
5. Provide a right to disposal of personal information even when a retention policy is in place.
6. Create a culture of privacy by requiring organisations to build privacy into the design of products and services and to conduct privacy impact assessments for high-risk initiatives.
7. Strengthen the framework for de-identified and anonymised information.
8. Require organisations to explain, on request, all predictions, recommendations, decisions and profiling made using automated decision systems.
9. Limit the government's ability to make exceptions to the law by way of regulations.
10. Provide that the exception for disclosure of personal information without consent for research purposes only applies to scholarly research.
11. Allow individuals to use authorised representatives to help advance their privacy rights.
12. Provide greater flexibility in the use of voluntary compliance agreements to help resolve matters without the need for more adversarial processes.
13. Make the complaints process more expeditious and economical by streamlining the review of the Commissioner's decisions.
14. Amend timelines to ensure that the privacy protection regime is accessible and effective.
15. Expand the Commissioner's ability to collaborate with domestic organisations in order to ensure greater coordination and efficiencies in dealing with matters raising privacy issues.[203]

203 'Submission of the Office of the Privacy Commissioner of Canada on Bill C-27, the Digital Charter Implementation Act, 2022' (Office of the Privacy Commissioner of Canada, April 2023), www.priv.gc.ca/en/opc-actions-and-decisions/submissions-to-consultations/sub_indu_c27_2304/ accessed 6 June 2024.

These recommendations by the OPC may be implemented in the final form of Bill C-27 since the outcome of the proposed AI legislation is still pending. Initial submissions have been made to the House of Commons Standing Committee on Industry and Technology (INDU).[204] The most frequently studied issue during the Bill C-27 consideration in committee by INDU is addressing harms arising from AI.[205] However, additional public participation in the legislative process will be required at the Senate stage of the federal parliamentary process before Bill C-27 is finalised.

If passed during the 2024 parliamentary session, the CPPA and Tribunal Act could come into effect in the near future. However, the development of the underlying AIDA regulations is anticipated to take at least two years following Bill C-27 receiving Royal Assent, meaning much of the AIDA's regulatory authority would not be effective until 2026 at the earliest.[206]

Voluntary AI Code of Conduct for Businesses

In September 2023, the Department of Innovation, Science and Economic Development Canada (ISED) published a Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative Artificial Intelligence Systems (the 'Code'). Following a public consultation on generative AI, the Government of Canada developed the Code using the recommendations and feedback provided by stakeholders and written submissions.[207] The Code establishes commitments for developers and managers of advanced generative systems to achieve outcomes related to: accountability, safety, fairness and equity, transparency, human oversight and monitoring, and validity and robustness.[208] The measures ensure that generative AI risks are appropriately identified and mitigated in advance of the proposed AIDA requirements under Bill C-27.

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204 House of Commons, Standing Committee on Industry and Technology (INDU), www.ourcommons.ca/committees/en/INDU/StudyActivity?studyActivityId=12157763 accessed 23 April 2024.

205 *Bill C-27: Timeline of Developments* (Gowling WLG, February 2024), https://gowlingwlg.com/en/insights-resources/articles/2024/bill-c27-timeline-of-developments/ accessed 6 June 2024.

206 *Artificial Intelligence and Data Act (AIDA) Companion Document* (Innovation, Science and Economic Development Canada), https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document accessed 21 April 2024.

207 *Frequently asked questions for the Voluntary Code of Conduct on Advanced Generative AI Systems* (Innovation, Science and Economic Development Canada), https://ised-isde.canada.ca/site/ised/en/frequently-asked-questions-voluntary-code-conduct-advanced-generative-ai-systems accessed 18 April 2024; see also *What We Heard – Consultation on the development of a Canadian code of practice for generative artificial intelligence systems* (Innovation, Science and Economic Development Canada), https://ised-isde.canada.ca/site/ised/en/what-we-heard-consultation-development-canadian-code-practice-generative-artificial-intelligence accessed 18 April 2024.

208 *Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems* (Innovation, Science and Economic Development Canada), https://ised-isde.canada.ca/site/ised/en/voluntary-code-conduct-responsible-development-and-management-advanced-generative-ai-systems accessed 18 April 2024.

Competition Bureau AI Discussion Paper

The Competition Bureau of Canada released a Discussion Paper on 20 March 2024 addressing potential competitive harm from AI, as well as promoting competition in AI markets.[209] The paper states that firms involved in supplies for AI chips or cloud systems could warrant additional scrutiny from a merger and acquisition standpoint.[210] The publication provides an overview of current considerations for AI and competition. Ultimately, it indicates that the Competition Bureau may adopt AI rules and regulations in the future.

Ontario amends employment legislation regarding the use of AI in hiring

On 21 March 2024, the Ontario Government passed Bill 149 to amend the Employment Standards Act (ESA) with AI-specific requirements for employers.[211] Under the amended ESA, any publicly advertised job postings that use AI to screen, assess or select applicants must include a statement disclosing the use of AI. The new disclosure requirements related to AI use in the hiring process are not yet in effect. These amendments will come into force at a later date by proclamation of the Lieutenant Governor.[212]

Québec government releases report surrounding responsible use of AI and calls for provincial AI legislation

On 5 February 2024, the Conseil de l'innovation du Québec (CIQ) issued a report entitled *Prêt pour l'IA: Répondre au défi du développement et du déploiement responsables de l'IA au Québec* (available in French only).[213] This report stems from a consultation process involving 250 experts and civil society organisations urging the adoption of framework legislation to regulate AI development and deployment in Québec.[214] The proposed law would affect developers and distributors of AI systems

209 *Artificial Intelligence and competition: Discussion Paper* (Competition Bureau Canada, March 2024), https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/artificial-intelligence-and-competition accessed 18 April 2024.

210 *Artificial Intelligence and competition: Discussion Paper* (Competition Bureau Canada, March 2024).

211 *Ontario to Require Employers to Disclose Salary Ranges and AI Use in Hiring* (Government of Ontario, 6 November 2023), https://news.ontario.ca/en/release/1003758/ontario-to-require-employers-to-disclose-salary-ranges-and-ai-use-in-hiring; see also Bill 149, *An Act to amend various statutes with respect to employment and labour and other matters*, 1st Sess, 43rd Leg, 2023 Ontario (assented to 21 March 2024) SO 2024 Ch 3, www.ola.org/sites/default/files/node-files/bill/document/pdf/2024/2024-03/b149ra_e_0.pdf accessed 23 April 2024.

212 Bill 149, *An Act to amend various statutes with respect to employment and labour and other matters*, 1st Sess, 43rd Leg, 2023 Ontario (assented to 21 March 2024) SO 2024 Ch 3, www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-149 accessed 23 April 2024.

213 *AI-Ready Report: Meeting the Challenge of Responsible AI Development and Deployment in Quebec* (Conseil de l'innovation du Quebec), https://conseilinnovation.quebec/wp-content/uploads/2024/02/Rapport_IA_CIQ-1.pdf accessed 21 April 2024; see also https://conseilinnovation.quebec/intelligence-artificielle/publications-de-la-reflexion-collective/ accessed 21 April 2024.

214 *The AI-Ready Recommendations Report is now tabled* (Conseil de l'innovation du Quebec, 5 February 2024), https://conseilinnovation.quebec/pret-pour-lia-est-maintenant-depose/ accessed 21 April 2024.

in both the public and private sectors. The report addresses various issues and opportunities associated with AI. It also puts forward a series of proposals, including 12 main recommendations supported by 25 complementary recommendations aimed at ensuring the responsible development and use of this technology in Québec, grouped into five areas of focus: regulation, anticipation, education, support and positioning. The resulting regulations would potentially impact the operational standards and compliance obligations of affected businesses operating in Québec. The legislative changes following the CIQ's recommendations are yet to be determined.

Ontario Securities Commission Report seeks to regulate AI in capital markets

The Ontario Securities Commission also published a report on 10 October 2023 titled 'Artificial Intelligence in Capital Markets – Exploring Use Cases in Ontario' (the 'OSC Report') regarding the adoption of AI in Ontario's capital markets.[215] The OSC Report considers how 'oversight, regulation or guidance can facilitate responsible AI innovation and adoption in Canada'.[216] The OSC Report details that the advancement of AI technology holds the promise of delivering notable efficiencies within capital markets and among capital market participants. However, the inherent disruptive capabilities of AI systems have prompted critical inquiries into the necessity of robust regulation and governance.

6. Is free data access an issue in relation to AI?

Free data access is indeed an issue in relation to AI in Canada, particularly as it pertains to the use of AI tools in the legal profession. The quality of AI as a tool in the legal profession relies on access to large volumes of legal data. In Canada, bulk access to legal texts for purposes of data-mining is restricted and inequitable, unlike the United States, where public access to legal data in bulk has been more liberalised.[217] The Canadian Legal Information Institute (CanLII) does provide free access to Canadian cases and statutes, however, its terms of use prohibit bulk access, for example through web scraping.[218] Moreover, vast amounts of 'big legal data' in Canada are held by a few large entities, making it difficult for new entrants to compete and limiting the diversity of legal AI tools available (for example, at more affordable price points).[219]

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215 *Artificial Intelligence in Capital Markets* (Ontario Securities Commission), https://oscinnovation.ca/resources/Report-20231010-artificial-intelligence-in-capital-markets.pdf accessed 23 April 2024.

216 *Artificial Intelligence in Capital Markets* (Ontario Securities Commission), p 4.

217 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

218 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

219 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

Access to data for the training and use of legal AI tools has also raised concerns in Canada with respect to privacy, confidentiality and data security, especially where client information is inputted into AI tools.[220] Regulators of the legal profession in Canada are actively discussing and educating on these issues.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to use of AI in the provision of legal services?

Canadian case law on the provision of legal services using AI is sparse, and most of the judgments that do discuss the use of AI only do so in *obiter*. The few cases that mention AI indicate that its use is not unwelcome in Canadian courts, however, it should be used responsibly and with caution.

A case from the Ontario Superior Court of Justice, *Drummond v The Cadillac Fairview Corp Ltd*,[221] briefly discussed the use of AI within the legal profession. In discussing the parties' cost submission, and after finding technology-assisted research to be a recoverable counsel fee item, the judge shared their views on the future of AI in the practice of law, noting:

> 'The reality is that computer-assisted legal research is a necessity for the contemporary practice of law and computer assisted legal research is here to stay with further advances in artificial intelligence to be anticipated and to be encouraged. Properly done, computer assisted legal research provides a more comprehensive and more accurate answer to a legal question in shorter time than the conventional research methodologies, which, however, also remain useful and valuable.'[222]

In the case of The Commissioner of Competition v Live Nation Entertainment Inc,[223] from Canada's Competition Tribunal, the applicants brought a motion seeking an order compelling the respondents to produce additional affidavits of documents. This was because the respondents produced a narrowed number of documents to the applicants after using document review software. In this case, the Tribunal went as far as to endorse the use of AI, stating:

> 'The Tribunal encourages the use of modern tools to assist in these document-heavy cases where they are as or more effective and efficient than the usual method of document collection and review.'[224]

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220 *Technology Task Force Report* (Law Society of Ontario, 2019).

221 *Drummond v The Cadillac Fairview Corp Ltd* 2018 ONSC 5350 (CanLII), https://canlii.ca/t/hv321 accessed 24 April 2024.

222 *Drummond v The Cadillac Fairview Corp Ltd* 2018 ONSC 5350 (CanLII) at [10].

223 *The Commissioner of Competition v Live Nation Entertainment Inc* – Reasons for Order and Order re: Commissioner's motion for further and better affidavits of documents, 2018 CACT 17 (CanLII), https://canlii.ca/t/hvk0d accessed 24 April 2024.

224 *The Commissioner of Competition v Live Nation Entertainment Inc* 2018 CACT 17 at [15].

In the more recent case of *Zhang v Chen*,[225] the British Columbia Supreme Court issued a landmark decision addressing the misuse of AI in legal proceedings. In this case, a lawyer had mistakenly submitted a notice of application containing citations to non-existent cases that had been fabricated or 'hallucinated' by ChatGPT. The court ordered the lawyer to pay costs personally, and made the following cautionary statement regarding the use of AI tools:

> 'The risks of using ChatGPT and other similar tools for legal purposes was recently quantified in a January 2024 study: Matthew Dahl et. al., "Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models" (2024) arxIV:2401.01301. The study found that legal hallucinations are alarmingly prevalent, occurring between 69% of the time with ChatGPT 3.5 and 88% with Llama 2. It further found that large language models ("LLMs") often fail to correct a user's incorrect legal assumptions in a contrafactual question setup, and that LLMs cannot always predict, or do not always know, when they are producing legal hallucinations. The study states that "[t]aken together, these findings caution against the rapid and unsupervised integration of popular LLMs into legal tasks".'[226]

In a final comment, the court stated:

> 'As this case has unfortunately made clear, generative AI is still no substitute for the professional expertise that the justice system requires of lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. The integrity of the justice system requires no less.'[227]

In a similar vein, many Canadian courts have recently issued practice directions or notices to the profession with respect to the use of generative AI in the preparation of materials filed with the court, including, for example, the Court of King's Bench of Manitoba,[228] the Supreme Court of Yukon,[229] the Alberta Courts of King's Bench and Appeal,[230] the Provincial[231] and Supreme Courts[232] of Nova

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225 *Zhang v Chen* 2024 BCSC 285 (CanLII), https://canlii.ca/t/k314g accessed 24 April 2024.

226 *Zhang v Chen* 2024 BCSC 285 at [38].

227 *Zhang v Chen* 2024 BCSC 285 at [46].

228 *Practice Direction – Use of Artificial Intelligence in Court Submissions* (Court of King's Bench (Manitoba), 23 June 2023), www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf accessed 24 April 2024.

229 *Practice Direction – Use of Artificial Intelligence Tools* (Supreme Court of Yukon, 26 June 2023), www.yukoncourts.ca/sites/default/files/2023-06/GENERAL-29%20Use%20of%20AI.pdf accessed 24 April 2024.

230 *Notice to the Public and Legal Profession – Ensuring the Integrity of Court Submissions when Using Large Language Models* (Alberta Courts, 6 October 2023), www.albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf?sfvrsn=713d5a82_7 accessed 24 April 2024.

231 *Use of Artificial Intelligence (AI) and Protecting the Integrity of Court Submissions in Provincial Court* (Provincial Court of Nova Scotia, 27 October 2023), www.courts.ns.ca/sites/default/files/notices/Oct%202023/NSPC_Artificial_Intelligence_Oct_27_2023.pdf accessed 24 April 2024.

232 *Ensuring the Integrity of Court Submissions When Using Generative Artificial Intelligence* (Supreme Court of Nova Scotia, 18 October 2023), https://courts.ns.ca/sites/default/files/notices/Oct%202023/NSSC_Court_Submissions_AI_Oct_18_2023.pdf accessed 24 April 2024.

Scotia and the Federal Court.[233] Many of these directives and notices mandate the disclosure of any reliance on generative AI tools in the preparation of court-filed materials; some go further to require disclosure of *how* such tools were used, while others merely advise lawyers to use caution and ensure human supervision when using AI tools for legal research and court submissions.

Overall, these cases and directives from various Canadian courts suggest that, while they are willing to accept the use of AI in the provision of legal services, it must be done in a cautionary and responsible manner.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

With such a broad scope of application to the legal field, the emergence of AI presents several regulatory and legislative concerns with respect to its usage. In an effort to address these concerns, the LSO formed its Technology Task Force (the 'Task Force'): a group of lawyers, paralegals and publicly appointed lay benchers, whose goal is to review the Law Society's framework and standards to determine whether they are adequately serving the needs of the legal field.[234] To do so, the Task Force has grounded its approach to AI in the Law Society's mandate[235] and foundational principles.[236] These principles entail an ongoing focus on facilitating access to justice, evaluating regulatory risks and opportunities and protecting the public interest. This focus must be conducted in a manner that is proportionate to the LSO's regulatory objectives.

Currently, the Task Force has made inquiries into three key topics: (1) defining the scope of how far the LSO's mandate ought to expand to effectively meet its regulatory objectives; (2) determining how the LSO should be structured and who should bear responsibility to ensure these objectives are met; and (3) what steps should the LSO take to better promote innovation and the adoption of emerging technology in an informative way that educates those who use it or are impacted by it.[237] However, as the regulator of a self-regulating industry, the LSO is faced with the challenge of whether it is appropriately situated and has the resources necessary to effectively regulate persons and entities operating legal tech tools.[238] Inevitably, the key barrier to overcoming such a challenge is the necessary technological wherewithal required to regulate such legal tools.

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233 *Notice to the Parties and the Profession – The Use of Artificial Intelligence in Court Proceedings* (Federal Court, 20 December 2023), www.fct-cf.gc.ca/Content/assets/pdf/base/2023-12-20-notice-use-of-ai-in-court-proceedings.pdf accessed 24 April 2024.

234 *Technology Task Force* (Law Society of Ontario), https://lso.ca/about-lso/initiatives/technology-task-force accessed 20 April 2024.

235 *Technology Task Force Report* (Law Society of Ontario, 2019).

236 Law Society Act RSO 1990, c L8, ss 4.1–4.2.

237 *Technology Task Force Report* (Law Society of Ontario, 2019).

238 *Technology Task Force Report* (Law Society of Ontario, 2019).

While the inquiries made by the LSO have yet to lead to concrete changes in legislation, the Taskforce is focused on exploring approaches to encourage the technological competence of legal professionals.[239] To date, the LSO Taskforce has made various informational resources on AI available through its Technology Resource Centre for lawyers.[240]

Moreover, the Law Commission of Ontario (LCO) has conducted extensive research on the use of AI and automated decision-making across the legal system.[241] Most notably, the LCO's *Regulating AI: Critical Issues and Choices* (2021) and *Accountable AI* (2022) reports provide further guidance on the use of AI in the legal profession.[242] In the latter, the LCO puts forward 19 recommendations to the provincial government and key stakeholders to ensure the following:

- the use of trustworthy AI in Ontario and ensuring that government's use of AI is properly regulated;
- that government AI systems comply with administrative law requirements;
- the development of new AI-specific *Rules of Civil Procedure* and laws of evidence;
- the development of educational programs and materials for lawyers, judiciary, tribunal members and administrators; and
- the establishment of a working group to analyse, monitor and report on the use of AI algorithms in Ontario's civil and administrative justice systems.[243]

Although the LCO does not have the same regulatory powers as the LSO, as an independent stakeholder it provides authoritative advice on the complex legal policy issues related to AI.[244]

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239 *Technology Task Force Report* (Law Society of Ontario, 2019).

240 *Using Technology* (Law Society of Ontario), https://lso.ca/lawyers/technology-resource-centre/practice-resources-and-supports/using-technology#notices-1--6 accessed 21 April 2024.

241 *AI, ADM and the Justice System* (Law Commission of Ontario), www.lco-cdo.org/en/our-current-projects/ai-adm-and-the-justice-system/ accessed 21 April 2024.

242 *Regulating AI: Critical Issues and Choices* (Law Commission of Ontario, April 2021), www.lco-cdo.org/wp-content/uploads/2021/04/LCO-Regulating-AI-Critical-Issues-and-Choices-Toronto-April-2021-1.pdf accessed 21 April 2024; see also *Accountable AI* (Law Commission of Ontario, June 2022), www.lco-cdo.org/wp-content/uploads/2022/06/Accountable-AI-reduced-sise.pdf accessed 21 April 2024.

243 *Accountable AI* (Law Commission of Ontario, June 2022), www.lco-cdo.org/wp-content/uploads/2022/06/Accountable-AI-reduced-size.pdf accessed 21 April 2024, Appendix A: Recommendations.

244 *About Us (*Law Commission of Ontario), www.lco-cdo.org/en/learn-about-us/ accessed 21 April 2024.

9. What is the role of the national bar organisations or other official professional institutions?

In Canada, the role of national and provincial bar organisations regarding the use of AI in the legal profession primarily revolves around regulation, ethical guidance and education. The Federation of Law Societies of Canada (FLSC) is the national body representing the law societies of each province and territory. The FLSC has a Model Code of Professional Conduct (the 'Model Code') that serves as a foundational guideline across the provinces, which have largely aligned their individual codes of professional conduct with the Model Code.

While there are no specific rules in the Model Code (or provincial/territorial codes) that explicitly deal with the adoption or responsible use of AI in a lawyer's practice, several rules intersect with and implicate it.[245] For example, rule 3.1-2 in the Model Code sets out the lawyer's duty to be competent. In recent years, the FLSC amended the commentary to rule 3.1-2 to refer specifically to technological competence:[246]

> 'To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognising the lawyer's duty to protect confidential information set out in section 3.3.'[247]

This provision has been incorporated into the codes of professional conduct of various law societies, including Ontario and Alberta.

The Law Society of Ontario (LSO) established a Technology Task Force (the 'Task Force') in 2018 with the mandate to 'consider the role of technologies in the delivery of legal services, and the Law Society's role as a regulator in this changing environment'.[248] The Task Force released a 2019 report dealing with this topic.[249] The report recognises and provides guidance on professional conduct rules that are engaged by emerging legal technologies like AI. For example, rule 6.1-1 provides that lawyers must 'assume complete professional responsibility for their practice of law' and 'directly supervise non-lawyers to whom particular tasks and functions are assigned'.[250] With respect to rule 6.1-1, the Task Force report states:

> 'AI-based tools present opportunities for technologies to go beyond merely performing support functions (eg, word processing or traditional dictation software) to now autonomously perform legal service functions. In these circumstances, it may become necessary to re-examine the rules around

245 See n 12 above.

246 See n 12 above.

247 Model Code of Professional Conduct at rule 3.1-2, Commentary [4A] (Federation of Law Societies of Canada), https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Model%20Code%20Oct%202022.pdf.

248 *Technology Task Force Report* (Law Society of Ontario, 2019).

249 *Technology Task Force Report* (Law Society of Ontario, 2019).

250 *Technology Task Force Report* (Law Society of Ontario, 2019).

adequate supervision of non-licensees, and to consider their application to non-person entities.'

The Task Force report goes on to recommend potential approaches the LSO should consider taking on the topic of legal tech like AI, including, among other things, amending professional conduct rules and improving guidance and practice resources on the topic.[251] This illustrates the role that the governing bodies of Canada's legal profession can play on this topic.

Aside from the LSO, the FLSC and some of Canada's other law societies have similarly engaged in discussion, ethical guidance and education on the topic.[252] For example, in 2023, the FLSC held a conference on the topic of 'Regulating Legal Services in the Age of AI', fuelling discussion and education on the topic in the legal sector.[253]

In late 2023, the Law Society of British Columbia released its Guidance on Professional Responsibility and Generative AI, which provides guidance to lawyers on compliance with various professional duties related to, for example, confidentiality, honesty and candour, competence and information security, in light of the increased adoption of AI tools in legal practice.

Finally, the Canadian Bar Association (CBA) has published guidelines on ethics and technology. The CBA guidelines include *Practising Ethically with Technology* (2014), *Legal Ethics in a Digital World* (2015) and *Legal Ethics in a Digital Context* (2021).[254]

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251 *Technology Task Force Report* (Law Society of Ontario, 2019).

252 *The Generative AI Playbook: How Lawyers Can Safely Take Advantage of the Opportunities Offered by Generative AI* (Law Society of Alberta), www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook/ accessed on 30 April 2024.

253 *Fall Schedule* (Federation of Law Societies of Canada), https://meet2023.flsc.ca/fall-schedule/ accessed 21 April 2024.

254 *Legal Ethics in a Digital Context* (Canadian Bar Association), www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/Legal-Ethics-in-a-Digital-Context/LegalEthicsInaDigitalContext.pdf accessed 21 April 2024.

Chile

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Annalena Fuchs, Bitlaw, Santiago

1. What is the understanding or definition of AI in your jurisdiction?

The term artificial intelligence (AI) is understood in Chile as a computational system that can, for a given set of objectives defined by humans, make predictions and recommendations, or take decisions, that influence real or virtual environments, and is designed to operate with different levels of autonomy (according to the definition provided by the Organisation for Economic Co-operation and Development (OECD)).

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

There are some AI tools and real use cases in practice for legal services, both in the private and public sectors.

There are several law firms in Chile that apply legal technology in the field of document management systems (DMS) to control versions of the documents they generate for their clients and to access legal background of the latter. Some law firms are implementing internal tools that, by applying AI, work or will work as document managers, allowing document analysis or locating legal information among the different areas of the firms.

Likewise, there has been a boom in startups that provide legal services. One case is the legal startup Lexnova, which uses an AI tool developed by a law firm in alliance with a consulting firm specialising in technologies and AI. This company seeks to provide Spanish-speaking countries in Latin America with innovative products and services that use AI to make legal processes in companies and public agencies more efficient.

Another such example is SEPKTR, an AI tool designed specifically for the legal sector, which aims to be a specialised assistant in legal consultations and research, based on the Chilean legal system.

In the public sector, the Public Prosecutor's Office last year announced the use of an AI tool, called Detective Heredia, which, through the same technology used by ChatGPT, is capable of detecting relationships between subjects of criminal interest in order to identify potential members of a group associated with a specific

criminal act. The idea is for the system to function as an assistant to the prosecutor in charge of the investigation.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

The implementation of AI in the legal field is still under development and many of the tools mentioned above are in their early stages or are being internally developed. Currently, most law firms use software to track their cases, such as CaseTracking, or search for case law and the legal literature in databases such as vLex or Microjuris. Although these tools are not necessarily AI, they are used by independent law firms, international law firms and in-house counsel, so it is reasonable to expect a similar development in the future with AI tools.

However, it is important to note that most of the firms that are developing or implementing their own AI tools are international law firms, especially those headquartered in Europe. While international law firms may be at the forefront at the moment in terms of implementing AI tools, the adoption of these technologies is constantly evolving. Over time, more law firms, both independent and in-house, will adopt and benefit from AI tools as they become more accessible and mature in the market.

4. What is the current or planned regulatory approach on AI in general?

Currently Chile does not have a comprehensive AI regulation.

In 2021, the Ministry of Science, Technology, Knowledge and Innovation published a National Artificial Intelligence Policy, which generates a framework of understanding around AI systems. This policy was updated in 2024. It is divided into three interdependent pillars and is accompanied by a specific action plan that details the initiatives comprised in each of the actions, including the responsible and execution deadline, to achieve the policy's goal of covering the proposed strategic guidelines proposed for 2031.

In addition, in May 2024, the Chilean government submitted a bill to Congress regulating the use of AI. The bill is based on the definition of AI systems proposed by the OECD: among its references are the European Union's AI Act and the Unesco Recommendation on AI Ethics.

The bill proposes a risk-based approach on the use of AI systems, establishing four levels of risk associated with the development, implementation and use of AI systems: unacceptable, high, limited and no evident risk. The bill prohibits the

use of AI systems that pose an unacceptable risk, and establishes specific rules, regarding risk management, data governance, technical documentation, record-keeping systems, transparency mechanisms and human oversight for the use of high-risk AI systems.

In order to avoid generating disincentives in the development of these technologies, the bill takes an *ex-post* approach, ie, AI systems will not be required to undergo certification or evaluation before entering the market, but the developers must qualify themselves by risk and, based on this assessment, comply with a series of obligations. In addition, the bill proposes, as a measure to support innovation, that public institutions can provide a controlled space to facilitate the development, testing and validation of AI systems.

Regarding the institutional framework, an AI Technical Advisory Council will be created, in which the government, academia and the private sector will participate. This AI Technical Advisory Council will be in charge of drawing up the lists of high and limited-risk AI systems among others. In addition, the future Personal Data Protection Agency will be the organism responsible of the control and enforcement of the bill.

Although there is currently no comprehensive AI regulation in Chile, the implementation of the National Artificial Intelligence Policy and the proposal of the aforementioned bill demonstrate the country's efforts to establish a regulatory framework in this area. These initiatives seek to address risks and promote the ethical and responsible adoption of AI for the benefit of Chilean society.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Currently, AI is not yet explicitly regulated in any aspect of the law; however, there are bills seeking its regulation in different areas.

Given that AI requires the use of large volumes of data, the protection of personal data will be fundamental in its regulation. Although the current bill that amends Law 19.628 on the protection of privacy does not explicitly regulate the use of personal data by AI, the bill that regulates the use of AI gives the supervision of the latter to the future Personal Data Protection Agency, whether it is personal data or possible risks of AI systems that go beyond the use of data.

In addition, a bill that seeks to amend the Criminal Code to punish the misuse of AI is currently being debated in Congress, but limited to those cases in which fraud is committed using AI.

In general, in the absence of specific regulations, the general rules of law would apply to the use of AI.

6. Is free data access an issue in relation with AI?

Free access to data is fundamental to AI operation. Data processing operations are present throughout the entire AI life cycle, and the more access AI has to relevant and quality data, the more accurate its results and answers will be.

In Chile, the National Artificial Intelligence Policy seeks to promote and consolidate a public interest data agenda as one of its objectives. This agenda promotes a public-private ecosystem that encourages the generation and access to quality data for the use and development of AI and related technologies. Initiatives include a government Open Data Portal, and fostering and developing the institutional framework, trust and mechanisms for the industry to share and make data available at the industry level.

This Open Data Portal, called 'data.gob',[255] is already available for the general public. It consists of a portal in which public institutions publish their data in a transparent and accessible way. The objective of this website is to make public sector data and statistics available, free of charge and for free consumption. Currently, more than 3,500 datasets can be found, classified into 23 different categories – including science, education, finance, health and technology – shared by more than 530 public institutions, such as the Financial Market Commission (Comisión para el Mercado Financiero) and the State Defence Council (Consejo de Defensa Nacional).

It is important to note that the processing of personal data through AI systems must comply with the principles and legal requirements established by Law 19.628 on the protection of privacy and its amendments, to ensure the privacy and security of personal data used in AI systems.

Regarding legal information, in Chile, most court decisions are public, with some exceptions related to family matters, minors and some non-contentious proceedings. Judgments and other court documents are available directly on the virtual judicial office platform, and other platforms such as vLex or Microjuris. While these judicial databases are accessible and can be used as sources of information for legal AI systems, with the new policy proposals a continuous expansion is to be expected.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

The Chilean courts have, in some cases, dealt with the use of legal tech and AI, predominantly in cases of layoffs due to replacement of workers. However, to date,

255 See Open Data Portal, 'datos.gob', https://datos.gob.cl/ accessed 12 June 2024.

no rulings have been issued regarding the provision of legal services using AI or other sectors that may be applicable.

It is worth noting that in 2020, the Constitutional Court issued a ruling that addressed the issue of evidence and adjudication in criminal matters. In that ruling, it stated that in no case can the subjectivity of the sentencer be replaced by mechanisms or algorithms specific to the latest AI deployment. Judges are called to become true custodians of the scientific method to ensure the admissibility of scientific evidence from the methodological perspective, which in no way can be replaced by alternative mechanisms to the subjectivity and individuality of the judge.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

To date, Chilean legislation has not specifically regulated the use of AI in the legal profession or in services traditionally provided by lawyers, since there are currently no specific legal provisions that address in detail the use of AI in this particular field.

However, it is worth mentioning that one of the objectives noted in the National Artificial Intelligence Policy is to incorporate AI as a cross-cutting discipline in professional training, regardless of whether the career is related to technological areas or not. This suggests the intention to foster understanding and knowledge of AI in different professional fields, including law.

9. What is the role of the national bar organisations or other official professional institutions?

The Chilean Bar Association already plays an important role in educating and raising awareness about the use of AI by lawyers. An example of this is the specific talks and workshops that the institution has organised to provide lawyers with information on the use of AI.

On the other hand, there is also the National Centre for Artificial Intelligence (CENIA), an organisation created in 2021 with the purpose of promoting the development of the AI industry at a national level and promoting its responsible use. It gathers researchers from 15 Chilean universities: its main focus is to promote AI research and generate instances of communication with society to address the challenges and opportunities presented by this technology.

In the academic sector, some universities offer training programmes in AI aimed at lawyers and professionals in related areas, such as diploma courses and seminars, which help to strengthen knowledge and skills in this field and promotes the development of specialised AI professionals.

Denmark

Kristian Storgaard, Kromann Reumert, Aarhus

1. What is the understanding or definition of AI in your jurisdiction?

There is no legal definition of AI specific to Denmark. The term is used broadly to refer to various technologies that can perform tasks that normally require human intelligence, such as natural language processing, computer vision, machine learning and robotics.

The Danish government has adopted a national strategy for AI, which defines AI as 'systems based on algorithms (mathematical formulae) that, by analysing and identifying patterns in data, can identify the most appropriate solution'.[256] The definition in the national strategy can serve as guidance, but is not binding.

In October 2023, the Danish Data Protection Authority issued guidelines for the use of AI by public authorities.[257] The guidelines conclude that there is no generally accepted definition of AI, but points to the definition utilised in the forthcoming EU AI Act.

In conclusion, there is no universally agreed national definition of AI in Denmark.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Yes, there is. AI tools are used in Denmark by several legal actors. The AI tools in use can be sub-categorised into, primarily: (i) document review tools; (ii) case law review tools; and (iii) miscellaneous tools. In summary, AI tools are widely used in Denmark. There is high demand for AI tools and new tools are regularly emerging.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

Some national independent law firms, especially bigger ones, will probably employ AI as a real component of their core work. They will mainly use general

256 See https://en.digst.dk/media/19337/305755_gb_version_final-a.pdf accessed on 13 May 2024.

257 See https://www.datatilsynet.dk/Media/638321084132236143/Offentlige%20myndigheders%20brug%20af%20kunstig%20intelligens%20-%20Inden%20I%20g%C3%A5r%20i%20gang.pdf (in Danish) accessed on 13 May 2024.

productivity tools like Microsoft Copilot, but they will also use AI tools specifically designed for the legal sector. These AI tools purposely tailored to the legal sector could have various uses, such as:

- document review and analysis;
- legal research;
- contract drafting; or
- due diligence reporting.

A common denominator for independent law firms is that their use of AI tools will mostly be based on licensing third-party solutions.

International law firms tend to have access to certain other AI tools, but there is no clear comprehensive overview of this aspect of AI use by law firms. That being said, only a few international law firms are present in Denmark.

In-house counsel will most likely use AI tools to complete certain tasks, previously delegated to external counsel. This will, on one hand, allow in-house counsel to solve more issues on their own without external assistance, thereby keeping costs down. On the other hand, these cost savings can be used to enable external counsel to concentrate more thoroughly on material matters.

4. What is the current or planned regulatory approach to AI in general?

The Danish government has adopted a national strategy for AI. The strategy contains four objectives on how Denmark can become a frontrunner in the development and use of AI, which are:

(i) Denmark should have a common ethical and human-centred basis for AI;

(ii) Danish researchers should research and develop AI;

(iii) Danish businesses should achieve growth through developing and using AI; and

(iv) the public sector should use AI to offer world-class services.

These objectives are to be realised through 24 initiatives, subdivided into the following main topics:

- a responsible foundation for AI;
- more and better data;

- strong competences and new knowledge;
- increased investment in AI; and
- priority areas.

The national strategy is non-binding in regard to the regulation of AI, but will serve as guidance for the Danish government.

Denmark adheres to the Organisation for Economic Co-operation and Development's (OECD) Recommendation on Artificial Intelligence, which was approved on 22 May 2019.[258] The recommendation sets out principles for responsible stewardship of trustworthy AI and obligates the adherents to invest in AI, foster a digital AI ecosystem, shape an enabling policy environment for AI, build human capacity and prepare for the labour market transformation, and co-operate internationally in regard to AI.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

In Denmark, there is no national (binding) regulation on the use of AI, as such. At the moment, in general, the development and use of AI depends largely on already established legal frameworks.

For example, the use of personal data must comply with the European General Data Protection Regulation and the Danish Data Protection Law (Databeskyttelsesloven).

In June 2023, the Danish Copyright Act (Ophavsretsloven) was amended by including sections 11(b) and 11(c), required by the EU Directive on copyright and related rights in the Digital Single Market (the 'DSM Directive'), in order to implement the rules on text and data mining. While the DSM Directive is not primarily concerned with the regulation of AI, the implications of these new rules are crucial for the development of AI solutions. The new rules mandate that rightsholders must make a declaration if they wish to prevent their copyright protected material from being used for text and data mining. By creating an opt-out scheme, the new rules can be said to be an anomaly in terms of copyright principles, where it is normally the user that must ask for permission to use copyright protected material.

In the future, an important regulation on AI will be the EU AI Act, which was approved by the European Parliament on 13 March 2024. The EU AI Act is awaiting formal endorsement by the European Council and will enter into force 20 days after its publication in the Official Journal of the European Union and will

258 See https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449 accessed on 13 May 2024.

be fully applicable 24 months thereafter (except for certain parts of the regulation which will apply from six to 36 months after its entry into force).

Further, the EU AI Act will be supplemented by the proposed EU AI liability directive and the new EU Product Liability Directive. The former will yield national statutory rules on the liability of AI systems and their operators. The latter will yield national statutory rules on liability for defective products, including AI.

6. Is free data access an issue in relation to AI?

Yes. Access to free data, let alone access to free high-quality data, is a major problem. AI tools are currently (narrow AI that is) limited by their training data. As long as AI tools depend on the quality and quantity of their training data, free access to high-quality data will be an issue.

Statistics Denmark is the organisation with a mission to collect, compile and publish statistics on Danish society. Such data are published in the so-called StatBank Denmark database.[259] The data in StatBank Denmark are free to use, including for commercial purposes, as long as the data source is referenced.

Open Data DK is an organisation providing free access to a wide range of public (non-personal) data.[260] This includes data about air quality or traffic, and such data can be used when developing AI tools in general.

Of particular relevance to the application of AI within the legal sector is the national Judgment Database.[261] Here, a wide range of case law from the Danish courts is published and made freely available. API-based access can be granted if the applicant has a legitimate interest.

While some free data sources are available, more sources are needed to fully enable AI developers to enhance their tools. This is particularly true in regard to the development of legal AI. The required data for such tools are currently ringfenced by large providers of legal knowledge.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

No.

259 See https://www.dst.dk/en/Statistik/brug-statistikken/muligheder-i-statistikbanken accessed on 13 May 2024.

260 See https://www.opendata.dk/ accessed on 13 May 2024.

261 See https://domsdatabasen.dk/ accessed on 13 May 2024.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There are no specific laws that regulate the use of AI in the legal profession, as such.

9. What is the role of national bar organisations or other official professional institutions?

Danish attorneys are obligated to act in accordance with the Danish legal ethics rules issued by the Danish Bar and Law Society. The Danish Bar and Law Society have not issued specific guidance on AI, but have focused on providing certain relevant information.

In addition to this, the Association of Danish Law Firms has launched an AI working group to look further into the use of AI in law firms.

England and Wales

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Introduction

This is an examination of attitudes towards the use of artificial intelligence (AI) as a professional tool as used by the legal profession in England and Wales. The profession in this jurisdiction includes a number of different types of lawyers, of which solicitors are the largest group. This chapter focuses predominantly on the use of AI by solicitors.

Solicitors are authorised by the Solicitors Regulation Authority (SRA), which is described as an approved regulator with powers to issue practising certificates that enable individuals to carry on certain legal activities known as reserved legal activities. Solicitors are able to provide legal services, subject to various conditions, as sole practitioners and independent solicitors, in law firms, and also in in-house employment.

The SRA also authorises law firms, which include sole practitioners, traditional firms of solicitors and alternative business structures where ownership and management is shared with non-solicitors. Individual solicitors and authorised law firms must comply with the SRA Standards and Regulations,[262] which set out the standards and requirements that must be achieved for the benefit of clients and in the wider public interest.

The Law Society of England and Wales is the independent professional body for solicitors, with a representative role designed to promote England and Wales as the jurisdiction of choice, and support its members through a variety of services.

Both the SRA, as the approved regulator, and the Law Society, as the representative body of solicitors, have considered the growth of AI. This is also true of the regulatory and representative bodies for the other parts of the legal profession (eg, barristers[263] and legal executives[264]), who also have similar interests in the topic. It is recognised, and not challenged, that AI will change the way in which legal services are provided both by qualified lawyers and law firms, and also non-lawyer individuals and businesses.

In this chapter, we examine both the national position and then issues for the legal services profession in responding to developments with AI technology.

262 www.sra.org.uk

263 The Bar Standards Board, see www.barstandardsboard.org.uk and the Bar Council, see www.barcouncil.org.uk

264 The Chartered Institute of Legal Executives, see www.cilex.org.uk

1. What is the understanding or definition of AI in your jurisdiction?

There is a burgeoning interest in AI and its use, but there does not appear to be a universally agreed definition of AI when discussing its use in the provision of legal services.

The SRA produced a risk report titled *Technology and Legal Services* in December 2018,[265] in which it did not seek to formulate its own definition and instead used the following meaning for the phrase, which it attributed to The Future Computed: AI and Manufacturing:

> 'AI refers to software systems that can interpret data in ways that would normally need human involvement. It is loosely defined as machine learning that can improve its own capabilities without needing humans to reprogram it. This allows the system to process information more quickly and accurately. AI systems are generally focused on specific tasks and aim to assist and enhance performance. They enhance human judgment and intelligence, rather than replace it.'[266]

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

The Law Society published an article called 'Six Ways the Legal Sector Is Using AI Right Now',[267] explaining the use of AI by the legal sector. This was written by one of its commercial partners, Seedrs, and identified the six main ways in which the legal sector was using AI tools as follows:

1. practice management automation;
2. predictive coding;
3. document assembly;
4. legal research;
5. voice recognition; and
6. do-it-yourself (DIY) law and chatbots.

While the majority of these tools are used by solicitors subject to SRA oversight, DIY law and chatbots are also being used by businesses that are not authorised and/or

265 See www.sra.org.uk/risk/risk-resources/technology-legal-services.

266 See https://news.microsoft.com/futurecomputed.

267 See www.lawsociety.org.uk/news/stories/six-ways-the-legal-sector-is-using-ai.

do not employ solicitors. The AI enables these businesses to interact with customers to create their own legal documents and get access to certain legal advice.

The SRA's research supports these findings. The SRA confirms that AI systems have been developed and applied in areas that include document reviews (eg, contract reviews and discovery); conflict checks and due diligence; identifying precedents; legal research and analytics; predicting case outcomes; and billing.

The SRA generally regards the use of AI positively, arguing that technology can help smaller firms to compete with unregulated businesses through the fact that it helps solicitors with their time management, and that it can also help firms complete more work, particularly that of a routine and formulaic nature, more quickly and accurately. AI is also used to provide legal services in innovative ways, such as virtual law firms and more online legal services.

3. If yes, are these AI tools different regarding • independent law firms; • international law firms; and • in-house counsel; and what are these differences?

Most solicitors and law firms will be using AI in its simplest form with case management systems to run client files, for time recording, accounting purposes and so on. Many firms also have access to online legal information resources, such as those provided by LexisNexis[268] and other businesses. With both of these AI solutions, cost will be a determining factor that influences take up.

Larger firms, often those with an international reach, and firms that service commercial clients, are more likely to develop the use of AI more quickly because of the realities of economics, and because the volume and type of work that they do is more likely to generate a commercial justification for the use of such AI as document assembly and predictive coding. Time-consuming tasks that might otherwise be performed by humans (often by paralegals and non-lawyer employees) in smaller firms will be performed more cheaply and more quickly through the use of AI in larger firms.

In-house counsel employed in commerce is also likely to be able to adopt AI answers because of the financial position of its employers.

4. What is the current or planned regulatory approach on AI in general?

The United Kingdom is a signatory to the Organisation for Economic Co-operation and Development (OECD) Principles on Artificial Intelligence.[269] These were

268 See www.lexisnexis.co.uk.

269 See www.oecd.org/going-digital/ai/principles.

agreed in May 2019, and are designed as standards for the safe development of innovative technologies. The OECD AI Principles are:

- AI should benefit people and the planet by driving inclusive growth, sustainable development and wellbeing.
- AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards, for example, enabling human intervention where necessary, to ensure a fair and just society.
- There should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.
- AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.
- Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.

The OECD also provided five recommendations to national governments:

1. Facilitate public and private investment in research and development to spur innovation in trustworthy AI.
2. Foster accessible AI ecosystems with digital infrastructure and technologies, and mechanisms to share data and knowledge.
3. Ensure a policy environment that will open the way to deployment of trustworthy AI systems.
4. Empower people with the skills for AI and support workers for a fair transition.
5. Cooperate across borders and sectors to progress on responsible stewardship of trustworthy AI.

In June 2019, the Group of 20 (G20) (of which the UK is a member) adopted human-centred AI Principles that build on and complement the OECD initiatives.[270]

The UK Government was one of the early developers of a national response. The Office for Artificial Intelligence is a joint government unit forming part of the Department for Business, Energy and Industrial Strategy and the Department for Digital, Culture, Media and Sport, and is responsible for overseeing the responsible

270 See www.mofa.go.jp/files/000486596.pdf.

and innovative uptake of AI technologies for the benefit of everyone in the UK.[271] This includes:

- society: making sure AI works for people – ethics, governance and future of work;
- demand and uptake: supporting adoption across sectors, including via 'Missions'; and
- foundations: ensuring the best environments for building and deploying AI – skills, data, investment and leadership.

Additionally, the Centre for Data Ethics and Innovation is a government-level advisory body that considers AI advances.[272] For example, in September 2019, it published three papers addressing particular areas of public concern in AI ethics: deepfakes and audio-visual information; smart speakers and voice assistants; and AI and personal insurance.[273]

Also, in 2019, the UK Government committed approximately £2m to help develop law technology opportunities in order to drive innovation and help the UK legal sector grow.[274]

However, none of this is a regulatory solution. In a book published in 2019 called *AI, Machine Learning and Big Data*,[275] the authors of the chapter on the regulation of AI and Big Data in the UK expressed the following thoughts: 'As the seat of the first industrial revolution, the UK has a long history of designing regulatory solutions to the challenges posed by technological change. However, regulation has often lagged behind – sometimes very far behind – new technology. AI is proving no exception to this historical trend.'

The authors concluded that there was no consensus on whether AI required its own regulator or specific statutory regime, and concluded that there was 'currently no overall coherent approach to the regulatory challenges posed by the rapid development of AI applications'.

In summary, therefore, there is an awareness of the need for oversight of AI development, but no current plans for regulation, either at a national or sector level.

271 See www.gov.uk/government/organisations/office-for-artificial-intelligence/about.

272 See www.gov.uk/government/organisations/centre-for-data-ethics-and-innovation.

273 See www.gov.uk/government/publications/cdei-publishes-its-first-series-of-three-snapshot-papers-ethical-issues-in-ai.

274 See www.gov.uk/government/news/legal-services-and-lawtech-bolstered-with-2-million-of-government-funding.

275 Berkowitz M and Thompson J (Eds), *AI, Machine Learning and Big D* (Global Legal Group Ltd, 26 June 2019).

5. What is the role of the national bar organisations or other official professional institutions?

In the absence of national law or regulation, it is necessary to consider the role of the SRA in regulating the use of AI by those individuals and firms that it authorises and regulates. There is also the need to acknowledge that there are many non-lawyers and unauthorised businesses using AI to provide certain legal services, but these are not subject to SRA oversight.

Solicitors are subject to individual regulation by the SRA, regardless of where or how they practise. All law firms (and all their owners and all employees) that are authorised by the SRA are similarly subject to regulatory oversight. Solicitors who are employed in unauthorised businesses (eg, those employed by commercial and other organisations as in-house counsel) are subject to regulatory oversight but the SRA's regulatory reach does not extend to their employer.

The various principles and rules to which individuals and law firms are subject are contained in the SRA Standards and Regulations.[276] These were drafted on the premise that certain outcomes must be achieved by individuals and firms, and these achievements will demonstrate that clients have received ethical legal services and the public interest purpose of regulation has been met.

The SRA also describes itself as a risk-based regulator, which means that it prioritises concerns that pose the highest risk both to clients and impede the public interest in having trust and confidence in the legal profession. Current risk priorities, as described in the SRA Risk Outlook,[277] include considerations such as information and cybersecurity, integrity and ethics, and standards of service.

In the previously mentioned SRA publication 'Technology and Legal Services', the SRA made its position clear: 'Our regulation is based on the outcomes that firms achieve, not the tools that they use to achieve them'. In other words, the SRA assesses individuals and firms against personal and entity-based duties, and does not impose restrictions on how required behaviours are achieved. The individuals and entities must meet regulatory standards, and the SRA has supervisory and enforcement powers that will be used, if necessary.

This publication highlighted some of the ethical and risk-based issues from the use of AI, including:

- the use of chatbots to provide legal advice may not be able to identify all the individuals that the system is advising on behalf of the solicitor or the law firm and lead to conflicts of interest;
- some documents prepared by AI might involve the system carrying out reserved legal activities with the questions that would trigger in

276 See www.sra.org.uk.

277 See www.sra.org.uk/risk/outlook/risk-outlook-2019-2020.

respect of legal restrictions on the provision of these activities, for example, certain conveyancing and probate activities can only be performed by qualified persons, including solicitors;

- the use of AI technology to process personal data requires the consideration of data protection legislation and the information that must be provided to data subjects; and
- bias in AI systems creating complications in respect of equality, diversity and inclusivity duties imposed on solicitors and others in law firms by the application of the law and also because of regulatory duties in the SRA Standards and Regulations.

This means that while AI, and innovative technologies more widely, can be used, and this use is encouraged by the SRA, the following should be understood:

- Nothing about the use of AI should undermine or compromise an individual's or firm's ethical, regulatory or legal duties.
- Firms must implement effective governance systems to oversee the ethical and legal use of AI.
- The lack of the correct response that is attributed to AI faults will nevertheless be of regulatory interest.
- The risks of using AI must be acknowledged, managed and mitigated. Topical issues include information security and data protection, and the threat of data breaches caused by cyberattacks. Breaches must be considered and, depending on seriousness, possibly reported to both the SRA and the UK's Information Commissioner's Office.

France

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1. What is the understanding or definition of AI in your jurisdiction?

The definitions of artificial intelligence (AI) proposed within the French legal landscape always refer to human intelligence. The French Data Protection Authority (Commission nationale de l'informatique et des libertés or CNIL) defined AI as 'the science of making machines do what humans would do with a certain intelligence'[278].

In a 2017 annual study, the French Conseil d'Etat defined AI as 'the science whose aim is to make a machine perform tasks that traditionally require human or animal intelligence'.[279] In a report on the open data of court decisions submitted to the Minister of Justice in 2017, AI is defined as 'the set of theories and techniques whose purpose is to make a machine that simulates human intelligence perform tasks'.[280]

The Commission d'enrichissement de la langue française, whose primary purpose is to fill gaps in vocabulary and to designate in French the concepts and realities that appear under foreign names, defined AI as the 'theoretical and practical interdisciplinary field whose purpose is the understanding of mechanisms of cognition and reflection, and their imitation by a hardware and software device, for the purpose of assisting or substituting human activities'.[281] The definitions of this commission are published in the *Official Journal of the French Republic*, and are then of obligatory use in the administrations and institutions of the state and serve as a reference.

However, any comparison between AI and human intelligence, which is a purely anthropocentric approach, seems completely misleading. AI will never be human. On the contrary, some authors point out the risk of AI becoming inhumane,

278 Translated from the definition in French: '*la science qui consiste à faire faire aux machines ce que l'homme ferait moyennant une certaine intelligence*'; CNIL, *How can humans keep the upper hand? Report on the ethical matters raised by algorithms and artificial intelligence* (2017).

279 Translated from the definition in French: '*science dont le but est de faire accomplir par une machine des tâches qui requièrent traditionnellement l'intelligence humaine ou animale*'; Conseil d'Etat Annual Study (2017).

280 Translated from the definition in French: '*l'ensemble des théories et techniques dont le but est de faire accomplir des tâches par une machine qui simule l'intelligence humaine*'; Report on the open data of court decisions submitted to the Minister of Justice in 2017.

281 Translated from the definition in French: '*champ interdisciplinaire théorique et pratique qui a pour objet la compréhension de mécanismes de la cognition et de la réflexion, et leur imitation par un dispositif matériel et logiciel, à des fins d'assistance ou de substitution à des activités humaines*'; published in the *Official Journal of the French Republic*, December 2018

controlling our civil liberties. The questions raised by the relationship between AI and humans, its ability to capture our emotions, anticipate or direct our desires, or decipher parts of our personality or health, raise a growing body of ethical questions, from its autonomy to its status or the establishment of responsibility.

As many digital professionals point out, the term AI was first built – and still is today – on a marketing approach in order to designate the most advanced and ever-changing area of information processing techniques.[282] Some experts even denounce the confusing term, which relates less to a form of real intelligence than to fast, evolved or advanced algorithms.[283]

Furthermore, we must bear in mind that the technologies used by AI in the legal sector are mainly expert systems that can be summarised as 'first AI generation' (eg, contract management software).

The current interest for AI is renewed by the emergence of two technologies: machine learning and natural language processing, which are currently under-used or too disappointing in their application to law, especially among French legal tech.

AI must therefore be understood within a technological ecosystem that feeds on data exploitable by high-performance algorithms, outside of any fantasy or anthropocentric perspective generated by certain propaganda of innovation.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Legal professionals are beginning to adopt AI tools in their practice, mostly for the execution of repetitive and time-consuming tasks.

AI in law is characterised by the combined use of 'Big Data', machine learning, probability calculations, natural language processing and expert systems (formalisation of the expertise of specialists, notably through hierarchical trees).

The current AI tools available in France predominantly relate to contract and clause review, predictive justice, regulatory monitoring and even loan and business credit application review, specifically for the banking sectors.

The first area in which significant progress in legal AI has been made is contract and clause review.

282 See https://pierrelevyblog.com/2018/09/06/lintelligence-artificielle-va-t-elle-prendre-le-pouvoir accessed 6 July 2020.

283 See https://www.lemonde.fr/idees/article/2019/11/24/l-intelligence-artificielle-est-bien-aujourd-hui-une-escroquerie_6020312_3232.html accessed 6 July 2020.

Contract and clause review

Created in 2015, Softlaw specialises in the audit of M&A contracts to detect questionable clauses. This AI software is structured in a way that it performs knowledge management and fosters the exploitation of legal data, using search algorithms based on keywords, natural language processing and machine learning. It also assists with contracts analysis and regulation compliance.

Hyperlex developed an online contract management and analysis solution, allowing its clients to classify their contracts and find specific clauses or specific data (dates and amounts) with an automatic alert system. Founded in 2017, the company ensures accuracy by using all available AI technologies, including image pattern recognition, and intercedes with the Paris Chamber of Notaries to tag notarial documents automatically.[284]

Legisway, an AI solution to manage legal activities such as contracts, litigation, delegation of authority or even IPR protection, was launched by French AI contract analytics software provider Della in partnership with Wolters Kluwer Legal & Regulatory. Such a solution frees legal professionals from such time-consuming tasks.

As a robotic process automation (RPA) solution, Legal Suite is a complete software aimed at covering various legal tasks such as contract management – through its GaLexy Contract Authoring Tool – and can be adapted to specific areas of law. For example, Legal Suite solutions can help with IP protection by managing patents, or with real estate law by monitoring leases and calculating rents. There is also Legal Suite's GaLexyBot, a computer-based virtual assistant with the capacity of holding a conversation and answering predefined questions in the legal field.

Chatbots such as GaLexyBot are increasing in their popularity at a high rate, as they relieve legal practitioners from being solicited with questions that have already been dealt with, or are considered to have little added value, allowing them to free up time for the most important tasks.

Still in the field of document analysis, the bank JP Morgan launched Contract Intelligence ('COiN') in 2017, a bot that is able to review complex legal contracts faster and more efficiently than lawyers. According to the bank, within seconds the bot can review the same number of contracts as it would have previously taken over 360,000 staff-hours for the lawyers themselves to complete. Sociéte Générale is additionally developing a scoring engine to detect customers who are likely to

284 See https://www.lemondedudroit.fr/professions/241-notaire/68509-victoria-intelligence-artificielle-notaires.html accessed 6 July 2020.

leave the bank. According to Sociéte Générale, it has quadrupled the number of detected 'likely to leave customers' since its launch.[285]

Predictive justice and litigation

AI has also been very effective in predictive justice and litigation.

In the field of predictive justice, Predictice and Case Law Analytics are decision support tools for legal professionals and insurers. They provide access to case law via a natural language search engine. An algorithm then calculates the probabilities of resolving a lawsuit, the amount of potential compensation and identifies the most influential legal arguments or facts in previous decisions handed down by the courts.

Another AI tool fit for litigation was launched by Lexbase in 2018. Legalmetrics is a solution aimed at helping decision-making and litigation strategy by using statistical reporting. By mapping French companies' legal dispute, it indicates the main areas of a company's litigation, its position and the invoked arguments. Such mapping allows legal practitioners to reinforce their legal strategy, by estimating chances of success for instance, by knowing the success rate of a claim, the compensation amount or even the duration of litigation. Another use of Legalmetrics can be the mapping of a company's legal life before a potential legal action by practitioners.

Regulatory monitoring

Faced with the burgeoning amount of legislative and regulatory texts in the banking and financial sector, RegMind uses AI to provide automatic regulatory monitoring and follow-up. It informs its users when a new version of a legal text has been released, and compares both versions to highlight the differences. RegMind also analyses regulatory bodies sanctions from both national and European jurisdictions.

Many other legal techs exist, but their degree of technological innovation does not enable them to enter the AI category. Examples include YouSign (electronic signature), Youstice (online dispute resolution) or AirHelp (compensation assistance in case of delayed or cancelled flights).

The 2020 Wolters Kluwer *Future Ready Lawyer Report: Performance Drivers* survey[286] assessed the readiness and resilience in the legal sector by conducting

285 See https://www.societegenerale.com/en/news/press-release/societe-generale-towards-data-driven-bank accessed 25 March 2022.

286 See https://landing-legisway.wolterskluwer.com/en-whitepaper-future-ready-lawyer-2020?utm_campaign=FR&utm_medium=article&utm_source=lexology accessed 25 March 2022.

its survey of over 700 legal professionals across the US and several European jurisdictions.

Such survey revealed that:

- 82 per cent of respondents predicted the greater use of technology will change how they deliver service;
- 63 per cent expected Big Data and predictive analytics to have a significant impact on the sector within three years; and
- 56 per cent expected to increase spending on legal technology solutions over the following three years.

However, it is crucial to highlight that the use of AI tools depends on the data available to train and reinforce AI tools' veracity. Such issues are addressed in question 6 below.

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

There are a large number of software packages claiming to develop AI, but few of them are actually based on the latest machine learning and natural language technologies.

There should be no difference in the use of these tools and software by these different structures, except that international law firms are more likely to use them because of their larger resources and the level of implementation of these tools in the United States.

4. What is the current or planned regulatory approach on AI in general?

It is no coincidence that France is considered to be the leading continental European nation in this field, and Paris is the leading city in continental Europe in terms of attractiveness to AI startups.[287] Indeed, the French Government is eager to make AI attractive, locally and internationally, as demonstrated in President Macron's March 2018 speech, which set out his vision and strategy to make France a leader in AI.[288]

287 See https://www.rolandberger.com/publications/publication_pdf/roland_berger_ai_strategy_for_european_startups.pdf accessed 25 March 2022.

288 See www.elysee.fr/emmanuel-macron/2018/03/29/frances-new-national-strategy-for-artificial-intelligence-speech-of-emmanuel-macron.en accessed 6 July 2020.

The Villani report, titled *AI for Humanity*[289], laid the foundations for an ambitious French strategy, which has truly been the stimulus for a national discussion on the impact of AI, including the issue of what regulations should be implemented. Other studies quickly followed the Villani report, including the report on AI in relation to the labour market,[290] commissioned by the Ministry of the Interior, and the report on AI in the service of defence,[291] commissioned by the Ministry of the Army.

Another study was published in February 2019, at the request of the *Direction Générale des Entreprises* (a department of the French public administration). Titled *Artificial Intelligence – State of the Art and Perspectives for France*,[292] it classifies sectors potentially most transformed by the rise of AI, focusing on four: energy and environment, transport and logistics, health, and industry. For each sector, the study assesses the opportunities generated by AI and suggests targeted strategies.

A consensus seems to emerge from various reports and studies tending to conclude that, at this stage in its evolution, there is no pressing need to rethink the current legislative and regulatory framework for AI. Current legal mechanisms and regimes, coupled with contractual flexibility, enable economic actors and consumers to cope with technological change with a satisfactory level of legal safety.

Nevertheless, there are exceptions to this approach, and special regulation may be necessary at a national and regional (European Union (EU)) level, for example, to support data openness, to regulate the activity of platforms or to support the development of specific innovation.

Autonomous vehicles that are currently in the testing phase are leading the government to support the development of testing in an open environment. In March 2018, the President announced that by 2022, a regulatory framework allowing the circulation of autonomous vehicles will be put in place and that an exceptional legal framework on liability for intelligent objects will be necessary.[293] And the publication of a decree on 1 July 2021, makes France the first country to proceed to a simultaneous evolution of its traffic and transport regulations to promote the deployment of automated driving.[294]

Furthermore, the view that the development of AI should be regulated is widely shared because of its significant impact on the everyday life of citizens. The implementation of soft law measures should encourage actors to respect the principles of transparency and fairness of algorithmic processing. Indeed, AI technologies must be explainable if they are to be socially acceptable, and this is why their development cannot be carried out without certain ethical considerations.

289 See www.aiforhumanity.fr/en accessed 6 July 2020.

290 See https://www.vie-publique.fr/sites/default/files/rapport/pdf/184000171.pdf accessed 25 March 2022.

291 See https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000723.pdf accessed 25 March 2022.

292 See https://www.entreprises.gouv.fr/files/files/en-pratique/etudes-et-statistiques/etudes/2019-02-intelligence-artificielle-etat-de-l-art-et-perspectives.pdf accessed 25 March 2022.

293 See footnote no 11.

294 See https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043729532 accessed 25 March 2022.

At a national level, various reports and studies encourage the development of an initiative among AI stakeholders for the establishment of general guidelines in this area. The CNIL has therefore issued a report following a public debate on the theme 'Algorithms in the Age of AI', which has identified two founding principles for AI at the service of humans. The two principles are:

- fairness applied to all sorts of algorithms, and ensuring that the users' interests prevail in any case; and
- continued attention and vigilance in response to the unpredictable nature (inherent in machine learning) and the excessive reliance on technological objects.

These principles begin to take shape through six policy recommendations intended for both public authorities and civil society (companies, citizens, etc):[295]

1. fostering education of all players involved in algorithmic systems (designers, professionals and citizens);
2. making algorithmic systems comprehensible by strengthening existing rights and by rethinking mediation with users;
3. improving algorithmic system design at the service of freedom to prevent the 'black box' effect;
4. creating a national platform in order to audit algorithms;
5. increasing incentives for research on ethical AI and launching a major participative national cause around general interest research projects; and
6. strengthening ethics in companies (eg, by creating ethics committees, by spreading good practices in each sector or by revising code of ethics).

As another illustration of this desire to favour soft law for the time being, Etalab (a government body responsible for coordinating the open data policy for public data) has published a guide for administrations and public organisations that design, develop and operate algorithmic processing.[296]

These guidelines set out four criteria that must be met for a decision based on an algorithm to be considered fair:

1. transparency;
2. intelligibility: the procedure must be described;

295 See www.cnil.fr/fr/comment-permettre-lhomme-de-garder-la-main-rapport-sur-les-enjeux-ethiques-des-algorithmes-et-de accessed 6 July 2020.

296 See https://guides.etalab.gouv.fr/accueil.html accessed 6 July 2020.

3. loyalty: the procedure described must actually be used completely and faithfully; and

4. equal treatment: no individual should be treated more favourably (or unfavourably).

At a regional level, the EU's approach to AI is based on excellence and trust and aims to boost industries while still ensuring fundamental rights.

In this perspective, the European Commission has undertaken to provide a framework for the development of AI across Europe to facilitate the development of a technology that is both efficient and respectful of European laws, principles and values. Therefore, the European Commission established a High-Level Expert Group that published guidelines on trustworthy AI in April 2019, in which seven key requirements were identified:[297]

- human agency and oversight;
- technical robustness and safety;
- privacy and data governance;
- transparency;
- diversity, non-discrimination and fairness;
- societal and environmental wellbeing; and
- accountability.

These guidelines also contain an assessment list for practical use by companies. The High-Level Expert Group revised its guidelines in light of this feedback and finalised this work in June 2020.

In February 2020, the European Commission launched the European Data Strategy, during which it published its White Paper on 'Artificial Intelligence – A European approach to excellence and trust'.[298] It states that a clear European regulatory framework would build trust in AI among consumers and business, and therefore speed up the acceptance of the technology. The European Commission concluded that, in addition to possible adjustments to existing legislation, new legislation specifically on AI may be needed in order to make EU legal framework fit for current and anticipated technological and commercial developments.

The European Commission expanded its vision by developing an AI strategy suggesting new rules and actions to make the EU the global hub for trustworthy

297 See https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419 accessed 6 July 2020.

298 See https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf accessed 6 July 2020.

AI. Such a strategy includes a 'Communication on Fostering a European Approach to Artificial Intelligence',[299] the updated 'Coordinated Plan with Member States'[300] and a proposal for an AI Regulation laying down harmonised rules, called 'Artificial Intelligence Act',[301] more details of which are given in question 5 below.

A genuine European AI ecosystem is thus taking shape, with the French strategy being in line from the outset with the strategy pursued on the scale of continental Europe.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

Although regulations are emerging which cover the general use of AI or machine learning systems, there are few regulations currently in force which apply to the use of AI. The French Data Protection Act[302] and the EU's General Data Protection Regulation (GDPR)[303] both apply to the use of AI in a general way to the extent that it processes personal data.

The French Data Protection Act formally controls algorithmic decisions by a principle of prohibition. It provides that no court decision or any decision of any kind producing legal effects in respect of a person or significantly affecting them may be taken on the basis of the automated processing of personal data intended to foresee or evaluate certain personal aspects relating to the data subject.[304] The GDPR also provides for the prohibition of automated individual decisions.[305]

However, there are some fairly broad exceptions to this principle in French law. The Digital Republic Act No 2016-1321 of 7 October 2016 authorised the administration to make decisions regarding a person on the basis of an algorithm on the condition that it includes an explicit mention of the interested party information.[306] In addition, the source code of the algorithms used by the administration has been included among the documents that any citizen has the right to request access to.[307]

299 See https://digital-strategy.ec.europa.eu/news-redirect/709089 accessed 25 March 2022.

300 See https://digital-strategy.ec.europa.eu/news-redirect/709091 accessed 25 March 2022.

301 See https://digital-strategy.ec.europa.eu/news-redirect/709090 accessed 25 March 2022.

302 Law No 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties (also known as 'French Data Protection Act') as updated further to the EU Regulation No. 2016/679, known as the General Data Protection Regulation (GDPR), with the enactment of Law No 2018-493 of 20 June 2018, on the protection of personal data, and the Order No 2018-1125 of 12 December 2018, adopted pursuant to Art 32 of Law No 2018-493. The French Data Protection Act has been further updated with the adoption of Decree No 2019-536.

303 EU Regulation No 2016/679, known as the General Data Protection Regulation (GDPR).

304 Art 120 of the Act No 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties.

305 Art 22 of the GDPR.

306 Art L 311-3-1 of the French *code des relations entre le public et l'administration*.

307 Art L 300-2 of the French *code des relations entre le public et l'administration*.

Another exception exists in the area of intelligence agencies. Act No 2015-912 of 24 July 2015 allows the services concerned to use an algorithm aimed at detecting low signals of a terrorist threat by the massive processing of connection data without the need for personal identification.[308]

More recently, the 2018-2022 Programming and Reform Law for Justice[309] broadened the availability of court decisions to the public in electronic form. This modification was specified by a decree of 29 June 2020.[310] To date, approximately 20,000 administrative decisions and 15,000 judicial decisions are published online each year. The objective of the open data of court decisions is to promote access to law and to reinforce the transparency of justice with the publication online by 2025 of 300,000 administrative decisions and three million judicial decisions each year.

Although there is no current French legislation specifically applicable to the general use of AI or machine learning systems, such regulation is currently being instilled by the EU, before being transposed into French law.

For instance, the Data Governance Act[311] and the Data Act[312] respectively adopted on 25 November 2020, and 23 February 2022, are meant to remove data-access barriers, such as trust in data sharing, or technical obstacles to data reuse, while preserving incentives to invest in data generation.

The EU also proposed its 'Artificial Intelligence Act'[313] on 21 April 2021. The first regional AI law, it allocates AI applications according to three risk categories:

- AI applications creating unacceptable risk are forbidden;
- high-risk AI applications are subject to particular legal requirements; and
- AI applications that are not considered to create an unacceptable or high risk are left unregulated for now.

The proposed AI Act is consistent with the EU's regulatory approach, such as its Industrial Strategy, as the new Act would introduce and implement the EU Strategy for Data, by enshrining the principle of free flow of data within the internal market for instance, introduced by Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the EU.[314]

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308 Art L 851-3 of the French *code de la sécurité intérieure*.

309 See https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038261631 accessed 28 March 2022.

310 See https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042055251?r=FSiRIBv4yG accessed 28 March 2022.

311 See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0767 accessed 25 March 2022.

312 See https://ec.europa.eu/newsroom/dae/redirection/document/83521 accessed 25 March 2022.

313 See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206 accessed 25 March 2022.

314 See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1807 accessed 25 March 2022.

6. Is free data access an issue in relation with AI?

Having a maximum amount of data is essential to train AI tools. However, what some would call a 'data war' is currently taking place and slowing down the development and implementation of AI tools in the French legal landscape.

A typical example of this data war is the *ROSS* case, an AI software launched by IBM in 2017 and capable of researching case law faster than an associate lawyer.

The so-called 'world's first artificial intelligent lawyer' was designed to understand legal language, provide answers to legal issues and formulate hypothesis. However, ROSS Intelligence was forced to shut down its operations as a lawsuit was filed by Thomson Reuters in May 2020, claimed theft of proprietary data, crippling the ROSS company's ability to attract new investors and leaving it without sufficient funds to run its operations. ROSS founders announced that its services would end by 31 January 2021.[315]

In France, this data war is still raging, as the innovative legal search engine Doctrine.fr, which specialised in the aggregation of court decisions for legal practitioners, is facing an important lawsuit, being accused of having used unfair methods to obtain a very extensive database of case law.

The French National Bar (CNB) and the Paris Bar Association have filed a complaint against the startup, claiming that lawyers' personal data was manipulated without their knowledge. A complaint was also filed before the French Data Protection Authority (CNIL) regarding the misuse of legal practitioners' personal information.

Finally, the emergence of AI tools is also subject to the development of startups. However, the Covid-19 pandemic has dealt a negative blow to their expansion. As an illustration, the French Government registered 103 new startups in 2019 against 18 in 2020.

In the specific area of law, the development of AI is limited by the lack of openly usable data. The reason why AI could have a massive impact for lawyers is that unlike AI, no human can read millions of pages per second. No human can accumulate a memory equivalent to that of an AI. But the AI must have something to read or analyse, and this is not a condition that can be easily met in France.

The first explanation is due to the French legal tradition concerning how court decisions are made. In fact, unlike their Anglo-Saxon counterparts and their dissenting opinions, French judges do not reflect in their decisions the debates and positions taken by each of the judges. The decisions of French judges, particularly those of the French Court of Cassation and the Conseil d'Etat, are consequently shorter and sometimes only implicitly indicate the real motivations behind the decision.

315 See https://blog.rossintelligence.com/post/announcement accessed 25 March 2022.

However, that limit may well be lifted in the future. The new methods of editing the decisions of the Constitutional Court, the Conseil d'Etat and, more recently, the French Court of Cassation now include an enriched motivation for the most important decisions (eg, reversal of jurisprudence), which includes the precedents, so the decision is placed in a common pattern. According to some authors, this could well allow algorithms to improve how they read and analyse these decisions. Finally, French legal publishers who have the *doctrine* (the data that links court decisions together and allows them to be understood) do not yet include machine learning in their work. But they are working on it and will soon be able to provide additional data to the AI.

The second explanation for the lack of openly usable data is related to material limitations. First, the data must be available in a format that is usable for AI. However, many court decisions are not delivered in a format that the AI can read (paper format, poor quality scan, etc). Second, the conciliation of open data of court decisions with privacy requires these decisions to be anonymised. However, the justice system does not have sufficient human and technical means to anonymise thousands of court decisions.

It seems that although free access to data is a prerequisite for AI to emerge and develop steadily, French and EU regulatory bodies have understood such correlation by passing regulations in order to remove data-access barriers, as explained above in question 5.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the best of the authors' knowledge, no decision has been made to date regarding the use of AI.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

No regulations specific to the use of AI in services rendered by lawyers appear to be in place at this time. The discussion is at a more global level.

However, questions are being raised about the possibility of in future seeing robots handing down court decisions. This particularly concerns alternative dispute resolution methods that have recently been deployed in electronic form because – once online – the resolution method could be based on self-learning algorithms that could gradually result in a form of artificial justice.

In this regard, the French Government launched an experiment in the justice field, by issuing a decree, allowing the Minister of Justice to implement, for a two-year period, the creation of an automated processing of personal data for the purpose of developing an algorithm, called DataJust.

DataJust was created to allow the retrospective and prospective evaluation of public policies in matters of civil and administrative liability, the elaboration of an indicative reference system for personal injury compensation, the information of the parties and the assistance in the evaluation of the amount of compensation to which the victims may be entitled in order to encourage an amicable settlement of disputes, as well as the information or documentation of judges called upon to rule on personal injury compensation claims.

However, this experimentation was badly perceived by French legal professionals, who highlighted the algorithm's limits of the Ministry of Justice, which was considered to be biased because it was incomplete, due to the absence of first instance decisions for example.

The project was sued in court by lawyers and associations defending the rights of people with disabilities. According to lawyer Hervé Gerbi, the algorithm of DataJust will be 'the implementation of a scale that will standardise the decisions of judges' and 'penalise the victims', before adding 'a cut finger is in general two per cent of incapacity. But for a professional pianist, his whole career is at stake. The algorithm of DataJust will deny this particularity. By wanting to make justice equal, it will make it unfair. This algorithm will penalise victims and standardise their compensation'.[316]

Due to its complexity, DataJust was abandoned last January, two months before its end. But although this first official experimentation in France regarding the application of AI into the legal sector was not considered satisfactory, it is important to note that AI technology, while growing, is still in its infancy stage. But above all, DataJust shows the current state of the majority opinion of legal and justice professionals regarding the implementation of AI in their practices.

Finally, the first European Ethical Charter on the use of AI in judicial systems and their environment was adopted by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe.[317] Providing a framework to guide legal and justice professionals, this text is the very first setting forth ethical principles relating to the use of AI in judicial systems such as:

- 'Principle of respect of fundamental rights: ensuring that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;

316 See https://www.leparisien.fr/faits-divers/un-avocat-attaque-datajust-le-logiciel-qui-va-transformer-les-juges-en-robot-21-05-2020-8321205.php Interview of M. Hervé GERBI, accessed 25 March 2022.

317 See https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c accessed 25 March 2022.

- Principle of non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;

- Principle of quality and security: with regard to the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment;

- Principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorising external audits;

- Principle "under user control": precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices'[318].

The CEPEJ Charter also includes an in-depth 40-page study on the use of AI in judicial systems, especially regarding AI applications processing judicial decisions and data.

9. What is the role of the national bar organisations or other official professional institutions?

The French National Bar (CNB) plays a role at several levels in the understanding of AI by legal actors.

The CNB primarily contributes to the debate by organising conferences on the subject of AI and formulating proposals.

Above all, it plays an advocacy role for the legal profession regarding the risks of AI use. In particular, the CNB has adopted a position on open data for court decisions: in November 2018, the general assembly of the CNB formulated some proposals aimed at ensuring equal access to court decisions between lawyers and magistrates, but also equal access for lawyers to court decisions in order to prevent unfair competition between large and small law firms.

Moreover, the Premier President of the Court of Cassation and the President of the CNB signed a joint declaration on 25 March 2018.[319] It contains the following proposals to:

- give the Court of Cassation the responsibility of collecting and circulating the decisions of the judiciary and making available to the public a single database of judicial decisions of the judiciary;

- involve the Court of Cassation, the first-degree and appeals jurisdictions, and the CNB in the regulation and control of the use of the database of court decisions; and

318 *Ibid*, page 8

319 Revue pratique de la prospective et de l'innovation n°2, October 2019, p 10.

- create a public entity in charge of the regulation and control of the algorithms used for the processing of the database of court decisions and the reuse of the information contained therein.

In 2019, the Court of Cassation, in collaboration with the Ministry of Justice, hosted two data scientists whose mission was to identify data to be pseudonymised in court decisions before making them publicly available. Today, the project is being continued within the Court of Cassation. It has demonstrated the effectiveness of machine learning on pseudonymisation and opens the way for other data science projects (eg, the search for discrepancies in jurisprudence). The Court of Cassation appears to be now at the forefront at EU level of the automated pseudonymisation of court decisions.[320]

Moreover, the CNB is part of the Council of Bars and Law Societies of Europe (CCBE), an EU association gathering bar associations of 32 European countries, which published its considerations on the legal aspects of AI in 2020.[321] Recently, the CCBE also published a position paper on the AI Act[322], in which legal professionals advocated for specific provisions on the use of AI in the particular field of justice and pled that 'the proposal should require that not only the final decision itself but also the entire decision-making process should remain a human-driven activity'.[323]

320 See https://fichiers.eig-forever.org/posters/eig3/openjustice.pdf accessed 6 July 2020.

321 See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommendations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf accessed 25 March 2022.

322 See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20211008_CCBE-position-paper-on-the-AIA.pdf accessed 25 March 2022.

323 *Ibid*, p 7.

Germany

Martin Schirmbacher, Härting Rechtsanwälte, Berlin

1. What is the understanding or definition of AI in your jurisdiction?

The term artificial intelligence (AI) (*Künstliche Intelligenz* or KI) is used to refer to software that is able to detect and solve complex problems. In contrast to 'non-intelligent systems', an AI can open up solutions for itself and develop solutions that do not have to be taught in advance. It is able to learn by itself through a large amount of data (reasoning and machine learning).

Sometimes a distinction is made between 'weak' and 'strong' AI. Strong AI assumes that AI systems have the same or even greater intellectual abilities than humans. Weak AI concentrates on the solution of concrete application problems based on scientific methods. This is referred to as 'intelligent' systems that are capable of self-optimisation.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

There are many possible applications of AI to provide legal services. In addition to tools for the administration of law firms, AI supports, in particular, activities such as the processing and evaluation of legal documents, judgments and contracts, and the platform-based verification of claims.

Some companies in Germany are currently working on software that will automatically analyse judgments. The software is intended to make statements for the future based on judgments already made. How could a court decide? What could the reasoning be based on? Does judge 'A' possibly have special features in his/her decisions or does judge 'B' always decide in a particularly strict or lenient manner? It could also be used to examine when a decision is particularly often or particularly rarely overturned by a higher court. One of these tools, 'law stats', independently evaluates revisions using quantitative risk analysis. It is therefore less a legal service than machine learning from statistical data. However, it improves lawyers' work by setting them free from repetitive work.

Another example of an AI tool was developed by the Berlin startup 'Leverton'. The tool from Leverton is used for fully automated contract analysis. Its automated abstraction process eliminates error-prone, manual data entry while also helping to identify and eliminate data discrepancies. The software extracts key data from the document and links each extracted data point to the source information. This simplifies the work of lawyers considerably. For example, a 100-page

rental agreement can be checked in seconds, and data can be extracted, such as termination modalities of the rental parties. The startup offers solutions for compliance, invoice reconciliation, lease abstraction, legal AI for due diligence, regulatory compliance and tax compliance. According to its own statements, Leverton's software is used by companies such as Deutsche Bank and EnBW, among others.

3. If yes, are these AI tools different regarding • independent law firms; • international law firms; and • in-house counsel; and what are these differences?

Most law firms currently use software to manage their cases or to search online databases. Most common are the online database 'Juris', which mainly contains judgments, and 'BeckOnline', which offers access to legal literature on a large scale and also includes publicised judgments. However, these databases or software cannot be considered AI. In any case, these databases are commonly used by in-house counsel as well as law firms – regardless of size. The same is to be expected for AI applications.

In the future, the use of AI will be useful for independent law firms, international law firms and in-house counsel. With AI, legal work can be done faster and easier; time-consuming research or analysis of judgments is no longer necessary. For this reason, the use of AI makes sense for both smaller and larger law firms. International law firms can save costs because they need fewer employees or can use their staff differently. Smaller law firms can take on larger projects with the help of AI.

There are therefore few differences in the use of AI tools between international law firms, independent law firms and in-house counsels.

4. What is the current or planned regulatory approach on AI in general?

Lawyers

Legal services are strictly regulated in Germany. Software that not only collects statistical data but also provides legal services itself must therefore comply with specific legal conditions. In principle, the German law for legal services (Rechtsdienstleistungsgesetz or RDG) does not allow the fully automated provision of legal services; however, to provide legal services, using AI is possible.

According to current case law, debt collection companies can also use software solutions to check legal issues, as long as they are related to the claim (for more information, see question 7).

Using AI just to assist lawyers is in accordance with German law, as long as the legal service is provided by the lawyer him/herself. However, lawyers can save themselves research work, which can slow down their professional activity.

For a legally secure use, it is always important that the legal service is still provided by the lawyer him/herself and that the AI only acts as an 'assistant' to the lawyer and not as the lawyer him/herself.

Courts

It is clear that, according to the German constitution, a judge may not be replaced by AI. However, it is already less clear whether the judge should be allowed to use AI in his/her decision-making. The use of AI seems conceivable, especially in lower courts with less complex facts and legal issues. However, this is only a theoretical problem and only discussed in the literature as there is still a lack of functional software

General

In November 2018, the Federal Government of Germany launched its AI strategy. The strategy presents the progress made in terms of AI in Germany, the goals to achieve in the future and a concrete plan of policy actions to realise them. The range of policy initiatives outlined in the strategy aims to achieve the following goals:

- increasing and consolidating Germany's future competitiveness by making Germany and Europe a leading centre in AI;
- guaranteeing the responsible development and deployment of AI that serves the good of society; and
- integrating AI in society in ethical, legal, cultural and institutional terms in the context of a broad societal dialogue and active political measures.

For the implementation of the strategy, the Federal Government of Germany intends to provide around €3bn for the period 2019–2025.

Starting with the AI strategy, the Federal Government of Germany launched initiatives to tackle specific issues with AI, for example, information management, data ownership, free flow of data and standardisation.

Reforms of the legislation target many domains, including codifying the rights of the labour force, consolidating competitiveness of the industry and developing rules with respect to data usage and protection. Among the initiatives are:

- the launch of a Commission on Competition Law 4.0, serving as a political platform for a debate on how to further develop competition and copyright law;
- the launch of the Opportunities for Qualifications Act, a legislation providing reskilling opportunities and support to employees whose jobs are at risk due to AI technologies;
- the adoption of the Skilled Labour Immigration Act, legislation to facilitate the migration of skilled workers to Germany;
- the formation of a Workforce Data Protection Act to codify data protection regulation and privacy (ie, safeguard the control on personal data), compliant with EU law, especially the General Data Protection Regulation (GDPR);
- review and, if necessary, adaptation of the legislation concerning the use of non-personal data as well as copyright; and
- implementation of the Cybersecurity Directive: this Directive, properly known as the Directive on security of network and information systems (NIS), requires Member States to adopt a national cybersecurity strategy.

The Federal Government of Germany advocates using an 'ethics by, in and for design' approach throughout all the development stages and use of AI-based applications. It highly recommends engaging in dialogue with other leading regions to reach an agreement on joint guidelines and ethical standards on AI. Hence, the strategy foresees work on a legal and ethical framework aligned with European guidelines and taking into account the recommendations of the national Data Ethics Commission:

- guidelines for developing and using AI systems in compliance with data protection rules;
- ethical requirements to ensure transparency, verifiability and predictability of AI systems (eg, ethical guidelines for self-driving cars); and
- initiative to enforce a better coordination of ethical values at European level.

Besides ethical guidelines and legislative reforms, standards form an essential aspect of an adequate and effective regulatory framework. Standards shall act as a seal of excellence in ensuring high-quality products and services. With respect to standardisation, the Federal Government of Germany proposes following support initiatives:

- funding for the development of data standards and formats to encourage European Union-wide collaborations;
- funding for experts, particularly from small and medium-sized enterprises (SMEs) and startups in order to support their participation in international standardisation processes; and
- develop a roadmap on AI standardisation to review existing standards regarding whether they are AI-compatible.

None of this has yet led to legislation.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

Currently, AI is not yet explicitly regulated in many areas of law. There are special regulations on the liability of AI in road traffic law. In 2017, the legislator amended the Road Traffic Act to explicitly allow autonomous driving. The owner of the vehicle, as well as the driver of the vehicle, are both liable if the AI causes damage.

In other fields of law, in the absence of special statutory regulations, only the general statutory regulations developed for human liability apply. That means that general statutory regulations on contracts and torts apply to liabilities arising from losses, with all their features and differences, in terms of liability allocation, burden of proof and statutes of limitations, arising therefrom.

The question of whether the producer of software can also be held liable for the misconduct of an AI remains unresolved. In Germany, a distinction is made between contractual and tortious liability. In the contractual area, the manufacturer can largely avoid liability risks. As a result, a company using AI often has to bear the cost of damages itself and has no recourse to liability. In tort law, liability is hardly more favourable for companies that want to use AI. The manufacturer is only liable if it has violated its duty of safety on the road or knew that it was selling defective software.

Since the use of AI usually requires a large amount of data, data protection is also often an important area to be regulated. In Europe, the GDPR exists for this purpose, which does not contain any specific regulations on the use of AI, but compliance with it is nevertheless an important prerequisite.

The Data Protection Supervisory Authorities of the German Federal and State Governments (the 'DPA') specified the data protection requirements for AI. In particular, their restrictive interpretation of the principals of purpose restriction and data minimisation will pose significant challenges for companies. The adopted Hambach Declaration on Artificial Intelligence (Hambacher Erklärung zur Künstlichen Intelligenz) stipulates seven data protection requirements, which must already be complied with today based on current data protection laws:

1. AI must not turn human beings into objects;

2. AI may only be used for constitutionally legitimate purposes and may not abrogate the requirement of purpose limitation;

3. AI must be transparent, comprehensible and explainable;

4. AI must avoid discrimination;

5. the principle of data minimisation applies to AI; and

6. AI needs responsibility.

The DPA concludes with arguing that AI development requires regulation.

6. Is free data access an issue in relation with AI?

The strict requirements of the European GDPR must be taken into account when processing personal data. This is especially true when the trend is towards 'legal outsourcing' and data processing does not remain with the processor.

Furthermore, free data access is essential for AI. An AI is superior to humans in that it can read and understand thousands of documents full of judgments or legal literature in a second. It can thus recognise and analyse key points of important judgments better and faster than any human. But this only works if the AI can train with a lot of data beforehand (machine learning).

With respect to legal information, in Germany, court decisions are not always made publicly available on the internet. Although there are always rulings of the highest courts (Federal Constitutional Court and Federal Supreme Court) that are accessible on the internet, there is rarely free access to rulings of lower courts. All in all, Germany lacks a freely accessible database containing all judgments. Although there are fee-based databases, such as 'Juris', these are limited. For an AI to work most efficiently, it would need access to a central database containing all judgments and all legal literature.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

The German courts have, in some cases, dealt with the use of legal tech and AI. Predominantly, the question was raised regarding whether legal services may be provided by automated software at all.

In Germany, the provision of legal services is regulated by the RDG. This law stipulates that legal services may only be provided by lawyers. Collection agencies are also regulated by the RDG. However, they are generally only allowed to collect receivables for their customers but not provide legal advice.

The German Federal Supreme Court recently dealt with the case of wenigermiete.de ('lessrent.de' in English). Wenigermiete.de is a website that enables tenants of apartments to calculate whether the rent they pay is reasonable or higher than the German law allows (statutory rent cap/rental price brake).

The advantage for the tenant is that it can calculate directly on the website whether it pays too much, and if so, by how much. In addition, the tenant only has to pay wenigermiete.de a success commission, so no risks arise for the tenant.

The company that operates the website wenigermiete.de, however, is not a law firm but only a collection agency.

The German Federal Supreme Court ruled on the question of whether the provision of such services by legal tech companies constitutes an illegal legal service, that is, whether the activity is so advisory that it should have been performed by a lawyer rather than by a software plus collection agency. The court decided that, even in the provision of mere collection services, a comprehensive and full consideration of the legal situation is possible as long as it is necessary for the collection agency to enforce the claim. According to the Federal Supreme Court, the purpose of the RDG is to promote and permit the use of new forms and technologies. An automated provision of legal services is also covered by this, as long as it remains within the scope of the RDG.

The judgment opens up many new possibilities for the use of AI for legal services. In particular, it allows enforcement in cases where consumers want to assert a right but are not prepared to bear the costs and risks. A contingency fee cannot be agreed upon in Germany with a lawyer; however, it is possible with a collection agency (legal tech companies like Wenigermiete.de).

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

As already explained in question 7, the Federal Court of Justice decided that the RDG should also aim to use new technologies for the provision of legal services. This would enable, for example, debt collection companies to provide legal services with the help of an AI that had previously only been provided by lawyers.

However, the core area of legal services is still left to lawyers. It is therefore always necessary that legal services, which include legal representation in court and so on, are provided by lawyers.

The ruling of the Federal Court of Justice, however, opens up the possibility of providing simpler legal services not by lawyers but by other companies, such as debt collection agencies.

9. What is the role of the national bar organisations or other official professional institutions?

The bar association will have the primary task of critically monitoring progress. The main purpose is to protect the high quality and reliability of legal services. In addition, the bar association will also try to protect the legal profession in the best possible way and not allow competition from unqualified or defective AI.

For example, the bar association has already taken legal action against providers who wanted to offer 'legal documents in lawyers' quality' through 'SmartLaw software'. This service using 'SmartLaw software' was prohibited by the court. The provider advertised that the software could generate adapted contracts for little money, which were of the same quality as a contract prepared by a lawyer. However, this generator did not achieve the high quality of legal advice.

This demonstrates the main task of the bar association with regard to AI will be to review new developments and ensure the high quality of human legal advice.

Ghana

Lom Nuku Ahlijah, Integri Solicitors & Advocates, Accra – Ghana

1. What is the understanding or definition of AI in your jurisdiction?

Artificial Intelligence (AI) is still an evolving subject in Africa in general and in our jurisdiction in particular, and as such no statutory definition has been provided to describe activities that ought to fall within the scope of artificial intelligence. Generally, however, AI involves the use of computer systems to equip machines with human-like qualities such as visual perception, the ability to reason and speech recognition, among others, for the performance of tasks that would usually require human intelligence. The United Nations Educational, Scientific and Cultural Organisation's (Unesco) survey[324] on artificial intelligence needs in Africa defines AI as the combination of technologies that enable machines capable of imitating certain functionalities of human intelligence, including such features as perception, learning, reasoning, problem solving, language interaction, and even producing creative work.

The researchers surveyed several jurisdictions in Africa including Ghana and the findings indicate that there is little to no policy, legislative or regulatory position in any of the countries surveyed.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms etc), are there already actual AI tools or use cases in practice for legal services? If yes, are these AI tools different regarding: (1) independent law firms; (2) international law firms; and (3) in-house counsel; and what are these differences?

Most law firms in Ghana are independent law firms. Only a handful can be characterised as international law firms. There are also firms with international affiliations. There are no known AI tools that are in use in the legal services sector.

A few of the big law firms in Ghana make use of law firm management software systems that help with the management of case files, managing client details, billing and other accounting functions, among others. The use of such tools is, however, not widespread as most law firms still use manual systems to perform the aforementioned functions. In-house counsel in most legal departments of companies will typically not have access to any systems purposely for their legal work except where the specific company employs AI tools in the company's operations.

324 Unesco, *Artificial Intelligence Needs Assessment Survey in Africa* (2021).

3. What is the current or planned regulatory approach on AI in general?

There is no known legal or regulatory framework around AI in Ghana. However, there are some regulations that cover aspects of the scope of AI. In the banking sector, for instance, there is the use of AI tools in electronic money transactions. The regulatory framework governing such use is mainly for the particular industry, and not AI as a developing concern for the jurisdiction. However, there is no regulatory framework governing the use of AI in these sectors.

4. Which are the current or planned regulations on the general use of AI or machine learning systems?

There is no regulatory regime on the general use of AI in the jurisdiction. However, considering the pervasive nature of AI in almost every industry, there is bound to be the need to make rules and regulations governing the use of AI in the very near future to forestall situations where there is damage but no known remedy provided for such damages.

In the Unesco report, the government of Ghana indicated its clear interest in developing policy and regulatory framework for AI in Ghana. This is particularly important in Ghanai given that in 2019 Google established its first AI office in Africa there. However, to date no concrete steps have been taken by the government or the legislature to regulate the AI space.

Data protection and privacy

AI technology largely thrives on and requires a lot of data. In Ghana, there is a constitutional right to the protection of a person's privacy.[325] A person's data cannot therefore be taken and used for any purpose without that person's consent. In this regard, the Ghanaian courts are inclined to protect a person's privacy and punish the use of data without express consent.[326] The development of AI technology will therefore thrive when there is a way to gather and use data without infringing on the right to people's privacy in Ghana.

Intellectual property law

The Copyright Act 2005 of Ghana (Act 690),[327] which is the main legislation that governs intellectual property in Ghana, recognises and protects computer

325 Constitution of Ghana 1992, Art 18(1).

326 *Raphael Cubagee v Michael Yeboah Asare, K Gyasi Company Ltd, Assembly of God Church* (2018) JELR 68856 (SC).

327 Copyright Act 2005 (Act 690).

programs and software.[328] Computer programs and software are usually developed to work on the basis of AI technology. At the same time, the Act punishes any attempt to circumvent a technological protection measure applied by a holder of intellectual property right. Even though there are no express AI terms used in this piece of legislation, it makes way for AI to thrive while protecting its users thereof.

5. Is free data access an issue in relation with AI?

Companies that make use of AI tools will typically build a database of their client's personal details to aid with the personalisation of the service rendered to the client. The provisions contained in the Data Protection Act 2012 place some obligations on companies and people regarding the use of personal information gathered from clients. For instance, Section 18 of the Data Protection Act 2012 ('Act 843') provides: 'A person who processes personal data shall ensure that the personal data is processed, without infringing the privacy rights of the data subject in a lawful manner and in reasonable manner.'[329]

In addition, Section 20 of Act 843 requires that, save for certain stated exceptions, the consent of every data subject is obtained before the processing of any personal data in respect of the data subject. The Act further provides that the data subject is allowed to object to the use of their personal data and where a data subject objects to the processing of personal data, the person who processes the personal data shall stop the processing of the personal data.[330]

What this means is that firms must comply with the provisions of the Data Protection Act in their gathering and use of clients' personal data in AI systems.

As stated, the effective development and use of AI systems in all aspects of the economy will depend on access to accurate personal data. The lack of access to accurate personal data of most of the Ghanaian population is one factor that is likely to negatively affect AI development and use. This is because the Ghanaian government does not have a working database that accurately captures personal biodata of the population. This deficiency is already impeding the efforts of the police and other security services in solving crimes.

However, in 2019, with the introduction of the National Identification Card,[331] popularly known as the Ghana card, the government commenced efforts to build a database to capture biodata. When registering for the card people give biometric, residential, educational and employment data, among others. Measures were put in place to ensure that most Ghanaians are registered on this database. All Ghanaians

328 *Ibid*, s 1.

329 Data Protection Act 2012 (Act 843) s 18.

330 *Ibid*, s 20(2) and (3).

331 National Identification Authority Act 2006 (Act 707) s 1 and 2; National Identity Register Act 2008 (Act 750) s 3.

and non-Ghanaians who are at least 15 are required to register to be issued with a Ghana card. The card will eventually be required for use in all transactions.

The database built from the Ghana card registration can effectively be tapped into for use in AI systems. There is still a need, however, for the development of a legislative regime to regulate the use of information gathered from this and other databases in the use of AI systems.

6. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

There are no court decisions on the provision of legal services using AI, nor are there known decisions concerning other sectors that are directly applicable to the use of AI in the provision of legal services. The AI regime is not fully developed in Ghana and there is scant writing if any on the use of AI. Ghana is still very rooted in manual operations in the provision of legal services. It is mostly presumed that the profession is steeped in and preserved in antiquity. AI therefore has made few in-roads in the provision of the legal services.

A recent case in front of the Ghanaian Supreme Court, *Raphael Cubagee v Michael Yeboah Asare, K Gyasi Company Ltd, Assembly Of God Church*,[332] gives an indication of the position the court is likely to take if it is called upon to pronounce on the use of AI systems in the provision of legal services. The decision in the *Cubagee* case primarily reinforced an individual's constitutionally guaranteed right to privacy. The principle espoused in that case was essentially to discourage the use of a person's personal information or data of any form without first obtaining the person's consent. Consequently, any attempt to use personal information in AI systems for the provision of legal services will require the requisite consent to be obtained.

7. What is the current status – planned, discussed or implemented - of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

The legal profession in Ghana is regulated by the Legal Profession Act 1960 (Act 32) as well as the Legal Profession (Professional Conduct and Etiquette) Rules 2020. Act 32, which was passed in 1960, contains no provisions on the use of AI. Even though the Legal Profession Rules contain no provisions on the use of AI systems in the conduct of the legal profession, they contain provisions that reiterate the lawyer's duty of confidentiality to the client. Thus, notwithstanding the absence of express provisions on the use of AI systems in the legislation

332 See n 3 above.

governing the legal profession, practitioners ought to be guided by the duty of confidentiality in the use of clients' data in AI systems.

8. What is the role of the national bar organisations or other official professional institutions?

The Ghana Bar Association has made no input in the development and use of AI systems in the practice of the legal profession. It is, however, envisaged that the association will willingly join the discourse when discussions for the development of AI legislation commence.

The UN Global Pulse, the Ministry of Communications for Ghana and the Data Protection Agency, with support from Germany, hosted a session and a subsequent workshop on developing an ethical AI framework in African economies during the 1st African Region Data Protection and Privacy International Conference. There was a general consensus that there is a need to develop and implement an ethical and regulatory framework. The Ministry declared a need for laws as well as a policy to unlock the value of data to maximise the use of AI while limiting possible dangers.

Hong Kong (Special Administrative Region)

Hin Han Shum, Squire Patton Boggs, Hong Kong

1. What is the understanding or definition of AI in your jurisdiction?

The Hong Kong Special Administrative Region ('Hong Kong') enjoys a special one-country, two-systems arrangement with the People's Republic of China. Hong Kong is a common law jurisdiction, where the law is formed not only by statute but also case law. The rule of law serves as a keystone to this legal system. There is a robust and independent judiciary, and cases from other common law jurisdictions are considered persuasive, though not binding. Former foreign judges of the judiciary in common law jurisdictions outside of Hong Kong are also invited to sit at the Court of Final Appeal.

There is no statutory definition of artificial intelligence (AI) under Hong Kong laws. Despite not having an official statutory definition or specific legislation in relation to AI, there is a generally accepted understanding that AI means emerging technological programs/robots that use, inter alia, algorithms, Big Data learning and machine learning to perform tasks traditionally performed by humans. Types of AI tools include natural language processing, programmed data collection and data analytics, and chatbots.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Hong Kong legal practice, it is common to use external service providers, such as companies that have adopted natural language processing and machine learning programs, to conduct translation work, and or companies that provide electronic discovery and due diligence services, to complete these tasks more efficiently.

Many law firms also have contract template generating programs and document management systems that allow for the categorisation of documents, which assist with data segregation requirements under certain regulations. Some law firms use chatbots to facilitate initial instruction and provide preliminary answers as to black letter law. The Law Society of Hong Kong has also been exploring the use of chatbots for its enquiry handling operations.[333]

As a result of the general adjournment period of the courts due to Covid-19, in the Guidance Note for Remote Hearings for Civil Business in the High Court published

333 See http://hk-lawyer.org/content/chatbots accessed 6 July 2020.

by the Hong Kong Judiciary on 2 April 2020,[334] and on 8 June 2020,[335] the court has also endorsed alternative ways, other than physical court appearance, to continue court proceedings. The guidelines apply on a 'technology neutral basis' to the possible use of various types of electronic means in phases, and it may be possible for further and more enhanced technological tools, such as AI, to be used in the future.

On 1 October 2021, the Court Proceedings (Electronic Technology) Ordinance (Cap 638) came into force. It provides a legislative framework to enable court-related documents to be processed in electronic form. The judiciary has been developing an integrated court case management system across all levels of court by phases for handling various court processes, such as the filing and service of documents and payments through electronic means. Pilot projects for the system have taken place over the past year for mock district court civil proceedings for personal injuries actions, tax claims and civil actions, and will be organised for summons courts of the magistrates courts.

The Judiciary Administration aims to introduce a bill relating to remote hearings for criminal cases in late 2022.

An online dispute resolution platform, electronic Business Related Arbitration & Mediation system (eBRAM),[336] which makes use of AI tools, has been established and is due to be open for use by lawyers or parties in person for certain cases. [337]

The Hong Kong International Arbitration Centre, a leading dispute resolution organisation situated in Hong Kong, enables arbitration, mediation, adjudication and domain name dispute resolution, in addition to offering users integrated virtual hearing services.[338]

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

Rolling out AI tools is quite costly. Not only are there the expenses of engaging subcontractors to prepare the programs or preparing them in-house, time and resources also have to be devoted to monitoring, maintaining and troubleshooting the systems. Training personnel is also necessary to ensure the AI tools are used properly.

That is why it is more common for international law firms in Hong Kong to have more advanced or a greater variety of AI tools (eg, chatbot frequently asked questions

334 See www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase1_20200402.pdf accessed 6 July 2020.

335 See https://www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase2_20200608.pdf accessed 16 September 2020.

336 See http://ebram.org accessed 6 July 2020.

337 See Question 9 for further details.

338 See www.hkiac.org/content/virtual-hearings accessed 6 July 2020.

(FAQs), contract template generating tools, e-discovery, e-due diligence and document management platforms) compared with independent/local law firms.

In-house counsel may have even fewer resources than law firms as they serve more of a back-office function and may have less budget to spend. However, they have the option of engaging external counsel to assist with their work, and can make use of independent/local law firms and international law firms depending on the task, and thereby can benefit from the AI tools that those firms use.

4. What is the current or planned regulatory approach on AI in general?

There is no current Hong Kong legislation which specifically focuses on AI. Many of the Ordinances in existence are also technology neutral (eg, the Personal Data (Privacy) Ordinance (Cap 486) (the 'PDPO')).

However, there have been several guidelines issued by regulators whose organisations are applicable to AI. For example, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Privacy Commissioner of the Personal Data (PCPD) have all issued guidelines that relate to AI or the internet of things. Regulators can consider whether the circumstances relating to a breach of guidelines would show evidence of a breach of relevant ordinances.

The PCPD has been advocating the adoption of data ethics to balance out the data economy and technological developments with the need to protect personal data. The 2018 *Ethical Accountability Framework for Hong Kong, China* ('Ethical Accountability Framework') report, prepared for the Office of the PCPD, also discusses AI tools and how AI is changing the scene for data processing activities. In the report, the PCPD noted that the regulatory regime may not adequately address data protection risks arising from advanced data processing activities, which is why it considered the concept of data ethics as the way forward.

In August 2021, the PCPD published its *Guidance on the Ethical Development and Use of Artificial Intelligence* report, which further expands on some of the concepts discussed in the Ethical Accountability Framework report.[339]

The General Data Protection Regulation (GDPR) has extraterritorial jurisdiction, and is applicable for Hong Kong businesses under certain circumstances. Where it applies, the provisions relating to, inter alia, 'automated processing' and so on apply in Hong Kong and should be complied with if Hong Kong companies or firms utilise such technologies and/or AI tools.

The Personal Information Protection Law (PIPL) was enacted by the People's Republic of China on 1 November 2021 and has extra-territorial effect. Hong Kong entities which handle the personal information of natural persons

339 See https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_ethical_e.pdf accessed 31 March 2022.

within mainland China may be bound by the PIPL. The PIPL has provisions on automated decision-making and requires transparency, fairness and no unreasonable price discrimination against individuals when data processes use automated decision-making processes.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

The PCPD co-sponsored the Declaration on Ethics and Data Protection, which was passed in October 2018 at the 40th International Conference on Data Protection and Privacy Commissioners held in Brussels. The declaration provided for six guiding principles to preserve human rights in the development of AI. The principles are as follows:

1. fairness;
2. continued attention and vigilance;
3. transparency and intelligibility;
4. ethics by design;
5. empowerment of every individual; and
6. reducing and mitigating biases or discrimination.[340]

In October 2020, the newly named Global Privacy Assembly adopted the Resolution on Accountability in the Development and Use of AI. It recommends the adoption of 12 accountability measures for organisations which develop and use AI, to facilitate trust building with stakeholders.[341]

The PCPD was also involved in preparing 'Data Stewardship Accountability, Data Impact Assessments and Oversight Models – Detailed Support for an Ethical Accountability Framework' guidance. Organisations can consider the guidance on how to act ethically and apply equitable principles 'particularly in advanced data processing activities, such as AI and machine learning, and the application of knowledge to enable data-driver innovation to reach its full potential'.[342] Organisations are to understand and evaluate how their activities affect the parties positively or negatively, act as data stewards rather than data custodians, and consider whether the outcomes of their AI and machine learning processing activities are legal, fair and just. Although this guidance is not a regulation or requires mandatory compliance, the document serves as a framework for law

340 See http://globalprivacyassembly.org/wp-content/uploads/2018/10/20180922_ICDPPC-40th_AI-Declaration_ADOPTED.pdf accessed 31 March 2022.

341 See https://globalprivacyassembly.org/wp-content/uploads/2020/10/FINAL-GPA-Resolution-on-Accountability-in-the-Development-and-Use-of-AI-EN-1.pdf accessed 31 March 2022.

342 See www.pcpd.org.hk/misc/files/Ethical_Accountability_Framework_Detailed_Support.pdf accessed 6 July 2020.

firms and other businesses to consider how their data is collected and utilised in light of the technology they may use. The approach taken by the PCPD here is to promote awareness of the concept of data stewardship and accountability where AI and machine learning is used, and to promote organisational policies and change of culture and conduct to achieve this. In the 2021 Guidance on the Ethical Development and Use of Artificial Intelligence, the PCPD also provided a self-assessment checklist to facilitate organisations to determinate whether the practices recommended in that Guidance have been adopted in the organisation's development and use of AI.

6. Is free data access an issue in relation with AI?

For AI tools to run smoothly, it is important to have a large and/or accurate set of data inputted so that machine learning can be conducted properly. Data bias or inaccurate data will greatly affect the function of the AI tools.

There is a large amount of data that relates to personal information. Under the PDPO, data is to be collected (to the extent necessary and not excessively) and used only for the purposes for which it is collected (pursuant to the consent provided). If the purpose for using the personal data in a data analytics or machine learning scenario was not communicated to the data subject (ie, the person who the personal information pertains to), that may amount to a breach of the law.

Therefore, a balance has to be struck between the use and development of AI tools using these types of data, and the protection of personal data and privacy. Please see also the data stewardship and data ethics principles that were discussed in questions 4 and 5.

Furthermore, Hong Kong law firms and companies need to comply with the GDPR and PIPL where they, inter alia, collect, hold or process personal data of residents in those jurisdictions. Provisions relating to the personal information being collected (using various methods, including AI tools such as 'automated decision-making') and its use will also be subject to similar considerations outlined above in relation to the PDPO.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the author's best knowledge, there are no published court cases relating to the provision of legal services using AI. However, Hong Kong also looks to other common law cases as reference, and this serves as persuasive, but not binding, authority.

In the Court of First Instance defamation case *Dr Yeung Sau Shing Albert v Google Inc (No 2) (2014)* HKEC 1782, a question arose as to whether Google had in fact published the alleged defamatory content or if it was a passive facilitator of information by way of its artificial intelligence based auto-complete and search engine systems. Though the Court considered that it is arguable that through the automated algorithmic processes (which collects and collates information from search requests and web content to present them to users as auto-complete and predictive keyword searches), Google would not be a mere passive facilitator and may be considered a publisher, the Court left the discussion open for the Court of Appeal on that point due to the differing foreign case law and the significance and inter-lay of this technology and defamation law.

There have been cases were the Courts have sanctioned the use of alternative technological means to further court cases.

A recent Hong Kong decision in *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Mei Ah (HK) Co Ltd* [2020] HKCFI 347, *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Silver Kent Technology Ltd* [2020] HKCFI 347 and *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Silver Kent Technology Ltd* [2020] HKCFI 347 (the '*Cyberworks* case') has explored the use of technology to conduct court hearings. Traditionally, attendance at Hong Kong courts required the physical attendance of the parties and/or their lawyers. With the general court closure (except those of an urgent and essential nature, and certain criminal matters) commencing 29 January 2020 and continuing at the time of the hearing of that case caused by Covid-19 (the 'General Adjournment Period' or GAP), many proceedings had to be adjourned. The *Cyberworks* case, which was ruled on 21 February 2020 (decision published on 28 February 2020), resulted in an unprecedented confirmation of the legality of telephone hearings relating to High Court proceedings under the Hong Kong legal framework. This ruling demonstrates that the court will consider the enhanced use of technology tools to move forward to enable justice to be done.

Subsequent to the *Cyberworks* case, on 2 April 2020, the Hong Kong Judiciary (the 'Judiciary') also published a Guidance Note for Remote Hearings for Civil Business in the High Court to provide an alternative way to continue court proceedings rather than physically appearing in court. This was the first of its kind. The Judiciary noted that, at the current time, trials are not suitable for remote hearings. The guidelines apply on a 'technology neutral basis' to the possible use of various types of electronic means in phases.

The first phase of remote hearings by video conferencing facilities (VCF) in civil cases in the Court of Appeal and the Court of First Instance of the High Court commenced during the GAP. As at 8 April 2020, two cases were heard, with one taking place at the Court of Appeal and the other at the Court of First Instance. On 8 June 2020, the Hong Kong Judiciary published a Guidance Note

for remote hearings for civil business in the Civil Courts.[343] This note is to be read in conjunction with the Guidance Notice issued on 2 April 2020, and sets out the second phase developments for alternative modes of court hearing disposal. It provides for expanded video-conferencing facilities and telephone remote hearing practice to be applicable to the Court of Appeal of the High Court, the Court of First Instance of the High Court, the Competition Tribunal, the District Court and the Family Court.

In the second phase, which started on 15 June 2020, remote hearings conducted by VCF and telephone in civil cases were extended to the following civil courts:

1. the Court of Appeal of the High Court;

2. the Court of First Instance of the High Court (Judges and Masters);

3. the Competition Tribunal;

4. the District Court (Judges and Masters);

5. the Family Court.

The third phase was implemented on 2 January 2021, under which remote hearings by the use of VCF and telephone in civil cases were extended to the Labour Tribunal and Small Claims Tribunal.[344]

In February 2022, the Judiciary also issued a note on the use of VCF for remote hearings for civil business.[345]

More VCF hearings are expected in the near future. Other hearings will be dealt with paper disposal where suitable.[346]

In January 2022, the Judiciary has additionally introduced an e-Appointment service, which allows unrepresented litigants or applicants to make online appointments through the new dedicated web links for specified services of the registries and office. This e-Appointment service is applicable for various services in the Probate Registry, the Family Court Registry and the Lands Tribunal Registry, Appeals Registry at the Clerk of Court's Office of the High Court, the High Court Registry and the Integrated Mediation Office.[347]

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343 See https://www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase2_20200608.pdf accessed 16 September 2020.

344 See https://www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase3_20201217.pdf accessed 25 March 2022.

345 See https://www.judiciary.hk/doc/en/court_services_facilities/technical_specifications_of_vcf_of_the_judiciary_20220302.pdf accessed 25 March 2022.

346 See https://www.judiciary.hk/doc/en/court_services_facilities/press_release_20220304_annex.pdf accessed 25 March 2022.

347 See https://www.info.gov.hk/gia/general/202201/04/P2022010400178.htm accessed 25 March 2022.

In the case of Hong Kong Court of First Instance of *Hwang Joon Sang And Future Cell Plus Co, Ltd v Golden Electronics Inc, Worldbest Global Supplier Inc, Harmony Electronics Inc, Quantum Electronics Inc, Jin Miao International Limited, Vivien Chung Ying-Yin, Magic Electronics Inc, BC Century Techology Limited, Chen Nien Fang, Chen Yi Kuei, China Dynamic Limited, Chiu Wei Fen, Chou Lin Chiao, Glory Dynamic Limited, Hsu Wei Lun, Hu Hong Bin, Imperial Dragon Limited, Lin Chih Cheng, Liu Mei Ting, Magic Crystal Limited, Niu Hsiu Chen, Su Chao Ming, Su Kuang Hong, Su Pei I, Tsai Pao Tsai, Wang Chao Cheng, Wang Hui Min, and Chou Pei Fen* (2020) HKCFI 1084, the Hong Kong Courts allowed for a novel mode of ordinary service of court documents. In that case, the Court held that any document, not being an originating process or one requiring personal service, may be served by providing access to an online data room with authorisation by the court. This decision can be made by courts pursuant to Order 65(1)(d) of the Rules of the High Court, where the court can, on a case by case basis, consider alternative methods of service in various situations.

In *Zhuhai Gotech Intelligent Technology Co Ltd v Persons Unknown* (HCZZ 10/2020), the Court of First Instance allowed a plaintiff to serve proceedings and related documents (including an interlocutory injunction order), out of jurisdiction by way of substituted service, via Facebook messaging.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Hong Kong lawyers are to abide by the Hong Kong Solicitors' Guide to Professional Conduct. Although solicitors may use information communication technology available at the time of the use, Chapter 1.07 of the Hong Kong Solicitors' Guide sets out that, even with such use, solicitors are still responsible and bound by the duties relating to professional conduct.[348] In other words, lawyers can use AI tools where they see fit (eg, document management tools, electronic discovery and template generating tools), but they must ensure that they comply with the Hong Kong Solicitors' Guide to Professional Conduct, practice directions and applicable laws governing their legal practice.

9. What is the role of the national bar organisations or other official professional institutions?

For several years now, the Hong Kong Government has been promoting 'LawTech', which is the concept of law and technology. Its aim is to make use of technology in providing legal services to the public.

348 *The Hong Kong Solicitors' Guide to Professional Conduct* (The Law Society of Hong Kong, 2020) (vol 1).

On 8 April 2020, as part of the measures to ease the economic and commercial challenges posed by Covid-19, the Hong Kong Government announced the establishment of the LawTech Fund and the Covid-19 Online Dispute Resolution (ODR) Scheme.

The LawTech Fund aims to assist small and medium-sized law firms (where there are five or fewer solicitors) and some small barristers' chambers in procuring and upgrading information technology systems (eg, hardware, servers, computer equipment, software, databases, networks, cloud-based services and other information technological tools), and funding their staff for LawTech training courses. A joint committee established by the Law Society of Hong Kong and the Hong Kong Bar Association will process and assess the applications for the fund, as well as arrange the disbursement of the funding. Eligible firms and chambers can receive a reimbursement of up to HK$50,000. The fund is envisaged to benefit over 60 per cent of law firms and over 50 per cent of barristers' chambers in Hong Kong (ie, a total of around 700 firms/chambers).[349]

The ORD Scheme was established in anticipation of the disputes arising from or relating to Covid-19.[350] It will use the dispute resolution platform eBRAM,[351] which makes use of AI tools. eBRAM allows for various dispute resolution services, such as negotiation, mediation and arbitration, to be conducted online. Lawyers can participate in the process along with clients who cannot physically meet face-to-face for those proceedings/sessions, and allows for continuity of lawyer dispute resolution services despite the effects of Covid-19 and/or travel-related delays, and enables a more speedy and cost-effective way to resolve disputes.

The Hong Kong Legal Cloud services was launched on 1 March 2022. It serves to provide a secure and affordable data storage service for the local legal and dispute resolution professionals, to harness modern technology and enhance the service capability of the legal profession. The Department of Justice also set up the Hong Kong Legal Cloud Fund, administered by the Asian Academy of International Law on a pro bono basis, to offer eligible local legal and dispute resolution professionals free subscription to the Hong Kong Legal Cloud services for up to three years.

The Law Society of Hong Kong also arranges and hosts many conferences open to both local and international participants, and for the past several years, such conferences have contained at least one session on AI and legal practice. One of the more prominent conferences was the ABC to Building a Smart Belt and Road: Law and Artificial Intelligence, Blockchain and Cloud, which took place on 28 September 2018, with sessions focusing on AI tools.[352] Such conferences

349 See www.info.gov.hk/gia/general/202004/27/P2020042700514.htm accessed 6 July 2020.

350 See www.news.gov.hk/eng/2020/04/20200413/20200413_110404_476.html accessed 6 July 2020.

351 See www.doj.gov.hk/eng/public/blog/20190807_blog1.html accessed 6 July 2020.

352 See www.hklawsoc-beltandroad.com/en/index accessed 6 July 2020.

explore the various opportunities, risks and liabilities that are involved in AI and legal practice.

Risk management courses relating to, inter alia, cybersecurity, data privacy and the cloud, are also provided by the Hong Kong Academy of Law, which is a subsidiary entity under the Law Society of Hong Kong. These courses aim to educate practitioners as to the risks and ways to manage those risks where technologies are used in firms, and attendees are awarded continual professional education points. To renew a solicitors' practicing certificate in Hong Kong, generally, 15 points is required on an annual basis.

Hackathons have also been organised by the Law Society of Hong King on using AI to solve problems and providing better access to justice. The themes for the hackathons conducted so far have been to encourage cross-disciplinary innovation and collaboration in relation to various legal issues that people may encounter on a day-to-day basis.[353]

353 See www.hk-lawyer.org/content/belt-road-justice-challenge-cultivating-innovation-hackathon accessed 6 July 2020.

India

Sajai Singh, J Sagar Associates, Bengaluru

1. What is the understanding or definition of AI in your jurisdiction?

The concept of artificial intelligence (AI) and the way it is understood in India is fluid and still developing. According to Invest India, India's official agency for investment promotion and facilitation, AI is an attempt to automate a process that would otherwise require human intelligence.[354] The Ministry of Commerce and Industry, a governmental department, created the 'Task Force on Artificial Intelligence for India's Economic Transformation'. This Task Force published a report in 2018 (the 'Commerce Ministry Report').[355] The Commerce Ministry Report relies on the work of Professor John McCarthy to define the term AI, and defines it as the science and engineering of making intelligent machines, with intelligence being the computational part of the ability to achieve goals in the world. AI uses computers to understand human intelligence.

The policy 'think tank' of the Government of India, Niti Aayog, which provides directional and policy inputs, also explains AI in the discussion paper titled *National Strategy for Artificial Intelligence* (the 'Discussion Paper').[356] According to the Discussion Paper, AI refers to the ability to perform cognitive tasks such as thinking, perceiving, learning, problem solving and decision-making – ie, a technology that could mimic human intelligence.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Resistance in the legal fraternity

While AI has successfully managed to infiltrate most businesses, such as healthcare, education and agriculture, the use of AI in the legal sector is at a nascent stage. India has been a hub of innovation: while the acquisition of technology has not been a challenge, Indian law firms have shown reluctance in making AI part of their daily routine. Nevertheless, a few law firms in India have adopted AI tools to streamline their legal services by incorporating it in their day-to-day practice. Such AI and machine learning (ML) tools are being deployed to

354 'The growing interest for artificial intelligence in India' (Invest India, 19 February 2019), www.investindia.gov.in/team-india-blogs/growing-interest-artificial-intelligence-india accessed 12 June 2024.

355 *The Artificial Intelligence Task Force* (Office of the Principal Scientific Advisor to the Government of India 2018), https://www.psa.gov.in/mission/artificial-intelligence/34 accessed 12 June 2024.

356 'National Strategy for Artificial Intelligence' (Niti Aayog, June 2018), https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf accessed 21 May 2024.

assist lawyers by accelerating tasks which typically take hours of their time – such as due diligence, contract review and abstraction, evidence management, litigation strategy, legal research and intellectual property.

However, language continues to be a major impediment for these AI solutions, which have failed to penetrate the litigation circle. There are many languages spoken in India. In fact, while the medium of communication in upper courts, such as the high courts and Supreme Court, is English, vernacular languages continue to be commonly used in lower courts. The lawyers practising in those courts are proficient in their vernacular language; thus, any tool that they may need will have to be in the language they are comfortable in.

That being said, the Supreme Court of India has been receptive to harnessing AI tools, while ensuring that such technology does not affect its decision-making process and the integrity of the justice system. For instance, the Supreme Court, with the technical support of the Ministry of Electronics and Information Technology (MEITY), has developed the Supreme Court Vidhik Anuvaad Software (SUVAS). SUVAS is a machine-assisted translation tool trained by AI, which can translate the judgments of the Supreme Court into regional and vernacular languages. SUVAS can translate orders, judgments or other documents from English into ten Indian vernacular languages including Hindi, Kannada, Tamil, Telugu, Punjabi, Marathi, Gujarati, Malayalam, Bengali, Urdu and vice versa.[357]

Another example is the AI-powered portal SUPACE (Supreme Court Portal for Assistance in Courts Efficiency), which can enhance the productivity and efficiency of legal researchers and judges by extracting relevant information, reading case files and drafting pleadings and other case documents. It expedites the process of fact-finding, extracting points of law and flagging issues from thousands of pages of documents in a matter of seconds.[358]

The integration of AI into the judicial domain is aimed at reducing pendency of litigation and enhancing the efficiency and productivity of justice delivery. The deployment of such AI tools by the country's judiciary is a segue towards a more speedy and efficient justice system, thereby enabling access to justice.

Availability and penetration of AI tools in the Indian legal market

Kira, which was developed by a Canada-based technology company, Kira Systems, has now been introduced to India. Kira uses AI to identify, analyse and extract clauses and other information from contracts and other types of legal documents. There are machine learning models for a range of requirements across practice areas.

357 *Action plan for simple, accessible, affordable and speedy justice* (Ministry of Law and Justice, 10 August 2023), https://pib.gov.in/PressReleasePage.aspx?PRID=1947490 accessed 12 June 2024.

358 'AI is set to reform justice delivery in India' (IndiaAI, 7 April 2021), https://indiaai.gov.in/article/ai-is-set-to-reform-justice-delivery-in-india accessed 12 June 2024.

The tool is also capable of identifying different clauses across a large volume of legal contracts, with a high degree of accuracy.

For litigators, there are AI solutions available in the market to accomplish tasks such as managing and tracking cases listed in courts. Companies such as LegalMind[359] offer 'AI powered search'. The company also offers solutions such as 'litigation analytics' and 'brief analyser'. As the name suggests, litigation analytics enables users to analyse trends and patterns across judgments and tries to 'predict' the behaviour of courts, judges and so on. It is a strategy building tool that is now being used in the market. Furthermore, 'brief analyser' helps lawyers to summarise judgments without missing out any details. The tool 'understands' the important elements of a judgment, such as the arguments, facts and issues raised, and provides the user with a comprehensive summary. There is no formal data to confirm the extent and reach of these tools.

Compliance

The compliance function is one area where the use of automation and AI has increased. Companies are trying to acquire tools that will keep their costs low. When it comes to compliance, the proposed AI tool needs to ascertain: (1) what needs to be complied with; (2) what process is involved; and (3) whether the process is robust. With the Government of India moving towards digitisation, where most filings may be done online, these compliance tools are certainly reducing the workload of compliance professionals. Simpliance is one such tool that can help a company to set up a compliance framework vis-à-vis labour laws across more than 120 laws and 8,700 compliances using an algorithm.

AI-enabled forensic tools for litigation

Companies, particularly those rendering financial services, are reducing dependency on humans, to a great extent, and are relying on AI to detect issues such as acquirer fraud, reducing credit risk and delinquency, fighting financial crime and preventing waste and abuse of resources. These AI tools are often used as a preventive measure and are now being used to garner evidence in contentious matters.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

As mentioned above, there are different types of AI-based tools available on the market, offering a wide range of support. As such, these tools are either

359 See LegalMind, https://legalmind.tech accessed 21 May 2024.

supporting lawyers in day-to-day management, or directly offering services to customers. While there are specific products made for dispute resolution and corporate practice, there is barely any difference in the kind of AI tools available for independent law firms, international law firms and in-house counsel. However, as mentioned above, a few law firms in the country have developed, or are in the process of developing, bespoke AI tools for use within the firm.

4. What is the current or planned regulatory approach on AI in general?

Role of Niti Aayog in defining the approach

The Government of India is working towards evolving an AI-friendly regime. While there is no regulatory approach clearly laid out, the Niti Aayog Discussion Paper sets the tone for the adoption and use of AI in different verticals. The Discussion Paper identifies the large incremental value that AI is capable of adding to a wide range of sectors. The Discussion Paper focuses on a few sectors that could benefit the most from AI; these sectors include healthcare, agriculture, education, infrastructure/smart city and smart mobility and transport.

The Discussion Paper does highlight the barriers that have to be addressed before the use of AI may be scaled. These challenges include (1) lack of expertise in research and application of AI; (2) absence of intelligent data (for inputs); (3) high resource cost and low awareness for adoption of AI; (4) privacy and security related issues; and (5) the absence of a collaborative approach in connection with the adoption and application of AI.[360]

Niti Aayog also released an approach paper to set up India's first AI-specific cloud computing infrastructure called the AI Research, Analytics and Knowledge Assimilation Platform (AIRAWAT). The Government of India intends to manage challenges in relation to the lack of access to computing resources via AIRAWAT. This is another attempt by the Government of India to demonstrate its inclination to scale the AI ecosystem in India.

As a follow-up to the Discussion Paper, stakeholder consultations were initiated on the proposed approach for responsible use of emerging technologies. This culminated in 2021, with the release of a two-part approach paper, identifying principles for responsible design, development and deployment of AI in India,[361] and setting out enforcement mechanisms for the operationalisation of these principles,[362]

360 'National Strategy for Artificial Intelligence' (Niti Aayog, June 2018).

361 'Responsible AI – Approach Document for India: Part 1 – Principles for Responsible AI' (Niti Aayog, February 2021), www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf accessed 11 April 2024.

362 'Responsible AI – Approach Document for India: Part 2 – Operationalizing Principles for Responsible AI' (Niti Aayog, August 2021), see www.niti.gov.in/sites/default/files/2021-08/Part2-Responsible-AI-12082021.pdf accessed 11 April 2024.

ie, Responsible Artificial Intelligence Principles ('RAI Principles'). The seven RAI Principles outlined are:

- safety and reliability;
- inclusivity and non-discrimination;
- equality;
- privacy and security;
- transparency;
- accountability; and
- protection and reinforcement of positive human values.

Niti Aayog, as part of its series of publications on Responsible AI, published a paper in November 2022 on the use of AI-based facial recognition technology. The paper, titled *Responsible AI: Adopting the Framework – A Use Case Approach on Facial Recognition Technology*, provides recommendations for applications using facial recognition technology (FRT) within India and includes a case study of the Ministry for Civil Aviation's DigiYatra Programme.[363] The paper presents detailed review of DigiYatra's use of FRT to enable fast and paperless travel for passengers in India, and examines the use of FRT against the Niti Aayog's RAI principles.

Regulators' approach to AI

Various regulators in India have also recognised the value of the use of AI and robotics to reduce inefficiency. In 2017, the Reserve Bank of India (RBI) (the central bank responsible for the regulation of foreign exchange, currency, payment systems, etc), released the report of its Working Group on Fintech and Digital Banking. The report highlighted the need to identify what machines can do better than humans and vice versa, and develop a complementary role and responsibilities for each.[364] RBI has consistently promoted the use of technology and, in fact, in 2019, released the report *Enabling Framework for Regulatory Sandbox*. This report opened the gates for several technology players to live test their new products or services in a controlled or test regulatory environment.

Similar sandboxes have been introduced by other regulators, such as the Insurance Regulatory and Development Authority of India, the insurance regulator and the Security Exchange Board of India (SEBI), the securities market watchdog. SEBI

363 'Responsible AI: Adopting the Framework – A Use Case Approach on Facial Recognition Technology' (Niti Aayog, November 2022), https://www.niti.gov.in/sites/default/files/2022-11/Ai_for_All_2022_02112022_0.pdf accessed 11 April 2024.

364 'Report of the Working Group on Fintech and Digital Banking' (RBI, November 2017), https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27F4A.PDF accessed 12 June 2024.

has also put in place a project to augment its use of AI in pattern recognition and other use cases to track offences like insider trading. This certainly is an encouraging trend.

Ministries approach to AI

The Commerce Ministry report acknowledged that AI is a game-changer and an important factor for economic development, and also pointed out that there is a need to develop a framework for smooth functioning. Apart from being used in the commercial sector, AI has also seen extensive use in the defence sector. DAKSH (equipment for explosive device identification and handling), NETRA (unmanned aerial vehicles for surveillance), CSROV (a battery-operated tracked vehicle with a telescopic arm) and UXOR (bomb handling robot) are some of the applications of AI in the defence sector.[365]

MEITY has constituted several committees for developing a framework for AI.[366] It has been proposed that the Open National Artificial Intelligence Resource Platform will become the hub for knowledge integration and dissemination in AI. Liability in the case of damage done by an AI tool is another question that is being analysed. The increasing use and reliance on AI by ministries is a strong indicator that India may adopt an AI-friendly regulatory framework.

IndiaAI Report 2023

On 14 October 2023, MEITY published the IndiaAI Report 2023 ('IndiaAI Report'),[367] which lays down the fulcrum of India's AI strategy. Seven working groups have collaborated to draft the IndiaAI Report, highlighting the practical considerations and recommendations with respect to India's AI ecosystem. The IndiaAI Report also offers suggestions on how India can utilise its demographic advantage and capitalise on its status as an information technology (IT) superpower to enhance the spread of AI expertise within the nation. This involves bolstering the AI framework to foster innovation through collaborations between the public and private sectors.

Standardisation

The Bureau of Indian Standards, an entity which formulates, recognises and promotes standardisation across sectors and products, has released a Standards

365 'Robotics' (Defence Research & Development Organisation), https://drdo.gov.in/robotics accessed 21 May 2024.

366 *Artificial Intelligence Committees Reports* (MEITY), https://meity.gov.in/artificial-intelligence-committees-reports accessed 21 May 2024.

367 *IndiaAI 2023* (MEITY, 14 October 2023), www.meity.gov.in/writereaddata/files/IndiaAI-Expert-Group-Report-First-Edition.pdf accessed 12 June 2024.

National Action Plan (SNAP) and has identified AI as one of the key standardisation areas. In February 2024, it released the draft Indian Standard for comments which is identical to *ISO/IEC 5338:2023 Information technology – Artificial intelligence – AI system life cycle processes*, issued by the International Standardization Organization (ISO) and the International Electrotechnical Commission (IEC).[368] It may be adopted by the Bureau of Indian Standards (BIS) on the recommendations of the Artificial Intelligence Sectional Committee and approval of the Electronics and Information Technology Division Council.

Private parties

Technology giants such as Google and Walmart continue to acquire startups for their AI tools. The support from big companies has certainly resulted in several startups coming up with AI products that can be used to solve various real-life issues across sectors.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Current sets of regulations

There are certain laws that may apply to AI tools, but there is a need to develop a more comprehensive set of laws. AI applications are not expressly protected under any form of statutorily recognised intellectual property. While one may argue that AI may be protected under the copyright regime or the patent law, the Indian enforcement authorities are not regularly faced with such questions, and thus enforcing rights in relation to AI tools may be a challenge. Questions, such as whether collusion through AI tools are anti-competitive or not, are matters that regulators need to evaluate. The level of sophistication and technological expertise required to analyse questions like this is not something that Indian regulators are dealing with on a regular basis. While there is a positive trend and increasing acceptance of AI, the laws are not sufficient to deal with several challenges that come with AI.

Advisory issued by MEITY

MEITY issued an advisory dated 15 March 2024 (the 'Advisory'), on the use and deployment of AI tools.[369] This Advisory subsumes a previous advisory on this subject dated 1 March 2024, wherein MEITY directed intermediaries to comply

368 'Draft Indian Standard Information Technology –Artificial Intelligence – AI System Life Cycle Processes' (BIS, February 2024), www.services.bis.gov.in/tmp/WCLITD38624866_16022024_1.pdf accessed 11 April 2024.

369 *Advisory* (MEITY, 15 March 2024), www.meity.gov.in/writereaddata/files/Advisory%2015March%202024.pdf accessed 12 April 2024.

with their due diligence obligations to check rising instances of deepfakes and misinformation on their platforms. The Advisory has expanded the scope of the due diligence which is required to be carried out by intermediaries to include compliance requirements associated with the use and deployment of AI tools. This Advisory has been issued in addition to another advisory issued by MEITY, dated 26 December 2023, which requires platforms to identify and promptly remove misinformation, false or misleading content, and material impersonating others, including deepfakes.[370]

The Advisory was issued to ensure that intermediaries and platforms are not negligent in undertaking the due diligence obligations outlined in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 ('Intermediary Guidelines'). It also requires intermediaries to comply with certain obligations while deploying different AI tools on or through their computer resources. Among other requirements, an intermediary is required to ensure that it does not permit its users to host, display, upload, modify, publish, transmit store, update or share any unlawful content or violate any other provision of the Information Technology Act 2000 (the 'IT Act') and other laws in force. Furthermore, under-tested or unreliable AI tools should be made available to users only after appropriately labelling the possible inherent fallibility or unreliability of the output generated. A 'consent popup' or equivalent mechanisms may be used to explicitly inform the users about the possible inherent unreliability of the output generated. The Advisory also provides that, where any intermediary permits or facilitates the creation of information in a manner which may potentially be used as misinformation or deepfake, it is advised that such information is labelled or embedded with permanent unique metadata or identifier, which identifies such information as not authentic.

However, at present, these requirements have only been issued by way of an advisory and no amendments have been made to the Intermediary Guidelines or the IT Act in this regard.

Press release by the Ministry of Commerce and Industry

The Ministry of Commerce & Industry has issued a press release dated 9 February 2024 which observed that the existing intellectual property rights (IPR) regime is well-equipped to protect AI-generated works and that there is no need to a create separate category of rights.[371] It noted that the exclusive economic rights of a copyright owner such as the right of reproduction, translation, adaptation, etc, granted by the Copyright Act 1957 obligates the user of generative AI to obtain

370 *Advisory* (MEITY, 26 December 2023), https://www.meity.gov.in/writereaddata/files/Eradicated_Advisory_26Dec2023.pdf accessed 12 April 2024.

371 *Existing IPR regime well-equipped to protect AI generated works, no need to create separate category of rights* (Ministry of Commerce & Industry, 9 February 2024), https://pib.gov.in/PressReleasePage.aspx?PRID=2004715 accessed 12 April 2024.

permission to use their works for commercial purposes if such use is not covered under the fair dealing exceptions provided under section 52 of the Copyright Act. The press release also states that there is no proposal to create any separate rights or amend the copyright regime in the context of AI-generated content. However, it is still debatable whether the present inward processing regime (IPR) is adequate to protect AI-generated works and related innovations.

Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023

The purpose of the Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023 (ICMR AI Guidelines) issued by the Indian Council of Medical Research (ICMR) is to ensure ethical conduct and address emerging ethical challenges in the field of AI in biomedical research and healthcare. The ICMR AI Guidelines also provide a framework for ethical decision-making in medical AI during the development, deployment, and adoption of AI-based solutions. The ICMR AI Guidelines apply to all stakeholders involved in AI-related biomedical research and healthcare, including creators, developers, researchers, clinicians, ethics committees, institutions, sponsors and funding organisations. Ethical and guiding principles for stakeholders, an ethics review process, governance of AI use and informed consent are a few notable provisions.[372]

Digital Personal Data Protection Act 2023

India's privacy laws are undergoing a sea change. The current set of laws only regulates limited types of data. The Government of India published the Digital Personal Data Protection Act 2023 (the 'DPDP Act') on 11 August 2023, forming the new data privacy and regulatory regime in India. The sections and rules under the DPDP Act are yet to be notified for its effective implementation. While the DPDP Act does not discuss the interplay between AI and data privacy, it does apply to fully or partly automated processing of personal data, thereby, covering AI-based personal data collection, disclosure and other forms of processing. A clearer understanding of this is expected once the rules under the DPDP are notified.

Proposed Digital India Act

The government has proposed to enact a new Digital India Act that aims to provide a contemporary legal framework for India's evolving digital ecosystem. The Digital India Act may replace the existing IT Act, which was formulated in the

372 'Ethical Guidelines for Application of Artificial Intelligence in Biomedical Research and Healthcare 2023' (ICMR, 2023), https://main.icmr.nic.in/sites/default/files/upload_documents/Ethical_Guidelines_AI_Healthcare_2023.pdf accessed 12 April 2024.

early days of the internet before the advancement of technology. It is proposed that the Digital India Act regulate (among others) new age technologies like AI and blockchain technologies. The Digital India Act is envisaged to be a dynamic law which will be consistent with changing market trends and disruption in technologies. In order to rapidly create, modify and enforce regulations, it proposes to adopt a 'principles and rule-based approach' to regulation.[373] However, a draft of the new Digital India Act has not been released in the public domain.

6. Is free data access an issue in relation to AI?

Using, processing or generally dealing in personal data is regulated in India. Users of AI tools would need to ensure that the extant privacy laws are followed at all times. Accordingly, what may or may not be shared and used is a function of whether the provider of information consents to such use or disclosure.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

A few court decisions may be worth noting in this regard.

In a recent case,[374] the Punjab & Haryana High Court rejected a bail petition of a petitioner who had committed assault. The presiding judge requested for inputs from ChatGPT to gain a wider perspective on the granting of bail in cases of cruelty. However, it is important to note that the reference to ChatGPT's inputs were not relied upon to express an opinion on the case's merits. The reference was solely intended to provide a broader understanding of bail jurisprudence when cruelty is a factor.

In a recent trademark infringement case,[375] the Delhi High Court observed that, at the present stage of technological development, AI cannot substitute either human intelligence or the humane element in the adjudicatory process. The counsel in this case sought to rely on responses from ChatGPT for establishing the reputation and goodwill of a leading shoe brand. In this regard, the High Court opined that such tools cannot be the basis of adjudication of legal or factual issues in a court of law. This is because there are possibilities of incorrect responses, fictional case laws, imaginative data, etc generated by AI chatbots. Since the accuracy and reliability of AI-generated data is still in a grey area, the tools may be utilised for a preliminary understanding or for preliminary research and nothing more.

373 *Proposed Digital India Act 2024* (MEITY, 9 March 2023), https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf accessed 12 June 2024.

374 *Jaswinder Singh v State of Punjab* 2023:PHHC:044541.

375 *Christian Louboutin Sas v M/S The Shoe Boutique* – Shutiq 2023:DHC:6090.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

The use of AI in the legal profession is not regulated in India.

9. What is the role of the national bar organisations or other official professional institutions?

The Indian Bar Association is not currently involved in the promotion of AI in the legal profession.

Ireland

Barry Scannell, William Fry, Dublin

Laura Casey, William Fry, Dublin

Introduction

In this chapter we consider the utilisation of artificial intelligence (AI) as a tool within the Irish legal sector. In Ireland, the legal profession is regulated by several bodies, each with specific roles and responsibilities.

Ireland's legal industry appears to have embraced AI, with a number of firms piloting technologies such as Microsoft Copilot and Harvey AI. Advanced AI-powered legal research tools significantly reduce the time required for case law analysis, while predictive analytics offer insights that aid strategic decision-making. These technologies empower Irish solicitors and barristers to transcend routine tasks and instead focus on delivering nuanced counsel and developing innovative legal strategies.

The Law Society of Ireland (the 'Law Society') is responsible for regulating solicitors in Ireland. It oversees the admission, education and professional conduct of solicitors, as well as ensuring that standards are maintained within the legal profession.

The Bar Council of Ireland (the 'Bar Council') regulates barristers in Ireland. It sets standards for admission to the bar, provides ongoing education and training, and ensures that barristers adhere to professional codes of conduct.

The Legal Services Regulatory Authority (LSRA) was established in 2016 and is an independent authority. It is Ireland's national statutory regulator for both branches of the legal profession – barristers and solicitors.

These bodies work together to uphold the integrity and professionalism of the legal profession in Ireland, ensuring that practitioners adhere to high standards of ethics and competence. They have also been considering the growth of AI across the legal profession and, without dispute, acknowledge that AI will alter the manner in which legal services are delivered in Ireland. In this chapter, we explore the national stance and subsequent challenges faced by the legal services provision in adapting to advancements in AI technology.

While the adoption of AI by the Irish legal industry brings undeniable benefits, it also raises questions around ethics, privacy and professional accountability. This chapter will explore these challenges, alongside AI's potential to revolutionise legal practice in Ireland. It will illustrate how legal professionals can harness this transformative technology responsibly, ultimately reshaping the delivery of justice in the digital age.

1. What is the understanding or definition of AI in your jurisdiction?

Ireland's national strategy on AI, 'AI – Here for Good'[376], published in 2021, adopted the Organisation for Economic Co-operation and Development's (OECD) definition of AI, which was later adopted and adapted by the European Union (EU) in its own definition of AI in the EU AI Act.[377]

The EU AI Act will have direct effect in Ireland, and the definition of AI which will apply is as outlined in Article 3(1) of the EU AI Act, which defines an AI system as a 'machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments'.

'AI – Here for Good' acknowledges that 'AI is part of a suite of digital technologies which will play a major role in shaping global competitiveness and productivity over the coming decades, granting early adopters significant societal, economic and strategic advantages'.[378]

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

There are several AI tools on the market, which are currently being utilised or at least piloted by legal service providers across the country.

We are seeing AI solutions being proffered by existing legal tech service providers, such as Practical Law and LexisNexis. William Fry is the first law firm outside of the US to use Clearbrief, an AI system which assists in major litigation. Other litigation-related AI platforms, such as TrialView, are also available on the Irish market. Harvey AI appears to be making inroads in the Irish legal sector, with a number of prominent firms announcing pilots of the technology. Many law firms are also trialling the use of Microsoft Copilot.

At the time of writing, AI systems are primarily being piloted, with certain exceptions, in order to ascertain use cases and address risks. Use cases which have been identified include contract review, document review, contract drafting, research and administrative assistance.

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376 Department of Enterprise, Trade and Employment, *AI – Here for Good: A National Artificial Intelligence Strategy for Ireland* (Government of Ireland, July 2021).

377 Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts [2021] COM(2021)0206.

378 Department of Enterprise, Trade and Employment, *AI – Here for Good: A National Artificial Intelligence Strategy for Ireland* (Government of Ireland, July 2021) 4.

3. If yes, are these AI tools different regarding:
- independent law firms;
- international law firms; and
- in-house counsel;

and what are these differences?

Many Irish legal practitioners, whether they are based in law firms or in in-house counsel roles, are considering new generative AI (GenAI) features, once they are released from their existing vendors. These include case management systems that run client files, such as iManage, and online legal information resources, like Westlaw or LexisNexis. The extent to which these add-on features are adopted will likely depend on a cost–benefit analysis.

Bigger law firms in Ireland, particularly those with global operations and those catering to corporate clientele, are inclined to adopt and integrate AI at a faster pace. This trend is driven by economic factors, as well as the nature and volume of their work, which often provides a solid commercial rationale for employing AI technologies like document assembly and predictive coding. For example, new applications are typically introduced by corporate law firms every 18 months, and it is likely they will be heavily focussed on AI in the future.

An example of a recently adopted AI tool by William Fry's litigation team is Clearbrief. William Fry is the first law firm outside the US to use this platform. It assists lawyers by locating and viewing supporting factual evidence, while composing briefs and other legal documents in Microsoft Word, cite checking both the facts and the law, and generating timelines, exhibits and tables of authorities. Within Microsoft Word, this AI-driven technology analyses the user's document and displays the underlying factual and legal sources cited in a side panel, while also suggesting additional evidence that could bolster an argument within the draft. As courts increasingly mandate hyperlinks to cited law and evidence in filings, and at a time when courts are insisting on diligence in reviewing filings for spurious citations, Clearbrief ensures that both factual and legal citations are accurate and properly substantiated.

William Fry is also currently trialling Microsoft Copilot and Copilot 365 with several of its practitioners. Copilot is integrated into the Microsoft 365 apps used across the firm every day, namely Word, Excel, PowerPoint, Outlook and Teams. Copilot in Microsoft Word can provide legal practitioners with a first draft to edit and iterate on, potentially saving hours of writing, sourcing and editing time. Similarly, Copilot in Microsoft PowerPoint assists with the creation of a presentation with a simple prompt, adding relevant content from an existing document if desired. With Copilot in Microsoft Excel, practitioners can analyse trends and create professional-looking data visualisations in seconds.

Some other Irish law firms have announced partnerships with Harvey AI, a specialist legal generative AI platform. Similar to numerous generative AI platforms, Harvey AI

functions as a substantial language model system, enabling it to accomplish broad language generation and comprehension tasks. What sets Harvey AI apart from other AI platforms is its tailored design for the legal sector. Derived from OpenAI's GPT-AI, Harvey AI shares a foundational connection with ChatGPT. However, it has been uniquely trained with legal-specific data, including case law and legislation, to cater specifically to the needs of the legal industry.

In-house lawyers are often budget conscious and constantly looking to create both monetary and time efficiencies in their teams, which are oftentimes under resourced. It is, therefore, no surprise that many in-house lawyers in Ireland see AI as a huge opportunity. They acknowledge and welcome the fact that it is likely AI will be utilised for low-value, high-volume type work to free them up to focus on more strategic value-add type workstreams.

4. What is the current or planned regulatory approach to AI in general?

The Irish regulatory approach to AI is largely being driven by the EU, and this is a theme seen across EU Member States.

Government policy

The government has formed an AI advisory council, an independent task force dedicated to providing the government with expert guidance, particularly in fostering public trust and advancing trustworthy, person-centred AI. Barry Scannell, a partner at William Fry, has been appointed to this council by the Irish Minister of State for Trade Promotion, Digital and Company Regulation, Dara Calleary. The council comprises 14 members and is responsible for offering expert insights, recommendations and guidance on AI, responding to specific government requests and shaping its own workplan on AI policy issues.

In August 2023, the government published a progress report on the National AI Strategy, noting the achievement of several of its outlined goals.[379] Highlights include the appointment of Ireland's AI ambassador and the establishment of the Enterprise Digital Advisory Forum, which focuses on industry adoption of AI. The creation of an AI Innovation Hub offers services like specialised AI training and project feasibility assessments for small and medium-sized enterprises (SMEs). A National Youth Assembly on AI convened in October 2022, and Ireland has joined the Global Partnership on AI, a multi-stakeholder initiative that originated within the OECD. The National Standards Authority of Ireland (NSAI) has also issued the AI Standards and Assurance Roadmap.

379 Department of Enterprise, Trade and Employment, *AI – Here for Good: Progress Report on the National AI Strategy* (Government of Ireland, August 2023).

The EU AI Act

In March 2024, the European Parliament approved the EU AI Act. It will become effective in the near future and will be directly applicable in Ireland without requiring transposition measures. The obligations outlined in the EU AI Act will be introduced gradually over a 36-month period, with the primary obligations in effect by mid-2026. However, importantly, rules on GenAI systems and general-purpose AI systems, predominantly relating to transparency, will take effect by mid-2025.

EU Product Liability Directive[380]

In September 2022, the European Commission unveiled a supplementary regulatory proposal alongside the EU AI Act, known as the EU AI Liability Act, along with suggested amendments to the Product Liability Directive. Political consensus on the revisions to the Product Liability Directive was reached in December 2023. This update explicitly recognises that AI systems fall within its scope, owing to the inclusion of software within the definition of a product.

EU AI Liability Directive[381]

The adoption of the EU AI Liability Directive is anticipated in either 2024 or 2025, although progress on it appears relatively slow given the current legislative and societal emphasis on AI. The directive aims to introduce fresh regulations tailored to damages resulting from AI systems, ensuring that individuals harmed by such systems receive comparable protection to those harmed by other technologies in the EU. By establishing a rebuttable 'presumption of causality', the AI Liability Directive will shift the burden of proof in claims for damages caused by AI systems, simplifying the task for victims to demonstrate harm caused by an AI system. Upon adoption, Ireland will have a 24-month window to transpose this directive into its national legislation.

The Irish Digital Services Act 2024

The Digital Services Act (DSA)[382] is a significant law impacting AI, especially recommender systems that are often powered by AI. The DSA primarily targets intermediary services and online platforms. The Irish Digital Services Act 2024, enacted on 11 February 2024, implemented this legislation in Ireland. Ireland's media regulator

380 Proposal for a directive of the European Parliament and of the Council on liability for defective products [2022] COM/2022/495.

381 Proposal for a directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) [2022] COM/2022/496.

382 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC [2022] OJ L 277.

(Coimisiún na Meán) has been designated as the Digital Services Coordinator and the lead competent authority for enforcing the DSA in the country. The DSA mandates that very large online platforms (VLOPs) and very large online search engines (VLOSEs) conduct AI-specific risk assessments to identify and mitigate the risks associated with the AI technologies on their platforms.

The Garda Síochána (Recording Devices) (Amendment) Bill 2023

The Garda Síochána (Recording Devices) (Amendment) Bill 2023 authorises members of the national police and security service of Ireland (An Garda Síochána) to wear smart body cameras in specific conditions. This could enable automatic facial recognition, profiling and individual tracking. The bill explicitly grants authority for biometric identification, since there was previously no legislative framework for An Garda Síochána to process biometric data within the Irish Data Protection Act 2018.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

The EU AI Act introduces general-purpose AI models as a novel inclusion, with a dedicated chapter addressing them. As mentioned above, the EU AI Act will have direct effect in Ireland. These models are characterised as AI models, which are trained extensively with large datasets using self-supervision at scale, and which demonstrate substantial generality and competence in performing diverse tasks regardless of their market placement. Moreover, they are adaptable for integration into various downstream systems or applications.

Numerous companies have expressed concerns about the potential applicability of the EU AI Act to models under development or employed for research purposes. However, it is important to note that the EU AI Act excludes models utilised for research, development and prototyping activities prior to their market release. General-purpose AI systems, built upon a general-purpose AI model, possess the capacity to fulfil various purposes, whether through direct usage or integration into other AI systems. Notably, a significant amendment ensures that the EU AI Act does not encompass AI systems and models, along with their outputs, specifically designed and deployed solely for scientific research and development purposes.

Organisations that use open-source AI systems should take note that the EU AI Act only applies to open-source AI systems if they are prohibited or high-risk AI systems.

The EU AI Act tackles the categorisation and responsibilities of suppliers of general-purpose AI models, especially those posing systemic risks. A general-purpose AI model is deemed to carry systemic risk if it possesses substantial impact capabilities or is designated as such by the European Commission, especially if its training

entails a considerable computational workload. A general-purpose AI model is regarded as having high-impact capabilities if the aggregate computational power employed for its training, measured in floating-point operations, surpasses 10^25.

The European Commission must be notified by providers if their model meets these criteria, including arguments that their model, despite meeting the criteria, does not present systemic risks. A model can be designated as having systemic risk by the European Commission based on specific criteria. The provider can also request a reassessment of designation by the European Commission.

Obligations to which general-purpose AI models are subject include the maintenance of technical documentation and the provision of information to AI system providers who use these models. Subject to specific cases, these obligations do not apply to AI models available under a free and open licence.

6. Is free data access an issue in relation to AI?

There is myriad legislation either in force or planned, which aims to ameliorate the issue of free data access in Ireland going forward.

Text and data mining (TDM)

TDM is an automated process involving the selection and analysis of vast data sets for purposes such as extraction, pattern recognition and semantic analysis, and plays a crucial role in sourcing, compiling and utilising the massive data sets used to train AI models. Article 4 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (the 'CDSM Directive') addresses commercial TDM and is implemented in Irish law through Regulation 4 of S I No 567/2021 European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 (the 'Irish CDSMD Regulations').

The CDSM Directive stipulates that reproducing copyright protected works for TDM, even for commercial purposes, does not require the rightsholder's authorisation, provided that rights to those works have not been expressly reserved 'in an appropriate manner' against this usage. This 'appropriate manner' includes metadata and website or service terms and conditions for online works. If these are not available online, the terms must be communicated to anyone with lawful access to the work.

However, a notable discrepancy exists between the Irish CDSMD Regulations and the CDSM Directive regarding TDM. The CDSM Directive allows 'rightsholders' to expressly reserve their work against TDM, whereas Regulation 4 of the Irish CDSMD Regulations restricts this right to 'authors'. This discrepancy could lead to future legal ambiguity, as 'rightsholders' is a broader term, encompassing cases where a

company owns copyrighted work created by a contractor, making the company the rightsholder and the contractor the author. The Irish CDSMD Regulations allow only the author to reserve their rights against TDM, excluding subsequent rightsholders downstream.

Open Data Directive[383]

The EU Open Data Directive, which stipulates minimum requirements for EU Member States regarding making public sector information available for re-use, was implemented into Irish law via the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021. The aim of these regulations is to enhance accessibility to machine learning, AI and the internet of things (IoT), by tackling emerging obstacles to publicly funded data and fostering digital innovation, particularly in the realm of AI. The data sharing regime pursuant to these regulations imposes an obligation to make high-value data sets available for re-use, free of charge in machine-readable formats and via application programming interfaces (APIs) and, where relevant, as a bulk download. These high-value data sets offer substantial societal, environmental and economic advantages, as they are appropriate for developing applications and value-added services.

Data Act[384]

In addition, the EU Data Act, which has the objective of improving access to the use of data, particularly data generated by connected products or IoT devices, becomes directly applicable in Ireland on 12 September 2025. The requirements pursuant to the Data Act will be applicable where data is derived from IoT devices and is used to train AI systems.

Health Data Space Regulation[385]

Finally, the European Health Data Space Regulation takes effect in Ireland from 2026. The objective of this regulation is to support individuals in taking control of their own health data. It will support the use of health data for better healthcare delivery, research, innovation and policymaking and will enable the EU to make use of the potential offered by the safe and secure exchange, use and reuse of health data. It aims to foster the development of new AI-based healthcare products and

383 Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) [2019] OJ L 172.

384 Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) [2023] OJ L.

385 Proposal for a regulation of the European Parliament and of the Council on the European health data space [2022] COM/2022/197.

services that significantly improve patient safety and wellbeing, while preserving privacy and security.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

While no cases related to the provision of legal services using AI have yet been adjudicated in the Irish courts, it is worth noting that Ireland operates within the framework of common law. As such, legal professionals are keenly monitoring the developments and verdicts in prominent AI-related cases across the legal profession within other common law jurisdiction.

Internationally, where lawyers have found themselves in difficulty after irresponsibly using AI, the fines arising from such cases have focused on concepts of bad faith and accuracy in legal submissions.[386] This is significant from an Irish perspective, as the Irish 'Solicitor's Guide to Professional Conduct 2022' (the 'Guide to Professional Conduct') places similar requirements on Irish solicitors to exercise their 'professional skill and judgment' when acting on instructions from clients.[387] The Guide to Professional Conduct further states that solicitors need to be careful that what is said in their name is truthful and this obligation further requires solicitors to be honest and forthright in all professional and business relationships.[388]

While we have not seen any cases to date which are specifically in the context of the provision of legal services using AI, we are beginning to see other AI-related claims emerge. Generally, in line with the increased use and development of AI, the past number of years has led to new claims within the Irish courts, particularly with regard to AI's role in defamation proceedings. For example, the first AI case in the state, initiated in early 2024, involves a defamation claim by an Irish broadcaster following the alleged malfunction of an AI tool that was being used as an automated news content aggregator.[389] A further defamation case where the use of AI is inextricably linked, and which is currently going through the Irish courts, is one initiated by a privacy expert against LinkedIn in Ireland. In that case, it is alleged that LinkedIn's AI security system defamed him by 'shadow banning' him, meaning his profile and

386 See Kathryn Armstrong, 'ChatGPT: US lawyer admits using AI for case research' *BBC* (27 May 2023) https://www.bbc.com/news/world-us-canada-65735769 accessed on 14 May 2024; Dan Milmo, 'Two US lawyers fined for submitting fake court citations from ChatGPT' *The Guardian* (23 June 2023) https://www.theguardian.com/technology/2023/jun/23/two-us-lawyers-fined-submitting-fake-court-citations-chatgpt accessed on 14 May 2024; Park v Kim, No. 22-2057 (United States Court of Appeals for the Second Circuit, 2024).

387 Law Society of Ireland, *Solicitor's Guide to Professional Conduct* (Fourth edition, 2022) 13.

388 Law Society of Ireland, *Solicitor's Guide to Professional Conduct* (Fourth edition, 2022) 15.

389 See Deirdre Ahern, 'Dave Fanning's AI defamation case is at a new frontier of litigation' (*Trinity College Dublin*, 26 January 2024) https://www.tcd.ie/news_events/articles/2024/dave-fannings-ai-defamation-case-is-at-a-new-frontier-of-litigation/ accessed 3 May 2024; Fanning v BNN & Ors (2023) 227 IA.

posts cannot be seen by other users.[390] This case is set for a hearing before the Irish High Court in June 2024.

In light of this emergence of AI-related claims in Ireland, together with activities across the water, it is likely disputes concerning the legal profession's use of AI in Ireland is inevitable.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There is no sector specific legislation currently planned, to our knowledge, or implemented in Ireland on the use of AI in the legal profession. However, this will be required pursuant to the EU AI Act, particularly in relation to specific regulated products.

However, the Law Society of Ireland is live to the emerging use of AI technology across the legal profession and, in light of this, has created a dedicated page on its website, where it has published links to a range of AI resources for practitioners.[391]

Such publications include an AI starter guide.[392] This guide spans a wide range of entry level AI-specific issues like the definition of AI, the potential risks of AI (be it accuracy, intellectual property infringement, data privacy), challenges AI presents for legal education, and the role of AI in transforming legal practice. The Law Society has also created an easy access, compilation entitled 'AI and the Legal Profession', which contains a wide range of AI resources, including relevant books, eBooks and other AI-related journal articles.[393]

Further, the Law Society has two committees which consider the issues related to AI, namely the Intellectual Property and Data Protection Law Committee and the Technology Committee. The former is committed to, among other things, analysing the interplay between intellectual property and data protection and the EU AI Act. The latter's function is to monitor developments in technology, which are relevant to the legal profession, and promote the use of technology, including AI, as a business resource within the profession.

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390 See Mark Tighe, 'Privacy expert sues LinkedIn in first AI defamation case' *Irish Independent* (11 December 2022) https://www.independent.ie/irish-news/courts/privacy-expert-sues-linkedin-in-first-ai-defamation-case/42210892.html accessed 3 May 2024; *Hanff v LinkedIn Ireland Unlimited Company* (2022) 5977 P.

391 Law Society of Ireland, 'AI and the Law' (Law Society of Ireland) https://www.lawsociety.ie/news/news/Stories/ai-and-the-law accessed 3 May 2024.

392 Law Society Library, 'Artificial Intelligence (AI) in Legal Practice' (Law Society of Ireland, February 2024) https://lawsociety.libguides.com/ld.php?content_id=35197930 accessed 3 May 2024.

393 Law Society of Ireland, 'AI and the Legal Profession' (Law Society of Ireland) https://lawsociety.libguides.com/AI accessed 3 May 2024.

Finally, for those practicing in the public sector, the Government of Ireland has issued interim guidelines for the use of AI in the public service.[394] In these guidelines, the government has made a commitment that the use of AI tools in the civil and public service must comply with seven key principles, namely: human agency and oversight; technical robustness and safety; privacy and data governance; transparency; diversity, non-discrimination and fairness; societal and environmental wellbeing; and accountability.

Overall, the above indicates that the integration of AI across the legal profession in Ireland is well under way and although its use is not regulated by legislation per se, the Law Society and Bar Council of Ireland are clearly live to the issues it presents. As the application of AI increases, so too does the risk of liabilities for lawyers and, therefore, in this context education is vital. In light of the risks the use of AI tools pose in the legal context, we expect the Law Society and/or Bar Council to publish guidance similar to our English and Welsh counterparts, to help practitioners in making educated decisions on the use of AI.

9. What is the role of the national bar organisations or other official professional institutions?

To date, the Law Society and Bar Council have played the role of educators in the implementation of AI across the legal profession in Ireland.

For example, the Law Society has hosted a number of training events on AI, with sessions covering the risks associated with failing to prepare for AI compliance and the impact of AI on access to justice with a focus on ethics, and the use of emerging technologies in legal practice. Conscious of the growing interest in this area and in anticipation of the EU's AI Act coming into force, the Law Society plans to host more AI events and continuing professional development (CPD) training in the future.

The Bar Council has also hosted CPD sessions, covering topics like the EU AI Act, ChatGPT, and the risks and opportunities of GenAI. Its monthly publication, called *The Bar Review*, the readership of which is predominantly barristers practicing in Ireland, frequently contains articles on AI issues. For example, the latest issue contained a piece on how AI can be used in the legal context more specifically.[395]

The LSRA plays a significant role in overseeing the legal profession and protecting consumers in the legal services market. The LSRA ensures that solicitors and barristers adhere to strict professional standards, safeguarding the public against inadequate services, excessive fees and misconduct.

394 Department of Public Expenditure NDP Delivery and Reform, *Interim Guidelines for Use of AI in the Public Service* (Government of Ireland, February 2024).

395 Colm Quinn, 'More than a Flash in the Ram' (2024) 29(2) Bar Review 54.

The LSRA also monitors and authorises legal professionals and firms to ensure that the legal market maintains transparency and accountability. By adjudicating disputes over legal costs, the authority helps maintain clarity in regard to legal fee structures.

In terms of AI, the LSRA might shape how legal professionals integrate such technologies. As the profession increasingly adopts AI for tasks like legal research, document drafting and due diligence, the LSRA could establish guidelines aimed at ensuring ethical and effective use. This might involve ensuring that AI does not compromise confidentiality, cause bias in legal decisions, or create other professional risks.

The LSRA could also promote AI literacy among legal practitioners, helping them understand the implications and potential limitations of AI in legal work. By regulating AI's use, the LSRA can uphold professional standards, while allowing the legal profession to leverage AI's benefits responsibly.

Israel

Dr Omri Rachum-Twaig, FISCHER (FBC & Co.), Tel Aviv

1. What is the understanding or definition of AI in your jurisdiction?

The term artificial intelligence (AI, תיתוכאלמ הניב or Bina Melakhutit) is used in Israel to refer to software that is able to perform tasks that normally require human intelligence, such as reasoning, learning, decision making and problem solving. There is no legal definition for AI.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Several AI tools are available in Israel. Some of which are based on Israeli developments, including LawGeex, which uses AI to review and approve contracts, and FirstRead which assists in automated generation of legal documents. Other tools are globally available and are used in Israel such as Harvey.ai and SpellBook.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

The adoption of AI tools for the legal profession in Israel is still developing and, therefore, there are no substantial differences in adoption between local law firms, international law firms and in-house departments.

4. What is the current or planned regulatory approach on AI in general?

Lawyers

Legal services are regulated in Israel by the Israeli Bar Association Law (1961), which stipulates that only licensed lawyers can provide legal services. The law does not explicitly address the use of AI or other technologies for legal services, but it implies that lawyers are responsible for the quality and ethics of their legal work, regardless of the tools they use. Therefore, lawyers who use AI tools for legal services may be required to ensure that they comply with the rules of professional conduct, such as confidentiality, competence, diligence and loyalty.

Courts

The use of AI in courts is not yet existing or regulated in Israel, but there are some initiatives and experiments to explore its potential and challenges. For example, the Israeli Ministry of Justice has launched a pilot project to use AI to help standardise criminal sentencing based on previous court decisions.

General

Israel does not have a comprehensive or specific legal framework for AI, but it has several laws and regulations that may apply to certain aspects or domains of AI, such as data protection, intellectual property, consumer protection, competition, cybersecurity and human rights.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

As mentioned in Question 4, Israel does not have a specific statutory legal framework for AI or machine learning systems and the Ministry of Justice and Ministry of Innovation explicitly published a statement that Israel does not intend to adopt general AI legislation, but rather address AI concerns on a sector-by-sector basis.

There are several laws and regulations that may apply to certain aspects or domains of AI or machine learning systems, depending on the nature, purpose and context of their use. Some of these laws and regulations are:

- **The Protection of Privacy Law (1981):** This law regulates the collection, processing and transfer of personal data, and grants individuals the right to request access, correct and delete their personal data. It also imposes obligations on data controllers and processors, such as obtaining consent, providing privacy notices which ensure security and notifying people of breaches. The law applies to AI or machine learning systems that use personal data – either for training models or for the operation of the AI system itself – as it refers to any processing of personal data for technological purposes.

- **The Copyright Law (2007):** This law protects the rights of authors and owners of original works of literature, art, music, software and databases. It also grants exceptions and limitations for certain uses of copyrighted works, such as fair use, quotation, education and research. The law may apply to AI or machine learning systems that create, use or infringe copyrighted works, such as text, image, video and audio generation, analysis or recognition. However, the law does not clarify some of the issues and uncertainties raised by

AI or machine learning systems, such as the authorship, ownership, originality and liability of AI-generated works, or the scope and conditions of fair use of copyrighted works by AI and machine learning systems. The Ministry of Justice published an opinion stating that the training of AI models based on copyright protected works generally qualifies as fair use under Israeli law.

- **The Consumer Protection Law (1981):** This law regulates the rights and obligations of consumers and suppliers in various transactions, such as contracts, warranties, advertisements, cancellations and compensation. It also prohibits unfair or misleading practices, such as fraud, deception, coercion and discrimination. The law may apply to AI or machine learning systems that are involved in consumer transactions, such as e-commerce, chatbots, recommender systems and smart devices. However, the law does not address some of the challenges and risks posed by AI or machine learning systems, such as the disclosure, consent, quality, safety and accountability of AI-based products or services, or the protection of consumer data and privacy.

6. Is free data access an issue in relation to AI?

Free data access is an important issue in relation to AI, as AI or machine learning systems rely on large amounts of data to learn, improve and perform their tasks. Free data access can enable the innovation, research and education of AI in Israel, as well as the transparency, accountability and participation of the public and private sectors in the development and use of AI. However, the legal framework in Israel does not currently address the concept of free data access in relation to AI. The Ministry of Justice has published an opinion regarding the applicability of fair use defences with respect to training AI models based on copyrighted materials, but this has not yet been addressed in courts.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

There are no court decisions in Israel that directly address the provision of legal services using AI.

8. What is the current status – planned, discussed or implemented – of the sectoral legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There is no specific legislation in Israel on the use of AI in the legal profession or services that are traditionally being rendered by lawyers. The Israeli Bar Association Law (1961), however, prohibits non-lawyers from providing legal services. This effectively means that legal AI startups cannot currently provide their tools to consumers without the involvement of licensed lawyers.

9. What is the role of the national bar organisations or other official professional institutions?

The Israel Bar Association is a statutory body that represents and regulates the legal profession in Israel. The Israel Bar Association has the powers to set forth binding legal ethics guidelines which could apply, in the future, to the use of AI support tools in the legal profession. It is also equipped to challenge non-lawyers who are effectively offering quasi-legal services in violation of the Israeli Bar Association Law (1961).

Italy

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1. What is the understanding or definition of AI in your jurisdiction?

By using the wording artificial intelligence (AI) (*intelligenza artificiale*), reference is made to software and hardware systems capable of achieving complex goals, operating in physical or virtual dimensions, perceiving the surrounding environment, acquiring – understanding – inferred data through knowledge continuously acquired (reasoning and machine learning), adopting decisions and choosing solutions in given or extemporary situations. AI is defined as a 'dual' technology, as it can apply to both civilian and military scopes.[396]

AI is a technology ecosystem based on highly performing calculations, mobile broadband technologies, nanotechnologies and the so-called internet of things (IoT). In a few years, the development of these sectors will allow a more synergic interaction among them, mainly due to blockchain, cloud computing and mostly, the operativity of 5G frequency bands.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

We are at the beginning of this new trend; however, there is already some AI software used by lawyers in their practices. They are mostly meant to simplify lawyers' work, setting them free from repetitive work, which can slow down their professional activity.

This software can assist lawyers in statutory regulations and court case searches, as well as with the revision of contracts.

As an example, ROSS can help lawyers in research. It is software based on AI that aims to simplify the work of lawyers. ROSS is capable of simplifying the search of statutory regulations and court cases. It is based on 'Watson', IBM software capable of understanding human language, and can be used by law firms to simplify and render faster any legal searching activity, which young lawyers usually perform.[397]

Besides performing searches on single cases, ROSS is capable of developing logical connections and proposing ad hoc solutions to help lawyers to interpret

396 See www.mise.gov.it/index.php/it/intelligenza-artificiale-call accessed 6 July 2020.

397 See https://rossintelligence.com accessed 6 July 2020.

a specific case and to act accordingly. Several Italian law firms, particularly in Milan, have begun to use it.

A second example of AI software for law firms is Kira, a software expert on contracts.[398] Kira is devoted to cutting down time spent on analysing hundreds of pages of contracts. Kira automatically finds, extracts and reviews significant contract information in minutes.

This software is meant to enhance visibility in contracts, making it easy to get a quick picture of contract terms. Kira rapidly responds to a change in law, anti-bribery review or force majeure event. According to its provider, Kira can jump between summary text and the original scanned page.

Kira analyses contracts, extracts their most relevant sections and highlights their material provisions. Kira is also capable of analysing documents based on the inclusion or absence of specific provisions, and can extend search and analysis to contracts drafted in different languages.

An interesting bot used for legal data privacy protection is that commercialised by LT42.[399] This Italian software offers the possibility for companies to be appointed as data protection officers (DPO) to comply with the European Union General Data Protection Regulation Directive No 679/2016 (GDPR) on privacy. LT42 offers support that can be provided both through its online platform and through a customised consulting service, as well as constant monitoring to comply with the norms established by the EU. A team of experts retains control of the software on privacy, legal issues and technology.

Contract Intelligence (COIN), is another bot able to substitute 360,000 annual working hours performed by lawyers. So far, it has been tested by JP Morgan.[400] COIN runs on a machine learning system that is powered by a private cloud network that the bank uses. Apart from shortening the time it takes to review documents, COIN has also helped JP Morgan to decrease its number of loan-servicing mistakes. According to the program's designers, these mistakes stemmed from human error in interpreting 12,000 new wholesale contracts every year.

Another example is 'DoNotPay', AI software meant to appeal parking tickets, cancel any service or subscription, and sue in small claim courts, for example, for delayed or cancelled flights. It's a mobile phone app and the company running this business claims that 'the DoNotPay app is the home of the world's first robot lawyer. Fight corporations, beat bureaucracy and sue anyone at the press of a button'.[401]

398 See https://kirasystems.com accessed 6 July 2020.

399 See www.lt42.it accessed 6 July 2020.

400 See www.icertis.com/resource/what-is-contract-intelligence accessed 6 July 2020.

401 See https://donotpay.com accessed 6 July 2020.

In Italy, AI software called 'Flightright' provided by a German company called Flightright GmbH is frequently used by travellers.[402] It is an air passenger claims management software that offers assistance and advisory services. The software offers passengers assistance and advisory services to obtain compensation from airlines when a flight is delayed or there is a failure. Flightright's free checks tell customers whether they are entitled to compensation if they simply type in the flight details – whether there was a delay, cancellation, rebooking or a missed connection.

3. If yes, are these AI tools different regarding • independent law firms; • international law firms; and • in-house counsel; and what are these differences?

Based on the above, there is a wide variety of AI-based software already available on the market. Some applications are used to support lawyers in their work, whereas others directly offer legal services to their customers. Most of this software and applications have been developed outside Italy, and they are meant for an international clientele, so independent law firms, law firms operating in several countries and in-house counsel can all avail of their services.

4. What is the current or planned regulatory approach on AI in general?

AI is deemed, by both the Italian Government and the EU, to be one of the key technologies for a new industrial revolution guided through the transition to digital. Italy has undertaken to implement a national strategy on AI within the framework of the European Coordinated Plan on Artificial Intelligence, which constitutes the domestic contribution to synergic action among EU Member States.[403]

In April 2021 the European Commission unveiled a proposal for a new Artificial Intelligence Act (AI Act). The Regulation proposal sets out harmonised rules on AI and introduces a technology-neutral definition of AI systems into EU law. The Commission also proposes to adopt different sets of rules tailored to a risk-based approach with four levels of risk:

Unacceptable risk AI: harmful uses of AI that contravene EU values (such as social scoring by governments) will be banned because of the unacceptable risk they create;

- High-risk AI: a number of AI systems (listed in an Annex to the Regulation) that are creating adverse impact on people's safety, or their fundamental rights, are considered to be high-risk. In order to ensure trust and consistent high level of protection of safety and

402 See www.flightright.com accessed 6 July 2020.

403 See https://ia.italia.it/assets/whitepaper.pdf accessed 6 July 2020.

fundamental rights, a range of mandatory requirements (including a conformity assessment) would apply to all high-risk systems;

- Limited risk AI: some AI systems will be subject to a limited set of obligations (eg, transparency);
- Minimal risk AI: all other AI systems can be developed and used within the EU with no additional legal obligations than existing legislation.

The proposal is now being discussed by the co-legislators, the European Parliament and the European Council, where negotiations have started to find a common position between Member States.

The domestic strategy comprises nine targets and seven sectors.

The national strategy for AI comprises an initial chapter, called Vision and Targets, and a series of brief chapters explaining the nine targets the strategy is aiming at:

1. improving investment, public and private, on AI and related technologies;
2. enhancing R&D in the field of AI;
3. supporting the adoption of digital technologies based on AI;
4. increasing educational efforts at different levels to enable AI to support the workforce;
5. exploiting the data economy, real fuel for AI, particularly in the public sector;
6. consolidating the legal and ethical frameworks that regulate AI development;
7. promoting awareness and trust of AI among citizens;
8. improving the public administration sector and making public policies more efficient; and
9. favouring European and international cooperation for accountable and inclusive AI.

The following seven key sectors have been given the utmost priority in the allocation of resources: manufacturing industry, agrofood, tourism and culture, infrastructure and energy networks, healthcare and social security, smart cities and mobility, and public administration.

Among the measures that shall be adopted are those to increase the number of AI experts in Italy to support academic, industrial training and research in this field and to finance the hiring of professors and researchers in universities and R&D centres,

as well as financing masters carried on by businesses alongside universities and programmes of industrial PhDs.

Besides promoting the development of centres operating in the AI field, the government is aiming at realising a national network for the development and wide spread of AI and digital technologies. Material in this context will be the activities of the Competence Centre and the 12 technology clusters, among which is one dedicated to the Intelligent Factory and the Digital Innovation Hub.

There are several possible solutions for improving interoperability and access to public administration data, and the Italian Government is committed to promoting the development of the Data Sharing Agreement, which is a standard contract under which parties undertake with each other to manage data supply and management in accordance with agreed upon rules, as well as to assess, in cooperation with the Antitrust Authority and the Privacy Authority, the implementation of data sharing standards in specific strategic sectors of national interest.

The regulatory and ethical aspects are indeed material to developing AI. The constant interaction between man and intelligent-machine requires an update of the legislative framework to ensure that the AI system engineering is trustworthy. As an example, the current EU Machine Directive does not reflect the changes that have occurred, and a new European directive in that field is needed.

In connection with the ethical aspects, the Italian Government intends to prevent any kind of AI that can increase social differences and is detrimental to some. To that extent, the opportunity to regulate, promote and manage new certifications, which allow the verification that AI systems are aligned with the principles that the European guidelines on ethical AI set forth, is under examination.

Among the public administration sectors that could benefit from the use of AI are countering tax evasion and avoidance, web crimes, combating cyberattacks arising from AI, personal information and sensitive data theft, and fighting against organised crime and terrorism.

The Italian strategic plan represents a contribution to the European Coordinated Plan on AI.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

The legal effects and legal issues connected to the design, manufacturing and use of new technologies, including those connected to AI, must be examined within the context of the current statutory regulations, and be resolved on the basis of existing legal principles. This is because, to date, there are no statutory regulations in force specifically regulating AI systems, the consequences of availing of them or the liabilities from either a civil or criminal law standpoint, arising from losses or felonies depending on or connected to their use.

This means that general statutory regulations on contracts and torts apply to liabilities arising from losses, with all their features and differences, in terms of liability allocation, burden of proof and statutes of limitations, arising therefrom.

By analogy, the general statutory regulations of copyright and intellectual property apply to the invention and development of AI systems and to the output from their use.

Ultimately, the treatment of personal data and privacy rights linked to the use of AI is subject to the GDPR.[404] Notwithstanding, the EU directive does not make express reference to the use of new technologies; its scope is that the treatment and protection of personal data are ensured within the current technology context, especially with reference to the risks that innovation can cause to individual privacy.

The main feature of AI compared to other innovative technologies is embedded in its system, which allows 'self-decisions' through machine learning mechanisms, operating on external inputs and gathered data. From a legal standpoint, self-determination can interrupt the link between the conduct of those who have conceived, designed or manufactured the system and the output that the system generates. This involves an evident legal issue of linking liability to persons due to the autonomous AI conduct.

Based on domestic civil law, there are rules attributing liability for the conduct of another and or standards of strict liability, for example, liability for carrying out dangerous activities, as a provision of the Civil Code, Article 2050, set forth for car driving. Likewise, some EU statutory regulations, for example, EU Directive No 374/85 on liability for defective products, can apply and determine civil law liability. On the contrary, these standards and principles cannot apply to criminal liability due to the principle of legality and because criminal liability is personal. It is not possible that someone is subject to criminal responsibility for the conduct of another; hence, it is difficult to conceive that an individual can be criminally sanctioned for the autonomous, inevitable and unforeseeable conduct of an AI system capable of self-determination.

Brand new domestic statutory regulations – not directly linked to AI – have been introduced recently in the area of new technologies, for instance, blockchain and smart contracts, based on Act No 12-2019, which introduces definitions of 'technologies based on distributed ledgers' and 'smart contracts'.

New statutory regulations on AI are under discussion and they will abide by the EU Ethics Guidelines on AI and its principles as of 8 April 2019 (High-Level Expert Group on AI – Ethics Guidelines for Trustworthy Artificial Intelligence).[405]

404 See https://eur-lex.europa.eu/eli/reg/2016/679/oj accessed 6 July 2020.

405 See https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai accessed 6 July 2020.

The first of these principles provides that there shall always be human control of AI because the aim is to improve human actions and the human's rights, not to reduce the human's autonomy. A second principle provides that algorithms shall be safe, trustworthy and resist errors or inconsistencies during the different phases of the AI system life cycle. The third entails that citizens shall be always informed about the use of their personal data and have full control so that it cannot be used against them, and that shall be done by following consistent provisions in respect of the GDPR.

The fourth principle calls for transparency and aims to guarantee the traceability of AI systems. The fifth principle is to guarantee diversity and non-discrimination, with human beings able to modify the algorithms' decisions, taking into account all the needed factors. In this connection, there shall be procedures to object to algorithms' decisions to ensure the liability of those managing the systems in the case of loss or damages. Eventually, domestic statutory regulations on AI shall be intended for the benefit of social and environmental welfare.

6. Is free data access an issue in relation with AI?

As mentioned in question 5, the treatment of personal data and privacy rights linked to the use of AI is subject to the GDPR. Therefore, the GDPR statutory provisions apply to the use of free data, providing restrictions in order to ensure individual privacy.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To date, there are no court decisions on AI.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Currently, there are no planned, discussed or implemented sectorial statutory regulations in Italy on the use of the AI in the legal profession or services that are traditionally rendered by lawyers. Although not directly related to the use of AI, the Agency for Italian Digitalisation (Agenzia per l'Italia Digitale or AGID) issued Resolution No 116/2019 of 10 May 2019, setting up a Working Group for the implementation of guidelines and technical standards relating to technologies based on distributed ledgers and smart contracts.[406] This action was carried on

406 See www.agid.gov.it/it/sicurezza/cert-pa accessed 6 July 2020.

pursuant to the provision of Article 8ter of Law Decree No 135 of 14 December 2018 titled 'Urgent provisions to support and simplify for companies and the public administration', which was ratified through Act No 12 of 11 February 2019.[407] This Act introduces the legal definitions of 'technologies based on distributed ledgers' and 'smart contract'.

According to such statutory regulation, technologies based on distributed ledgers are those 'technologies and digital protocols, which involve the use of a shared ledger and are: 1) distributed; 2) reply; 3) simultaneously accessible; 4) structurally decentralised on cryptographic basis; and 5) capable to allow data recording, validation, upgrade and storage, both encrypted and not, which can be verified by each participant and which cannot be not modified or altered'.

A smart contract, instead, is defined as a 'computer program operating on technologies based on distributed ledgers and its execution automatically binds two or more parties on the basis or provisions pre-set by the same parties. Smart contracts satisfy the legal standard of written form through digital identification of the concerned parties', through a technical procedure matching the requirements AGID sets forth.

The recording of a digital document through the use of technologies based on distributed ledgers has the same legal effects as electronic time stamps in the provision of Article 41 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.[408]

In this context, the guidelines on technical standards that are about to be issued by AGID are material for ensuring the legal effects of electronic time stamps.

9. What is the role of the national bar organisations or other official professional institutions?

The Italian Bar Associations will play a material role in providing ethical rules and guidelines for the use of AI by the legal profession. Civil proceedings have been digitalised over the last decade, and the way of working for lawyers, judges and court clerks has changed dramatically.

The first step has been the digitalisation of court case registers, which are currently digital databases, and lawyers can access them to file written pleadings and court judgments via the so-called Portale Servizi Telematici (PST) from personal computers, access points and tools there connected (eg, 'Service1' and 'Consolle Avvocato').[409]

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407 See www.gazzettaufficiale.it/eli/id/2018/12/14/18G00163/sg accessed 6 July 2020.

408 See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=EN accessed 6 July 2020.

409 See www.accessogiustizia.it/pa/pct.jsp accessed 6 July 2020.

That has allowed a more efficient update of court claims files through databases, which enable real-time data sharing. Among the most relevant features, the PCT (ie, 'Processo Civile Telematico') has allowed the build-up of a digital archive of court decisions on a national scale.

Such an archive is being developed on a voluntary basis by judges, who filed their relevant decisions, based on their own assessment and by following the guidelines of court chambers. This archive-database enables judges to assess how a specific case was entertained and resolved by his/her colleagues and includes judgments of the courts of appeal. This leads to more uniform judgments on similar lawsuits within the same tribunals and gives lawyers the opportunity to better assess claims to advise clients.

There is an ongoing discussion on the use of tools on these databases, which would allow lawyers to have an automated risk assessment of a potential lawsuit, including the use of AI, to that extent.

As mentioned, several Legal Tech providers are currently offering office automation in some cases through AI tools that automatically select legal documents, for instance, ROSS Intelligence and LT42.

From a technical standpoint, a material aspect of machine learning is the availability of adequate datasets during the several development phases, such as training, cross-validation and testing. There is a direct relationship between the database dimension and the accuracy of the resulting models.

Among the benefits of implementing AI for legal practitioners is the improvement of knowledge and productivity; however, an open issue remains regarding determining the liability of those engineering, managing or using software that leads to wrong automated decisions. Software decisions are, in any case, still revised by individual professionals.

In Italy, the judge tool Consolle del Magistrato provides judges with access to a digital case file, and there is automated filling of the headings of documents, hearing minutes and orders of judgments on the basis of pre-set templates. Nevertheless, the document content, such as fact finding, reasoning and holdings, are entirely controlled by judges; hence, beyond the scope of this article.

Coming instead to the aforementioned digital archive of court decisions, the national bar associations shall discuss whether an AI machine learning system could support legal practitioners and judges in the issuance of decisions, provided the tool is capable of selecting relevant court precedents that fit the specific lawsuit. Such a tool could be implemented into the current PCT system at a centralised/ministerial level through a centralised national database or district court database.

Additionally, the national bar associations are called to examine the ethical aspects of implementing these tools into the legal profession. In their discussion, the bar

associations shall take as reference the work of the European Commission for the Efficiency of Justice (CEPEJ) of the European Council, which, in December 2018, issued the European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment (the 'Charter').[410] The Charter provides a framework of principles that can guide policy-makers, legislators and justice professionals when they grapple with the rapid development of AI in national judicial processes.

The CEPEJ's view as set out in the Charter is that the application of AI in the field of justice can contribute to improving efficiency and quality, and must be implemented in a responsible manner that complies with the fundamental rights guaranteed, in particular, in the European Convention on Human Rights (ECHR) and the Council of Europe Convention on the Protection of Personal Data. For the CEPEJ, it is essential to ensure that AI remains a tool in the service of the general interest and that its use respects individual rights.

The CEPEJ has identified the following core principles to be respected in the field of AI and justice:

- principle of respect for fundamental rights: ensuring that the design and implementation of AI tools and services are compatible with fundamental rights;
- principle of non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;
- principle of quality and security: with regard to the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multidisciplinary manner, in a secure technological environment;
- principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, and authorising external audits;
- principle 'under user control': precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.

For the CEPEJ, compliance with these principles must be ensured in the processing of judicial decisions and data by algorithms and in the use made of them.

410 See www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment accessed 6 July 2020.

Japan

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1. What is the understanding or definition of AI in your jurisdiction?

At present, there is no established definition of artificial intelligence (AI), making it difficult to strictly define the extension of broad AI. It is referred to in the AI Business Operators Guidelines, issued by the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade and Industry on 19 April 2024 (the 'AI Business Operators Guideline') that, 'within this guideline, AI is considered as either the "AI system" itself or an abstract concept including software or programs that perform machine learning'.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there any actual AI tools or use cases in practice for legal services?

Various legaltech services that leverage AI and natural language processing are currently being used in Japan's legal sector.

There are generally two categories of services: services provided to lawyers and corporate legal staff to improve operational efficiency, such as contract review, contract management, document review (predictive coding), legal research and contract translation; and services provided to increase accessibility to justice and law for general consumers, such as do-it-yourself (DIY) and Online Dispute Resolution (ODR).

The following are core services in Japan provided to lawyers and corporate legal staff.

Contract review

LegalForce, an AI-based Japanese and English contract review service provided by LegalOn Technologies, is used by more than 3,500 companies and law firms in Japan. Its main functions include an AI review service, an AI contract and knowledge management system, and a template database containing provisions from 1,500 types of contracts.[411]

The AI contract review supports 70 types of contracts, which can be reviewed and edited directly by uploading a Microsoft Word contract into LegalForce. The tool

411 See the Legal Force website, https://legalforce-cloud.com accessed 3 June 2024.

determines the content of the contract, clause by clause, and alerts the user of legal risks. This function recently started to provide revision to the flagged clauses by utilising a ChatGPT application programming interface (API). The uploaded contract can be modified directly by the user according to these alerts. The system also has the capacity to suggest clauses that are missing from the contract under review. The importance of a clause can be pre-set and the priority of review can be customised to users' preferences. With the comparison function, the system can automatically compare terms between two contracts (for example, the proposed contract and the user's template) and produce a table of their similarities and differences. This comparison can be conducted even if the order of clauses in each respective contract is different

In addition, companies can accumulate their own legal database by exerting the contract and knowledge management system called LegalForce Cabinet. This service can automatically extract and register vital information, such as the name of the contract and the names of the parties, types of contracts, etc, in uploaded contracts. It also enables users to search for executed contracts or specific clauses included in executed contracts from the tool's library.

There are also other contract review services in Japan, such as:

- Cloudsign Review, provided by Bengo4;[412]
- GVA Assist, provided by GVA Tech;[413] and
- MNTSQ, provided by MNTSQ.[414]

Document review (predictive coding)

KIBIT, an AI engine provided by FRONTEO, is a document review and predictive coding service which supports language analysis in Japanese, Korean, Chinese and English.[415] KIBIT is used in fraud investigations and e-discovery and is also routinely used for email auditing. According to our interviews with company representatives, relative to other services, KIBIT provides highly accurate reviews using comparatively less training data. For example, the tool can flag up emails that suggest fraud by analysing a message's content and context, even if such emails do not explicitly refer to fraud.

BoostDraft, the first legal document editor for legal professionals, assists Japanese companies and law firms to solve inefficiencies in legal drafting. BoostDraft enables users to quickly access and verify references to articles, laws and defined terms without scrolling through the document. It also helps users quickly complete

412 See the Cloudsign Review website, www.cloudsign.jp/review accessed 3 June 2024.

413 See the GVA Assist website, https://ai-con-pro.com accessed 3 June 2024.

414 See the MNTSQ website, www.mntsq.co.jp accessed 3 June 2024.

415 See the FRONTEO website, www.fronteo.com accessed 3 June 2024.

time-consuming tasks such as formatting the document, eliminating typos and omissions and correcting inconsistencies in the document. BoostDraft is integrated into Microsoft Word via a plugin function, which means users can use this service without introducing any new software.[416]

Legal research

Legalscape, provided by Legalscape, unifies and connects legal information (legal literature, judgments, administrative documents, guidelines, public comments, etc) from both online and offline sources. This enables lawyers to conduct comprehensive online legal research through what the company envisions as 'a legal version of Google'.[417] For example, the system allows its users to search through 2,800 registered law-related books and 7,000 laws in full text and displays where the searched keyword appears within each book. Legalscape combines its original natural language processing technology optimised for legal content with generative AI to provide an AI-powered research function. With this function, users can simply ask questions about what they want to know, and the AI will display a list of the reliable legal literature and summarise the key points.

There are other legal research services in Japan, such as LEGAL LIBRARY[418] and LION BOLT.[419]

Contract translation

The Rozetta Corporation's T-400, a service that uses machine learning to automatically translate legal documents and contracts, has already been adopted by many law firms and companies in Japan.[420]

LeTranslate, provided by Lisse, is developed in cooperation with native English-speaking attorneys, and can provide customers with highly accurate translation services between English and Japanese.[421]

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

416 See the BoostDraft website, https://boostdraft.com/features accessed 3 June 2024.

417 See the Legalscape website, www.legalscape.co.jp, accessed 3 June 2024.

418 See the LEGAL LIBRARY website, https://legal-library.jp accessed 3 June 2024.

419 See the LION BOLT website, https://law-books.lionbolt.jp accessed 3 June 2024.

420 See the Rozetta AI Auto-Translation, www.rozetta.jp/t4oo accessed 3 June 2024.

421 See the LeTranslate website, https://lisse-law.com/translation accessed 3 June 2024.

Our research indicates that independent Japanese law firms have introduced document review, legal research, case management and contract translation services into their practices. Large law firms also use proofreading tools to improve working efficiency.

Our research also indicates that an increasing number of major Japanese companies have adopted AI contract review, contract management and translation services. AI contract review services are perceived as particularly useful, especially among non-lawyers in corporate legal departments. According to a survey published by Nikkei,[422] over 40 per cent of Japanese companies, including listed companies, medium and small companies, have introduced AI tools for checking omissions in contract clauses.

Although international law firms have introduced AI contract review and contract translation services developed by Japanese companies into their practices, they do not appear to have adopted other domestically developed legal tech services.

4. What is the current or planned regulatory approach on AI in general?

The AI Business Operators Guidelines, which consolidated existing documents related to AI risk management into a comprehensive guideline, has garnered significant attention. When it was released as a draft in December 2023, it received thousands of public comments during a month-long feedback period.

Content of the AI Business Operators Guidelines

Basic principles and guidelines

The 'main text' explains the societal vision and the specific actions that AI operators should aim for. This section outlines the basic directions and principles for maximising societal benefits using AI.

Practical approaches

The 'appendices' section details the specific approaches to be taken, providing concrete guidelines useful for actual operations.

422 See the NIKKEI website, www.nikkei.com/article/DGXZQOUC300NU0Q3A231C2000000 accessed 3 June 2024.

Target audience

The guidelines target the following three main groups:

1. *AI developers*: businesses that develop AI systems.
2. *AI providers*: businesses that incorporate developed AI systems into products or services and offer them to the market.
3. *AI users*: businesses that use AI systems or services in their operations.

These target audiences are identified based on specific AI use cases and their stakeholders.

Key sections of the Guidelines

Common Guidelines (C)

This includes basic elements of AI governance such as human-centred design, safety and fairness. It also covers aspects of education and innovation, integrating similarities from various domestic and international guidelines.

Guidelines Common to Operators of Advanced AI Systems (D)

Guidelines for advanced systems, including cutting-edge technologies such as generative AI. This section clarifies the roles of not only AI developers but also providers and users in reducing risks and promoting the use of AI.

Building ai governance (e)

Based on an agile governance approach, this provides methods for quickly updating governance cycles. The aim is to flexibly apply governance frameworks in a society with increasing uncertainty.

These guidelines, created based on domestic and international policy and technological trends, cover a broad range of issues and serve as a crucial resource for AI business operators.

As seen above, the rules related to AI have been made as soft law in Japan. However, there is an ongoing discussion about creating an AI governance law, led by the Liberal Democratic Party (Japan's ruling party), to regulate developers of AI foundation models. Although the details of the discussion are unclear, it will be necessary to closely monitor future developments.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

There are currently no statutes or regulations that specifically regulate AI in Japan. As a result, existing legislation is generally applied to AI or machine learning systems. However, in some areas, existing legislation has been updated to meet the new challenges arising from AI-related issues. Given this context, we will focus on introducing new or updated legislation in three key areas, namely: autonomous driving issues; copyright; and big data protection. Privacy and personal data protection is further explored in Question 6.

Autonomous driving issues

A typical example of an AI-equipped technology approaching practical use in Japan is a car with an autonomous driving function.

In Japan, there are six classifications (Level 0 to Level 5) which categorise automatic driving according to J3016 (September 2016) by SAE International and its Japanese reference translation, JASO TP 18004.

In Level 3 automated vehicles for example, there will be a 'fallback-ready user' who is prepared to respond to traffic, road or hazardous conditions. This user does not need to control the vehicle directly in normal conditions while the autonomous driving system is operating. However, this fallback user will be responsible for responding appropriately to the system's intervention requests. In contrast, personnel within Level 4 or 5 driverless vehicles are no longer considered drivers, but passengers, with no role in vehicle operation.

The 2019 amendments to the Road Traffic Act and the Road Transport Vehicle Act introduced the definition of an 'automatic driving device' as a device with functions that replace the entire ability of the driver of the vehicle to recognise, predict, judge and operate the vehicle, ie, automatic driving function using AI technology. The automatic driving device allows the drivers to be exempt from rules that preclude them from talking on mobile phones or looking at electronic displays, such as navigation systems.[423] The 2019 amendments allow Level 3 autonomous-driving cars to operate on public roads.[424]

The 2022 amendments to the Road Traffic Act have further deregulated Level 4 autonomous driving. The Road Traffic Act introduced the concept of 'specified automatic driving', defined as the operation of a motor vehicle equipped with an automatic driving device under the specified conditions for that device, excluding cases where a person is present to operate the

423 Road Traffic Act Article 71-4-2 para 2.

424 'Autonomous Driving' (National Police Agency), www.npa.go.jp/bureau/traffic/selfdriving/index.html accessed 3 June 2024.

vehicle's device in response to road, traffic and vehicle conditions.[425] To engage in specified automatic driving, one must obtain permission from the Public Safety Commission having jurisdiction over the subject area.[426] Furthermore, the business operator of the specific automatic driving must fulfil certain obligations under the Road Traffic Act.

In addition, the 2022 amendments have paved the way for autonomous delivery robots to operate on public roads, subject to the same traffic rules as pedestrians. However, such robots must adhere to certain conditions, including a maximum speed limit of six kilometres per hour and a body size comparable to that of an electric wheelchair.

In Japan, negligence of an actor is required to impose tort liability. With respect to tort liability in the event of a traffic accident, a Level 3 designation does not relieve the user of an automated vehicle entirely of the duty to drive and operate the vehicle while it is driving autonomously. However, drivers are not required to take direct control of the vehicle, and the duty of care necessary while driving is reduced. As a result, drivers may not be found negligent for an accident involving a Level 3 vehicle. At Level 4 and above, the user of an automated vehicle is, in principle, allowed to trust the proper operation of the system and does not owe a duty of care while the system is in use. Therefore, in principle, the user is not negligent for any accident while using the system. However, failure to perform the required inspection and maintenance of the car's software before driving may constitute negligence. In addition, if the autonomous driving car repeatedly behaves abnormally and the user continues to use the system, the user may be considered negligent. Furthermore, if the user should have suspected the system to be defective or the user's assumption of trust in the system has diminished, negligence may also be imposed.

In Japan, the Compulsory Insurance System has been established in accordance with the Act on Securing Compensation for Automobile Accidents. The owners and other operators of cars are made to bear de facto strict liability for traffic accidents to provide prompt and reliable compensation for damage.

The Ministry of Land, Infrastructure, Transport and Tourism's Study Group on Liability for Damages in Automated Driving has studied the liability for damages under the Act for accidents involving vehicles equipped with up to Level 4 autonomous driving capabilities. Its report, which was published in March 2018, covers a transitional period until around 2025.[427] The report concluded that at least until the transitional period, strict liability should continue to be imposed on the owners or operators of autonomous vehicles involved in accidents. The liability of

425 Road Traffic Act Article 2 para 1 item 17-2.

426 Road Traffic Act Article 75-12, para 1.

427 *Report of the Study group on liability for damages in autonomous driving*, (Ministry of Land, Infrastructure, Transport and Tourism, March 2018), www.mlit.go.jp/common/001226452.pdf accessed 3 June 2024.

the manufacturers of autonomous driving vehicles is also being discussed among academics and lawyers.

Regarding the application of criminal law to accidents while using automated driving systems, there is discussion whether criminal law is applicable to AI itself in cases where errors in the AI's judgement are the causes of the accident.

Copyright

To develop AI effectively, AI systems need as much training data as possible, and such data sets may contain copyrighted material. Consequently, there is debate as to whether the use of copyrighted works for the purpose of AI analysis should be permitted, and in the case that it is, to what extent.

As the basic framework, the Copyright Act of Japan (the 'Copyright Act') has not recognised a 'fair use' defence against alleged copyright infringement, but the legislation lists certain specific acts, including reproduction for private use or citation, etc, as being exceptions to copyright infringement. In general, the scope and conditions of such exceptions are explicitly prescribed in the Copyright Act. However, new exceptions to copyright infringement are now emerging, which were not previously contemplated by the Copyright Act. For example, according to the Copyright Act as amended in 2018, unless it unduly harms a copyright holder's interests, copyrighted works may, to the extent necessary, be used in any manner if such use is made for any purpose other than enjoying the expression of the copyrighted works, including for the purpose of information analysis. This exception is applicable even for commercial use, and even for use for the benefits of third parties.

Consequently, use of copyrighted works as training data for deep learning or machine learning and the creation of training datasets for circulation among business partners or affiliates does not constitute copyright infringement. Given such broad exceptions to copyright infringement, a Japanese researcher has deemed Japan 'a paradise for machine learning'.

On 18 April 2024, the Cultural Affairs Agency published a summary of the document *Perspectives on AI and Copyright*, which was compiled by the Copyright Subcommittee of the Cultural Council's Legal System Committee on 15 March 2024. This document was prepared in response to the rapid development of generative AI, and it discusses how the existing copyright law applies to AI.

The main points of discussion are as follows:

- the development and learning stages of AI;
- the generation and usage stages of AI; and
- whether content generated by AI qualifies as a copyrightable work.

Additionally, scenarios such as AI mimicking the style of specific creators, using pirated content knowingly, and the copyrightability of human modifications or enhancements to AI-generated content are discussed. These considerations aim to clarify whether current copyright laws are violated and who holds the responsibility – the AI user or the developer.

The document also highlights the future perspective on generative AI and copyright, emphasising that the sustainable development of AI technology is fundamentally reliant on human creative activities. It stresses the importance of proper communication and a collaborative relationship among creators, stakeholders and AI-related businesses.

The published content does not hold legal binding power and is subject to ongoing review and information collection.

Protecting big data

The use of big data plays a significant role in enhancing the capabilities of AI, thereby necessitating the protection of its commercial value. However, under Article 206 of the Japanese Civil Code, '[a]n owner has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations'; and, under Article 85 of the Civil Code, '[t]he term 'Things' as used in this Code shall mean tangible things'.

Therefore, no ownership right is conferred in data, as it is not considered tangible. Also, due to the absence of creativity, inventiveness or novelty, big data is not generally copyrightable or patentable under current law. Big data may qualify for protection as a 'trade secret' as defined under the Act against Unfair Competition. However, since big data often contains non-confidential information, it often does not qualify as a trade secret. To address this issue, the Act was amended as of July 2019 and added protection for certain elements within big data. These protected elements, called 'data for limited provision', are defined as technical or business information that is accumulated in a reasonable amount by electronic or magnetic means (ie, an electronic form, a magnetic form or any other form that is impossible to perceive through human senses alone), and managed by electronic or magnetic means as information provided to specific persons on a regular basis. If big data qualifies as 'data for limited provision' under the Act, certain types of conduct, such as misuse, misappropriation or unauthorised disclosure of such data are subject to injunction and compensatory damages.

6. Is free data access an issue in relation to AI?

Protection of privacy

Under established court precedence, an individual enjoys constitutional rights to privacy and to not having their private life unduly disclosed to the public.

Protection on personal data

Certain personal information is protected under the Act on the Protection of Personal Information of Japan. Personal information is defined as information about a living individual which:

- can identify the specific individual by name, date of birth or other description contained in such information (including such information as will allow easy reference to other information and will thereby enable the identification of the specific individual); or
- contains the personal identification number.

Under the Act on the Protection of Personal Information of Japan, business operators storing personal information in searchable compiled databases for their business use are required to comply with certain requirements. These include:

- the identification of the purpose of use;
- restriction on the purpose of use;
- appropriate acquisition;
- notification of the purpose of use on acquisition; and
- management of claims.

In addition, such business operators are forbidden from providing a third party with personal information which constitutes a component of their database (defined as personal data), unless they obtain the principal's consent.

In the context of big data to be collected or used for AI analysis, unlike the EU's General Data Protection Regulation,[428] information such as cookie-obtained information including browsing history, IP address and location data do not qualify as personal information under the Act since they cannot be used to identify a specific individual. However, an issue arose in 2019 when cookie-obtained

428 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

information relating to university students' job-seeking behaviour was analysed by AI and later sold to recruiting companies without the students' consent. Under such circumstances, the Act was amended in 2020, adding the category of 'personal related information', defined as 'the information about a living individual which cannot identify the specific individual by itself'. In the case that personal related information is to be transferred to a third party, and such information qualifies as personal data which can identify specific individuals in conjunction with other information already possessed by the acquirer, the transferor must obtain the individual's consent, and the acquirers must confirm that the transferor has received the individual's consent.

AI principles

In the *AI Operator Guidelines*, protection of privacy in all AI systems and services are set out as follows:

- appropriate data learning for the developers;
- implementation of mechanisms and measures for privacy protection measures against privacy violations for the AI providers; and
- measures against improper input of personal data and privacy violations for the AI users.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

According to our research, there are no decisions regarding the use of AI in the providing of legal services.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

According to our research, AI tools are mainly used to provide contract drafting, contract review or contract management services, which are traditionally being rendered by lawyers. In response to these trends, legal academics and lawyers with a keen interest in legal tech have been discussing the relationship between the legal tech services currently being offered and the current Article 72 of the Attorney Act, which regulates legal services as a monopoly for lawyers.

Due to growing concerns that the provision of AI-powered contract drafting, review or management services to support legal businesses may violate Article 72 of the Attorney Act, the Ministry of Justice (MOJ) published the *Relationship between the provision of contract related support services using AI and Article 72 of the Attorney Act* (the 'Guidelines') in August 2023.[429]

The Guidelines clarified the MOJ's view on the applicability of Article 72 of the Attorney Act to such AI tools, specifically addressing the requirements for constituting a violation and the grounds for justification. The key points of these Guidelines are as follows:

- The Guidelines mention that, in most cases, the examination of legal issues related to the conclusion of contracts in the course of ordinary business lacks 'disputes between parties', one of the elements of Article 72 of the Act.
- The Guidelines show that the main functions provided by existing contract drafting, review or management services do not fall under 'legal assessment or other legal services' as stipulated in Article 72 of the Act.
- The Guidelines clearly state that when lawyers (including in-house lawyers) use these services as support tools for their own contract work, it does not constitute a violation of Article 72 of the Act.

These Guidelines provide clarity on the legal boundaries within which AI tools can operate in Japan and offer assurance to lawyers who wish to utilise such tools to assist with their contract-related tasks.

9. What is the role of the national bar organisations or other official professional institutions?

The Japan Federation of Bar Associations (JFBA) upholds the principle of lawyer autonomy in Japan. Consequently, it is the JFBA, rather than the MOJ, that develops regulations and ethical guidelines regarding the use of AI in legal practice. All lawyers must adhere to the regulations and guidelines set by the JFBA.

Although the JFBA has not publicly expressed its view on the MOJ's guidelines mentioned above, it participated in the G7 Bars' Statement on Artificial Intelligence[430] in October 2023. The statement encouraged the Bars and Law Societies to cooperate with each other in monitoring AI's impact on the practice of the legal profession, including attention to professional codes of conduct.

429 *Relationship between the provision of contract related support services using AI and Article 72 of the Attorney Act* (Ministry of Justice, August 2023), www.moj.go.jp/content/001400675.pdf accessed 3 June 2024.

430 *G7 Bars' Statement on Artificial Intelligence* (Japan Federation of Bar Associations Legal Research Foundation, October 2023), www.nichibenren.or.jp/library/pdf/activity/international/joint_statement/240321.pdf accessed 3 June 2024.

Currently, Article 7 of the Basic Code of Professional Conduct established by the JFBA states that 'lawyers shall endeavour to study in order to become better educated and to become familiar with laws and legal affairs'. In future, this professional development obligation may be extended to require lawyers to learn about AI tools and use them in their legal practice for the benefit of their clients.

The revision of the Code of Civil Procedure enacted in May 2022 is mainly focused on digitising civil trial procedures (e-court, e-filing and e-case management), rather than introducing AI. The Japanese government plans to implement the entire IT reform in the civil litigation system by May 2026. As part of this trend, the Project Team for Open Data of Civil Judgments, established by the Japan Federation of Bar Associations Legal Research Foundation, has been discussing the possibility of creating a database of civil judgments and making it widely available for use by the public and society.[431] Such digitalisation and publication of civil judgments will facilitate the development of AI tools for analysing and predicting judgments.

Regarding the AI contract review service, the AI and Contract Review Technology Association (ACORTA), a voluntary organisation of contract review service companies established in 2022, is working to increase awareness and reliability of AI and technology in contract review services.[432]

431 *Recommendations on the Ideal System for the Appropriate Utilization of Civil Judgment Information*, (Japan Federation of Bar Associations Legal Research Foundation), www.jlf.or.jp/wp-content/uploads/2022/06/PT-teigen20220608.pdf accessed 3 June 2024.

432 See the ACORTA website, https://ai-contract-review.org/#about accessed 3 June 2024.

Latvia

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1. What is the understanding or definition of AI in your jurisdiction?

There is no definition of artificial intelligence (AI) in domestic Latvian law. The definition of AI contained in the Artificial Intelligence Act (the 'AI Act'), an EU regulation on AI, will become binding in Latvia when the regulation enters into force.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

To our knowledge, AI tools have not been consistently deployed in the legal services sector. However, a well-known AI tool already in use in the public domain, and not solely within the legal services sector, is ChatGPT.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

To the extent of our knowledge, AI tools have not been implemented within the legal domain. Rather, tools that are accessible across various sectors are utilised.

4. What is the current or planned regulatory approach on AI in general?

Currently, the planned general regulatory approach on AI in Latvia will be the AI Act, the EU regulation on AI. Currently, there are no planned domestic law initiatives in the area of AI.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Currently, there is no current or planned legislation regarding AI besides the EU AI Act.

6. Is free data access an issue in relation to AI?

Access to data and their use will be governed by the AI Act.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

As at the time of writing, there are no court decisions regarding the utilisation of AI.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

The utilisation of AI within the legal domain is presently a subject of discussion. Currently, AI is not extensively employed in the legal sector; thus, discussions regarding the necessity and specifics of regulation are not widely prevalent in the public sphere. It is conceivable that a more pronounced impact may ensue following the implementation of the EU AI Act.

9. What is the role of the national bar organisations or other official professional institutions?

We are not aware that the Latvian Bar Association has initiated any initiatives regarding the utilisation of AI in the legal profession.

However, the Council of Sworn Notaries of Latvia is contemplating the development of an IT (information technology) tool that may employ AI for the compilation of client data from various registers and databases.

According to public information on the Latvian Courts' web portal, representatives of the Court Administration, which is tasked with supporting the work of Latvian courts, recently exchanged opinions and practices with employees from the Supreme Court administration regarding the possibilities of AI.

The highlighted potential uses of AI in Latvian courts include:

- automated analysis of court decisions to identify inaccuracies, trends and patterns, such as the most frequently violated legal rules and the most common causes of disputes; and
- analysis of patterns and trends in large data sets, for example, analysis of similar cases and evaluation of the effectiveness of legal arguments.

One of the goals of AI-assisted analysis is the promotion of consistency of case law. No specific AI tools were highlighted for use in Latvian courts

Lithuania

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1. What is the understanding or definition of AI in your jurisdiction?

The Lithuanian Artificial Intelligence Strategy (the 'Lithuanian Strategy')[433] is using the definition of artificial intelligence (AI) released by the European Commission's Coordinated Action Plan on AI, which defines AI as:

> 'systems that display intelligent behavior by analyzing their environment and taking actions, with some degree of autonomy, to achieve specific goals. These systems can be purely software-based (e.g., voice assistants, image analysis software, search engines) or embedded in hardware devices (e.g., advanced robots, autonomous cars, drones).'

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Lithuania's legal sector has seen the gradual integration of AI tools into various aspects of legal services beyond traditional legal technology (legaltech) tools.

While legaltech tools like claim management systems and data platforms are common, there are emerging AI tools and use cases tailored specifically to some legal services. For instance, the Lithuanian commercial website for legal news and information, Infolex, has developed a solution using AI to calculate the probability that draft laws will be adopted; legislative news is read by a machine-generated neutral voice rather than a human announcer on the Parliament of the Republic of Lithuania (Seimas) portal; and Dataistic, a private company, has announced the launch of Dataist, an AI-based General Data Protection Regulation (GDPR) paralegal.

These examples show Lithuania's pursuit to be a future leader in AI development, especially in the legal sector (both private and public). Lithuania's Artificial Intelligence Strategy emphasises unique and unparalleled advantages, one of which is to improve the efficiency and quality of the public sector. In this context, some of the AI-based tools such as automatic legal consultation and case outcome forecasting systems are thoroughly considered.

433 Ministry of the Economy and Innovation, "Lithuania Artificial Intelligence Strategy 2019", https://wp.oecd.ai/app/uploads/2021/12/Lithuania_Artificial_Intelligence_Strategy_2019.pdf.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

Independent law firms in Lithuania are indeed using AI tools to streamline legal processes such as legal research, contract analysis and document review. These tools help lawyers to efficiently manage large volumes of legal documents, identify relevant case law and extract key information from contracts. Independent firms are often looking for cost-effective and scalable AI solutions to increase productivity and competitiveness in the legal market. So today, algorithms are widely used in legal practice. Due diligence tools that automate the screening of a large number of company documents, identifying important references and specific areas of text are gaining popularity in corporate law.

International law firms operating in Lithuania tend to have access to more advanced AI technologies due to their larger resources and global reach. These firms may invest in AI solutions with sophisticated capabilities such as natural language processing (NLP) for complex legal document analysis, predictive analytics for case outcome predictions and AI-powered virtual assistants to enhance client interactions and service delivery.

In-house counsel within corporations and organisations in Lithuania also deploy AI tools to manage legal workflows, compliance tasks and risk assessment processes efficiently. These tools help automate routine tasks, identify regulatory compliance issues and provide data-driven insights for strategic decision-making within the organisation. In-house counsel typically prioritises AI solutions that integrate well with existing systems and address the specific needs and priorities of their organisation.

In summary, while the core functions of AI tools used in legal services may be similar across independent law firms, international law firms and in-house counsel in Lithuania, differences lie in the scale of deployment, resource availability and specific requirements of each context. International firms may have a wider array of AI tools due to their global presence and resources, while in-house counsel may focus on solutions tailored to their organisation's unique challenges and priorities.

4. What is the current or planned regulatory approach on AI in general?

First, Lithuania, a Member State of the EU, is awaiting the Artificial Intelligence Act's official Council approval and publishing in the EU Official Journal. This law will serve as the foundation for any potential national regulatory actions to advance AI development.

On one hand, the Lithuanian regulators are aware that the over-regulation of AI may limit innovation in the country and lead to a loss of competitive advantage. On the other hand, an overly liberal approach can lead to particularly severe consequences when it is difficult or too late to regulate measures that seriously violate human rights.

In Lithuania, regulation is characterised by active efforts to develop a comprehensive framework to address the various aspects of AI implementation. This includes aspects such as data privacy, cybersecurity, transparency, accountability and fairness of algorithmic decision-making. The Lithuanian government is actively engaging with stakeholders, including industry experts, academics and civil society organisations, to gather insight and perspectives to prepare a robust roadmap on the overall developmental direction of AI. The overarching goal is to create an environment that fosters innovation and economic growth, while ensuring that AI technologies are deployed in an ethical manner and in line with fundamental rights and values.

Key areas of focus in the Lithuanian Strategy include fostering AI research and development, enhancing digital literacy, developing AI governance mechanisms and implementing regulatory frameworks that balance innovation with ethical considerations. Additionally, the Lithuanian government is committed to promoting international collaboration and aligning its AI policies with EU standards.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

The Lithuanian Strategy acknowledges the transformative potential of AI whilst also emphasising the need for responsible governance to reduce potential risks, particularly in relation to the ethical application of AI, which should also involve preserving a close watch on how technology is affecting fundamental human rights.

Lithuania, as a member of the EU, will carry out the rules set forth in the EU AI Act. In order to ensure that Lithuania is prepared for a future with AI, the Strategy outlines a goal to improve and evolve the country's current AI ecosystem. As per the Strategy, Lithuania will concentrate its administrative capabilities on the following key domains and directions:

(i) **Human capital:** the Strategy emphasises the development of AI skills and competences at all levels of education. Education concerns not only the development of technical skills, but also non-technical education in AI and related programs.

(ii) **Research and innovation ecosystem:** it is a priority to strengthen the national AI research and innovation institutions and promote collaboration between science, industry and government.

(iii) **Deployment and use of AI:** deployment of AI in all areas of economic activity in both the private and public sectors. As part of the plan, AI start-ups and companies undergoing AI transformation are encouraged and funded.

(iv) **Ethical and legal framework:** establishment of legal framework for the sustainable and transparent application of AI. Ensuring the responsible development of AI in a way that is consistent with the interests of people is a priority.

(v) **Data ecosystem:** emphasis is placed on building a responsible and efficient data management system to support AI applications and data interoperability.

Additionally, investment measures are being planned to support language resource development models for AI use and to assist AI start-ups and businesses. While the Lithuanian Strategy provides policy directions, it does not outline specific financial provisions for implementation, which are up to the government to decide.

6. Is free data access an issue in relation to AI?

Free access to data can facilitate AI innovation by providing researchers and developers with access to large datasets for training and testing machine learning models. This can lead to the creation of new AI applications, products and services that benefit various sectors of the economy.

Like other countries in the EU, Lithuania has certain obstacles when it comes to free access to data in the context of AI advancements. First and foremost, Lithuania is bound by laws pertaining to data privacy, such as the General Data Protection Regulation (GDPR). This regulation, which has an effect on the advancement of AI, sets strict standards for access to personal data. The rules include requirements for consent, anonymisation and data security. However, in order to preserve AI growth in a way that is ethical and upholds fundamental human rights, these conditions must be met.

On the other hand, the EU's digital strategy, as well as the regulations and directives that have been adopted, create more opportunities for access to data, particularly with regard to data generated by internet of things (IoT) devices. For example, the Data Act seeks to ensure the confidentiality of valuable data while facilitating its seamless transfer between data holders and users.

Additionally, the Lithuanian Strategy highlights the necessity for high-quality, readily available data for AI research. The AI system's precision increases with the quality of the dataset. Data inaccuracies and flaws can result in biased AI models, which can have unethical or discriminating effects.

This is why one of the important aspects of the Lithuanian Strategy is to ensure that data used for AI systems complies with the EU's FAIR (findable, accessible, interoperable and reusable) Data Management principles, as well as to develop

an open data ecosystem in the public sector. As part of this ecosystem, sandbox environments are being set up to provide public sector data for the creation of AI technologies. The sandbox's goal is to provide access to public data for individuals and organisations interested in developing AI systems.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Like many other nations, Lithuania is progressively investigating how AI might be integrated into a variety of fields, including the legal sector. Yet, as of right now, the authors are not aware of any specific court rulings in Lithuania that specifically address AI in the legal services industry – or any other industry, for that matter.

Regarding the more general trends and ideas surrounding this subject, it is noteworthy that the Lithuanian legal system has an extended tradition of utilising technologies, including:

- e-services portal for judicial proceedings (e.teismas.lt), offering online services pertaining to court procedures, such as data transfers between courts, information about proceedings and the judge's activities and the preparation and presentation of procedural documents. Case management and access to legal information are made easier by such an information system; and
- online court hearings including audio and video recordings which enhance the transparency, participation and recording of the proceedings.

8. What is the current status – planned, discussed, or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

The sectorial legislation in Lithuania that focuses on the application of AI to the legal profession or to services that lawyers typically provide is pending.

However, on 22 March 2024, the Lithuanian Bar Association, the Association of Lithuanian Young Lawyers and the Ministry of Justice organised a conference where one of the primary topics was the application of AI in legal activities. The conference covered a range of topics, including potential legal issues and strategies for resolving them, in addition to the practical applications of AI in the day-to-day work of lawyers.

Discussions are expected to continue and policymakers might propose regulatory actions. Government officials, technology professionals and the legal community must work together to find a balance between innovation and legal ethics. Although law has not yet been put into place, the legal community is actively studying both the opportunities and obstacles posed by AI.

9. What is the role of the national bar organisations or other official professional institutions?

Coordination of the efforts of advocates and other lawyers defending their interests in public institutions and international organisations is greatly aided by the Lithuanian Bar Association. Furthermore, it supports their interests in a variety of circumstances, such as when it formulates laws pertaining to the activities of lawyers and their profession and submits them to the Lithuanian Ministry of Justice.

As previously noted, the Lithuanian Bar Association was one of the organisers of the conference on the application of AI in legal activities on 22 March 2024. The Lithuanian Bar Association will represent the legal community as a whole and help shape Lithuania's legal framework in the event that AI policies pertaining to the legal profession are implemented in the future.

Additionally, the Lithuanian Bar Association offers training and capacity building programmes for advocates, which could enhance their professional abilities.

Malta

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1. What is the understanding or definition of AI in your jurisdiction?

Malta does not have a dedicated legal framework to govern artificial intelligence (AI) per se; however, various initiatives have been taken locally. In October 2018, the Malta.AI Taskforce (the 'Taskforce') was set up by the Government of Malta. Two documents have been published by the Taskforce: (1) Malta's Ethical AI Framework (the 'Framework'); and (2) A Strategy and Vision for Artificial Intelligence in Malta 2030 (the 'Strategy'). The Framework, published in October 2019, does not have the binding force of law but establishes a set of guiding principles for trustworthy AI governance. It builds upon the *AI Ethics Guidelines for Trustworthy AI*, published in April 2019 by the European Commission's High-Level Expert Group on Artificial Intelligence (AI HLEG),[434] but adds thereto a number of control practices which aim to provide guidance in terms of the manner in which the principles set out therein should translate in practice.

The European Commission's AI HLEG published a definition which states as follows:

> 'Artificial intelligence (AI) refers to systems designed by humans that, given a complex goal, act in the physical or digital world by perceiving their environment, interpreting the collected structured or unstructured data, reasoning on the knowledge derived from this data and deciding the best action(s) to take (according to predefined parameters) to achieve the given goal. AI systems can also be designed to learn to adapt their behaviour by analysing how the environment is affected by their previous actions. As a scientific discipline, AI includes several approaches and techniques, such as machine learning (of which deep learning and reinforcement learning are specific examples), machine reasoning (which includes planning, scheduling, knowledge representation and reasoning, search and optimisation), and robotics (which includes control, perception, sensors and actuators, as well as the integration of all other techniques into cyber-physical systems).'

The above-mentioned Malta documents, on the other hand, provide no definition of AI. The reason provided therein for the lack of a definition is the fact that AI has many different definitions which are constantly evolving, considering that AI consists of a wide range of technologies, scientific approaches and definitions which are simultaneously being researched, discovered and taken forward to expand what is possible.

434 *AI Ethics Guidelines for Trustworthy AI* (European Commission's High-Level Expert Group on Artificial Intelligence (AI HLEG), April 2019).

Having said that, Malta, as an EU Member State, is subject to and will be required to abide by the EU's Artificial Intelligence Act (the 'AI Act') when it comes into force. The AI Act defines an 'AI system' as:

> 'a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.'

The European Commission's AI HLEG published *A definition of Artificial Intelligence: main capabilities and scientific discipline* in December 2018.[435] This seven-page document opened with a disclaimer:

> 'The following description and definition of AI capabilities and research areas is a very crude oversimplification of the state of the art. The intent of this document is not to precisely and comprehensively define all AI techniques and capabilities, but to describe summarily the joint understanding of this discipline that the High-Level Expert Group is using in its deliverables.'

The definition provided in the document states:

> 'Artificial intelligence (AI) refers to systems designed by humans that, given a complex goal, act in the physical or digital world by perceiving their environment, interpreting the collected structured or unstructured data, reasoning on the knowledge derived from this data and deciding the best action(s) to take (according to predefined parameters) to achieve the given goal. AI systems can also be designed to learn to adapt their behaviour by analysing how the environment is affected by their previous actions. As a scientific discipline, AI includes several approaches and techniques, such as machine learning (of which deep learning and reinforcement learning are specific examples), machine reasoning (which includes planning, scheduling, knowledge representation and reasoning, search and optimisation), and robotics (which includes control, perception, sensors and actuators, as well as the integration of all other techniques into cyber-physical systems).'

Put simply, AI uses data and algorithms (a set of instructions using mathematical formulae) on computers or other technological systems to perform specific tasks or make decisions that usually require human intelligence, such as learning, problem solving, pattern recognition, visual perception and speech recognition. Trained AI can perform these tasks or make these decisions without explicit human instructions using a series of techniques and technologies.

435 *A definition of Artificial Intelligence: main capabilities and scientific discipline* (AI HLEG, December 2018).

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Some Maltese law firms have implemented some basic AI tools – certainly, ChatGPT is used significantly within the profession. We are also aware that Luminance and similar software has been used by certain firms.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

There is no significant difference.

4. What is the current or planned regulatory approach on AI in general?

The regulatory process in terms of AI is still in its initial stages in Malta, and no legislative amendments, or new acts/regulations, have yet been introduced. So far, the efforts made by the Taskforce involve the publication of the abovementioned Framework and the Strategy. As mentioned therein, a Technology Regulation Advisory Committee is to be set up to carry out a gap analysis as to how the existing laws and regulations can address the challenges brought about by AI technologies and to recommend relevant amendments. Malta has also focused on a national AI Certification Programme, which will be based on the Framework and its underlying control practices, and which will provide applicants with valuable recognition in the marketplace that their AI systems have been developed in an ethically aligned, transparent and socially responsible manner.

As an EU Member State, Malta is subject to and will be required to abide by the EU's AI Act. The AI Act is part of a wider package of policy measures to support the development of trustworthy AI, which also includes the AI Innovation Package and the Coordinated Plan on AI. Together, these regulations are intended to guarantee people's fundamental human rights and rights of business and safety when it comes to AI. Important measures implemented by the AI Act include:

- safeguards on general purpose AI;
- limits on the use of biometric identification systems by law enforcement;
- bans on social scoring and AI used to manipulate or exploit user vulnerabilities; and
- rights of consumers to launch complaints and receive proper explanations.

The AI Act – which is still to be formally endorsed by the Council (likely to be in June 2024) – will enter into force 20 days after its publication in the Official Journal, and be fully applicable 24 months after its entry into force, except for some parts thereof which will apply at varying timeframes after the entry into force date (between six and 36 months).

5. What are the current or planned regulations on the general use of AI or machine learning systems?

The Framework aims to formulate the ethical principles as to how AI technologies should be developed and used. These four main principles are:

1. *Human autonomy*: humans interacting with AI systems must be able to keep full and effective self-determination over themselves.

2. *Prevent harm*: AI systems must not cause harm at any stage of their lifecycle to humans, the natural environment, or other living beings.

3. *Fairness*: the development, deployment, use and operation of AI systems must be fair.

4. *Explicability*: end users and other members of the public should be able to understand and challenge the operation of AI systems as required for the particular use case.

The achievement of these objectives is already embedded, in part, in existing legal and regulatory requirements. In terms of liability, for example, under the Maltese law of obligations, pursuant to Article 1032(1) of the Civil Code, 'a person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus paterfamilias*'. Furthermore, Article 1032(2) of the Civil Code goes on to state that 'no person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree'. It appears that the standard of reasonable care which is required is that of a reasonable man, or a *bonus paterfamilias*. In principle, therefore, whoever causes harm by acting in a manner which falls below the level of diligence of a *bonus paterfamilias* would be liable to compensate for the harm that they have caused as a result of such negligence. The duty which is mentioned in Article 1032 of the Civil Code has not been amended in order to cater for AI issues, and there is no express provision or principle in Maltese law stating that there is a duty of reasonable care when using AI. The duty of care which exists under Maltese law is of a general nature and does not specifically discuss AI matters.

In a 2019 report by the European Commission on the liability for AI and other emerging digital technologies, it was discussed that from the 19th century onwards, legislators generally responded to risks brought about by new technologies by introducing strict liability. So far, these changes to the law have concerned, for example, means of transport, such as trains or motor vehicles and

energy or pipelines. Even before that, tort laws often responded to increased risks by shifting the burden of proving fault, making it easier for the victim to succeed if the defendant was in control of particular sources of harm such as animals or defective immovables. Under the Maltese Civil Code, Article 1038 states that 'any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskilfulness, he may cause to others'. Furthermore, Article 1040 provides that 'the owner of an animal, or any person using an animal during such time as such person is using it, shall be liable for any damage caused by it, whether the animal was under his charge or had strayed or escaped'. Many academic writers are drawing a parallel with such a situation and one where, for example, a robot runs amok, stating that such provisions should be used in such a case. This comparison is being made in parallel with similar articles in foreign legislation.

Furthermore, the Product Liability Directive[436] was transposed into Maltese law through Articles 56 to 71 of the Consumer Affairs Act which introduce the principle of strict (no fault) liability into the product liability regime. This legislation is of course subject to the limitations of the Product Liability Directive itself.

6. Is free data access an issue in relation to AI?

As a Member State of the EU, Malta's data protection regime comprises the General Data Protection Regulation (GDPR)[437] and the local law which supplements it, namely the Data Protection Act, Chapter 586 of the Laws of Malta, together with guidelines issued by the EU European Data Protection Board (EDPB) and the Office of the Information and Data Protection Commissioner (IDPC).

AI systems require colossal amounts of data in order to be properly trained to build their algorithmic models and to achieve accurate results. Many times, such data is personal data. When such reliance is specifically on personal data, the principles as outlined in the GDPR must be adhered to. Thus, given such heavily reliance on data, the implications of the GDPR on AI companies and applications which involve the use of personal data in particular are quite significant. In the first place, the GDPR generally restricts access to and collection of data. Secondly, data can only be used for its original intended purpose, thus restricting reuse of data for novel purposes and the possibility of new value through combination of datasets. Under the GDPR, decisions that were taken *solely* in an automated manner must allow for human review of that decision if it significantly affects the data subject. Furthermore, the data subject has a right to an explanation as to how a decision was reached. These factors can render automation of processes impractical and costly, and many argue that this defeats the purpose of automated processes.

436 Directive 85/374 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L210/29.

437 Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

On a final note, AI companies and applications which involve the use of personal data need to implement safeguards and data protection must be present by design and by default. Malta does, however, have legislation in place to cater for situational reuse of data in certain scenarios, such as the Re-Use of Public Sector Information Act and the Processing of Personal Data (Secondary Processing) (Health Sector) Regulations.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

At the time of writing, there are no actual court decisions on the provision of legal services using AI. There are various judgments relating to Article 1038 of the Maltese Civil Code, that may be applicable. The said Article (as detailed above) states that 'any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskilfulness, he may cause to others'.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There is currently no planned, discussed or implemented sectorial legislation in Malta which deals specifically with the use of AI in the legal profession or services that are traditionally being rendered by lawyers, other than as discussed above.

9. What is the role of the national bar organisations or other official professional institutions?

The national bar organisation, the Chamber of Advocates, is currently actively involved in discussions relating to the use of AI in the legal profession. Various other entities play a role in relation to the general use of AI:

- The Malta Digital Innovation Authority (MDIA) has the power to oversee and provide for registration and certification of innovative technology arrangements.
- The Office for Consumer Affairs is responsible for the promotion and protection of consumer rights and welfare.
- The Standardisation Directorate of the Standards and Metrology Institute (SMI), a Maltese independent body set up under the Malta Competition and Consumer Affairs (MCCAA) Act, is entrusted with

the coordination of standardisation and related activities at various corporate, national, regional and international levels.

- Finally, the IDPC is the national supervisory authority responsible for monitoring and enforcing the provisions of the GDPR and the Data Protection Act.

Montenegro

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1. What is the understanding or definition of AI in your jurisdiction?

Montenegro currently lacks a formal definition of artificial intelligence (AI). However, as AI technologies continue to permeate various sectors of society, including healthcare, finance, transportation and beyond, the absence of a clear-cut definition poses challenges in understanding and regulating its implications.

However, due to the Stabilisation and Association Agreement (SAA) through which Montenegro undertook to harmonise the country's legal landscape with EU regulation, Montenegro might adopt a definition of AI similar to the one prescribed in the EU AI Act.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Montenegro, the use of AI tools within the legal field is still in its early stages. While no significant locally developed AI applications tailored specifically for legal services exist, various international and commercially available tools are gaining traction. These tools are predominantly employed by larger law firms and corporate legal departments. They encompass document automation systems, helping to draft and manage legal documents, and legal research platforms that utilise AI to sift through extensive amounts of legal data to find relevant case law and statutes.

Furthermore, predictive analytics tools are beginning to enter the Montenegrin legal market. These tools analyse past legal decisions to forecast the outcomes of similar cases, providing lawyers with valuable insights into probable judicial tendencies, which can inform litigation strategies and client advisories.

In addition, AI is being explored for its potential to enhance due diligence processes, by quickly processing and reviewing large datasets, such as contracts and legal documents, to identify hidden risks and obligations that may elude human reviewers.

Moreover, the integration of chatbots, including ChatGPT, and virtual assistants is gaining momentum in the legal sector, assisting with basic client interactions and routine tasks. This not only boosts operational efficiency, but also lightens the workload of legal professionals.

Despite these advancements, the widespread adoption of sophisticated AI tools in Montenegro's legal sector remains relatively limited compared to some Western jurisdictions. This is partly due to the high costs associated with advanced AI systems and the absence of local developments focused on AI applications tailored to Montenegrin laws and languages. However, as AI technology becomes more accessible and its potential benefits more widely recognised, its adoption is expected to increase across independent law firms, international law firms and in-house legal departments in Montenegro.

3. If yes, are these AI tools different regarding: If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

In Montenegro, the utilisation of AI tools in the provision of legal services varies based on the type and size of the legal entity, reflecting differences in resource availability, specific requirements and the exposure to international standards:

- *Independent law firms*: smaller, independent law firms in Montenegro typically employ AI in a more restricted capacity. Common uses include basic document automation and management systems aimed at streamlining the handling of legal documents. Budget constraints often limit investment in more advanced AI technologies.

- *International law firms*: with their broader international reach, synergies within larger groups and greater financial resources, international law firms in Montenegro can implement sophisticated AI systems. This may include advanced legal research tools utilising machine learning for case law analysis and outcome prediction, as well as complex case management systems integrating various legal work aspects. Such firms are also more inclined to utilise AI for intricate processes like predictive analytics for litigation and transactions, along with risk assessment tools requiring substantial computational power and advanced algorithmic support.

- *In-house counsel*: in Montenegro, in-house legal departments within corporations utilise AI tools differently, prioritising efficiency and risk mitigation. They commonly employ contract management systems for automating the creation, review and monitoring of legal agreements, along with compliance tools ensuring adherence to regulations and standards. These AI systems are often customised to optimise operational efficiency and support strategic business decisions, aligning directly with the company's objectives.

It is important to note that these distinctions arise within a context where sophisticated legal AI tools have a relatively low presence in Montenegro. As Montenegro's legal market evolves, these discrepancies may diminish with the increasing integration of AI across all tiers of legal practice.

4. What is the current or planned regulatory approach to AI in general?

While there are no current, nor publicly available, plans for future regulatory approaches to AI, Montenegro's alignment with European Union policies, facilitated by the SAA, will significantly influence its regulatory environment. Through the SAA, Montenegro has committed to gradually harmonising its legislation with EU standards, including the impending adoption of the EU AI Act. The EU AI Act represents a comprehensive legal framework aimed at regulating AI usage across EU Member States, focusing on risk assessment, compliance requirements, and fostering trust and accountability in the AI ecosystem.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Despite the absence of dedicated legislation on AI, Montenegro applies existing laws and regulations to AI usage in specific contexts. For example, the Montenegrin Constitution safeguards privacy and personal data. The Personal Data Protection Act delineates procedures for processing and safeguarding personal data, particularly pertinent to AI systems utilising such data. Montenegro has ratified several international treaties addressing AI-related issues, such as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

The Ministry of Science and Technological Development plays a pivotal role in advancing AI development within Montenegro. It leads initiatives to foster innovation and research in AI and related fields, positioning Montenegro to stay abreast of global technological advancements.

6. Is free data access an issue in relation to AI?

Unrestricted access to data poses several challenges, particularly concerning the protection of intellectual property and personal data security. As AI systems heavily rely on data for training and operation, striking a balance between data accessibility and respecting privacy laws and intellectual property rights becomes paramount.

In Montenegro, similar to the EU, there exists a pressing need to reconcile data availability for AI development with the rights of data owners. The utilisation of large datasets raises intricate intellectual property issues, particularly when proprietary information is involved. Unauthorised data usage can lead to copyright,

or trade secret infringements, potentially stifling innovation and dissuading creators if not adequately safeguarded.

Montenegro faces challenges akin to those encountered in the EU regarding stringent data protection requirements, notably under the General Data Protection Regulation (GDPR), which it adheres to. AI developers must ensure that any personal data utilised in training and deploying AI systems complies with these stringent privacy standards. This entails obtaining proper consent, practicing data minimisation and fortifying data against unauthorised access. Upholding the right to data privacy is paramount, as any breach could result in legal consequences and erode public trust in AI technologies.

The Montenegrin legal framework must furnish clear guidelines on data access for AI usage, while safeguarding intellectual property and complying with privacy regulations. This dual imperative necessitates delicate management by policymakers. Effectively addressing these issues is crucial for cultivating a robust AI ecosystem conducive of innovation yet grounded in responsibility.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Currently, Montenegro lacks public court cases directly relevant to the use of AI in legal services provision. The integration of AI within the legal sector is still in its early stages and, consequently, there have been no established precedents specifically addressing AI's role in legal processes.

Given these circumstances, it is plausible that future regulations or legal decisions concerning AI in Montenegro may evolve to address similar concerns within the legal sector, ensuring that AI tools enhance rather than undermine the integrity of legal services. As AI's usage expands in both scope and complexity, the legal framework in Montenegro is likely to adapt, potentially drawing insights from cases and regulations from sectors like media to inform guidelines and standards for AI in law.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

Currently, there are no enacted laws in Montenegro that explicitly regulate AI applications for legal services. However, the topic is gaining attention due to the increasing relevance of AI technologies across various sectors.

Educational and professional initiatives

There's a growing emphasis on educational and professional development programmes geared towards equipping legal professionals with the knowledge and skills necessary to effectively utilise AI tools. These initiatives are critical for ensuring that legal practitioners can efficiently utilise AI technology, while comprehending the ethical implications and regulatory requirements associated with AI usage.

Alignment with international standards

As Montenegro seeks closer alignment with international standards, particularly in light of agreements like the SAA, the country is likely to consider international best practices and recommendations when drafting regulations concerning AI in the legal profession. This alignment might involve adopting standards similar to those proposed in the EU AI Act, which emphasises risk management, transparency and accountability in AI applications.

Impact on traditional legal services

The integration of AI into legal services prompts questions about its impact on traditional legal practices. AI has the potential to transform areas such as case prediction, document analysis and legal research, tasks traditionally time consuming and ripe for improvement through automation and AI technologies. However, it is crucial to balance these advancements with the need to uphold human judgment and ethical considerations central to the practice of law.

9. What is the role of the national bar organisations or other official professional institutions?

In Montenegro, the Bar Association holds a pivotal role in representing the legal profession, advocating for its interests, and ensuring the proper and lawful practice of legal services. Key responsibilities include enhancing professional and ethical standards, developing the legal profession, and bolstering professional discipline and accountability among its members. With these competencies, the Bar Association is strategically positioned to address the integration and ethical use of AI within the legal profession.

As AI technologies become more prevalent in legal practice, the Bar Association could potentially lead initiatives to define and enforce guidelines for the proper and ethical use of AI. This action would likely occur once AI usage reaches a certain level of maturity and prevalence within the profession.

Moreover, other professional institutions such as the Chamber of Public Enforcement Officers, the Prosecutor Association of Montenegro and the Chamber of Public Notaries also play significant roles in upholding the professional and ethical standards of their respective members. These bodies are crucial in ensuring that their members, who may increasingly use AI tools in their practices, remain compliant with established legal standards and ethical guidelines.

These institutions might collaborate or individually take steps to educate members about the potential and pitfalls of AI technology through training sessions and workshops. They could also develop guidelines specifying acceptable uses of AI in their respective fields, focusing on issues such as data privacy, the accuracy of AI-generated information and the prevention of bias.

Furthermore, they can monitor compliance by overseeing the adoption and usage of AI tools to ensure they align with professional responsibilities and ethical obligations. Additionally, they can advocate for regulation by representing the profession's interests in discussions with regulators and lawmakers regarding future AI regulation, ensuring any new laws or policies consider the practical aspects of the legal profession.

The proactive engagement of these professional bodies is crucial not only to harness the benefits of AI, but also to mitigate the risks, ensuring that the deployment of AI technologies in legal services enhances rather than undermines the quality and integrity of the profession. As AI evolves, the role of these organisations in guiding and regulating its use will become increasingly important, marking a significant aspect of their contribution to the legal landscape in Montenegro.

Serbia

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1. What is the understanding or definition of AI in your jurisdiction?

The only currently operational definition of artificial intelligence (AI) is detailed in Serbia's AI Development Strategy,[438] which is adopted from a report by the European Commission's High-Level Expert Group on Artificial Intelligence, entitled *A definition of AI: Main capabilities and disciplines*.[439]

The definition describes AI as follows:

> 'Artificial intelligence (AI) refers to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals. AI-based systems can be purely software-based, acting in the virtual world (eg, voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (eg, advanced robots, autonomous cars, drones or Internet of Things applications).'

This comprehensive definition emphasises AI's capability to perform tasks that typically require human intelligence, ranging from digital assistants to more complex robotics. It captures both the software and hardware aspects of AI technologies, recognising the broad scope of AI applications in contemporary and future contexts.

However, it is important to note that this definition might soon evolve. The Government of the Republic of Serbia is expected to soon update its AI Development Strategy for the period 2025–2030. It is anticipated that the new definition may align more closely with the evolving standards under the EU AI Act, reflecting broader and possibly more stringent criteria pertaining to the capabilities and governance of AI systems. This prospective change underscores Serbia's commitment to keeping its legal and regulatory frameworks for AI in step with international developments, particularly those applicable to the European Union.

Furthermore, Serbia is a member of the Global Partnership on AI, comprising 29 developed nations. As of 2024, Serbia assumes the presidency of the Global Partnership on AI for a term spanning three years and will host the prestigious

438 *AI Development Strategy of the Republic of Serbia for the 2020–2025 period* (Official Gazette of the Republic of Serbia No 96/2019).

439 European Commission's High-Level Expert Group on Artificial Intelligence, *A definition of AI: Main capabilities and disciplines* (18 December 2018), https://digital-strategy.ec.europa.eu/en/library/definition-artificial-intelligence-main-capabilities-and-scientific-disciplines accessed on 20 May 2024.

AI summit. During the inaugural and concluding years, Serbia will fulfil the role of vice chair, transitioning to the chairmanship in the second year.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Serbia, the use of AI tools within the legal sector is still emerging. Although there are no significant locally developed AI applications dedicated specifically to legal services, various international and commercially available tools are being adopted. These tools are primarily used by larger law firms and the legal departments of corporations. Common applications include document automation systems, which help in drafting and managing legal documents, and legal research platforms that utilise AI to sift through vast amounts of legal data to find relevant case law and statutes.

Additionally, there are predictive analytics tools that are starting to make their way onto the Serbian legal market. These tools analyse past legal decisions to forecast the outcomes of similar cases, offering lawyers enhanced insights into likely judicial tendencies. This can be particularly useful for litigation strategies and client advisories.

Furthermore, AI is also being explored for its potential to enhance due diligence processes. AI can quickly process and review large datasets, such as contracts and other legal documents, to identify risks and obligations that might not be immediately apparent to even the most diligent of human reviewers.

Additionally, the integration of chatbots, especially ChatGPT, and virtual assistants are gaining traction in the legal sector. These AI-driven platforms are increasingly used for basic client interactions and providing assistance in routine tasks, which boosts operational efficiency and alleviates the workload of legal professionals.

Despite these advancements, the penetration of sophisticated AI tools in Serbia's legal sector remains relatively limited compared to some Western jurisdictions. This is partly due to the high costs associated with advanced AI systems and a general lack of local development focusing on AI applications tailored to Serbian laws and languages. As AI technology becomes more accessible and its potential benefits more widely recognised, it is expected that its adoption will increase across independent law firms, international law firms and in-house legal departments in Serbia.

3. If yes, are these AI tools different regarding: If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

In Serbia, the utilisation of AI tools in legal services exhibits differences based on the type and size of the legal entity. These differences largely stem from the varying resource availability, the specific needs of the firm and the exposure to international best practices.

- *Independent law firms*: smaller, independent law firms in Serbia generally utilise AI in a more limited capacity. The most common uses include basic document automation and management systems that help streamline the handling of legal documents. These firms may have budget constraints that prevent them from investing in more advanced AI technologies;

- *International law firms*: due to their international scope, synergies within larger groups and greater dedicated financial resources, international law firms can implement sophisticated AI systems, such as advanced legal research tools that use machine learning to analyse case law and predict outcomes and complex case management systems that integrate various aspects of legal work. International firms are also more likely to use AI for more complex processes such as predictive analytics for litigation and transactions, as well as for risk assessments that require significant computational power and advanced algorithmic support; and

- *In-house counsel*: in-house legal departments within corporations often leverage AI tools differently, focusing mainly on efficiency and risk mitigation. Common AI applications include contract management systems that automate the creation, review and monitoring of legal agreements, and compliance tools that help ensure the company adheres to regulations and standards. Given their direct alignment with the business goals, these AI systems are tailored to optimise operational efficiency and support strategic business decisions.

It should be noted that the described differentiation occurs within a context where there is relatively low penetration of sophisticated legal AI tools. As Serbia's legal market continues to evolve, these disparities may lessen as AI becomes more integrated across all levels of legal practice.

4. What is the current or planned regulatory approach to AI in general?

Serbia's current regulatory approach to AI is encapsulated in its current AI Development Strategy 2020–2025, which emphasises the ethical and safe usage of AI technologies. This strategy highlights several key areas of focus, namely ensuring data protection, enhancing the transparency of AI systems and preventing discriminatory practices by AI, which are detailed further below:

- *data protection*: there is a special emphasis on safeguarding personal data that is utilised to train AI systems. The aim is to ensure that data handling adheres strictly to privacy norms and that adequate security measures are in place to protect sensitive information;

- *transparency and explanation of AI decisions*: the strategy advocates for mechanisms that can explain AI decision-making processes. This is crucial for maintaining public trust and accountability, particularly in applications that directly affect individual rights or wellbeing; and

- *ethical AI development*: the strategy calls for the development of AI technologies that align with international ethical standards. This includes ensuring that AI systems do not perpetuate biases or lead to unjust outcomes, and that they are developed with consideration of their broader social impact.

In addition to the guidelines set forth in the AI Development Strategy, Serbia's alignment with EU policies through the Stabilisation and Association Agreement (SAA) further shapes the country's regulatory landscape. Under the SAA, Serbia has committed to progressively align its legislation with EU standards, which includes the forthcoming adoption of the EU AI Act. The EU AI Act is a comprehensive legal framework designed to govern the use of AI within EU Member States, focusing on risk assessment, compliance requirements and fostering an ecosystem of trust and accountability.

Given this backdrop, Serbia is preparing to update its AI Development Strategy for the period 2025–2030. This move is anticipated to introduce more stringent requirements for AI development and deployment, particularly concerning high-risk AI applications, in alignment with the EU AI Act. This regulatory evolution aims not only to promote innovation within a safe and ethical framework, but also to position Serbia as a responsible player in the global AI landscape.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

In Serbia, the regulatory framework for AI is currently guided by non-binding instruments rather than formal legislation. The Serbian government has implemented an AI Development Strategy effective through 2025, which outlines the broad objectives and principles guiding AI development in the country. Additionally, the government has issued ethical guidelines for the development, implementation and use of robust and accountable AI.[440] These guidelines serve as an ethical framework aiming to ensure that AI systems are developed and deployed responsibly and transparently. This may be seen as yet another step in the process of harmonising Serbia's legislative framework with the EU.

440 See 'Ethical guidelines' (National AI Platform), www.ai.gov.rs/tekst/en/459/ethical-guidelines.php accessed on 20 May 2024.

Despite the lack of specific legislation on AI, certain existing laws and regulations are applicable to the use of AI in specific contexts. For instance, the Serbian Constitution provides for the protection of privacy and personal data. The Personal Data Protection Act outlines the procedures for the processing and protection of personal data, which is especially relevant in the context of AI systems that use personal data. Serbia has also ratified several international treaties that address AI-related issues, such as the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108) and the EU General Data Protection Regulation (GDPR).[441] The Serbian Electronic Communications and Information Society Services Act also covers aspects of data protection and digital communication that can be impacted by AI applications. The recently amended Act on Electronic Communications covers other aspects.

Some specific uses of AI, such as in regard to autonomous vehicles, are subject to particular regulatory frameworks that address the unique challenges and risks associated with such technologies.[442]

In addition to the national strategy, the Serbian government has also established a regulatory sandbox for AI. The sandbox is designed to provide a controlled environment for testing new AI products and services, allowing businesses to experiment with AI technologies without being subject to full regulatory compliance.

The Ministry of Education, Science and Technological Development plays a pivotal role in promoting AI development in Serbia. It spearheads initiatives aimed at fostering innovation and research in AI and related fields, helping Serbia keep pace with global technological advancements. These initiatives include the establishment of the Institute for Artificial Intelligence Research and Development of Serbia, as well as a number of other initiatives aimed at establishing educational and research programmes, collaboration with industry and funding in the field.

Looking forward, the Serbian government's plans to update its AI Development Strategy for the 2025–2030 period. This upcoming strategy is expected to further refine the government's stance on AI, potentially leading to more formalised regulations. This reflects an ongoing effort to harmonise Serbia's AI policies with broader EU directives, particularly in anticipation of the EU AI Act, which Serbia may need to adopt as part of its obligations under the SAA with the EU.

6. Is free data access an issue in relation to AI?

Free data access presents several challenges, particularly in the realms of intellectual property protection and personal data security. As AI systems require

441 Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and to the free movement of such date, and repealing Directive 95/46 [2016] OJ L119/1.

442 *Rulebook on the Conditions for Conducting Autonomous Driving of the Republic of Serbia* (Official Gazette of the Republic of Serbia No.104/2023).

substantial amounts of data for training and operation, ensuring appropriate access to data while respecting privacy laws and intellectual property rights becomes a critical concern.

Access to large datasets can involve complex intellectual property issues, especially when these datasets include proprietary information. In Serbia, as in the EU, there is a significant need to balance the availability of data for AI development with the rights of data owners. Unauthorised use of data can lead to infringements of copyright or trade secrets, which can stifle innovation and discourage creators if not adequately protected.

Like the challenges faced in the EU, Serbia must contend with stringent data protection requirements, particularly under the GDPR, which it adheres to. AI developers must ensure that any personal data used in training and deploying AI systems is handled in accordance with the strict privacy standards. This includes obtaining appropriate consent, ensuring data minimisation and securing data against unauthorised access. The right to data privacy is paramount, and any breach could not only lead to legal repercussions, but also damage public trust in AI technologies.

The Serbian legal framework needs to provide clear guidelines on data access for AI use, while protecting intellectual property and complying with privacy regulations. This dual requirement creates a delicate balance that policymakers need to manage. Addressing these issues effectively is crucial for fostering a robust AI ecosystem that can innovate freely, yet responsibly.

As Serbia progresses with its AI initiatives, particularly with the anticipated updates to its AI Development Strategy, more comprehensive measures and guidelines are expected to be developed. These will likely address the specific challenges of data access for AI, aiming to create a conducive environment for AI research and development that respects both intellectual property and personal privacy.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Currently, there are no public court cases directly applicable or relevant to the use of AI in the provision of legal services in Serbia. The integration of AI within the legal sector is still in the early stages and, as such, precedents specifically addressing AI's role in legal processes have not yet been established.

However, the recent involvement of Serbia's Regulatory Agency for Electronic Media (REM) in addressing issues related to AI technologies, specifically the deepfake phenomenon, highlights a broader regulatory interest that could be

applicable to AI in legal contexts. The REM has issued several warnings to media service providers regarding the obligations around broadcasting content. These notices emphasise that providers must not air programmes that exploit the gullibility of viewers or deceive the public through manipulated content, which includes deepfakes.

REM's actions demonstrate the enforcement of existing regulations concerning the integrity of audiovisual content and the protection of public trust. These regulations underline that audiovisual content, a domain where AI can play a significant role, must adhere to standards that prevent deception and misinformation. Failure to comply with these standards can lead to legal proceedings and the imposition of measures as outlined in the Act on Electronic Media.

This regulatory approach could offer a precedent for how AI might be regulated in other sectors, including legal services. Ensuring that AI applications in law do not mislead or result in unjust outcomes could draw from similar principles that govern media content. The safeguarding against deceptive AI-generated content in media can be seen as analogous to ensuring that AI tools used in legal services are transparent, accurate and operate within the bounds of ethical guidelines.

Considering these developments, it is plausible that future regulations or legal decisions concerning AI in Serbia might evolve to address similar concerns in the legal sector, ensuring that AI tools enhance rather than undermine the integrity of legal services. As the use of AI continues to expand, both in scope and in complexity, the legal framework in Serbia is likely to adapt, potentially drawing from cases and regulations from sectors like media to inform guidelines and standards for AI in law.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There are no enacted laws that explicitly regulate AI applications for legal services, but the topic is gaining attention due to the increasing relevance of AI technologies in various sectors.

Educational and professional initiatives

There is an increasing focus on educational and professional development programmes aimed at equipping legal professionals with the knowledge and skills needed to effectively use AI tools. These initiatives are crucial for ensuring that legal practitioners can not only utilise AI technology efficiently, but also understand the ethical implications and regulatory requirements associated with AI usage.

Alignment with international standards

As Serbia looks to align itself more closely with EU standards, particularly in light of the SAA, the country is likely to consider international best practices and recommendations when drafting regulations that pertain to AI in the legal profession. This alignment could include adopting standards similar to those proposed in the EU AI Act, which stresses risk management, transparency and accountability in AI applications.

Impact on traditional legal services

The integration of AI into legal services raises questions about the impact on traditional legal practices. There is the potential for AI to transform areas such as case prediction, document analysis and legal research, which are traditionally time-consuming tasks that could benefit significantly from automation and AI technologies. However, it is essential to balance these advancements with the need to maintain human judgment and ethical considerations that are central to the practice of law.

9. What is the role of the national bar organisations or other official professional institutions?

The Bar Association of Serbia (the 'Bar Association') plays a crucial role in representing the legal profession, advocating for its interests, and ensuring the proper and lawful practice of legal services. Among its key responsibilities are the enhancement of professional and ethical standards, the development of the legal profession and the strengthening of professional discipline and accountability among its members. Given these competencies, the Bar Association is strategically positioned to address the integration and ethical use of AI within the legal profession.

As AI technologies become more prevalent in legal practice, the Bar Association could potentially spearhead initiatives to define and enforce guidelines for the proper and ethical use of AI. This action would likely be triggered once the usage of AI reaches a certain level of maturity and prevalence within the profession. The Bar Association's initiatives could include setting standards for AI usage that ensure transparency, accountability and adherence to legal and ethical norms, thus safeguarding the integrity of legal practices.

Additionally, other professional institutions such as the Chamber of Public Enforcement Officers, the Prosecutor Association of Serbia and the Chamber of Public Notaries also play significant roles in upholding the professional and ethical standards of their respective members. These bodies are crucial in ensuring that their members, who may increasingly use AI tools in their practices, remain compliant with established legal standards and ethical guidelines.

These institutions might collaborate or individually take steps to:

- *educate members*: organise training sessions and workshops to educate legal professionals about the potential and pitfalls of AI technology;
- *develop guidelines*: formulate guidelines that specify acceptable uses of AI in the respective fields, focusing on issues such as data privacy, the accuracy of AI-generated information and the prevention of bias;
- *monitor compliance*: monitor the adoption and usage of AI tools to ensure that they are used in a manner that aligns with professional responsibilities and ethical obligations; and
- *advocate for regulation*: represent the profession's interests in discussions with regulators and lawmakers regarding the future regulation of AI, ensuring that any new laws or policies consider the practical aspects of legal practice.

The proactive engagement of these professional bodies is essential not only to harness the benefits of AI, but also to mitigate the risks, ensuring that the deployment of AI technologies in legal services enhances rather than undermines the quality and integrity of the profession. As AI continues to evolve, the role of these organisations in guiding and regulating its use will become increasingly important, marking a significant aspect of their contribution to the legal landscape in Serbia.

Singapore

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1. What is the understanding or definition of AI in your jurisdiction?

Singapore's Infocomm Media Development Authority (IMDA) defines artificial intelligence (AI) as the study and use of intelligent machine learning to mimic human action and thought.[443] While there are no specific laws or regulations in this area, the Singaporean government has developed a Model AI Governance Framework, which further supplements the understanding of AI as a set of technologies that seek to simulate human traits, such as knowledge, reasoning, problem solving, perception, learning and planning and, depending on the AI model, produce an output or decision, such as a prediction, recommendation and/or classification.[444]

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In 2023, the Small Claims Tribunal started testing the use of generative AI (that is, AI capable of generating content). The Singapore courts entered into a two-year partnership with American legal AI startup, Harvey AI, to develop a generative AI program for users of small claims tribunals.[445]

The move is aimed at helping self-represented litigants446 and is part of the efforts by courts in Singapore to ensure access to justice by providing information and designing processes that are manageable for the layperson. This is a tremendous effort on the part of the Singapore judiciary towards making the law more accessible, as lawyers are not allowed to represent parties in small

443 'Artificial Intelligence in Singapore' (Infocomm Media Development Authority), www.imda.gov.sg/about-imda/emerging-technologies-and-research/artificial-intelligence accessed 19 April 2024.

444 *Model AI Governance Framework* (2nd edition, Infocomm Media Development Authority; Personal Data Protection Commission Singapore), http://go.gov.sg/ai-gov-mf-2 accessed 19 April 2024.

445 Lee Li Ying, 'Small Claims Tribunals to roll out AI program to guide users through legal processes' *The Straits Times* (27 September 2023), www.straitstimes.com/singapore/small-claims-tribunal-to-roll-out-ai-program-to-guide-users-through-legal-processes accessed 19 April 2024.

446 Lydia Lam, 'Generative AI being tested for use in Singapore courts, starting with small claims tribunal' *Today* (27 September 2023), www.todayonline.com/singapore/generative-ai-being-tested-use-singapore-courts-starting-small-claims-tribunal-2268976 accessed 17 April 2024.

claims consultations or hearings. If the program is successful, it is intended to be extended to other areas such as divorce maintenance and civil claims.[447]

3. If yes, are these AI tools different regarding:
- independent law firms;
- international law firms; and
- in-house counsel;

and what are these differences?

While there are minimal datapoints for us to definitively opine on the adoption of AI across lawyers, law firms and in-house counsel in Singapore, as one of the most mature and sophisticated legal industries in Asia, one can expect the adoption of AI in Singapore to follow the trend experienced by legal tech tools – that is widespread and fast (particularly, by larger firms who have access to a greater amount of resources).

On the above note, lawyers and law firms already use AI in various ways. Numerous legal tech tools rely on the same in the delivery of functions relating to, among others, discovery and document review, legal research, predicting the outcomes of court cases and contract lifecycle management.

With the advent of generative AI such as ChatGPT, lawyers and law firms are now more specifically looking at integrating generative AI-powered tools to aid with legal research and drafting.[448] These tools are aimed at speeding up tasks such as legal research, contract analysis and document review.

4. What is the current or planned regulatory approach to AI in general?

While Singapore has yet to promulgate any laws governing the use of AI, it has introduced responsible AI testing frameworks and toolkits.[449] These initiatives and guidelines support the development and adoption of AI technologies, including in the legal sector.

Some examples of these initiatives include:

- the National AI Strategy (NAIS), first released in 2019, sets out the national agenda aimed at deepening the use of AI technologies to transform the economy, going beyond adoption to rethinking business models for deep changes to be made. It was recently

447 Admin, 'Embracing AI in Singapore's Courts' *Open Gov Asia* (6 October 2023), https://opengovasia.com/2023/10/06/embracing-ai-in-singapores-courts/ accessed 19 April 2024.

448 Cheryl Seah, 'Artificial Intelligence: Learned Friend or Foe?' *Law Gazette* (August 2023), https://lawgazette.com.sg/feature/artificial-intelligence-learned-friend-or-foe/ accessed 19 April 2024.

449 Darren Grayson Chng and Joe Jones, 'Global AI Governance Law and Policy: Singapore' *IAPP* (February 2024), https://iapp.org/resources/article/global-ai-governance-singapore/ accessed 19 April 2024.

updated in 2023.[450] The updated NAIS refines the national strategy owing to breakthroughs in AI;[451]

- in 2019, the Personal Data Protection Commission (PDPC) released its first edition of the Model AI Governance Framework, which provides detailed and readily implementable guidance on ethical and governance topics when deploying AI in the private sector. The second edition of the framework was released in 2020 and includes updates for greater relevance and usability;[452]

- the IMDA has spearheaded various initiatives. A notable example is the publication of an open-source voluntary self-assessment framework named 'Verify AI', which was launched in 2022. It allows organisations to verify the performance of their AI systems against a set of standard process checks and technical tests. AI Verify is a first-of-its-kind mapping exercise based on the United States' AI Risk Management Framework, allowing it to be interoperable and strategically in sync with standards laid down by the largest hub for AI innovation.[453] More recently, the IMDA, in conjunction with the AI Verify Foundation, has developed a draft model AI governance framework for generative AI, putting forward a conceptual foundation to provide a catalogue and guidance on suggested practices for the safety evaluation of generative AI models;[454] and

- Singapore's central bank and financial regulator, the Monetary Authority of Singapore (MAS), was the first sectorial regulator to introduce AI governance guidance. In 2018, MAS published the 'Principles to Promote Fairness, Ethics, Accountability and Transparency in the Use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector' (the 'FEAT Principles') to provide guidance to firms on the use of AI and data analytics to offer financial products and services. Additionally, the existing MAS regulatory sandboxes enable firms to test the deployment of innovative financial technology (Fintech) solutions, including AI-powered legal technologies. Another initiative is the Veritas Toolkit, which is an open-source toolkit aimed at promoting the responsible use of AI within the financial sector.[455]

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450 'National AI Strategy' (Smart Nation Singapore), www.smartnation.gov.sg/nais/ accessed 19 April 2024.

451 'National AI Strategy 2.0' (Smart Nation Singapore), p.9.

452 'Singapore's Approach to AI Governance' (Personal Data Protection Commission), www.pdpc.gov.sg/help-and-resources/2020/01/model-ai-governance-framework accessed 19 April 2024.

453 Cheryl Seah, 'Round up of Significant Legal Developments in AI for 2023' *Law Gazette* (December 2023), https://lawgazette.com.sg/feature/round-up-significant-legal-developments-ai/ accessed 19 April 2024.

454 'Singapore proposes framework to foster trusted Generative AI development' (Infocomm Media Development Authority), www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/press-releases/2024/public-consult-model-ai-governance-framework-genai accessed 19 April 2024.

455 Rajesh Sreenivasan, Regina Liew et al, 'Responsible Use of AI – Guidance from a Singapore Regulatory Perspective' (Centre for Technology, Robotics, Artificial Intelligence and the Law, National University of Singapore, October 2023), https://law.nus.edu.sg/trail/responsible-use-of-ai/ accessed 17 April 2024.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

In an interview conducted by US news outlet CNBC in June 2023, the Director for Trusted AI and Data at IMDA stated that Singapore is not looking to regulate AI just yet.[456] The approach Singapore is looking to adopt would be to focus on deepening its understanding of how AI works, what benchmarks to use and what testing is appropriate, so that the development of legislation can be enforced.[457]

Against the understanding that effective AI frameworks at a local level should be interoperable with that of international standards, Singapore is seeking views from the international community on its proposed framework for generative AI. The proposed framework sets out a systematic and balanced approach for the use of generative AI, while at the same time facilitating innovation.[458]

The proposed framework[459] identifies nine dimensions in order to address concerns raised by generative AI, while balancing the need to foster ongoing innovation:

- accountability;
- data;
- trusted development and deployment;
- incident reporting;
- testing and assurance;
- security;
- content provenance;
- safety and alignment research and development (R&D); and
- AI for the public good.

For completeness, while there is an absence of an omnibus legislation regulating the use of AI and machine learning systems in general, the present legal landscape

456 Sheila Chiang, 'Singapore is not looking to regulate AI just yet, says the city-state's authority' *CNBC* (19 June 2023), www.cnbc.com/2023/06/19/singapore-is-not-looking-to-regulate-ai-just-yet-says-the-city-state.html accessed 19 April 2024.

457 Sheila Chiang, 'Singapore is not looking to regulate AI just yet, says the city-state's authority' *CNBC* (19 June 2023).

458 Ashley Tham, 'Singapore proposes generative AI framework' *Channel News Asia* (16 January 2024), www.channelnewsasia.com/singapore/generative-ai-artificial-intelligence-proposal-framework-4051526 accessed 18 April 2024; 'Singapore proposes framework to foster trusted Generative AI development' (Infocomm Media Development Authority, 16 January 2024), Singapore proposes framework to foster trusted Generative AI development' (Infocomm Media Development Authority).

459 'Proposed Model AI Governance Framework for Generative AI Fostering a Trusted Ecosystem' (AI Verify Foundation and Infocomm Media Development Authority, 16 January 2024), https://aiverifyfoundation.sg/downloads/Proposed_MGF_Gen_AI_2024.pdf accessed 19 April 2024.

provides for the regulation of activities which fall within the regulatory ambit of legislation in Singapore and, where the language used is sufficiently broad, it extends to activities facilitated by means of AI. Some examples include the PDPA (as defined below) and Singapore's Protection from Online Falsehoods and Manipulation Act 2019.[460]

6. Is free data access an issue in relation to AI?

The collection, use and disclosure of personal data is governed by the Personal Data Protection Act 2012 (PDPA). The PDPA also applies to systems that use AI to process personal data. Organisations must ensure that AI systems comply with PDPA requirements including obtaining consent for data processing and implementing appropriate security measures.

The PDPC has issued advisory guidelines on the use of personal data in AI.[461] The guidelines provide organisations with clarity on how they can use personal data to develop and deploy AI systems, as well as providing assurance to users about the use of personal data in AI systems.[462]

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

While there has yet to be any court cases specifically on AI and its use, there have been cases on cryptocurrency, which will impact certain aspects of AI.

For example, a case[463] decided by the Singapore International Commercial Court established an important precedent regarding the enforceability of smart contracts (automated contracts) and highlighted the importance of legal principles governing contract formation. The case centred around a cryptocurrency exchange that alleged that trading was executed due to a technical glitch. The cryptocurrency firm alleged that the trade executed was a valid contract and the unilateral reversal by the exchange was a breach of contract. The exchange, on the other hand, refuted this and said that the trades were made as a result of a technical error.

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460 Protection from Online Falsehoods and Manipulation Act 2019 s 8 provides that a person must not, whether in or outside Singapore, make or alter a bot with the intention of communicating, by means of the bot, a false statement of fact in Singapore; or enabling any other person to communicate by means of the bot, a false statement of fact in Singapore.

461 'Advisory Guidelines on use of Personal Data in AI Recommendation and Decision Systems' (Personal Data Protection Commission), www.pdpc.gov.sg/guidelines-and-consultation/2024/02/advisory-guidelines-on-use-of-personal-data-in-ai-recommendation-and-decision-systems accessed 19 April 2024.

462 'Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems' (Personal Data Protection Commission, 1 March 2024), www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/advisory-guidelines/advisory-guidelines-on-the-use-of-personal-data-in-ai-recommendation-and-decision-systems.pdf accessed 19 April 2024.

463 *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3.

The court observed that the electronic process of contracting was automatic and emphasised the importance of upholding the sanctity of contracts formed through automated trading systems and noted that parties must bear the consequences of their contractual obligations, even in cases involving technological errors.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

In 2020, the Ministry of Law launched[464] a sector-wide plan to promote innovation, technology adoption and development in Singapore's legal industry leading up to 2030. The roadmap presents initiatives and recommendations to support law firms and in-house legal teams in their transformation journeys.[465] While we can expect AI to be introduced into current systems and work processes (such as the use of AI-powered risk assessments and outcome simulations), it is unlikely for sectorial regulation to be introduced in the foreseeable future, given that the availability of such technology and the adoption of its use remains nascent.

In 2023, the Law Society of Singapore released its *Guide on the Adoption of LegalTech for Law Practices*, which sets out practices and criteria for law firms to use in assessing whether a specific legal technology or legal technology service or solution is suitable for their practice. The guide warns that while AI is expected to have a major effect on law practices, the full extent of its ramifications has yet to reveal itself.[466]

9. What is the role of the national bar organisations or other official professional institutions?

The Singapore Academy of Law and the Law Society of Singapore have issued guidelines and reports on AI-related topics, such as the application of ethical principles and the examination of criminal and civil liability in specific contexts.[467]

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464 *Technology and Innovation Roadmap Launched to Support Legal Industry in Adoption of LegalTech* (Ministry of Law, 2 October 2020), www.mlaw.gov.sg/news/press-releases/2020-10-02-technology-and-innovation-roadmap-launched-to-support-legal-industry-in-adoption-of-legaltech/ accessed 19 April 2024.

465 *Legal Industry Technology and Innovation Roadmap* (Ministry of Law: MinLaw Technology & Innovation), https://ltpi.mlaw.gov.sg/ltpi-website/roadmap/ accessed 19 April 2024; *The Road to 2030 Legal Industry Technology & Innovation Roadmap Report* (Ministry of Law, 2020), www.mlaw.gov.sg/files/news/press-releases/2020/10/Minlaw_Tech_and_innovation_Roadmap_Report.pdf accessed 19 April 2024.

466 'Guide on the Adoption of LegalTech for Law Practices' (The Law Society of Singapore, 16 October 2023), https://law-society-singapore-prod.s3.ap-southeast-1.amazonaws.com/2023/10/Guide-on-the-Adoption-of-LegalTech-for-Law-Practices-16-October-2023.pdf accessed 19 April 2024.

467 'Report Series: The Impact of Robotics and Artificial Intelligence on the Law' (Singapore Academy of Law), www.sal.org.sg/Resources-Tools/Law-Reform/Robotics_AI_Series accessed 19 April 2024.

In particular, the Singapore Academy of Law's Law Reform Committee (LRC) has established a subcommittee on robotics and AI to consider and make recommendations on the application of the law to robotics and AI systems.468 The LRC is looking to publish a series of reports to stimulate systematic thought and debate on these AI issues by legislators, industry players, the legal profession and the general public.

468 'Report Series: The Impact of Robotics and Artificial Intelligence on the Law' (Singapore Academy of Law).

South Africa

Tafadzwa Brian Mukwende, Diversity and Inclusion Officer, Phathi Trust, South Africa

1) What is the understanding or definition of AI in your jurisdiction?

Dating as far back as closed-circuit television, justice was born into the digital age. In modern times, even the law must protect itself from itself in order to be a better version of neatly crafted rules of modern societal fashion. Keeping up with digital trends technology advancements is top priority. In the case of *H v W* 2013 (2) SA 530 (GSJ); [2013] 2 All SA 218 (GSJ), Judge Nigel Willis had this to say:

> 'The law has to take into account changing realities not only technologically but also socially or else it will lose credibility in the eyes of the people. Without credibility, law loses legitimacy. If law loses legitimacy, it loses acceptance. If it loses acceptance, it loses obedience. It is imperative that the courts respond appropriately to changing times, acting cautiously and with wisdom.'

In essence, artificial intelligence is virtually part and parcel of the judicial transformative process agenda for the future efficacy of court systems. AI is a constellation of technologies designed to adapt over time through machine learning processes that enable highly intelligent machine prompted responses with augmented automated capabilities in any given environment.[469]

Virtual courtrooms are the new colour television of our times where the judge not only enters our sitting rooms, lounges and private spaces but the gavel strikes close to the smart phone via an app better known as digital caselining. One would say justice has not only managed to put on its shoes but also found its speed.

2) In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms etc), are there already actual AI tools or use cases in practice for legal services?

In South Africa, there are diverse electronic legal resources, e-libraries and AI tools through which law professionals and any other person may access legal information on past, present and latest judicial precedents. By the push of a button on any one of the e-databases below, information is available:

- Bargaining council agreements: https://discover.sabinet.co.za/bargaining_councils

469 Access Partnership, *Artificial Intelligence for Africa: An Opportunity for Growth, Development and Democratisation*. South Africa: University of Pretoria (2017) p 4.

- Bill tracker: https://discover.sabinet.co.za/bill_tracker
- Government gazettes: http://discover.sabinet.co.za/government_gazettes
- Jutastat: https://jutastat.juta.co.za
- Municipality bylaws: http://discover.sabinet.co.za/municipal_by_laws
- My Lexis Nexis: www.mylexisnexis.co.zaNetLaw – Provincial: https://discover.sabinet.co.za/provincial_netlaw
- NetLaw – SA Legislation: http://discover.sabinet.co.za/netlaw
- Parliamentary documents: https://discover.sabinet.co.za/policy_documents
- Potchefstroom Electronic Law Journal: https://journals.assaf.org.za or https://law.nwu.ac.za
- Pretoria University Law Press – De Jure Law Journal: www.pilp.up.ac.zaProvincial gazettes: http://discover.sabinet.co.za/provincial_gazettesRetrospective government gazettes: http://discover.sabinet.co.za/rgg_gazettes
- Retrospective provincial gazettes: https://discover.sabinet.co.za/retrospective_provincial_gazettesSA journals – law: www.journals.co.za
- Sabinet – labour judgments: https://discover.sabinet.co.za/sabinet_labour_judgements
- Sabinet – reference: https://reference.sabinet.co.za
- SA Media: https://reference.sabinet.co.za/sa_media
- South African Legal Information Institute: www.saflii.org

The downside is that some of these specialised databases require membership subscriptions beyond the reach of many in order to gain access to case law, legislation and law journal publications.

3) If yes, are these AI tools different for independent law firms, international law firms and in-house counsel, and what are these differences?

International legal resources contain a matrix of sources of law, law journal publications, e-books, e-library features and archives of court records spanning for centuries of large law collection. Popular international legal resources include:

- Lexis Nexis International: https://solutions.nexis.com/doj

- HeinOnline: www.heinonline.org
- Index to Legal Periodicals: http://vnweb.hwwilsonweb.com/hww/jumpstart.jhtml

Vast differences may arise as a matter of affordability and access to AI tools where bigger international law firms are better positioned than small and medium-sized independent law firms. Subscription fees and cost of technology are the impediments to the use of AI and access to AI tools on these specialised law databases. Local databases are not as sophisticated and comprehensive as international databases in terms of quality and quantity of information.

4) What is the current or planned regulatory approach on AI in general?

Data protection legislation has been enacted in the South African jurisdiction to control freedom of expression, access to information and rights to privacy. Statutory and institutional mechanisms for data protection of confidential, sensitive and private information including trade secrets are established.

Protection of personal information in the information society

Minimum threshold requirements were established for the processing of personal information by public and private bodies as perambulated by the Protection of Personal Information Act, No 4 of 2013 (POPI). This legislative text examines the right to privacy, including the right to protection against the unlawful collection, retention, dissemination and use of personal information. Administration by an information regulator bestowed or endowed with certain scope of powers and to perform certain duties and functions intended to regulate the flow of personal information within the South African territory was established in comport with the Promotion of Access to Information Act 2 of 2000 and Protection of Personal Information legislative framework.

Civil remedies may be sought by an affected data subject, or at the request of the data subject, the regulator may institute civil action for damages against the party for intentional or negligent breach whether as provided by section 99(3) of the POPI. Administrative fines not exceeding ZAR 10m may be imposed for alleged infringement if found guilty as encapsulated by section 109(2)(c) of POPI.

Protection of rights through accessing information held by state and private bodies

Digital access to information records stored on computers or in electronic or machine-readable form or such copy by an information requester may be granted

or authorised by the public body concerned, as prescribed by section 29 of the Promotion of Access to Information Act 2 of 2000 (PAIA). A formal request for access to information must be made in the prescribed manner or form to the information officer of the public body concerned at his or her physical address or fax media or email address as stipulated by section 18(1) of the PAIA.

Voluntary disclosure and automatic availability of certain records are possible, subject to the head of a public body submitting a description of categories of records available to public access free of charge to the minister under legislative precepts as regulated by section 52 of PAIA. Additional functions of the Human Rights Commission include making recommendations for procedures in terms of which public and private bodies make information electronically available as governed by section 83 of the PAIA.

5) Which are the current or planned regulations on the general use of AI or machine learning systems?

Courts in the South African jurisdiction are undergoing digitisation and have adopted virtual court trials, including digital case management (caselines). Moving forward, the judiciary is prioritising digitising the functioning of courts to improve justice delivery and efficient performance. Court automation and the development of modernisation systems are of high priority for the justice department.

Recently, Mogoeng Mogoeng, the Chief Justice, announced that the digitisation project is piloting caselines in Gauteng,[470] equipped with a functioning National Efficiency Enhancement Committee (NEEC) and its equivalents the nine Provincial Efficiency Enhancement Committees (PEECs), including the Regional and District Efficiency Enhancement Committees (REECs and DEECs), set up by the Office of the Chief Justice (OCJ), which is tasked with facilitating the development of an appropriate court-automation system to detect causes and solutions of delays in the justice system.[471]

Implementation of electronic filing and record-keeping, performance-related data capturing, information dissemination or access to information relating to cases, judgments and all other court operations brings it much closer to achieving the goals of modernising the court systems.[472]

Court online components

The OCJ is in the process of developing and implementing Court Online. Court Online is an end-to-end e-filing, digital case management and evidence

470 South African Judiciary Annual Report (2017/18) p 9; South African Judiciary Annual Report (2018/19) p 7.

471 Judicial Newsletter Q3 Issue (December 2019) p 10.

472 (The South African Judiciary Annual Reports 2017/18:9; 2018/19: 7).

management system for the High Courts of South Africa. It provides legal practitioners with the opportunity to file documentation electronically online anywhere and at anytime without being physically present at court. It also affords law practitioners the ease of managing their court appearance diaries and court evidence instantaneously online.

Components of Court Online include: the front-end portal, workflow application, case management application, hearing application, evidence management application, post hearing or adjudication application and short message service (SMS) and email gateway to pass key information between the court and the litigants.

The front-end portal consists of a nine-step process to access the court online system:

- Step one: a law firm or litigant needs to create a once-off online profile so that they can access the court online system;
- Step two: a law firm or litigant must enter their identity document (ID) as part the online profile creation, which will be verified by the home affairs system along with all other information that citizenship can be verified;
- Step three: a law firm or litigant must enter their practice number as part of the online profile creation, which will be verified along the Legal Practice Council database of registered legal practitioners;
- Step four: upon registration, the law firm or litigant will register their digital signature on the system;
- Step five: the front end will provide law firms or litigants with an online case file through which they can file and view documents that have been filed by them, served on them or any messages received from the courts;
- Step six: upcoming hearing dates are also pushed through the front end at the law firm level and at the case level;
- Step seven: documents shall be sent as PDFs;
- Step eight: to file or serve a document, the law firm or litigant has to fill up the appropriate online template in the FE and attach the document to be filed or served in PDF format;
- Step nine, the entire submission may consist of one or several documents and this shall be digitally signed.

Physical court appearances became a thing of the past during the national lockdown caused by the Covid-19 pandemic. Court directives issued on 11 May 2020 provided physical court attendance was a last resort in the quest to strike a

balance between access to Justice having regard to the lack of IT infrastructure and equipment in the regional courts of Kwa Zulu Natal.

6) Is free data access an issue in relation with AI?

General public importance issues arise from future challenges with the process of judicial transformation when implementing digitisation, virtual courts, electronic presentation of visual-audio 'e-evidence' systems, e-services, e-filing, adoption of email correspondence and new legal reform to supplement court rules.[473] Forward thinking is required rather than a one-size-fits-all approach where great legal minds are admonished to apply the zebra approach to cater for unforeseen variables.

It is incumbent upon courts to be mindful of placing an iron curtain on the constitutional right of access to court justice and attenuating the right of access of information; it is especially important not to exclude the lay and illiterate from marginalised communities of previous disadvantaged people and disabled people. In the modern world, only the well-resourced tech savvy elite class will access speedy court processes. The circle of inequality hangs like a sledgehammer on legal migrants, refugees, undocumented citizens and second-class citizens, who may struggle to upload case files online since it requires citizens with a 13-digit green barcode identity approved by Home Affairs to access the automated court systems. Put simply, illegal immigrants and undocumented South Africans lack *locus standi* to be part of fair trials.

Diversity and inclusivity are the missing software components of technology since these require a certain level of literacy, training and exposure of the public to cloud computing and virtual platforms. Costs of technology remain a major impediment to free public access to data. Even recent interventions from the Independent Communications Authority of South Africa's (ICASA) latest regulations to lower costs of rollover data, airtime rates and usage notifications on mobile telecom service providers are a far cry from pragmatic solutions.[474]

7) Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Beware of the sheriff on social media you have been served!

Substituted service by way of publication in the Government Gazette, national newspaper and local newspaper of last known whereabouts of the party,

473 Reg 2 of the Government Gazette No 35450 published on 22 June 2012 by the Rules Board for Courts of Law inserted Rule 4A into the Uniform Rules of Court.

474 End-user and Subscriber Service Charter Regulations 2016 as Published under Government No 39898 of 1 April 2016, as amended in Notice No 233 of 2018 (Government Gazette No 41613).

by registered post, by service on a relative, by service on last known address or a combination of these methods may be effected with leave of the court as contemplated by Rule 4A of the Uniform Rules of High Court.

The High Court in *CMC Woodworking (Pty) Ltd v Pieter Odendaal Kitchens* 2012 (5) SA 604 (KZD) at para 13, per Steyn J, granted the applicant *in this case* leave for a notice to discover to be served by way of substituted e-service on Facebook in terms of Rule 4A with necessary conditions as directed by the court requiring publication of notice in the local newspaper. Influence from a comparable foreign civil procedure in Canada emanated from the decision in *Boivin v Associés* c.Scott 2011 QCCQ 10324 (Can LII), in which the court authorised service of motion proceedings via the defendant's Facebook account.[475]

Where spoliation remedy does not apply

In the case of *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA) it was impugned whether the court a quo made an error of law in ruling that the respondent had successfully proved quasi-possession and was legally entitled to the spoliation remedy for interference and undisturbed internet use from the appellant.[476] On appeal, it was found that continuous use of internet connection does not per se, that is in its own right, constitute quasi-possession. Therefore, the spoliation remedy is not available to the respondent because the mandament does not protect infringement of incorporeal property.[477]

Freedom of expression on social media platforms

When considering the defamatory effects of publication on Facebook the Constitutional Court highlighted the need to consider the context of publication to strike a balance between the freedom of expression and right to dignity in *S v Mamabolo (eTV and Others Intervening)* 2001 (3) SA 409 (CC) at p429I-431B; *Le Roux v Dey Freedom of Expression Institute and Another as amici curiae)* 2011 (3) SA 274 (CC) at paragraphs 39 to 51.

In its decision the High Court in *H v W* at paragraph 40 held that the court only has the power to grant a restraining order to compel the respondent to remove already published information circulating on social media and not to prevent future publications. Reluctance of courts to interdict publication of information on social media has a chilling effect on the right to freedom of expression according to *National Media Limited v Bogoshi* 1998 (4) SA 1196 (SCA) at p1210G-I. Courts

475 LTC Harms, *Civil Procedure in Superior Courts Issue 45* (2012: Durban: Lexis Nexis) B4–30.

476 *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA) paras 11–12.

477 *Ibid*, para 14.

have a different attitude not to interfere with the free flow of information on news media because it infringes the right to freedom of expression.[478]

Protection of privacy in social media conflicts

The impact of social media conflicts arising from *iniuria* or injury to self-dignity and pride brings about the need to develop the common law protection afforded to the right to privacy. It is imperative to note the dangers of social media on this right. Therefore, there is a dire need to stress the introduction of legal reforms through legislation and necessary judicial interventions to turn Facebook to good use.[479] The High Court in *H v W* 2013 (2) SA 530 (GSJ); [2013] 2 All SA 218 (GSJ) at paragraph 30, ruled that granting an interdict is the appropriate legal remedy to prohibit future infractions of one's right to privacy as set out in *Setlogelo v Setlogelo* 1914 AD 221 at 227.

Intercepting private communications is unconstitutional

Secret state surveillance, and interception, of communications between Sam Sole, a journalist and managing partner of the Amabhungane Centre for Investigative Journalism, a non-profit organisation, and Advocate Downer, a state prosecutor, were, without reasonable justification, facts leading to the judgment in this case. In *Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others* [2019] 4 All SA 33 (GP); 2020 (1) SA 90 (GP); 2020 (1) SCAR 139 (GP) at paragraph 168, per Roland Sutherland J, the High Court granted a declaratory order of invalidity against bulk surveillance activities and foreign signals interceptions as unlawful, striking down the statutory provisions of sections 16(7), 17(6), 18(3)(a), 19(6), 20(6), 21(6) and 22(7) of the Regulation of Interception of Communication-Related Information Act 70 of 2002 (RICA) to be inconsistent with the Constitution and accordingly invalid to the extent that it failed to prescribe procedure for notifying the subject of the interception, including where the subject is a practising lawyer or journalist. Sections 35 and 37 of RICA were also declared inconsistent with the Constitution and accordingly invalid to the extent that the statute, itself, fails to prescribe proper procedures to be followed when state officials

478 LJ Strahilivetz, 'A Social-Network Theory of Privacy' V CHI L REV 72, 923-24.

479 J Grimmelmann, 'Saving Facebook' (94) *Iowa Law Review* 94 (2009) 1137-1205.

are examining, copying, sharing, sorting through, using, destroying and/or storing the data obtained from interceptions.

8) What is the current status – planned, discussed or implements – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Judicial regulatory instruments

Transmission of any summons, writ, warrant, rule, order, document or other process in civil proceedings before a superior court or any communication by law, rule or agreement of parties may be effected or transmitted by fax or by means of any other electronic medium as provided by the rules in section 44(1)(a) of the Superior Courts Act 10 of 2013 read in conjunction with Judicial Regulatory Instruments (2nd ed) at 213. Notices sent by fax or any other electronic medium sent by any judicial or police officer, registrar, assistant registrar, sheriff, deputy sheriff or clerk of court is sufficient authority for execution of such writ or warrant for the arrest and detention of any person as envisaged by section 44(2)(a) of the Superior Courts Act 10.

Admissibility of digital evidence and the best evidence rule

Admissibility requirements of printed-out documents are governed by the provisions of section 15(1) of the Electronic Communications Act.[480] When print-outs of email correspondences transmitted or sent as data messages in electronic form are presented in court, the best evidence rule applies with respect to such documentary evidence in terms of section 15(1)(b) of the Electronic Communications and Transactions Act 25 of 2002. Electronic signature is not without legal force and effect merely on the grounds that it is in electronic form as envisaged by section 13(2) of the Electronic Communications and Transactions Act 25 of 2002. Advanced electronic signature is regarded as valid electronic signature, unless the contrary is proved as ensconced by section 13(4) of the Electronic Communications and Transactions Act 25 of 2002.

The best evidence rule implies the originality, authenticity, veracity and reliability of the document is in compliance with the statutory requirements of sections 14 and 15 of the Electronic Communications Act.[481] In determining the evidentiary weight of the data message, the reliability of such evidence is accorded to the manner in which it was generated, stored and communicated, integrity of data was maintained and the identification of the originator as encapsulated in section

480 S 15(1) of the Electronic Communications and Transactions Act 25 of 2002.

481 S 14 and 15 of the Electronic Communications Act 25 of 2002.

15(3) of the Electronic Communications Act. There is a legal duty on the plaintiff to certify the data message as correct according to section 15(4) of the Electronic Communications Act.[482]

Cybercrimes and malicious communications offences regulations

On 1 June 2021, President Cyril Ramaphosa signed the Cybercrimes Bill of 2017 into law to regulate the jurisdiction of cybercrimes in alignment with foreign policy to allow inter-state cybersecurity mechanisms. The Cybercrimes Act 19 of 2020 introduces alternative sentencing regimes for cybercrimes and malicious communications in the context of criminal penology. What to expect from the new cyber laws includes the criminalisation of the unlawful securing of access, acquiring of data, unlawful acts in respect of software and hardware devices, malicious communications, cyber fraud, cyber extortion, cyber forgery and attempted means of same conspiring, inducing and abetting.[483] The creation of new statutory criminal offences have a bearing on cyber-related acts and cybersecurity in attempts to regulate the digital playground.

Criminal proceedings on CCTV

Generally, court proceedings must be conducted in an open court with public access; subject to certain legal exceptions, justice may place a curtain on legal proceedings. Criminal proceedings can be held in camera, that is behind closed doors in accordance with prescribed requirements of section 153(1) of the Criminal Procedure Act 51 of 1977 (CPA). Based on the court's opinion to prevent revealing the identity of persons, if there is reasonable likelihood of intimidation or harm befalling witnesses, victim and witness protection in sex crimes-related trials especially minor children or vulnerable groups or class of persons, the trial may proceed in camera in terms of section 153(2) and (3) of the CPA.

Censorship of *sub judice* criminal court proceedings may be interdicted against any publications when it is just and equitable to do so in the eyes of the law as provided by section 154 of the CPA. All criminal proceedings must take place in presence of the accused except where judicial discretion fits or on application of the public prosecutor, the accused or witnesses' consent, evidence may be given by means of closed-circuit television or similar electronic media as envisaged by section 158(2) of the CPA. Courts may take into consideration certain factors such as prevention of unreasonable delays, saving costs, convenience, national interests of state security, public safety and good order or interests of administration of

482 '(4) A data message made by a person in the ordinary course of business, or a copy or printout of or an extract from such data message certified to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.'

483 S 2, 3, 8, 9, 10, 12 of Ch 2 and Ch 3 of the Cybercrimes Act 19 of 2020.

justice or public interest, prevention of reasonable likelihood of harm or prejudice of persons as set out in terms of section 158(3) of the CPA.

9) What is the role of the national bar organisations or other official professional institutions?

South Africa's legal profession is undergoing judicial transformation spearheaded by the new Legal Practice Act 28 of 2014, which repealed the Attorneys Act and Advocates Act. This provides a legislative framework for the transformation and restructuring of a fragmented legal profession in line with constitutional imperatives. A priority is to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic. The establishment of provincial councils and a single South African Legal Practice Council as the mother body regulating the legal profession came about as a result of these new developments. The appointment of a legal services ombud that functions to monitor and ensure fair, efficient and effective investigations by the investigations committee, conduct of disciplinary committees and the conduct of the appeal tribunals is prescribed by section 42 of the Legal Practice Act 28 of 2014.

National Bar Council of South Africa

The National Bar Council of South Africa (NBCSA) is a voluntary association formed to promote healthy competition between lawyers including advocates and attorneys, which will translate into a better and more cost-effective service to the public. Maintaining the true spirit of professional autonomy is the primary objective of the NBCSA. The core founding principles of the NBCSA include providing assistance of the previously disadvantaged to enter into the profession without having undue barriers of entry placed in their way. Campaigning for an accessible legal system through the provision of support to advocates and upholding the belief in freedom to practice.

Law Society of South Africa

The Law Society of South Africa (LSSA) brings together the Black Lawyers Association (BLA), the National Association of Democratic lawyers (NADL) and provincial attorneys' associations in representing the attorney's profession in South Africa. The LSSA undertakes advocacy initiatives in the interests of the legal profession and the public as part of its mandate. It aims to empower attorneys to provide excellent legal services to the community in an ethical, professional, considerate and competent manner. Its mission is to represent the attorneys' profession and to safeguard the rule of law via the efficient and fair administration of justice.

Legal Practice Council

The Legal Practice Council (LPC) is a national statutory body established in terms of section 4 of the Legal Practice Act. Facilitating the realisation of a transformed and restructured legal profession that is accountable, efficient and independent is a chief goal of the LPC, in accordance with section 5 of the Legal Practice Act. Imperative objectives of enhancing and maintaining integrity of the legal profession are necessary to preserve and uphold the independence of the legal profession. Regulation of all legal practitioners and all candidate legal practitioners is required to promote and protect public interests as the main function of the LPC and its provincial councils. The LPC's commitment to inclusivity and diversity ensures promotion of access to the legal profession, in pursuit of a profession that broadly reflects the demographics of South Africa. The LPC promotes high standards of legal education, training and compulsory post-qualification professional development. This seeks to ensure accessible and sustainable training of law graduates aspiring to be admitted and enrolled as legal practitioners. Registration and legal status of practising and non-practising legal practitioners including pending disciplinary processes, suspended practitioners and those struck off the roll is also now available to enable general members of the public to know their lawyer.

South African Judicial Education Institute

Training programmes ear-marked for judicial officers on a win-win court annexed mediation system facilitated by the South African Judicial Education Institute (SAJEI) was launched in July 2018. Judicial case flow management shall be directed at enhancing service delivery and access to quality justice through the speedy finalisation of all matters.[484] The National Efficiency Enhancement Committee, chaired by the Chief Justice, shall coordinate case flow management at national level. The head of each court shall ensure that judicial officers conduct pre-trial conferences as early and as regularly as may be required to achieve the expeditious finalisation of cases.

The finalisation of all civil cases in the High Court must be within a year of the date of issue of summons. In the magistrates' courts it must be within nine months of the date of issue of summons.[485] Judicial officers are required to finalise criminal matters within six months after every accused person pleads to the charge within three months from the date of first appearance in the magistrates' court.[486]

In conclusion, future litigation in virtual courts has become a virtual reality of modern litigation. Ongoing judicial transformation requires that legal reforms must accommodate the ever-expanding technological advancements. AI forms

484 Judicial Regulatory Instruments (2nd ed) 178 para 5.2.4.

485 *Ibid*.

486 *Ibid*, 179 para 5.2.5.

part of the solution as court structures are entering the digital space to suit the e-justice system. Online dispute resolution is the gateway for speedy alternative dispute resolution mechanisms that provide a smart remote solution through video conferencing, e-courtrooms and virtual courtrooms of today.[487] It seems the law has apparently left the proverbial walking stick for the electric wheelchair.

487 I Knoetze, 'Courtroom of the future – virtual courts, e-courtrooms, videoconferencing and online dispute resolution' *De Rebus*, 2014 (546) 28–29; Will K Kaplan, 'Will Virtual Courts Create Courthouse Relics?' *The Judges' Journal* (2013) Vol 52(2) 32.

Republic of Korea

Doil Son, Yulchon, Seoul

Sun Hee Kim, Yulchon, Seoul

DaYeon Ahn, Yulchon, Seoul

Seoho Lee, Yulchon, Seoul

1. What is the understanding or definition of AI in your jurisdiction?

In the Republic of Korea, there is currently no universally accepted legal definition of artificial intelligence (AI) enshrined in law, as AI-specific legislation is still under discussion in the National Assembly.[488] However, several existing laws incorporate concepts related to AI. For instance, the General Act on Public Administration (GAPA) addresses the use of 'automatic disposition' (defined as actions taken by a fully automated system, including those employing AI technologies) in Article 20. Additionally, the Personal Information Protection Act (PIPA) recognises the rights of individuals concerning 'automated decisions' (decisions made solely through systems using AI technologies) under Article 37-2.

Furthermore, a recent decision by the Seoul Administrative Court described AI as a technology that 'emulates human brain functions such as perception, judgement, inference, problem-solving, and, consequently, the capability to give verbal and behavioural instructions and perform learning functions'.[489] However, this definition arose from a lower court's ruling in a specific case, making it challenging to regard it as a definitive or official definition applicable across all legal contexts in Korea.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Korea, AI adoption within the legal sector, though still nascent, is met with significant enthusiasm from legal professionals eager to integrate these technologies into their practices. This interest has prompted a surge in legal tech startups developing AI-based solutions tailored for legal applications. Additionally, law firms and public sector entities, including courts and law enforcement agencies, are actively investing in AI to enhance legal processes.

488 The details of the AI-specific legislation currently under discussion in the National Assembly remain undisclosed. Nevertheless, since the legislation is intended to establish a foundational framework for the AI industry's promotion and regulation, it is expected to encompass a formal definition of AI.

489 Seoul Administrative Court Decision 2022GuHab89524, 30 June 2023.

AI tools offered by tech companies

The legal tech landscape in Korea is experiencing rapid growth, with startups increasingly integrating advanced AI technologies, including generative AI, into their services. For instance, legal tech startup Law & Good recently launched an AI-driven chatbot service offering legal advice on a wide range of topics from PIPA to finance regulations. It plans to extend this service to cover areas such as sex crimes, divorce and intellectual property. Another legal tech company, BHSN, introduced Allibee, an AI solution for contract management and legal dispute handling, featuring a contract lifecycle management (CLM) service that leverages AI to analyse and extract key clauses from contracts.

AI tools developed in law firms

Korean law firms are actively developing AI tools for legal services, often in collaboration with tech companies. Yulchon has established the eYulchon Team, focused on creating AI tools for B2B legal services, while DR & AJU LLC recently launched AI DR & AJU, a service that provides basic legal information to users directly (B2C model). These developments highlight the growing interest in generative AI among law firms.

AI used in public institutions

Public institutions, including law enforcement agencies, are leveraging AI to improve administrative efficiency. The police have implemented an 'AI-enabled written statement drafting system' using speech recognition technology, currently used in 239 police offices and Sunflower Centres, which assist victims of sexual violence. Furthermore, the Supreme Prosecutor's Office is developing an 'AI Investigator' model to aid in identifying similar cases during investigations, indicating a broader adoption of AI across various stages of criminal procedures.

Overall, these advancements reflect Korea's proactive stance in adopting AI technology across the legal sector, aiming to streamline operations and improve the accuracy and efficiency of legal services.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

The application of AI tools in the legal field varies across different types of law practices, such as independent small and medium-sized law firms, large independent law firms,

international law firms and in-house counsel. These variations may continue to develop with advancements in AI technology.

Small and medium-sized law firms often use AI for routine tasks such as legal research and drafting standard documents, for example contracts and litigation papers. These AI tools generally focus on basic automation processes and might not meet the broader needs of all firms.

Large independent and international law firms, especially those with wide-ranging practice areas and significant proprietary databases, prefer AI tools that can merge these internal resources with publicly available information. This capability allows for more complex and customised legal solutions.

In contrast, in-house counsel typically employs AI tools for tracking and managing operational activities. Technology companies develop specific tools that assist in-house legal teams in handling contract negotiations, monitoring implementation and managing litigation processes. These tools aim to streamline workflows and increase efficiency within the structure of the organisation.

Overall, while the fundamental functions of AI tools – such as document automation and data management – remain constant, their specific applications and the preferences of legal entities vary considerably depending on the organisation's size and type.

4. What is the current or planned regulatory approach on AI in general?

The South Korean Government's regulatory approach to AI primarily focuses on fostering the AI industry and facilitating the commercialisation of AI technologies. Spearheaded by the Ministry of Science and ICT (MSIT), the Government has actively implemented strategies to integrate AI into various aspects of daily life. In September 2023, MSIT released an implementation plan highlighting the significant role of advanced AI models in national competitiveness. The strategy includes several key objectives:

- enhancing the welfare of Korean citizens, especially minority groups, through AI applications;
- encouraging the proliferation of AI in the private sector, including its expansion within the legal sector;
- utilising AI in public services for functions such as real-time surveillance and disaster response; and
- establishing educational initiatives and certification systems to ensure the safe use of AI.

Additionally, the Personal Information Protection Commission (PIPC) plays a crucial role in establishing legal guidelines for AI use, particularly with regard to personal data. Recently, PIPC updated the Guideline on Processing of Pseudonymised Information, which now includes lawful methods for pseudonymising non-text data such as voice, image and video. This is intended for use in training AI models. Through these efforts, PIPC carefully balances the importance of protecting personal information with the need to supply data essential for advancing the AI industry.

The Financial Services Commission and Financial Supervisory Services have also been active since 2021, continuously publishing AI security guidelines for the financial sector.

On 27 December 2023, the Ministry of Culture, Sports and Tourism (MCST) and the Korea Copyright Commission published the Guideline on Copyrights for Generative AI (the 'AI Copyrights Guideline'). They announced on 15 April 2024 that an English version of the Guideline will be distributed this year through various international forums, starting with the World Intellectual Property Organisation (WIPO) and the Standing Committee on Copyright and Related Rights (SCCR).

Generative AI models are a type of AI capable of generating various outputs using deep learning technology based on large datasets. One notable feature of generative AI is that its outputs are similar in quality to, and can often be indistinguishable from, works created by human authors. Generative AI has been rapidly advancing since its introduction in November 2022 with models such as ChatGPT, Gemini, Stable Diffusion and DALLE3 leading the way. As the rapid development of generative AI technology is likely to increase the prospect of related legal disputes involving copyright issues, the Korean government published the AI Copyrights Guideline to identify copyright-related issues and to provide a government-proposed approach to address these issues.

These initiatives reflect a comprehensive approach to regulating and promoting AI in South Korea, balancing innovation with safety and privacy concerns.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

While South Korea has specific regulations such as the Personal Information Protection Act (PIPA) and the Credit Information Use and Protection Act (CIPA) that address data subjects' rights regarding automated decisions made by AI, there is currently no comprehensive regulation specifically addressing the use of AI or machine learning in general. However, various guidelines and specific legal provisions are in place to govern the development and use of AI technology.

Regulation on the use of personal information

- PIPA mandates that, in principle, personal information can only be processed for purposes such as developing an AI model with the explicit consent of the data subject. For example, a startup was sanctioned for using personal data collected from its users for its existing service to develop a separate chatbot application without express consent.
- Alternatives to direct consent include using publicly disclosed personal information under certain conditions and pseudonymised information for scientific research, which can encompass private sector technology development.

Regulation of decisions made by AI

- The 'black box' problem, where the decision-making process of AI systems is opaque, is a regulatory focus. Efforts are ongoing to enhance transparency and accountability in AI-driven decision-making.
- The Korean Fair Trade Commission (KFTC) is particularly active in regulating the use of algorithms and AI, such as imposing fines on unfair practices like self-preferencing by AI systems.

Guidelines on copyrights for generative AI

- AI operators are encouraged to secure rights and licences for using copyrighted works during the AI model training phase and to clarify the licensing terms.
- During the AI output generation phase, operators should implement measures to prevent generating outputs that are identical or too similar to copyrighted works and define terms for indemnification and risk allocation in their service contracts.
- Copyright holders are advised to clearly stipulate in contracts how their works can be used in AI training and employ technologies such as the Robots Exclusion Protocol to prevent unauthorised use.
- End users should be cautious not to infringe copyrights when publicly disclosing AI-generated outputs and should comply with relevant generative AI-related policies.
- In Korea, AI-generated outputs themselves are not copyrightable, but enhancements or modifications by humans may be. For registration of the copyright, it is essential to detail what parts of the work are AI-generated and what has been contributed by the applicant.

These regulations and guidelines collectively aim to address the complexities and challenges posed by AI and machine learning technologies, ensuring that their integration into various sectors is both responsible and compliant with existing legal frameworks.

6. Is free data access an issue in relation to AI?

Access to free data is indeed a significant issue in the context of AI development, especially given the challenges surrounding the use of personal information and copyright concerns. PIPC recognises these challenges and is in the process of delineating specific circumstances under which the use of personal information may be legally permissible. To address these concerns, PIPC plans to introduce guidelines that will clarify the lawful processing of publicly disclosed personal information, facilitating access to such data while ensuring compliance with privacy laws.

Additionally, the AI Copyrights Guidelines published by MCST address the use of copyrighted material in AI development. These guidelines aim to balance the rights of copyright holders with the needs of AI developers, providing a framework for lawful use and licensing of copyrighted works.

In the legal services sector, the issue of free data access is particularly contentious with regard to the public disclosure of court decisions. In Korea, certain court decisions are made publicly available through the Comprehensive Legal Information System, an online platform managed by the Supreme Court of Korea. Prior to public disclosure, personal information, such as names of the parties or other stakeholders involved in the cases, is anonymised to protect their privacy. As the legal tech industry expands in Korea, the demand for access to these databases by companies seeking to develop AI-based legal services is growing. This increasing demand is likely to escalate the debate over access to such data, as more legal tech firms seek to leverage these resources to enhance their services and products. This trend underscores the ongoing tension between fostering innovation in AI and maintaining the protection of proprietary and personal information.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

In exploring the use of AI within legal services, an instructive case from Korea is the Constitutional Court's decision involving Law Talk, an online platform designed to connect lawyers with clients. This platform, operated by a startup called Law & Company, faced sanctions from the Korea Bar Association under the Lawyers Advertising Regulations. Law & Company, along with other participating lawyers,

challenged these sanctions at the Constitutional Court of Korea, arguing that the regulations unduly infringed upon their fundamental rights.

The crux of the case was not only the general advertisement practices by individual lawyers on the platform but also specifically targeted the service's portrayal of its ability to 'predict' outcomes of court or governmental decisions. The Constitutional Court upheld the sanctions, ruling on 26 May 2022, that such advertising could mislead consumers. The court justified its decision by noting the inherent complexity and unpredictability of legal proceedings, which makes accurate predictions virtually impossible.[490]

This ruling sparked considerable debate, particularly because the AI-driven prediction service offered by Law Talk had attracted significant attention as a pioneering AI application in the legal sector. Despite its initial popularity, the service was discontinued by Law Talk following the court's decision and subsequent regulatory scrutiny. This case highlights the challenges and regulatory hurdles associated with integrating AI technologies into the legal services market, especially concerning consumer protection and the quality of the work created using AI-based technologies.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

Currently, there is no specific legislation exclusively regulating the use of AI in legal services within the jurisdiction. However, the existing regulatory framework, particularly under the Attorney-At-Law Act, provides a comprehensive mechanism to oversee the involvement of AI in the legal sector, especially regarding services traditionally rendered by lawyers.

The Attorney-At-Law Act stringently restricts non-lawyers from providing legal services. It includes a broad category of 'other general legal affairs', which the courts interpret expansively. The Supreme Court of Korea, in its decision dated 9 June 2015,[491] clarified that 'other general legal affairs' encompasses activities associated with the occurrence, modification, extinction, preservation and clarification of legal effects. According to this interpretation, any activity marginally connected to these legal outcomes is subject to regulation under this act.

This legislative approach effectively controls the use of AI in providing legal services, as any AI-driven service that might encroach upon the exclusive domain of licensed attorneys could be deemed unauthorised if it performs functions akin to those restricted to lawyers. Thus, while there is no explicit legislation targeting AI

490 Constitutional Court of Korea 2021Hunma619.

491 Supreme Court of Korea decision 2014do16204.

use in legal services, the broad interpretation of the existing laws ensures that AI's integration into the legal profession remains under careful scrutiny.

9. What is the role of the national bar organisations or other official professional institutions?

National bar organisations and other professional legal institutions play a pivotal role in regulating and shaping the use of AI within the legal profession. Under the Attorney-At-Law Act, these organisations, such as the Korean Bar Association, have a duty to enforce regulations that restrict non-lawyers from providing legal services. These regulations are crucial when considering the integration of AI technologies by law firms, as certain AI applications could potentially infringe upon these established rules.

For example, when a particular Korean law firm considered launching an AI chatbot service, several regulatory concerns were raised. These included the possibility of the chatbot service being perceived as an unauthorised advertisement offering free or low-cost legal consultations, which violates the Lawyers Advertising Regulations. Additionally, there were concerns about the AI service operating without proper lawyer supervision, potentially amounting to the delegation of legal work to non-lawyers, a practice that is strictly prohibited.

Given these complexities, there is a growing call within the legal tech community for the Korean Bar Association to take an active role in developing clear, specific guidelines for the use of AI in legal services. Such guidelines would not only clarify what is permissible under current laws but also help manage the legal risks associated with AI, thereby supporting the development and ethical deployment of AI technologies in the legal sector. These efforts are seen as essential for fostering innovation while ensuring compliance and maintaining the integrity of the legal profession.

Spain

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1. What is the understanding or definition of AI in your jurisdiction?

In Spain, artificial intelligence (AI) systems have been recently defined as per the proposed Royal Decree that should regulate the controlled testing environment for artificial intelligence systems in Spain (AI Sandbox regulation).[492] An AI system is a setup designed to function autonomously to some degree and it infers how to accomplish specified objectives using learning, logic or knowledge-based strategies based on human or machine-provided input data. Additionally, it generates outputs such as content (in generative AI systems), predictions, recommendations or decisions, influencing the environments it interacts with.

This proposed AI Sandbox regulation also addresses high-risk AI systems. Such a system is deemed high-risk if it meets one of the following conditions:

- it is a product under EU harmonised legislation specified in Annex IV to the proposal, requiring third-party conformity assessment for market placement or service provision;
- it serves as a safety component for a product under EU harmonised standards, necessitating third-party conformity assessment for market placement or service provision. This applies even if the AI system is marketed or serviced separately from the product; or
- it is a system referenced in Annex I, significant in decision-making processes and likely to pose substantial risks to health, safety, or fundamental rights.

Moreover, the regulation outlines the concept of AI systems for public interest or general purpose. These are AI systems intended by providers to perform general functions such as text, image and speech recognition; algorithm-driven generation of new text, audio, images and/or videos; pattern detection; question answering; and translation, among others. This encompasses foundational models and generative AI systems, versatile for multiple contexts and potentially high-risk transformations.

This regulation also includes definitions for AI providers, users and eligibility criteria for Sandbox participation.

492 For further information on the Royal Decree that regulates the creation of the Sandbox, see https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/Proyecto_RD_Sandbox_IA-1.pdf accessed 1 April 2024.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Spain, AI is progressively transforming legal services and reshaping how legal professionals work. Notably, AI tools are utilised for legal research and due diligence. Kira Systems and Luminance, for example, are contract analysis tools leveraging AI to identify patterns and anomalies in legal documents. eBrevia is another notable tool, capable of analysing contracts in multiple languages and highlighting key terms and clauses.

However, in the realm of AI tools specialised in analysing legal sentences and predicting outcomes of judicial processes, the data in Spain remains limited. A commonly referenced tool is Lex Machina, an AI-powered platform for extensive legal research. It enables users to analyse courts, judges, opposing counsel, various parties and law firms. Lex Machina also provides access to court dockets, case law and features comprehensive reports displaying awarded damages, case statistics and other critical metrics. This tool also facilitates comparisons between judges, law firms and parties.

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

The use of AI tools in legal services in Spain varies depending on the type of law firm or legal department. While specific data for Spain is limited, general trends can be observed.

Independent law firms

Smaller, independent law firms are well-positioned to leverage AI tools, especially in areas such as research, document review, case analytics and client services. AI helps these firms achieve greater efficiency, manage administrative tasks and compete with larger firms by offering high-quality, responsive services and informed, data-backed advice.

International law firms

Larger international firms often have more resources to invest in advanced AI tools. They might use AI for more complex applications such as large-scale document analysis, predictive analytics and more sophisticated client relationship management systems. The scale of international law firms allows for a broader integration of AI across various legal tasks and departments.

In-house counsel

In-house legal departments may utilise AI differently, focusing on tasks specific to their organisation's needs. This could include contract management, compliance monitoring and internal legal queries. In-house counsel often seek AI solutions that can integrate with other corporate systems and offer tailored analytics and reporting for corporate decision-making.

These differences stem mainly from the scale of operations, resource availability and the specific legal needs of each type of legal entity. While independent firms might focus on AI tools that enhance efficiency and client services, international firms and in-house counsel may use AI for more diverse and complex legal tasks.

4. What is the current or planned regulatory approach on AI in general?

In Spain, there are several ongoing projects and regulations related to the adoption of AI in the market.

The most notable among these is the National AI Strategy or Estrategia Nacional de Inteligencia Artificial (ENIA). This strategy serves as a reference framework for the development of AI that is inclusive, sustainable and focused on the citizens' welfare. ENIA is a pivotal element of the Digital Spain 2026[493] agenda and a component of the Recovery, Transformation and Resilience Plan aimed at revamping the Spanish economy.

The primary objective of this agenda is to position Spain as a leader in the transformation of the data economy and business, using AI as a catalyst for innovation, social inclusion and sustainable economic growth. This initiative is intended to prepare Spain for the socio-economic transformations brought about by AI and to enhance with the competitiveness through research and development (R&D) in digital enabling technologies (DETs).

The strategy includes the ENIA, a Data Office and Chief Data Officer (CDO), an AI Advisory Council and the National Cloud Services Strategy, incorporating Common European Data Spaces.

Additionally, the Ministry of Economic Affairs and Digital Transformation has published a draft of the Royal Decree that should regulate the controlled testing environment (Sandbox)[494] for AI systems in Spain. This future regulation will apply to public administrations, public sector entities and private entities that will be selected to participate in the controlled AI testing environment.

493 For further information on the Agenda Digital 2026, see https://espanadigital.gob.es/ accessed 1 April 2024.

494 For further information on the Royal Decree that regulates the creation of the Sandbox, see https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/Proyecto_RD_Sandbox_IA-1.pdf accessed 1 April 2024.

A significant development was the approval by the Council of Ministers of a Royal Decree establishing the statute of the Spanish Agency for the Supervision of AI (AESIA). This joint venture by the Ministry of Finance and Public Function and the Ministry of Economic Affairs and Digital Transformation positions Spain as the first European country to establish such an agency, anticipating the request by European Regulation on AI.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

In Spain, the regulatory landscape for AI and machine learning is shaped by several key statutes and initiatives. The creation of the AESIA, already mentioned, is a significant milestone in Europe for the supervision of the AI.[495]

Another critical development is the Ministry of Universities' issuance of regulatory bases for financial aid to foster cooperative research plans in AI. These grants, totalling €31 million, are aimed at promoting interdisciplinary and groundbreaking investigation into AI, integrating this approach into Spanish research culture and facilitating greater interaction among researchers.[496]

Additionally, the law 15/2022, of 12 July, on equal treatment and non-discrimination[497] establishes specific requirements for AI usage. It contains the first regulation of AI usage by public administrations and companies in Spain.

Article 23 of the Law mandates that within the framework of the National AI Strategy, the Charter of Digital Rights and European initiatives on AI, Public Administrations encourage the implementation of bias minimisation, transparency and accountability in decision-making algorithms. To this end, impact assessments are promoted to identify potential discriminatory biases, emphasising transparency in design and decision interpretability.

With a focus on minimising biases and promoting fundamental rights, Spain is aligning its AI strategy with broader EU initiatives, aiming to create a trustworthy and inclusive AI environment.

6. Is free data access an issue in relation with AI?

Free data access is indeed a significant consideration in relation to AI development in Spain. The country's approach to data governance, especially in the context

495 For further information on the AI Spanish Agency or Agencia de Supervisión de la IA, see www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2023/CONSEJO-DE-MINISTROS/22-08-23-NP-CM-Estatutos-Agencia-Inteligencia-Artificial.pdf accessed 1 April 2024.

496 Agencia Estatal Boletín Oficial del Estado, Order UNI/777//2023 of 7 July which establishes the regulatory bases and calls for the granting of aid for the financing of cooperative research plans in the area of artificial intelligence developed by interdisciplinary research groups, within the framework of the European Recovery, Transformation and Resilience Plan, www.boe.es/diario_boe/txt.php?id=BOE-A-2023-16210 accessed 1 April 2024.

497 Agencia Estatal Boletín Oficial del Estado, Law 15/2022, of 12 July, on equal treatment and non-discrimination, www.boe.es/buscar/act.php?id=BOE-A-2022-11589 accessed 1 April 2024.

of AI, reflects a comprehensive strategy that addresses various aspects of data management and usage.

Spain's National AI Strategy, as noted above, launched in December 2020, and aims to facilitate the development and deployment of AI in various sectors. A key component of this strategy is the emphasis on developing human capital in AI, promoting scientific excellence in the field and enhancing the use of AI technologies in both public and private sectors. This strategy is aligned with the broader EU policies and includes the establishment of a robust ethical framework for AI. The strategy is backed by significant public investment, with €600 million allocated for its implementation between 2021 and 2023.[498]

The Spanish central data governance body, the Data Office ENIA, at the national level, coordinates AI applications in public administrations and participates in initiatives to create secure data repositories within the EU. Additionally, this strategy involves creating decentralised and accessible data repositories, promoting public data access and encouraging the use of open data. These efforts are part of a broader commitment to data sharing among businesses, public administrations, governmental institutions and citizens.

While Spain is progressing the ethical and regulatory framework for AI, challenges persist in the practical implementation of AI programs. This includes difficulties in project monitoring and selection. Moreover, the heterogeneity in AI use across different regions of Spain is noted, concentrating mainly in service sector companies. A significant portion of Spanish companies that considered but do not currently use AI cited a lack of knowledge or capabilities within the company as the main reason.[499]

These points suggest that while Spain is making strides in developing AI capabilities and ensuring data accessibility, there are ongoing challenges related to the practical implementation of AI strategies and data accessibility at a broader level. The emphasis on creating a secure and open data environment aligns with the objectives of fostering AI development while addressing concerns related to data privacy and ethical use of AI.

Key aspects of Spain's AI and data strategy are:

- The national AI strategy includes the establishment of an ethical framework that outlines individual and collective rights, building an environment of trust in AI. This framework is essential for addressing data protection concerns.
- European legislation such as the Data Governance Act, which Spain is aligning with, is becoming a global reference for data management.

498 See https://ai-watch.ec.europa.eu/countries/spain/spain-ai-strategy-report_en accessed 1 April 2024.

499 Noelia Cámara, Alejandro Neut and Pep Ruiz, 'Inteligencia Artificial retos y avances para la economía española' 'Artificial Intelligence; advances and challenges' 10 October 2022, www.bbvaresearch.com/en/publicaciones/spain-artificial-intelligence-advances-challenges/ accessed 1 April 2024.

It outlines governance frameworks for data exchange processes, aiming to generate traceability, trust and enhance coordination on data.

- In terms of data privacy and security, Spain's participation in European initiatives such as Gaia-X focuses on developing high-quality data-driven AI with strong governance, complying with European regulatory frameworks. These initiatives emphasise interoperability, data protection and algorithmic transparency, addressing key data protection concerns in the context of AI.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

At the time of writing, Spain has not witnessed unequivocal court decisions specifically addressing the provision of legal services through AI. However, there are notable discussions and analyses concerning AI's integration in various sectors, including public administration and regulatory bodies, that could influence the legal services sector.

For instance, the National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia or CNMC) has recently analysed[500] the Sandbox regulation proposal. This proposal aims to establish a controlling test space for artificial intelligence projects in Spain. The CNMC's analysis focuses on the potential benefits for economic operators and consumers while emphasising the need to align with good regulatory principles. Key considerations include avoiding unfair competitive advantages for Sandbox participants, ensuring objective and non-discriminatory access and maintaining a balance between private interests and overarching public objectives.

Another relevant entity, the Spanish Data Protection Agency (SDPA or AEPD) initiated a preliminary investigation[501] in April 2023 against the US company OpenAI, owner of the ChatGPT service. This investigation centres around a possible breach of data protection regulations.

The AEPD, as part of European Data Protection Board (EDPB), seeks to coordinate at the European level to address the widespread impact of global data processing operations such as ChatGPT, considering that global processing operations may have a significant impact on the rights of individuals and thus require harmonised and coordinated actions in the application of the General Data Protection Regulation.

500 For analysis of the CNMC, see www.cnmc.es/prensa/ipn-entorno-pruebas-ia-20230828 accessed 1 April 2024.

501 For further information on the investigation carried out by the SDPA on OpenAI, see www.aepd.es/es/prensa-y-comunicacion/notas-de-prensa/aepd-inicia-de-oficio-actuaciones-de-investigacion-a-openai accessed 1 April 2024.

The creation of a task force by the Committee to promote cooperation and information exchange among data protection authorities highlights the growing concern about AI's role in data protection and privacy.

Furthermore, in January 2021, the AEPD published a guide[502] outlining requirements for audits of personal data processing involving AI. This document provides critical guidance on objectives and controls that could be incorporated into audits reflecting a data protection perspective.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Although there is currently no sectorial legislation, Spain is actively developing regulations regarding the use of AI, which include factors for the legal profession to consider. The key developments are:

1. The Spanish Council of Ministers approved the creation of the Spanish Agency for the Supervision of AI (AESIA) in August 2023. AESIA is the first AI regulatory body in the EU and is set to start operating from December 2023. It was established in anticipation of the upcoming EU AI Act and is part of Spain's commitment to develop an inclusive, sustainable and citizen-centred AI. The AESIA is not intended to replace the role of the Spanish Data Protection Authority (AEPD) but will work alongside it, especially since many AI applications involve personal data processing and fall under the General Data Protection Regulation (GDPR).[503]

2. The AEPD has developed its guidance for companies on using AI, mentioned above in 7., which is part of its broader digital strategy on how to audit personal data processing activities that involve AI. The AEPD's guidance is directed at data controllers and processors, as well as AI developers, data protection officers (DPOs) and auditors. The guidance aims to help ensure that products and services which incorporate AI comply with the requirements of the GDPR.

While the AESIA and AEPD provide regulatory oversight and non-binding recommendations, specific sectorial legislation for the use of AI in legal services or professions traditionally rendered by lawyers is still developing. In our view, the coordination between AESIA and AEPD will be crucial in shaping consistent AI regulation in Spain, including its application in legal services.

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502 AEPD, Guide with the requirements for audits of personal data processing involving AI, www.aepd.es/es/prensa-y-comunicacion/notas-de-prensa/aepd-publica-guia-requisitos-auditorias-tratamiento-ia accessed 1 April 2024.

503 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

These initiatives indicate that Spain is moving towards a more regulated AI environment, with implications for various sectors, including legal services. However, the specifics of how AI will be regulated within the legal profession are still evolving as part of Spain's broader alignment with the EU's AI strategy and regulations.

9. What is the role of the national bar organisations or other official professional institutions?

The crucial role for bar organisations is the adaptation to the evolving landscape of AI within the legal profession. It must be emphasised that the ability of these organisations to effectively integrate AI depends significantly on their human resources, budgets, the number of members and the public subsidies they receive.

As AI tools become more integral to a lawyer's toolkit, bar organisations must consider supporting lawyers in their jurisdictions appropriately. However, there is no one-size-fits-all approach for bar organisations within the EU, as actions depend on varying national circumstances. Several measures should be implemented such as creating AI solution directories, reviewing and reporting on these solutions, hiring third parties for validation and promoting standardisation in data exchange formats and APIs to address market fragmentation and vendor dependency issues.

Furthermore, bar organisations must actively defend the fundamental principles of the profession, particularly in protecting small firms and independent lawyers offering services via online platforms, where algorithmic recommendations may not be independent. Risks to lawyers' freedom of thought and expression, as well as to free competition, are at stake.

Bar organisations can play a crucial role in filtering Legaltech offerings, analysing solutions and creating informative materials, while maintaining technological neutrality to avoid market distortion and provide a comprehensive view of available options.

Additionally, all this should be part of a broader digital transformation plan for the legal profession. An action plan should include the creation of analysis and foresight centres, mechanisms for interdisciplinary collaboration, specialised centres in user experience (UX) to better understand client needs, activities for experiential learning in innovation and technology development and the integration of sustainable development goals (SDGs) to promote sustainable development and fundamental rights within the legal community.

Sweden

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1. What is the understanding or definition of AI in your jurisdiction?

Defining AI under Swedish law

There is currently no statutory definition of the term artificial intelligence (AI) in Sweden, nor is there a clear-cut or generally agreed-upon definition of the term.[504] However, some guidance on the understanding of AI in Sweden may be found in government documents and voluntary industry codes.

In 2018, the Swedish government adopted a national approach to AI, which has remained unchanged since its adoption.[505] The national approach refers to the description of AI in a 2018 report on AI in Swedish business and society from Vinnova, the Swedish government agency for innovation:

> 'In this analysis, artificial intelligence is defined as the ability of a machine to imitate intelligent human behaviour. Artificial intelligence also denotes the area of science and technology that aims to study, understand and develop computers and software with intelligent behaviour.'[506]

The definition of AI used in the Vinnova report provides two important insights into what AI is and into how AI is often understood in Sweden. The first insight is that, at its core, AI is computer software. The second is that AI refers to the area of science and technology related to machines imitating intelligent behaviour, often with human intelligence as a reference point.

The government further adds that AI:

504 'Artificial intelligence in Swedish business and society' (Vinnova, May 2018), www.vinnova.se/en/publikationer/artificial-intelligence-in-swedish-business-and-society/ accessed 11 June 2024.

505 *National approach to artificial intelligence* (Government of Sweden, 2018), www.regeringen.se/informationsmaterial/2018/05/nationell-inriktning-for-artificiell-intelligens/ accessed 11 June 2024.

506 'Artificial intelligence in Swedish business and society' (Vinnova, May 2018).

> 'AI is a broad field that encompasses many technologies, not least machine learning and deep learning. What distinguishes AI from other automation methods is the ability of AI technology to learn and become smarter over time.'[507]

The Swedish government's national approach to AI provides two further insights into how AI is often understood in Sweden. The first insight is that in most cases, when referring to AI, most people refer to machine learning and deep learning technology. Machine learning and deep learning are subsets of AI research and technology. However, these technologies currently hold the most potential for developing complex AI systems and solutions. The second insight is that AI is usually understood to be technology that, on its own, learns and becomes smarter over time. This is completed through exposing the AI to more data and by letting it attempt to solve the problems it was programmed to complete.

Along with the emergence of generative pre-trained transformer models (GPTs), the Swedish understanding of AI has broadened over the past few years. The generative models are, and will most likely remain, in the centre of the general discourse on AI in Sweden in the nearest future. AI Sweden, the national centre for applied AI, has among other things released a Swedish GPT, called GPT-SW3. GPT-SW3 is an open-source model constructed on extensive text data in Swedish, Norwegian, Danish, Icelandic and English with the purpose of being able to generate Swedish and Nordic languages texts.[508] AI Sweden is currently developing a multimodal language model to be able to handle images and audio in addition to text. The goal of developing the multimodal language model is to continue to bring Sweden to the forefront of AI development.

AI Sweden has created an AI vision for Sweden. The vision emphasises the necessity of adopting AI technologies to address major societal challenges, improve competitiveness and enhance democratic quality of life. It advocates for an adoption-focused strategy, encouraging significant investment across various sectors to harness AI benefits comprehensively. Key to this approach are bold leadership, cross-sector collaboration and significant investments to ensure wide-ranging benefits and secure Sweden's position as a leader in ethical AI use.[509] Many discussions concerning AI in Sweden, beside the vision proposed by AI Sweden, centre on similar themes of making AI easily accessible for everyday use, while being well-functioning and in compliance with laws and fundamental rights/ethics.

Definition of AI in Sweden likely to be influenced by EU legislation

We note that no legislative proposals or additional government reports have been published in which an attempt is made at defining AI. Instead, Sweden is likely to

507 *National approach to artificial intelligence* (Government of Sweden, 2018).

508 'GPT-SW3' (AI Sweden), www.ai.se/en/project/gpt-sw3 accessed 21 May 2024.

509 'AI Sweden launches an AI strategy for Sweden' (AI Sweden, 20 March 2024), www.ai.se/en/news/ai-sweden-launches-ai-strategy-sweden accessed 11 June 2024.

follow the European Union's lead with regard to defining the term. The European Parliament adopted the AI Act in March 2024, and the provisions of the regulation will eventually have binding legal force in Swedish jurisdiction. The AI Act defines AI-systems as:

> 'a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.'[510]

This definition aligns with the approach proposed by the Organisation for Economic Co-operation and Development (OECD).[511] Deviations from such definitions of AI in Swedish legislation are unlikely unless there are changes on a global or European level.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Actual AI tools are used in Sweden in a manner similar to other jurisdictions. Legal AI tools are used by a number of organisations in practice. We can identify several categories of tools that are currently being used.

One such category is tools based on large language models (LLM). Several large and medium-sized law firms have started using Leya, a generative AI assistant built on OpenAI and ChatGPT technology, created by a Swedish startup company. Leya enables users, for example, to assist with legal research, compare contracts and draft legal documents. Concide chat for legal is currently the dominating legal AI tool on the Norwegian market, spreading into the rest of the Nordic countries. Another tool on the rise in the Nordics is Harvey, built on OpenAI and ChatGPT technology.

An emerging additional category of AI technology is data retrieval with the help of AI to handle organisations' legal knowledge management. Information services such as Juno (Norstedts Juridik) are collaborating with legal tech providers to accelerate the utilisation of AI tools for legal research within the Juno database. Qura is another example, where AI is used for legal research within public legal sources.

Lately, we have seen an increased interest in solutions where relevant legal documentation can be found and retrieved within an organisation's information technology (IT) infrastructure with the help of AI software specialised in natural

510 Artificial Intelligence Act, www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.pdf accessed 13 June 2024.

511 *Artificial Intelligence and Responsible Business Conduct* (OECD), https://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf accessed 21 May 2024.

language processing. One such example is Henchman, a tool which allows for the user to search and find clauses and definitions in the organisation's own database. Henchman can also rank and find suitable wordings for contract drafting, including adjustments from singular to plural as well as translations.

There are also examples of AI tools used for translation, such as DeepL, and transcription, such as Klang.

Aside from the examples mentioned, there are additional examples of AI tools being developed in Sweden, both by law firms and independent legal tech providers, sometimes in cooperation. In a few cases there are also examples of in-house legal development of legal tech.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

The main variation between how different actors in Sweden use AI tools is based on their respective capacity in acquiring legal AI services. Large law firms are, as a main rule, the only actors that are able to develop their own legal AI services: they have done so internationally and implemented such services in Sweden as well.

Several 'off the shelf' products are more widely available, for instance, the examples provided under Question 2 above. Such AI products are widely in use by large and medium-sized Swedish law firms (all large and medium-sized law firms asked had invested in AI according to a survey conducted by the Swedish Bar Association's magazine in 2019).

For smaller actors and law firms, the use of AI technology is more unusual, although there are exceptions and niche use cases where even smaller law firms have developed their own AI technology.

For in-house legal counsels, there are several off-the-shelf products available, as well as a few examples of in-house developments such as the example provided under Question 2 above. However, the general AI maturity of in-house legal departments still seems to be somewhat lower than at the large Swedish law firms. In general, companies tend to invest in digitalisation, but not necessarily in legal tech. This causes the legal tech enhancement to lack behind among in-house legal departments.

4. What is the current or planned regulatory approach on AI in general?

The regulatory approach related to AI has historically not been clearly defined in Sweden, although the work done in the area is increasing gradually. The Swedish government has set out several general goals in its national approach to AI. The general ambition is for Sweden to be a leading country in exploiting the benefits of AI, both through strengthened welfare and increased competitiveness.[512] Sweden has an ambition to become a world leader in AI technology, and one ambition is for the legislative tempo to be increased and unnecessary regulatory obstacles that prevent digitalisation to be removed.[513]

An area of importance as indicated by the Swedish government and other actors is the creation of and adherence to ethical principles for developing and using AI technology, for instance the guidelines issued by the European Union High Level Expert Group on Artificial Intelligence (AI HLEG). Furthermore, specific Swedish guidelines have been issued by some stakeholders, for instance, the tech industry interest organisation TechSverige.[514] The Agency for Digital Government (Myndigheten för digital förvaltning, or DIGG) together with other Swedish agencies has released a report on how to promote the ability of public administrations to foster AI[515] and AI Sweden has released AI guidelines based on the principles of Global Impact from the UN.[516]

Another area of importance that has been identified is the question regarding access and ownership of data, as will be further outlined below. It should also be added that much of the planned regulatory approach for AI in Sweden is coordinated within the framework of the EU, led by the European Commission, to increase harmonisation within the EU and also to increase competitiveness in relation to the rest of the world.[517] The Swedish government has expressed the ambition that Sweden should have a high level of competence and participate actively in the regulatory discussion regarding AI on the EU level. The Swedish government was positive to the proposed AI Act presented by the European Commission in April 2021 and eventually adopted by the European Parliament

512 *National approach to artificial intelligence* (Government of Sweden, 2018).

513 *Hur Sverige blir bäst i världen på att använda digitaliseringens möjligheter – en skrivelse om politikens inriktning (How Sweden becomes the best in the world at using the possibilities of digitisation – a letter about the direction of politics**) (*Publisher's Tranlsation) (Government of Sweden, 21 November 2017), pp 19–20, www.regeringen.se/rattsliga-dokument/skrivelse/2017/11/skr.-20171847/ accessed 13 June 2024.

514 *TechSveriges branschkod för AI (TechSverige's industry code for AI*)* (*Publisher's Tranlsation) (TechSverig, 2023), www.techsverige.se/ittelekomforetagens-branschkod-for-ai/ accessed 21 May 2024.

515 'Slutrapport: Uppdrag att främja offentlig förvaltnings förmåga att använda artificiell intelligens' ('Final report: Mission to promote public administration's ability to use artificial intelligence'*) (*Publisher's translation) (DIGG), www.digg.se/analys-och-uppfoljning/publikationer/publikationer/2023-01-23-slutrapport-uppdrag-att-framja-offentlig-forvaltnings-formaga-att-anvanda-artificiell-intelligens accessed 21 May 2024.

516 'AI Sweden – Riktlinjer' (AI Sweden), www.ai.se/sv/om-oss/styrning/ai-sweden-riktlinjer accessed 21 May 2024.

517 *White Paper on Artificial Intelligence: a European approach to excellence and trust* (European Commission, 2020), https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf accessed 21 May 2024.

in 2024. The government supported the approach, arguing that the proposal is based on human rights, including the right to privacy, freedom of expression, non-discrimination and gender equality, as well as human integrity, the protection of natural persons with regard to the processing of personal data and information and cybersecurity.[518]

In a mapping of the view on regulation among stakeholders, a concern raised is that it is unclear how current rules apply for the use of AI technology, particularly sector-specific legislation.[519] That could be, for instance, with regards to data protection and the specific rules for healthcare, where there are limitations on the purposes for which personal data can be processed.

In the beginning of 2021, the Swedish state research institute RISE issued 25 recommendations for increased AI adoption in Sweden in its AI Agenda (the 'Agenda') for Sweden.[520] The legal challenges of AI technology are many and are also discussed in the AI Agenda. The proposal states that laws need to be modernised and adapted to the new reality where AI is a natural part of society. Laws should, according to the proposal, be drafted from a human-centred ethical perspective and it is essential that laws are drafted in a technology-neutral way. The EU is a key player and the proposal stresses the need to adapt EU-level regulation while maintaining data protection. Furthermore, the EU needs to ensure that the legal conditions for experimentation in AI are in place for AI to be effectively introduced into society.

The Agenda identifies some legal issues as particularly important for enabling the use of AI: data protection, patents, liability issues and product safety. It proposes, among other things, that the Swedish Supervisory Authority for Data Protection (Integritetsskyddsmyndigheten) should be tasked with developing simple and clear examples of how personal data can be handled in a legally secure way when using AI, and that responsibility for automated decision-making should be clarified. It is also proposed that legislative changes be made to enable further sharing of data and information.

In June 2021, the Swedish government gave four Swedish authorities the mission to investigate how the public sector can improve its use of AI to strengthen the Swedish welfare system and the global competitiveness of Swedish society. The final report was given in February 2023 and resulted in the following:

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518 *Förordning om artificiell intelligens (Regulation on artificial intelligence*)* (*Publisher's translation), (Government of Sweden, 26 May 2021), www.regeringen.se/faktapromemoria/2021/05/202021fpm-109/ accessed 11 June 2024.

519 'Slutrapport: Uppdrag att främja den offentliga förvaltningens förmåga att använda AI' ('Final report: Mission to promote public administration's ability to use artificial intelligence'*) (*Publisher's translation), (DIGG) pp 29–30, www.digg.se/analys-och-uppfoljning/publikationer/publikationer/2023-01-23-slutrapport-uppdrag-att-framja-offentlig-forvaltnings-formaga-att-anvanda-artificiell-intelligens accessed 11 June 2024.

520 '25 förslag för accelererad AI-användning i Sverige' ('The AI agenda – Accelerated AI use in Sweden'*) (*Publisher's translation) (RISE, 2021), www.ri.se/sv/ai-agendan/forslag-for-accelererad-ai-anvandning-i-sverige accessed 21 May 2024.

- a collaborative platform where the deliverables of the AI mission are delivered;
- an AI guide, trust model and information on relevant AI projects;
- two AI building blocks (a translation and transcription service) that are planned to be made available in the ENA structure (the cross-governmental digital infrastructure);
- a policy lab with the aim of investigating how the forthcoming AI regulation can affect AI work in practice; and
- analyses that show a clear need for a joint administrative effort to make an AI infrastructure available to all public actors in Sweden.[521]

Furthermore, in December 2023, the Swedish government appointed an AI Committee to identify the need for and to propose measures that can help strengthen the development and use of AI in Sweden in a sustainable and safe way. More specifically, the mission is to identify the need for and to submit proposals that promote competitive, safe and ethical AI development and AI use in Sweden, identify prioritised international efforts and submit proposals for how Sweden can act proactively and in a coordinated manner in the creation and development of international policies and regulations for AI, analyse and describe how the use of AI can affect and promote Sweden's security and democracy, and if necessary, submit legislative proposals. The final report will be published in July 2025.

To summarise, it is of central priority for the Swedish legislator to assess current legislation from an AI perspective and implement necessary changes. Furthermore, support in the interpretation of legislation is required from courts and public authorities. Access to data, information security and robustness, together with the ethical use of AI, are principles of central importance in the future regulatory approach.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Introduction

There are currently no 'AI laws' in Sweden. Historically, the legislative approach in Sweden has been to pass technology-agnostic legislation that does not need to be changed with every advance in technology. As a result, existing legislation can, in many cases, be applied to AI or machine learning systems. However, existing legislation is, in some cases, ill-suited for dealing with the unique challenges

521 'Slutrapport: Uppdrag att främja offentlig förvaltnings förmåga att använda artificiell intelligens' (DIGG).

brought by AI. In some cases, existing legislation has been updated to better deal with the challenges brought by AI.

In this section, an overview of four areas of legislation that are relevant to AI – torts and liability, intellectual property rights, data protection and privacy, and automated decision-making – will be presented. AI technology does not have legal capacity in Sweden (ie, electronic personhood), meaning that the natural and legal persons behind the AI carry all relevant rights and responsibilities related to the AI.

Torts and liability

The primary Swedish legislation governing liability in tort (non-contractual liability) is the Tort Liability Act (Skadeståndslagen). The Tort Liability Act is applicable when a party has suffered injury or damage caused by AI caused by another party's negligent or intentional acts. Furthermore, there must be a causal link between the negligent act and the injury or damage.[522] However, because AI cannot be held liable under Swedish law, claims for damages must be directed toward the people behind the AI – eg, the programmer, the user or the person responsible for training the AI. Due to the autonomous nature of AI, as well as the black box problem, it may be difficult to establish negligence and a causal link between the actions of the people behind the AI and the injury or damage.

A tortfeasor may be held liable also on other grounds, primarily strict liability, if there is support for such liability in other legislation. This is the case, for instance, for damages caused by defective products under the Product Liability Act (Produktansvarslagen). In most cases, AI technology falls outside the scope of the Product Liability Act because software is not a product under Swedish law. However, if the AI is embedded in a product the Product Liability Act may be applicable to the product.

In 2024, the European New Product Liability Directive (PLD) and the AI Liability Directive are expected to be adopted. The AI Liability Directive contains specific liability rules which are intended to apply when an AI system has been involved in an event leading to damage. The current Product Liability Directive is somewhat outdated and, according to the European Commission, not adapted to the digital and circular economy. Therefore, the European Commission is proposing a series of modernisations to the Product Liability Directive,[523] to complement the AI Liability Directive. The intention is to cover, for example, damages caused by robots, smart home products and other systems based on AI, and to clarify that these are covered by the provisions of the directive.

522 The legal assessment here may be complicated, but it is essentiality a requirement of foreseeability.

523 Directive 85/374 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L210/29.

Intellectual property rights

Three main issues are relevant to the protection of intellectual property rights (IPR) related to AI – protection of data and input, protection of the AI itself, and protection of results and AI generated works. The primary IPR legislation of relevance in relation to AI is the Copyright Act (Upphovsrättslagen). However, other legislation such as the Patent Act (Patentlagen) and the Trade Secrets Act (Lag om företagshemligheter) may, in some cases, also be relevant. Due to the difficulties in protecting IPR related to AI, companies and organisations may choose to protect them as confidential information and trade secrets.

Across the globe, a fierce debate is underway regarding the permissibility of training AI on copyrighted material. The development of AI necessitates the accumulation of vast data sets, often obtained via a process known as 'web scraping' using a 'web crawler tool'. This tool autonomously navigates from one website to another, extracting (or 'scraping') the site's content, which may include both text and images, irrespective of copyright status. According to the Swedish Copyright Act, the unauthorised duplication of copyrighted works is generally prohibited. However, an exception exists for text- and data-mining activities, a provision that AI developers argue encompasses the scraping and training of AI models. This exemption is, however, contested among creatives and some cases in jurisdictions with similar exceptions are currently being tried in court.

The main rule in Sweden is that data, such as industrial or transaction data, is not eligible for copyright protection under Swedish law. However, if data is organised into a database, the database as a whole may be eligible for protection under the Copyright Act. Protecting AI technology under the current copyright framework also poses significant challenges. The Copyright Act protects the AI's code and algorithms but provides no protection for the idea or concept behind the AI – meaning anyone can create similar AI using different code or algorithms. Finally, works autonomously created by AI are not eligible for copyright protection under the Copyright Act. However, where humans and AI collaborate in the creative process, AI generated works may be eligible for copyright protection.

Data protection and privacy

The primary legislation governing data protection in Sweden is the General Data Protection Regulation (GDPR).[524] The GDPR is complemented by the Swedish Data Protection Act (Lag med kompletterande bestämmelser till EU:s dataskyddsförordning), and sector-specific regulations such as the Patient Data Act (Patientdatalagen). Training and using AI requires large quantities of data. Where that data is personal data, the need to use large quantities of data comes into conflict with the GDPR and compliance with legislation must be observed.

524 Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

There is yet no clarification on which Swedish authority will have overall responsibility for the AI Act. However, in February of 2024, the Swedish data protection authority (IMY or Integritetsskyddsmyndigheten) issued guidelines on GDPR and the usage of AI. The guideline outlines how GDPR applies when AI involves the processing of personal data, emphasising the necessity to comply with GDPR regulations throughout AI development and deployment. All actions involving personal data, such as collection, storage and processing, must respect GDPR. It addresses the principle of purpose limitation, which restricts data use to explicitly stated and legitimate purposes originally communicated to data subjects, which might be an obstacle for companies that want to use previously gathered and stored data for AI training. Furthermore, it discusses the challenges of data minimisation in AI, stressing the need to balance the amount of data collected, the time it is stored and used against the importance of protecting individuals' privacy.[525] Most likely, further recommendations are to be expected.

IMY has issued a few decisions related to the processing of personal data with the help of AI-systems. In 2019, IMY issued an administrative fine to a municipality that used an AI system to take student attendance in classrooms. IMY stated that the processing of personal data and sensitive personal data was not compliant with Articles 5 and 9 of the GDPR. In a more recent case from 2021, IMY issued an administrative fine to the Swedish Police Authority for using a facial recognition application. The IMY issued the fine on the grounds that the Swedish Police Authority (1) had processed biometric data in breach of the Swedish Criminal Data Act (Brottsdatalagen); (2) had not implemented appropriate technical and organisational measures; and (3) had not carried out a data protection impact assessment relating to using the facial recognition application.

IMY has, in March 2023, finished its first sandbox pilot with Region Halland, Sahlgrenska Universitetssjukhuset and AI Sweden regarding decentralised AI use between two healthcare providers. The entities jointly identified the legal issues on which the guidance should focus, guidance was provided orally on several occasions over a period of a few months in the form of workshops or other dialogue-based formats, and then the work resulted in a public report summarising the reasoning and assessments to enable learning from the pilot case more broadly.[526]

Sweden has implemented the Open Data Directive[527] into Swedish law which will potentially improve free data access in Sweden (see Question 6).[528]

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525 21 'GDPR och AI' ('GDPR and AI'*) (*Publisher's translation) (IMY, 4 June 2024), www.imy.se/verksamhet/dataskydd/innovationsportalen/vagledning-om-gdpr-och-ai/gdpr-och-ai/ accessed 11 June 2024.

526 'Framgångsrik pilot med regulatorisk testverksamhet om AI' ('Successful pilot with regulatory test business on AI'*) (*Publisher's translation) (IMY, 15 March 2023), www.imy.se/nyheter/framgangsrik-pilot-med-regulatorisk-testverksamhet-om-ai/ accessed 11 June 2024.

527 Directive 2019/1024 on open data and the re-use of public sector information [2019] OJ L172/56.

528 Lag (2022:818) om den offentliga sektorns tillgängliggörande av data (Riksdagen), (Act (2022:818) on the public sector making data available*) (*Publisher's translation)) www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2022818-om-den-offentliga-sektorns_sfs-2022-818/ accessed 13 June 2024.

Automated decision-making

The main legislation that governs automated decision-making under Swedish law is the GDPR. Under GDPR Article 22, data subjects have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects. GDPR Article 22 paragraph 2 contains some exceptions to the main rule, including, for instance, that automated decision-making is permitted when it is authorised by EU or Member State law, which also lays down suitable measures to safeguard the rights of data subjects.

Following a reform of the Administrative Procedures Act (Förvaltningslagen), Swedish public authorities are permitted to use automated decision-making when making decisions. The change was made to permit automated decision with the ambition to make public authorities compliant with Article 22 of the GDPR.

Planned legislation and legislative initiatives

The majority of legislative initiatives and planned regulations concerning the use of AI and machine learning in Sweden come from the EU.

In 2017, the Swedish government adopted an ordinance permitting the trial of autonomous vehicles on public roads. A year later, the government released its official government report on autonomous vehicles.[529] The report contains, inter alia, discussions on introducing a new definition for the term 'driver', regulating the obligations and responsibilities of drivers and owners of autonomous vehicles, as well as on introducing new crimes such as 'gross negligence during automated driving on roads'. As of yet, the report has not resulted in any new legislation.

6. Is free data access an issue in relation to AI?

Yes, free data access is an issue in relation with AI. Training and using AI requires large quantities of data. One of the main issues preventing free access to data is that there is, as a general rule, little to no IPR protection for data, meaning that data is free to use for anybody with access to the data (see Question 5). Many companies, therefore, try to protect the data as confidential information and as a trade secret in order to maintain a competitive advantage.

Most legislative initiatives to improve free data access have come from the EU. These legislative initiatives include the Regulation on a framework for the free flow of non-personal data in the EU,[530] the Open Data Directive, the DSM Directive,[531]

529 *Vägen till självkörande fordon – introduktion (The reoad to self-driving vehicles – introduction**) (*Publisher's translation) (Swedish Government Official Reports, 7 March 2018), www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2018/03/vagen-till-sjalvkorande-fordon---introduktion/ accessed 13 June 2024.

530 Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the European Union [2018] OJ L303/59.

531 Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9 and 2001/29 [2019] OJ L130/92.

the second Payment Services Directive (PSD2), and the newly adopted Data Act.[532] Further initiatives on free data access are likely to come after the elections for the European Parliament in June 2024.

Improving access to data in relation to AI is important to the Swedish government. In its national approach to AI, the Swedish government states that:

> 'Access to data is the lifeblood of AI and a crucial part of the infrastructure […] Appropriate frameworks of principles, norms, standards and rules are therefore important prerequisites if Sweden is to realise the benefits of AI in society. Such frameworks must balance fundamental needs for privacy, ethics, trust and social protection with access to the data needed to realise the potential of AI.'[533]

In June 2022, Swedish legislation implementing the Open Data Directive entered into force.[534] This legislation enhances the availability of public sector data for reuse, particularly in open data formats, while safeguarding information security and the protection of personal data. It is applicable to governmental bodies and select public enterprises, with exceptions for cultural, educational and public service broadcasting entities.

Data must be made available in existing formats or, where practical, in open, machine-readable formats accompanied by relevant metadata. Priority datasets are to be accessible either through direct interfaces or via bulk download options, and dynamic data should be disseminated promptly or within a reasonable timeframe. Conditions for reuse can only be imposed when they are justified by public interest and must be objective, proportionate and non-discriminatory.

Exclusive rights to reuse data may be granted if necessary for providing a service of general public interest, with contract terms published digitally and reviewed every three years. Authorities and public companies may charge fees for data provision, not exceeding the costs of reproduction, provision, dissemination and anonymisation of personal data. Research data and valuable datasets should be provided free of charge, with some exceptions.

The increase in the accessibility of public sector data in open and machine-readable formats is expected to promote the development and application of AI technologies. This enhancement is likely to stimulate innovation and improve the efficacy of public services by providing richer datasets for algorithm training.[535]

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532 Directive (EU) 2015/2366 on payment services in the internal market, amending Directives 2002/65, 2009/110 and 2013/36 and Regulation (EU) 093/2010, and repealing Directive 2007/64 [2015] OJ L337/35.

533 *National approach to artificial intelligence* (Government of Sweden, 2018).

534 Lag (2022:818) om den offentliga sektorns tillgängliggörande av data (Riksdagen).

535 Prop. 2021/22:225.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the authors' knowledge, there are not yet any legal cases in Sweden regarding the provision of legal services or other sectors of relevance related to the use of AI.

It should be added that there are few limitations on how legal services can be provided in Sweden, with no restrictions on actors not admitted to or acting under the supervision of the Swedish Bar Association. Actors are generally free to provide legal advice and services, including with the help of technology, with potential legal disputes expected to be ruled by the normal civil law legislation related to contracts and torts.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

As mentioned above, there are generally few regulatory limitations in Sweden with regards to the provision of legal services. What is regulated is generally the procedures of court and the lawyers practising under the supervision of the Swedish Bar Association (membership of which in general, with a few exceptions, is not compulsory for the provision of legal services in Sweden). What could be expected is an oversight of the Swedish procedural legislation for courts in conjunction with possibility to use AI technology in Swedish courts. A governmental inquiry has already been made into public authorities' use of AI for making legally binding decisions and how the legislation should be adapted.[536]

9. What is the role of the national bar organisations or other official professional institutions?

The Swedish Bar Association has yet to give recommendations specifically on the use of AI technology. The bar association has, however, discussed questions regarding AI in its podcast *Advokatsamfundspodden*, as well as in its monthly

536 *Juridik som stöd för förvaltningens digitalisering (Law as support for the digitisation of administration*)* (*Publisher's translation) (Swedish Government Official Reports), www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2018/03/sou-201825/ accessed 21 May 2024.

magazine *Advokaten* (in issue 4 from 2023 and issue 2 from 2024).[537] The bar association did not make any recommendations in the magazine for lawyers acting under the bar.

Of related significance are the guidelines on how lawyers under the bar can use external information technology (IT) services,[538] which may have an impact on the use of AI since many Swedish law firms use off-the-shelf products that often are provided as cloud services. 'A question of importance is, for instance, storage of confidential information related to clients, where adequate protection must be ensured both from a regulatory and technical perspective. This is especially the case where information is stored in countries other than Sweden, as could be the case when legal tech service providers are being used by a lawyer/law firm. The guidelines have not, however, been updated since 2019.

537 'Advokatsamfundspodden: Hur ska advokater använda AI?' ('The Bar Association Podcasr: How should lawyers use AI?'*) (*Publisher's translation) (*Advocat*, 28 September 2023), https://www.advokatsamfundet.se/Nyhetsarkiv/2023/september/advokatsamfundspodden-hur-ska-advokater-anvanda-ai/ accessed 13 June 2024; 'Tekniken skapar möjligheter – men många faror lurar' 'Technology creates opportunities – but many danger lurk'*) (*Publisher's translation) (*Advocat*), www.advokaten.se/tidigare-nummer/2023/nr-4-2023-argang-89/tekniken-skapar-mojligheter--men-manga-faror-lurar/ accessed 21 May 2024; 'Mellan juridisk fixering och flexibilitet i den europeiska AI-förordningen' ('Between legal fixation and flexibility in the European AI regulation'*) (*Publisher's translation) (*Advocat*), www.advokaten.se/tigigare-nummer/2024/nr-2-2024-argang-90/mellan-jurdisk-fixering-och-flexibilitet-i-den-europeiska-ai-forordningen/ accessed 21 May 2024.

538 *Uppdaterad vögledning om användningen av externa IT-tjänster i advokatverksamhet (Updated guidance on externl IT services in law practice*)* (*Publisher's translation) (Swedish Bar Association (Advokatsamfundet), 15 April 2019), www.advokatsamfundet.se/Nyhetsarkiv/2019/april/uppdaterad-vagledning-om-externa-it-tjanster-vid-advokatverksamhet/ accessed 11 June 2024.

Taiwan

Eddie Hsiung, Lee and Li, Taipei

1. What is the understanding or definition of AI in your jurisdiction?

In Taiwan, there is no formal legal definition for artificial intelligence (AI) yet; in terms of policy, the Taiwanese government has been actively promoting the development of AI. For instance, the Taiwanese government introduced the Taiwan AI Action Plan in 2018. This plan focuses on five main areas:

- accelerating AI talent development;
- promoting AI leadership;
- establishing an international AI innovation hub;
- opening up regulations and environments; and
- advancing industrial AI.

In 2023, the government launched the Taiwan AI Action Plan 2.0, building upon the previous efforts with five key missions:

- optimising and expanding talent;
- deepening technology and industrial development;
- improving operational environments;
- enhancing international influence; and
- addressing human and societal issues.

Additionally, Taiwan's new President Lai Ching-Te stated in his inauguration speech on 20 May 2024 that, in the face of global and intelligent challenges, Taiwan will strive to become an 'Island of Artificial Intelligence'. This will involve promoting the industrialisation of AI, accelerating innovative AI applications and integrating AI into various industries. By leveraging AI computing power, the aim is to enhance national strength, military power, human resources and economic capabilities.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

With the development of ChatGPT, it is believed that many individual lawyers in law firms across Taiwan are already using generative AI tools to increase their work efficiency.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

Aside from the use of generative AI discussed in Question 2 above, there is generally limited public information or news about how different types of law firms utilise AI. Relevant reports indicated that international firm Allen & Overy has launched the legaltech AI platform Harvey, which leverages an adapted version of OpenAI's latest models, specifically optimised for legal applications. From this, we can understand that introducing AI in the legal industry is a significant investment that may come with additional costs. For smaller firms, launching an AI project independently can be financially challenging. A more practical approach for these firms is to purchase packaged software or use software as a service (SaaS) and other offerings from technology vendors. Larger firms may have the resources to start their own AI initiatives, but these still require considerable capital, potentially impacting profits.

As for in-house counsel, it has been reported that a large technology company in Taiwan has developed AI tools based on generative AI technology for use within their internal departments and functions, and even attempts to collaborate with businesses from other industries to form an ecosystem. In such scenarios, the work of in-house counsel may also benefit from these internally developed AI tools, increasing efficiency and reducing costs. Whether there will be more similar developments in the future is worth observing.

4. What is the current or planned regulatory approach on AI in general?

Taiwan currently has policies related to AI, but there are no specific laws dedicated to AI at the moment.

Existing policies include:

1. The action plans mentioned in Question 1.

2. The AI Technology R&D Guidelines (announced by the Ministry of Science and Technology under the Executive Yuan in September 2019,

demonstrating the Taiwanese government's commitment to enhancing Taiwan's AI research and development environment).

3. The Executive Yuan and its affiliated agencies' reference guidelines for using generative AI.

4. Core principles and relevant policy initiatives for the use of AI in the financial industry.

There are also certain laws and regulations which could be relevant to AI, such as: (1) the Unmanned Vehicle Technology Innovation and Experiment Act (the sandbox law for autonomous and self-driving vehicles); and (2) the Operating Rules for Securities Investment Consulting Enterprises Using Automated Tools to Provide Consulting Service (under which securities investment consulting enterprises may provide online securities investment consulting services by using automated tools through algorithms).

With the development of AI, there have been discussions in Taiwan in recent years about whether there is a need to establish special laws for AI. For example, since 2019, there have been legislators proposing draft bills such as the 'Basic Law for the Development of Artificial Intelligence' or the 'Act for the Development and Management of Artificial Intelligence', and there have also been proposals from private organisations. In addition to the versions proposed by the Congress and private organisations, the Executive Yuan is also planning to propose its version of the Basic Law for Artificial Intelligence, which was reported to be expected to be first announced by the end of 2024. The subsequent legislative process is worth paying attention to.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

See the response to Question 4.

6. Is free data access an issue in relation with AI?

In Taiwan, personal data falls under the protection of the Personal Data Protection Act (PDPA). Unless otherwise specified by law, businesses are generally obligated under the PDPA to provide notice (notice requirement) and obtain consent (consent requirement) from individuals before collecting, processing or using their personal data, with certain exemptions in place. The advent of AI technology has not altered these obligations. If a company intends to utilise AI technology to collect, process or use personal data, it remains subject to the requirements outlined in the PDPA as previously mentioned.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

While the use of AI in the legal services industry is a widely discussed topic, there have been no actual court decisions to date regarding the provision of legal services using AI or decisions applicable to the use of AI in the provision of legal services in these sectors.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

While the use of AI in the legal services industry is a highly debated topic, there has been no planned, discussed or implemented sector-specific legislation in Taiwan concerning the use of AI in the legal profession or services traditionally provided by lawyers.

9. What is the role of the national bar organisations or other official professional institutions?

Traditionally, in Taiwan, national bar organisations establish regulations regarding lawyers' ethics, business promotion (such as advertising), etc. Lawyers are expected to comply with the law when conducting their business. Therefore, regarding the use of AI tools, lawyers should ensure compliance with relevant regulations on their own (for example, ensuring the accuracy of information when using generative AI and avoiding copyright infringement). So far, at the level of national bar organisations, there seems to be few discussions on the need to establish specific regulations due to the rise of AI.

However, as AI is expected to have a significant impact on legal practice, it is common to see local bar associations hosting seminars and inviting experts and scholars to discuss AI-related issues. Also, the Taiwan Bar Association now has a committee called the 'Committee on AI Development and Response', which aims to address the potential impacts of AI on the local legal industry.

Thailand

Panupan Udomsuvannakul, Chandler MHM, Bangkok

Koraphot Jirachocksubsin, Chandler MHM, Bangkok

1. What is the understanding or definition of AI in your jurisdiction?

General understanding

According to an explanation by the Royal Society of Thailand, which plays a crucial role in the development and standardisation of the Thai language, 'artificial intelligence (AI) is a branch of computer science that focuses on making computers work more like humans. It is divided into various sub-fields, such as machine translation, expert systems, robotics, pattern recognition, human perception, and others'.

Legal definition

Thailand's existing legislation does not currently provide a specific definition of artificial intelligence (AI). Nonetheless, the definition of AI appears in the Draft Act on the Promotion and Support of AI Innovations in Thailand (the 'Draft Act'). The Draft Act defines AI as 'software or hardware capable of decision-making or problem-solving through the learning from processing of data by computational algorithms'. However, it is essential to note that this definition may evolve as the Draft Act progresses through the legislative process.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Although we have seen some attempts to develop AI tools and use cases for legal services, AI tools tailored specifically for legal services in Thailand are not yet prevalent in the market.

Numerous law firms actively encourage the implementation of AI integration into their working processes, including the development of AI models on their private cloud tailored to meet the specific needs of legal services. These efforts generally prioritise the safeguarding of client information and emphasise confidentiality and security, while leveraging the power of the large language models (LLMs).

The chatbot marketed as 'Thanoy' has been advertised to be able to provide preliminary legal advice, including advising on relevant regulations and recommendations for users' next steps. 'Thanoy' is an AI-backed legal service launched by a Thai startup.

Regarding the public sector, efforts are being made to integrate AI tools into legal proceedings to streamline processes. The Thai courts have been studying the deployment of AI on top of their e-hearing system for transcribing witness testimonies. This initiative aims to ensure swift, comprehensive and convenient transcription of witness testimonies, while also ensuring the accuracy thereof.

3. If yes, are these AI tools different regarding:
- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

The technical aspects of AI tools remain consistent across different users, whether they are independent law firms, international law firms or in-house counsel. However, variations primarily arise in terms of the users' objectives and tasks and the extent of the investment in AI tools.

International law firms have adopted AI solutions for tasks such as document or agreement review, case analysis and legal research, aiming to enhance operational efficiency on a global level, while independent law firms focus more on use cases in regard to the Thai market only. International law firms can leverage their size and greater financial clout to invest in various types of tools and undertake larger scale projects than independent firms.

As for in-house counsel, the trends in our view include finding AI tools for tasks such as contract management, risk assessment and regulatory compliance, tailored to the industry and legal obligations of the relevant companies, and those tools that can streamline both legal and non-legal workstreams and work as comprehensive solutions.

It is worth noting that, currently, the AI tools being adopted by law firms and in-house legal departments in Thailand are primarily those developed by overseas companies. These tools are designed to cater to a global market and are not specifically tailored to the unique legal landscape and language requirements in Thailand. While these tools have proven to be valuable in enhancing efficiency and productivity, there is a growing need for domestically developed AI solutions that can better address the specific needs of the Thai legal industry. However, as of now, we are not aware of the adoption of any AI tools developed in Thailand for legal purposes.

4. What is the current or planned regulatory approach to AI in general?

Before 2022, Thailand lacked any specific regulatory or national plans and policies specifically addressing AI. Instead, the existing regulations primarily focused on ensuring the safety of IT systems and computer-related activities. Examples of such regulations include the Computer-Related Crime Act B E 2550 (2007) (as amended), the Cybersecurity Act B E 2562 (2019), the Personal Data Protection Act B E 2562 (2019) (PDPA), the Electronic Transactions Act, B E 2544 (2001) (as amended) (ETA) and the Copyright Act B E 2537 (1994) (as amended). These laws are designed to protect various aspects of digital activities, covering cybersecurity, data privacy, electronic transactions and intellectual property rights, but do not specifically target AI technologies.

Recognising the essential role of AI in advancing the nation's development across various sectors, including security, the economy and citizen safety and wellbeing, Thailand has initiated the National AI Strategy and Action Plan (2022–2027) (NAIS) proposed by the Ministry of Higher Education, Science, Research and Innovation (MHESI) and the Ministry of Digital Economy and Society (MDES), which was approved by the cabinet in 2022. The NAIS sets out objectives aimed at enhancing both human capacity and technological infrastructure in the field of AI. It seeks to integrate AI applications to strategically boost economic growth and foster an encouraging environment for public access to and government utilisation of AI technologies.

Following the implementation of the NAIS, the Draft Act introduced by the Electronic Transactions Development Agency (ETDA) prioritises the advancement and growth of AI technology in Thailand. By providing various support and encouragement for AI development rather than implementing controls and restrictions, the Draft Act seeks to promote innovation and competitiveness within the AI industry. Key measures include the establishment of an AI regulatory sandbox, data sharing facilitation, providing for the relaxation or exemptions from certain laws, and offering support from the relevant authorities. These initiatives are intended to create an environment conducive to the growth and prosperity of the AI ecosystem in Thailand.

In addition, adopting a different perspective from the supportive measures under the Draft Act, the Draft Royal Decree on Business Operations that Use Artificial Intelligence Systems (the 'Draft Royal Decree') proposed by the Office of the National Digital Economy and Society Commission (ONDE) to be issued under the ETA, places greater emphasis on regulating and overseeing AI in a similar manner to the European Union's AI Act by adopting a risk-based approach to classify the level of control and monitoring required for the utilisation of AI systems. It takes into account individual rights and the potential for unfair treatment and bias resulting from the use of such AI technologies.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

As outlined above, the current regulatory landscape pertaining to AI in Thailand remains limited. Nevertheless, efforts are underway to establish comprehensive legislation governing the utilisation of AI.

The Draft Royal Decree places greater emphasis on regulating and overseeing AI in a similar manner to the EU AI Act by adopting a risk-based approach to classify the level of control and monitoring required for the utilisation of AI systems. It takes into account individual rights and the potential for unfair treatment and bias resulting from the use of such AI technologies.

The Draft Royal Decree also includes provisions on extraterritorial applicability, requiring service providers operating outside Thailand to adhere to the obligations outlined in the Draft Royal Decree.

If enacted, the Draft Royal Decree would impose obligations, responsibilities and certain restrictions on businesses operating in the services sectors that utilise AI. These measures are intended to ensure the responsible and ethical deployment of AI technologies, while mitigating the potential risks to individuals and promoting fair treatment in AI-driven business operations. Non-compliance with the obligations will also lead to penalties, including administrative monetary penalties and criminal penalties.

6. Is free data access an issue in relation to AI?

As AI systems rely on extensive data sets for effective learning and accurate decision-making, access to high-quality, diverse and relevant data is essential for training AI models. However, restricted access to such data can impede the development and performance of AI systems.

Free access to data may raise concerns regarding the sharing of personal information or sensitive data, under the PDPA and potential copyright violations under the Copyright Act. Balancing the need for data accessibility with privacy protection and intellectual property rights is crucial in the development and deployment of AI systems.

In light of the preceding considerations, the Draft Act addresses these issues by introducing a data-sharing mechanism and establishing a set of criteria and qualifications for data intermediaries in order to safeguard the rights of individuals, while facilitating the development of AI within the boundaries of the existing laws.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

So far, there have been no court decisions specifically addressing the provision of legal services utilising AI, nor are there any decisions from other sectors that might be pertinent to the utilisation of AI in the provision of legal services in Thailand.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

As of now, there are no existing regulations imposing restrictions or prohibitions on legal professionals from providing advice with the assistance of technology or AI, or allowing legal practitioners in Thailand to use technological tools, including AI, to enhance their advisory services, or drafts thereof. Nevertheless, legal professionals need to maintain ethical standards and ensure that the use of technology complies with the relevant laws and professional guidelines, particularly regarding confidentiality, data security and their duty of care to clients.

As outlined above, the regulatory landscape pertaining to AI in Thailand remains relatively nascent. While the overall national policy, represented by the NAIS, has been formally introduced, concrete regulations are still in the developmental stages. Both the Draft Royal Decree and the Draft Act are undergoing further study through public hearings, indicating that the processes and timelines towards finalising these regulatory frameworks may be extended.

In this regard, the enactment of the Draft Act and Draft Royal Decree are likely to contribute to creating a favourable environment for the adoption of AI technologies within the provision of legal services. The establishment of a clear regulatory framework, support mechanisms and incentives could help pave the way for the responsible and effective use of AI to enhance legal practice in Thailand and enable legal professionals to better serve their clients' needs.

9. What is the role of the national bar organisations or other official professional institutions?

The Lawyer Council of Thailand under the Royal Patronage and the Thai Bar Association under the Royal Patronage and the Lawyers Council of Thailand are two important organisations that play crucial roles in the legal profession in Thailand.

The Lawyers Council of Thailand is a statutory body established under the Lawyers Act B E 2528 (1985). It is the official body responsible for licensing lawyers in Thailand. Its primary responsibilities include promoting legal education and the

practice of law, regulating the conduct and ethics of lawyers, and fostering unity and upholding the honour of the profession.

The Thai Bar is the leading organisation in promoting knowledge and regulating the legal profession to ensure that lawyers maintain high quality and are ethical and honourable, in accordance with international standards. It aims to further strengthen solidarity among lawyers and public trust in the legal profession.

As of now, neither the Lawyers Council of Thailand nor the Thai Bar Association have issued any specific recommendations regarding the use of AI technology in legal practice. However, even though the use of AI (and technology generally) by lawyers is not specifically regulated under the ethical rules of the Lawyers Council of Thailand, it can be said that it is indirectly addressed through these ethical rules, although in a limited manner. For instance, lawyers are obligated to maintain the confidentiality of their client's information. This indirectly dictates how lawyers can share or store such information. Another example is the ethical prohibition against the use of false evidence. As such, submitting documents impacted by the hallucinations of generative AI is indirectly disallowed.

The People's Republic of China

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1. What is the understanding or definition of AI in your jurisdiction?

Artificial intelligence (AI) is a branch of computer science or intelligent science that involves researching, designing and applying intelligent machines. The main goal of AI is to study the use of machines to imitate and perform certain intellectual functions of the human brain, while the long-term goal is to use automatic machines to imitate human thinking and intellectual activities.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Some AI software is widely used by lawyers in legal practice, for example: Metalaw combines a self-developed large language model of law with a case-specific search function. Lawyers can search legal questions through spoken expressions; AI will intelligently locate similar or related cases and provide analyses of legal issues. In addition, major legal databases such as Wolters Kluwer and PKULAW have been equipped with a generative pre-trained transformer system, which can be used to summarise judgments and simplify reading.

Second, some AI software is used in police activities. Typical applications, such as facial recognition technology, are widely deployed in densely populated areas such as airports, stations and squares. They can automatically capture dynamic facial images and compare and verify them with images in public security organ databases. They have played an important role in the investigation activities of public security organisations and have provided useful assistance to public security organisations pursuing fugitives.

Third, a legal question and answer (Q&A) bot is used in court and arbitration commissions. In terms of practical applications, the so-called Q&As are mostly conducted in a fixed mode by clicking the corresponding question, or a relatively professional 'questioning mode'. For some simple cases, the legal Q&A bot helps parties who have not yet commissioned a lawyer to have a simple preliminary understanding of the legal issues related to the case.

In addition, AI software is also used in court proceedings. For example, the 'mobile micro court' program, which was built using AI technology, is currently used by

courts in many provinces. All functions in this program – such as online filing, online court trial, online evidence cross-examination and online delivery – can be carried out using a web application. It enables parties and judges to freely discuss and interact in real time with various message types, such as text, expressions, pictures, voices, geographic locations and files in an online courtroom, and can also implement message reminder notifications after the parties submit evidence (and offline).

There is also AI-assisted legislation. At the stage of soliciting legislative opinions using 'big data' technology, legislators actively solicit legislative suggestions through big data technology to broaden the ways for citizens to reflect. Citizens should also actively express their opinions through the internet and other means to make legislation truly reflect the democratic and scientific nature. The filing and review of established laws can strengthen the supervision of legislative work and improve the quality of legislation. In addition, AI is used to eliminate conflict between different legal norms and adapt to the needs of the socialist legal system.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

AI software has been widely used in Chinese legal practice. In addition to specific software or technology that is only used by judicial institutions (eg, facial recognition technology used by public security agencies), other AI software related to law can be provided, including but not limited to independent law firms, international law firms and in-house counsel.

4. What is the current or planned regulatory approach on AI in general?

As far as the current regulatory approach to AI is concerned, China currently provides administrative guidance on AI from the perspective of industrial policy promotion, support and development. The New Generation Artificial Intelligence Development Plan released by the State Council in 2017 highlights this idea.

The Data Security Management Measures (drafting) regulation also regulated the algorithm accordingly. It stipulates that 'network operators using technologies such as big data and artificial intelligence to automatically synthesise news information, blog posts, posts, comments, and so on through algorithms should indicate the word "synthesis" in a significant way'.

On 28 March 2018, the People's Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission and Foreign Exchange Bureau jointly issued the Guiding Opinions on Regulating the Asset Management

Business of Financial Institutions (the 'Guiding Opinions'). The Guiding Opinions regulates the application of AI in the financial field and carries out supervision of the algorithms of intelligent investment advisers in terms of competency requirements, investor suitability and transparent disclosure.

On 13 July 2023, the *Interim Measures for the Management of Generative Artificial Intelligence Services* was released. This document points out the implementation of classified and hierarchical supervision of generative AI services, clarifies the requirements for the use of training data and stipulates the obligations of providers in AI services.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

At present, the legal regulations for AI already have individual provisions in the legislation of e-commerce, data security and intelligent investment consulting.

The E-Commerce Law stipulates that an e-commerce operator who sells search results of goods or services to consumers based on their interests, consumption habits and other characteristics should also provide the consumer with options that do not target their personal characteristics, and respect and equally protect the legitimate rights and interests of consumers. This is a legal response to big data algorithms.

In criminal law, since AI technology belongs to the high-level part of the application of internet technology, in a realistic situation in which AI criminal law legislation has not yet formed, the conceptual understanding of the pre-emptive method of AI criminal law legislation can be combined with the information network in which the current criminal regulations and computer information system crime are carried out. Taking computer information system crime as an example, computer information systems, as one of the main manifestations of AI infrastructure, are also a focus area of new AI crime.

The basic framework of the Personal Information Protection Law takes the approach of empowering information subjects and imposing responsibilities on information controllers and processors. On the one hand, legislation must vigorously promote the development and application of AI technology. On the other hand, it must strengthen forward prevention and restraint guidance to ensure safety and controllability.

On 16 March 2024, the Artificial Intelligence Law (Draft of Scholars' Suggestions) was released. This scholar's proposal is divided into nine chapters and 96 articles, including general principles, development and promotion, rights protection, safety obligations, supervision and management, special application scenarios, international cooperation, legal responsibilities and so on, covering the main aspects of future AI governance.

6. Is free data access an issue in relation with AI?

For data collection and personal privacy protection, there has been significant progress in legislation in China in recent years.

In 2021, the Personal Information Protection Law and the Data Security Law were promulgated. The Personal Information Protection Law stipulates that the processing of personal information must obtain individual consent with full prior notification. In addition, sensitive personal information may only be processed for a specific purpose and with sufficient necessity, and the individual's separate consent or written consent must be obtained. When personal information involves cross-border transmission, it should also pass a security assessment by relevant authorities or professional institutions.

The Data Security Law stipulates the data classification and hierarchical protection system and the compliance obligations of data processors from a more general perspective.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

In a recent judgment, the court adopted the Interim Measures for the Management of Generative Artificial Intelligence Services for the first time. This case is also the first effective judgment in the world to identify copyright infringement issues involving service providers. In the judgment, the court pointed out that, considering the generative AI industry is in an early stage and to balance industry development and rights protection, it is not appropriate to excessively increase the obligations of service providers. Although China is not a common law country, this case will have an impact on future judgments.

Throughout current practice, AI used by the court system in the construction of 'smart courts' mainly has the following forms.

The first is the digitisation and 'datafication' of information: that is, the use of technical means to convert non-electronic information, such as voice and paper file text, into reproducible and convertible electronic data, thereby reducing the workload of the judiciary.

The second is the 'intelligentisation' of the case auxiliary system: that is, the use of intelligent means to realise the one-key generation of fixed-format content, such as party information and litigation requests in a judgment document, thereby shortening the time for drafting the document and assisting the judge to improve the quality of the case.

The third is the prediction and supervision of entity referees. Forecasting refers to the AI system's automatic extraction of plot features and intelligent learning of judgment results for a large number of judgment documents, thereby establishing a specific case judgment model. According to the keywords selected by the judge or the facts and plots provided, the statistics of similar cases will be automatically displayed in real time to predict the actual judgment of the case, and more accurate, similar cases will be pushed for the judge's reference.

The fourth is to establish a unified and electronic evidence standard: that is, to summarise the experience through legal big data, and embed it in the digital case handling system of the public security, procuratorate and court to regulate judicial behaviour.

Based on the AI technology in the above courts, according to the data published in the *White Paper on Internet Technology Judicial Application* issued by the Beijing Internet Court, the total number of legal documents generated by AI technology at the Beijing Internet Court is 117,729, including 4,199 copies of judgments, rulings, mediation and other documents.[539] Therefore, in China's judicial practice, there are already cases where decisions are made through AI technology, and in the future, there will be more courts using AI to assist or automatically generate judgments.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

Currently, there are no planned, discussed or implemented sectorial statutory regulations in China on the use of AI in the legal profession or services that are traditionally rendered by lawyers.

9. What is the role of the national bar organisations or other official professional institutions?

The Ministry of Justice of the PRC is a constituent department of the State Council in charge of judicial administration work within Mainland China. It mainly undertakes the following functions:

- formulates guidelines and policies for judicial administration, drafts relevant laws and regulations, formulates departmental regulations, formulates development plans for judicial administration and organises their implementation;
- formulates and organises the implementation of the general knowledge of the popularisation of laws for citizens, guides the legal

539 *White Paper on Internet Technology Judicial Application* (Beijing Internet Court, 2019).

publicity of various localities and industries, governs the work in accordance with the law and publicises the legal system abroad;

- supervises the work of lawyers and notarisation work and takes corresponding responsibilities;
- supervises and manages legal aid work nationwide;
- organises the national judicial examination;
- controls the registration and management of judicial appraisers and judicial appraisal agencies nationwide; and
- undertakes other matters assigned by the State Council.

Combined with the New Generation Artificial Intelligence Development Plan released by the State Council mentioned above, the Ministry of Justice will:

- formulate laws, regulations and ethical standards to promote the development of AI;
- improve relevant policies to support the development of AI; and
- establish AI technology standards and intellectual property systems.

This will play an important role in promoting the establishment and development of China's AI normative system.

The United States

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1. What is the understanding or definition of AI in your jurisdiction?

There is no single definition or understanding of artificial intelligence (AI) throughout the United States. AI for many is reflected in a spectrum of definitions and understandings, including simple automation and word searches; self-teaching programs, correcting mistakes and improving, and creative responsiveness in terms of making connections; and suggesting lines of research, programmed logic tree responses, affirmative 'deep learning' and initiation. The John S McCain National Defense Authorization Act for Fiscal Year 2019, Pub L 115-232, section 238, 132 Stat 1658 (2018) defined 'AI' as follows for the purposes of certain federal legislation:

- any artificial system that performs tasks under varying and unpredictable circumstance without significant human oversight, or that can learn from experience and improve performance when exposed to data sets;
- an artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action;
- an artificial system designed to think or act like a human, including cognitive architectures and neural networks;
- a set of techniques, including machine learning, that is designed to approximate a cognitive task; and
- an artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.[540]

It is generally taken that the phrase 'artificial intelligence' was coined by John McCarthy to mean 'the science and engineering of making intelligent machines'. *Science Daily* notes that the 'modern definition' means 'the study and design of intelligent agents' where an intelligent agent is a system that perceives its environment and takes actions which maximizes its chances of success.'[541] Arthur Samuel coined the phrase 'machine learning' in 1959 to mean 'the ability to learn without being explicitly programmed.' Machine learning is therefore a way of achieving AI. Calum McClelland has distinguished between AI, machine learning and

540 See www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf accessed 6 July 2020.

541 See www.sciencedaily.com/terms/artificial_intelligence.htm accessed 6 July 2020.

deep learning, noting that '[d]eep learning is one of many approaches to machine learning. Deep learning was inspired by the structure and function of the brain, namely the interconnecting of many neurons. Artificial Neural Networks (ANNs) are algorithms that mimic the biological structure of the brain.'[542]

A statutory definition exists within the 'research and development' provisions of the federal service, supply and procurement law:

'(g) Artificial intelligence defined. In this section, the term "artificial intelligence" includes the following:

(1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.

(2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.

(3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

(4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.

(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.'[543]

Different states and other agencies may have their own definitions by statute or regulation.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms etc), are there already actual AI tools or use cases in practice for legal services?

Limiting the response to legal practice applications (and ignoring certain chess and other gaming AI programs), the following areas of practice have involved AI programs. This is not meant to be an exhaustive or all-inclusive list, but to provide a sampling of the range. No endorsement is made of any particular product.

542 See https://medium.com/iotforall/the-difference-between-artificial-intelligence-machine-learning-and-deep-learning-3aa67bff5991; see also https://www.leverege.com/blogpost/the-difference-between-artificial-intelligence-machine-learning-and-deep-learning accessed 6 July 2020.

543 10 USCA s 2358.

Prediction studies

- Arditi and Pulket, Predicting the Outcome of Construction Litigation Using an Integrated Artificial Intelligence Model (2009): using 132 Illinois circuit court cases between 1992 and 2000, a 91.15 per cent prediction rate was obtained with an integrated prediction model (IPM), utilising data consolidation, attribute selection, prediction using hybrid classifiers and assessment.

- Aletras, Tsarapatsanis, Preotiuc-Pietro and Lampos, Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective (2016): using 584 cases relating to three separate articles of convention, 79 per cent accuracy was achieved using 'binary classification task where the input of our classifiers is the textual content extracted from a case and the target output is the actual judgment as to whether there has been a violation of an article of the convention of human rights'.

Patent applications

- 'RoboReview™ deploys expert bots to automatically review patent applications and amended claims for novelty, patentability, antecedent basis, claim support, term consistency and more.'[544]

Due diligence and contract analysis

- eBrevia (now part of DFIN): 'eBrevia uses industry-leading artificial intelligence, including machine learning and natural language processing technology, developed in partnership with Columbia University to extract data from contracts, bringing unprecedented accuracy and speed to contract analysis, due diligence, and lease abstraction.'[545]

- Luminance: 'reads and understands contracts and other legal documents in any language, finding significant information and anomalies without any instruction.'[546]

- Kira Systems: 'automatically converts files into machine readable form, and then uses machine learning models to identify the concepts and clauses you specify.'[547]

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544 See https://turbopatent.com/roboreview accessed 6 July 2020.

545 See https://ebrevia.com/#homepage accessed 6 July 2020.

546 See https://www.welcome.ai/tech/legal/luminance-smart-legal-platform accessed 6 July 2020.

547 See https://kirasystems.com/how-kira-works accessed 26 April 2022.

Research

- ROSS intelligence: 'With cutting edge NLP technology, pose your research questions like you're talking to another lawyer. Receive pinpoint answers from published and unpublished case law to substantive legal issues in seconds. ROSS is trained to track developments in the law with respect to your legal issues and send notifications with any relevant legal updates.'[548]

- Westlaw and Lexis also employ certain aspects of AI in search recommendations.

Currency

- Artificial Intelligence Coin, or AI Coin: 'a transaction-centric digital currency based on the Bitcoin software. It allows you to immediately complete digital transactions, because similar to cash, there is no wait for confirmation. Its participants cooperate to efficiently process transactions, and fairly share the mining rewards without expensive proof-of-work effort.'[549]

Dispute resolution

- DoNotPay identifies itself as 'the home of the world's first robot lawyer. Fight corporations, beat bureaucracy and sue anyone at the press of a button.' It says the user can 'fight corporations, beat bureaucracy, find hidden money, sue anyone, automatically cancel your free trials.' It features an area where parking tickets can be disputed. It appears to provide forms and suggested questions. Whether or not this would be deemed to be practicing law in unauthorised fashion if offering suggestions for how to fill in and submit appeals is an open issue.

- Adjusted Winner and Smartsettle are algorithms that come to a solution based on input of ranking and values of various factors.

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

548 See https://rossintelligence.com accessed 6 July 2020.

549 See https://aicoin.io/ accessed 6 July 2020.

There are jurisdictional issues relating to what constitutes the unauthorised practice of law. In the US, individual lawyers are regulated and have ethical obligations under their respective codes of professional conduct on a state-by-state basis (including territories). The American Bar Association (ABA) has adopted a resolution that encourages online providers of legal documents to adopt the ABA Best Practices Guidelines that contain provisions regarding what such providers should and should not say about their services.

So-called 'disruptor companies' are more commonly used by in-house counsel to save on costs by enabling certain tasks to be achieved using software instead of newer lawyers, causing concern in some quarters about attorney employment. On the other hand, some argue that lawyers are freed up to do the more substantial work. In any event, lawyers remain responsible for the work product that ultimately bears their names.

Use of AI tools by lawyers remain within the province of ethical considerations, and as with any outsourcing or cloud usage, lawyers remain responsible for ensuring compliance with competence (including certain levels of technological competence necessary to perform their tasks), client confidentiality, role of lawyer as advisor, and supervisory responsibilities.

Other differences between outside counsel and in-house counsel include the cost allocation. As with legal research programs or other such items, the question will be whether this is an overhead or whether a firm's use of such AI may be passed on to the client.

As for so-called international law firms, at least in the US, individual lawyers remain regulated by their jurisdiction, regardless of their affiliation with multinationally based firms.

4. What is the current or planned regulatory approach on AI in general?

From an ethics perspective, there is a view that rules of professional conduct have not kept up. As reported in *Law360* on 24 April 2018:

> 'Despite the widespread adoption of AI tools to conduct contract reviews and legal research, among a host of other tasks, there has been no corresponding uptick in guidance from regulatory bodies on how lawyers can ethically use these increasingly sophisticated tools, according to a panel of corporate legal leaders and legal tech experts at the Association of Corporate Counsel's midyear conference of in-house attorneys […]'

At the national level by Executive Order 13859, issued 11 February 2019, President Trump declared that: '[c]ontinued American leadership in AI is of paramount importance to maintaining the economic and national security of the United States and to shaping the global evolution of AI in a manner consistent with our Nation's

values, policies, and priorities.' Among other things, the Executive Order called for the Director of the Office of Management and Budget, in coordination with the White House Office of Science and Technology Policy (OSTP) and the National Economic Council, as well as consulting with other relevant stakeholders to:

'(i) inform the development of regulatory and non-regulatory approaches by such agencies regarding technologies and industrial sectors that are either empowered or enabled by AI, and that advance American innovation while upholding civil liberties, privacy, and American values; and (ii) consider ways to reduce barriers to the use of AI technologies in order to promote their innovative application while protecting civil liberties, privacy, American values, and United States economic and national security.'[550]

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

In its *Year One Annual Report* issued in February 2020,[551] the OSTP noted examples of federal actions removing barriers to AI innovation. These included steps taken by the Department of Transportation addressing automated vehicles, the Federal Aviation Administration addressing regulations concerning unmanned aircraft systems (UAS),[552] approval by the Food and Drug Administration of AI device for detection of diabetic retinopathy,[553] and a proposed regulatory framework for AI-based software as a medical device.[554] The impact of Covid-19 caused the FDA to readdress its regulatory approach to clinical decision support software, and otherwise, the formation of regulations in this area has been slow but informed.[555]

The 'John S McCain National Defense Authorization Act for Fiscal Year 2019', noted above, required the Secretary of Defense to coordinate the department's efforts 'to develop, mature, and transition artificial intelligence technologies into operational use' with emphasis on 'operational problems and coordinate activities involving artificial intelligence and artificial intelligence enabled capabilities within the Department.'[556]

On 3 February 2022, the OSTP issued an update that emphasised that it continues to coordinate AI activity across the federal government. It noted the passage of

550 See https://www.federalregister.gov/documents/2019/02/14/2019-02544/maintaining-american-leadership-in-artificial-intelligence accessed 26 April 2022.

551 See https://www.nitrd.gov/nitrdgroups/images/c/c1/American-AI-Initiative-One-Year-Annual-Report.pdf accessed 26 April 2022.

552 Presidential Memorandum for the Secretary of Transportation, 25 October 2017, see https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-secretary-transportation accessed 26 April 2022.

553 See https://www.fda.gov/news-events/press-announcements/fda-permits-marketing-artificial-intelligence-based-device-detect-certain-diabetes-related-eye accessed 26 April 2022.

554 See https://www.fda.gov/medical-devices/software-medical-device-samd/artificial-intelligence-and-machine-learning-software-medical-device accessed 26 April 2022.

555 See https://www.mddionline.com/new-developments-fda-regulation-ai accessed 26 April 2022.

556 See https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf accessed 26 April 2022.

the National AI Initiative Act of 2020, effective 1 January 2021,[557] establishing the National Artificial Intelligence Initiative to ensure US leadership in AI research and development and prepare the workforce for integration of AI systems across the economy and society in general.

States have also begun to enact legislation, relating particularly to automated vehicles.[558]

6. Is free data access an issue in relation with AI?

The United States has no one uniform law or regulation like the EU's GDPR, and in addition to numerous federal laws, there are state laws as well governing privacy considerations.[559] Some are industry specific, such as those dealing with banking or health law.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

'Artificial intelligence' as a phrase has appeared in over 200 cases, both reported and unreported, throughout the US, but that does not mean the fact of AI itself was a litigable issue. In an interesting non-precedential opinion, a pro se inmate sued for antitrust violations Google, Apple, Oracle, Facebook, Yahoo, YouTube, Instagram, Amazon, Intel, AT&T, Mobil, Occidental, Shell, Standard Oil, Gulf Oil, Sunoco, Phillips 66, Marathon, Texaco, Pennzoil, and Exxon, claiming the high tech and oil companies are in a symbiotic relationship, with the high tech companies using 'oil to build, construct and power their products', and oil companies 'utilize artificial intelligence to facilitate their accounting, business, treasury and corporate functions.'[560] The case was dismissed due to plaintiff's lack of antitrust standing.

In a state court case, the Supreme Court of Pennsylvania ruled that 'CGA is potentially admissible as demonstrative evidence, as long as the animation is properly authenticated, it is relevant, and its probative value outweighs the danger of unfair prejudice or confusion.'[561]

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557 See https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf#page=1210 accessed 26 April 2022.

558 https://www.loc.gov/law/help/artificial-intelligence/americas.php#us

559 See https://iclg.com/practice-areas/data-protection-laws-and-regulations/usa accessed 26 April 2022; see also https://www.varonis.com/blog/us-privacy-laws; accessed 26 April 2022; and https://fas.org/sgp/crs/misc/R45631.pdf accessed 26 April 2022.

560 *Demos v Google*, No 19-CV-04433-HSG, 2019 WL 6341318, at *1 (ND Cal 27 Nov 2019), appeal dismissed sub nom *Demos v Google, Inc*, No 19-17541, 2020 WL 1441425 (9th Cir 23 Jan 2020).

561 *Com v Serge*, 586 Pa 671, 699, 896 A2d 1170, 1187 (2006).

Other issues that are the subject of extensive commentary but no precedential cases as yet involve copyright ownership where the program generates prose or poetry, art or music, or liability where AI is at fault in autonomous vehicles, among others.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

The rules of professional responsibility governing lawyers address AI indirectly. As noted above, there is some sentiment that new rules are needed. Regardless, ABA Model Rule 1.1, requiring competent representation of clients, is informed by a comment that states 'To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.'

ABA Model Rule 1.2 deals with allocation of authority; to the extent that a lawyer will use AI and there is a cost, this needs to be discussed with the client. If the client insists on using a particular software but the lawyer does not trust that product, and it impedes the lawyer's ability to provide competent representation, the lawyer may need to withdraw. This also implicates ABA Model Rule 1.4, requiring the lawyer to 'reasonably consult with the client about the means by which the client's objectives are to be accomplished.' Whether or not the client may be billed for the use of AI implicates Rule 1.5 and the reasonableness of fees; whether AI is treated as an overhead or a cost that may be passed on to the client is an issue. ABA Model Rule 1.6 mandates that the 'lawyer shall make reasonable efforts to prevent the inadvertent or unauthorised disclosure of, or unauthorised access to, information relating to the representation of a client.' The use of AI, particularly where cloud storage or other licensing arrangements are involved, implicate who is using it, who sees the raw data and the results, who has access, and the steps taken to protect the information.

ABA Model Rule 1.4 requires lawyers to communicate with clients regarding their objectives and means to achieve same, which would include discussions as to the risks and benefits of AI in particular circumstances, when such may be used in the course of the client representation. ABA Model Rule 1.6 imposes the requirement of client confidentiality, so that any use of AI must take that into account.

Similarly, use of AI and the cost to the client, as well as its utility with regard to saving lawyer time, may be implicated by ABA Model Rule 1.5 and its requirement that fees be reasonable.

The lawyer as advisor in accordance with Model Rule 2.1 requires the lawyer to take into account various non-legal factors and considerations, such as economics, in rendering advice.

Of particular importance are the lawyer's supervisory obligations, found in ABA Model Rules 5.1 (partners and those with managerial authority) involve reasonable efforts to ensure effective measures to provide reasonable assurance of ethical compliance. Model Rule 5.3 imposes the same standards in engaging non-lawyer assistance. More esoteric issues arise as to whether the use of AI constitutes the practice of law, such that non-lawyers engaging in it are breaking ABA Model Rule 5.5.

9. What is the role of the national bar organisations or other official professional institutions?

Generally speaking, and with limited exception, lawyers, not law firms, are regulated in the US. Bar associations and the regulatory authorities are considering the impact of the definition of legal services and the fact that various entities (sometimes called disruptor companies) are performing what may have been called traditionally 'legal services'. To date, they are not generally regulated. It is suggested that bar associations need to take a broad-minded approach, as the access to legal services – the so-called justice gap – is driving reform in certain jurisdictions, including the use of legal forms and non-lawyer ownership.[562]

562 See, eg, ABA Resolution 115, Encouraging Regulatory Innovation https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115 accessed 26 April 2022.

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