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The Legal Labyrinth of AI Research

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Presenters for Session

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A Labyrinth of Legal and Ethical Issues

- Laws
- Regulations
- Standards
- Policies
- Evolving Case Law
- Legal Ethics/Ethics Opinions
- Ethical/Moral Issues
- Issues in How the Technology was Developed

Issues in How the Technology Was Developed or Used

- Ownership of the Training Data
- Ownership of the APP Itself
- Ownership of "Use" Data – e.g., future training
- Privacy of the Training Data and the Data Submitted to Generate Results
- Potential Libel/Slander from Results
- Export Control Concerns

(continued)

Issues in How the Technology Was Developed or Used (2)

- Legal Liability from "Bad" or "Wrong" Results
- Deep Fakes and Fake Pornographic Images
- NIL Issues from Generated Images
- Can AI Results be Reproduced?
- Authorship/Plagiarism and Derivative Works
- Is the AI Agent Authorized to Act for its Principal?

Multiple Areas of Concern

- AI used in Research
 - Sourcing Issues
 - Was AI Used to Develop the Research? Disclosure and Authorship and Other "Provenance" Questions
 - AI "Hallucination of Results" – Fact Checking AI Work?
 - Publication Questions
 - ???

(continued)

Multiple Areas of Concern (2)

- Research in AI
 - Ownership and Provenance of Training Data
 - Privacy Issues for Data Used
 - Reproducibility of Results
 - Attribution for Purposes of Publishing, Liability, and IP Ownership of Results (e.g. ICMJE [next slide])
 - ???

(continued)

ICMJE Attribution Recommendations

- Journals should require authors:
 - to disclose if they used AI for the submission
 - to describe in the cover letter and in the submitted work how they used AI
- Chatbots should not be listed as authors nor should AI be cited as an author or co-author
- Authors should be able to assert there is no plagiarism in their paper including the text and images produced by AI

Recommendations for the Conduct, Reporting, Editing, and Publication of Scholarly Work in Medical Journals Updated January 2024

- <https://www.icmje.org/icmje-recommendations.pdf>

Multiple Areas of Concern (3)

- Research and Development of AI
 - Ownership and Provenance of Training Data
 - Privacy Issues for Data Used
 - Re-Identification of Limited Data Sets
 - Reproducibility of Results
 - Attribution for Purposes of Publishing, Liability, and IP ownership of results
 - ???

(continued)

Multiple Areas of Concern (4)

- AI in Education
 - Plagiarism
 - Fraudulent "Original Work"
 - Response to Undisclosed or Improper Use as Matter of Academic Integrity
 - "Consumer Issues" (e.g., could a student claim that they are not receiving agreed upon value when AI was used to generate teaching materials/lectures, etc., but Student expectation was for human instruction from world-class experts?)
 - ???

(continued)

Multiple Areas of Concern (5)

- Additional Legal Issues
 - Liability for AI Errors: If AI tools provide incorrect information or assessments, determining liability—whether it lies with the institution, the AI provider, or the educators—can be complex
 - Equity and Access: There may be legal implications regarding equitable access to AI tools
 - Use of AI in Creative Arts (the theater school is not immune)
 - Deep fakes
 - Morality/Obscenity issues
 - ???

In Every Area of Concern – IP Issues

- Ownership of Training Data
- Ownership of Results Generated by AI
- Ownership of AI Developed with AI Assistance
- Form of Ownership (patent, copyright, trade secret, or new forms of IP?)
- Transfers of Ownership – just what is the "thing" being transferred?
- Derivative Rights, Improvements, and Other "Downstream" Questions
- ???

In Every Area of Concern – IP Issues (2)

- Patentability of AI-Assisted Inventions
 - **USPTO Revamps Eligibility Guidance for AI-Assisted Inventions** *In response to <https://www.federalregister.gov/executive-order/14110> the US Patent and Trademark Office’s recently updated inventorship guidance for AI-assisted inventions by expanding the [guidance](#) published earlier this year and clarifies unresolved concerns troubling stakeholders, especially subject matter eligibility of typical inventions and AI-assisted inventions.*
 - [2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence](#) (Effective July 17, 2024)
 - This guidance update will assist USPTO personnel and stakeholders in evaluating the subject matter eligibility of claims in patent applications and patents involving inventions related to AI technology (AI inventions)
 - **“Patent protection may be sought for AI-assisted inventions where one or more persons made a significant contribution to the claimed invention.”** (IV, para. 2 Guidance)
 - <https://www.federalregister.gov/documents/2024/07/17/2024-15377/2024-guidance-update-on-patent-subject-matter-eligibility-including-on-artificial-intelligence>

Increasing Focus on Bias

- Legal Issues Arising from Biased AI Training Data
 - Discrimination and Fairness
 - Privacy and Data Protection
 - Accountability and Transparency
 - Explainability
 - Liability
 - Consumer Protection
 - Misleading Information
 - Financial Harm

Unfair or Deceptive Practices

- FTC and CFPB indicate false or bolstered claims about AI products falls within their purview of unfair or deceptive business practices.
- A violation of the FTC Act may occur if you make, sell, or use a tool that is *effectively designed to deceive* – *"even if that's not its intended or sole purpose."* Comment in reference in ability to make "deep fakes," "deep voice," or "false content."
- Several bill proposals in Congress (e.g., "TAKE IT DOWN ACT") and Texas in 2019 criminalized political deep fake videos within 30 days of an election. CA and IL have also passed legislation.

Negligence/Product Liability

- Experts have identified four complications in applying traditional negligence laws to AI systems: unpredictability of AI errors, human limitations in interacting with AI, AI-specific software vulnerabilities in decision-making and potential bias in AI.⁹²
- Potential "failure to warn or instruct" liability.
- When did "defect" occur? Was there a reasonable alternative design? Is AI a product? (Not all courts agree.) But likely if incorporated into a product such as a medical device.
- Some experts advocate for a new scheme of tort liability for AI, such as strict liability for instances of personal injury and death, and/or a fault-based liability structure for reputation and dignity harms.¹⁰⁹

92 Andrew D. Selbst, *Negligence and AI's Human Users*, 100 B.U. L. R.Ev . 1315, 1321- 22 (2020).

109 Baris Soyer & Andrew Tettenborn, *Artificial intelligence and civil liability- do we need a new regime?*, 30 INT' LJ . L. & INFO. TECH . 385 (2022) .

Regulatory Framework

- United States
 - Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (EO AI)
 - 111-page EO Leverages the Federal Government's Purchasing Power Encouraging the Use of AI Throughout the Government and Directing Federal Agencies to Issue Guidance
 - <https://whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>

State Laws/Regulations

- Illinois use of AI video interview analysis, 820 Ill.Comp.Stat. Ann. Sec.42.
<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=4015&ChapterID=68>
- New York City Local Law 144 governing AI in hiring decisions,
<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344524&GUID=B051915D-A9AC-451E-81F8-6596032FA3F9&Options=ID%7CText%7C&Search=>
- California Privacy Rights Act – notice regarding collection of employment related information); <https://tinyurl.com/ms6y4muy>
- Colorado Artificial Intelligence Act (SB 205) May 24, 2024
<https://leg.colorado.gov/bills/sb24-205>
- Florida, Kentucky, Virginia, Washington and West Virginia proposed bills setting up AI Task Forces
- California **SB-1047 Safe and Secure Innovation for Frontier Artificial Intelligence Models Act**
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1047

European Union and Asia

- European Union (EU) adopted the EU AI Act on December 8, 2023
 - <https://artificialintelligenceact.eu/high-level-summary/>
- China: Comprehensive Control
- Singapore: Focus on Ethical AI and Responsible Innovation
- Japan: Balancing Innovation and Regulation
- South Korea: Emphasizing Data Privacy and Ethical Considerations
- India: National AI Strategy (2018 ethical AI development and responsible deployment)

Standards/AI Frameworks

- Artificial Intelligence Risk Management Framework 1.0 (AI RMF), NIST, on January 26, 2023, issued this voluntary guidance
 - Provides guidelines for building AI compliance programs
 - <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>
- International Organization for Standardization (ISO) Standard 42001
 - Requirements for establishing, implementing, maintaining, and continually improving an Artificial Intelligence Management System (AIMS) within organizations
 - <https://www.iso.org/standard/81230.html>

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Standards/AI Frameworks (2)

- EU AI Act Risk Levels
- NIST AI Risk Management Framework
 - On July 26, 2024, NIST released [NIST-AI-600-1, Artificial Intelligence Risk Management Framework: Generative Artificial Intelligence Profile](#)
- U.S. Department of State
 - [Risk Management Profile for Artificial Intelligence and Human Rights](#) as a practical guide for organizations "...to design, develop, deploy, use, and govern AI in a manner consistent with respect for international human rights"

Evolving Case Law

- **DAIL – the Database of AI Litigation:** <https://blogs.gwu.edu/law-eti/ai-litigation-database/>
- Recent Developments in Artificial Intelligence and Blockchain Cases 2024 – https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/recent-developments-artificial-intelligence-blockchain-cases-2024/
 - [Mata v. Avianca, Inc., 678 F. Supp. 3d 443 \(S.D.N.Y. 2023\)](#) : Attorney filed citations and cases fabricated ("hallucinations") by ChatGPT to the court; Rule 11 sanctions scheduled for June 11 for attorney to show cause why he should not be sanctioned
 - **Moffatt v. Air Canada** 2024 bccrt 149 (canlii) : Air Canada’s chatbot incorrectly explained the airline’s bereavement policy to a grieving plaintiff. Air Canada argued the chatbot was a **separate legal entity responsible for its own actions**. Result: Damages against AC disabled chatbot.
 - A number of courts have issued **standing orders either forbidding, requiring disclosure of, or requiring verification of information in text created with the assistance of generative AI**.
<https://guides.lib.uchicago.edu/AI/Practice#:~:text=A%20number%20of%20courts%20have,requirements%20for%20disclosure%20or%20certification.>

Ethics Opinions

- ABA Formal Opinion 512
 - The American Bar Association [Standing Committee on Ethics and Professional Responsibility](#) released July 29, 2024 its first formal opinion (512) covering the growing use of generative artificial intelligence (GAI) in the practice of law
 - https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf
- Ky Ethics Opinion KBA E-457
 - The Ethical Use of Artificial Intelligence ("AI") in the Practice of Law issued March 15, 2024
 - [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_\(part_2\)_/kbae457artificialintelligenc.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)_/kbae457artificialintelligenc.pdf)

Status of Bar Association Task Forces

- Texas – Guidelines Pending
- California – Guidelines Published November 2023
- Florida – Advisory Opinion Published November 2023
- Louisiana – Guidelines Pending
- New York – Guidelines Pending

Source: The Ethics Inside AI, ABA Webinar, August 6, 2024

MIT Task Force on Responsible Use of Generative AI for Law

- The purpose of this Task Force is to develop principles and guidelines on ensuring factual accuracy, accurate sources, valid legal reasoning, alignment with professional ethics, due diligence, and responsible use of Generative AI for law and legal processes. The Task Force believes this technology provides powerfully useful capabilities for law and law practice and, at the same time, requires some informed caution for its use in practice.
 - <https://law.mit.edu/pub/generative-ai-responsible-use-for-law/release/9>

Cite as: Greenwood, D. (2023). Task Force on Responsible Use of Generative AI for Law. *MIT Computational Law Report*. Retrieved from <https://law.mit.edu/pub/generative-ai-responsible-use-for-law>

QUESTIONS