



**iag global**

International Advisory Group

# AI REPORT

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# FOREWORD

In an era marked by rapid technological growth, Artificial Intelligence (AI) has emerged as a disruptive force with the potential to revolutionize various sectors, including industry and science. However, alongside its revolutionary capabilities, AI raises complex legal and ethical international questions. This report aims to provide a global perspective on AI regulations, and to examine the distinct legal situation in different countries. This report briefly delves into the multidimensional world of AI regulations, seeking to answer essential questions that define the current global landscape.

Each country has taken a different approach to AI regulation, influenced by cultural, political, and economic factors. From the data protection-centric approach of the European Union's GDPR to the AI development-oriented policies of nations like China. This report presents the diversity of global AI regulations and their impact on the worldwide AI ecosystem.

Second, and one of the most controversial matters raised in the report, is the ownership of AI-generated works—whether artistic, literary, and/or others. The ownership approach varies significantly from one country to another. The following report provides insights on how intellectual property rights are interpreted and allocated, clarifying the implications for AI developers, content creators, and society as a whole.

The report also addresses the question of legal and economic risks associated with the use of AI during day-to-day duties. Across nations, businesses are navigating through different legal landscapes while integrating AI technologies. This report outlines how various legal frameworks address issues of liability, data protection, and workforce transformation. Moreover, it includes real-world examples from multiple jurisdictions illustrating the challenges and opportunities faced by different countries.

Finally, authors present their experience in the use of AI within their legal profession, considering possible threats and opportunities. Legal practitioners worldwide are adopting AI for various purposes, from document review to predictive analytics. By examining the experiences of legal professionals in different countries, this report provides a brief and comparative analysis of the benefits, risks, and ethical considerations associated with the implementation of AI into legal practice.

The following report will be helpful for any legal professionals and IT entrepreneurs, as well as for anyone interested in trying to navigate the complex world of AI in our interconnected global society.

# AUSTRALIA

## **"Regulating AI. Is it possible?" - Are there any legal regulations on Artificial Intelligence in Australia? What are the current and/or expected legislative directions thereof?**

There is no specific legislation in force in Australia which is designed to regulate artificial intelligence (AI). There have been some steps taken by the Australian government to create voluntary frameworks and most recently public consultations to assist in the drafting of legislation.

In 2019 the Australian Department of Industry, Science and Resources established the AI Ethics Framework which includes core ethical principles which businesses may adopt in order to build public trust and consumer loyalty toward AI-enabled products and services. This framework is voluntary.

The Department of Industry, Science and Resources has also commenced a consultation process via the Safe and Responsible AI in Australia discussion paper. The discussion paper highlights two types of legislation that may have the effect of regulating AI:

1. 'general regulations' which have the effect of governing AI depending on its application (for example, the use of personal information in the development of an AI system would be regulated in part by the Australian Consumer Law).
2. 'sector-specific regulations' which have the effect of governing AI when it is used in a particular sector (for example, AI when used as a medical device as defined in the Therapeutic Goods Act 1989 (Cth)).

Public consultations closed on 4 August 2023, and further legislative steps are expected once the findings are published.

## **"Is AI an author?" – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

AI is not recognised as an author under Australian copyright laws.

In order for a work to obtain copyright protection an author must contribute "independent intellectual effort". As an AI-system is designed, supervised and otherwise in the control of humans (i.e. lacking independence) it is unable to be an author of copyrighted works. However, a human who uses AI or creates an AI-system to create a work may be able to obtain copyright protection.

Determining who owns the right to works created by AI is yet to be addressed by legislators or the courts.

**“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients’ businesses?**

There are three key business risks associated with AI use:

1. Errors – in the context of coding, it was found that developers with access to an AI assistant were likely to produce less secure code than those who wrote the code manually. Errors in coding or automated processing can create a significant financial crisis or can effect the efficiency of software.
2. Misinformation – AI software produces information based on patterns that have developed from the data the software has been fed, and many AI tools cannot verify information.
3. Privacy risks – the main privacy concerns surrounding AI is the potential for data breaches and unauthorised access to personal information.

Without proper AI regulation, the person using AI or the AI-system's owner, creator or controller is likely to be liable for mistakes, errors or the fall out from privacy risks. It is important that businesses have in place proper procedures and policies to limit the damage AI may cause to a business.

**Legal AI – a threat or an opportunity for legal business? Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

The risks present for businesses are present for the legal professionals using AI. However, additional risks are relevant and like every nascent technology, a lawyer must exercise caution when using AI. These additional risks may include:

1. Legal Privilege – by disclosing information to an AI-system, especially one that is open source (such as ChatGPT), a lawyer may disclose confidential or privileged information;
2. Lack of discretion – AI-systems are created by humans with biases and are obliged to follow computational rules, this means they lack the requisite human discretion required in order to make judgments or decisions; and
3. Errors, misinformation and liability – AI-systems often provide factually errant information. This information is also often out-of-date and not peer-reviewed (i.e. it relies on sources of information that may be incorrect, inaccurate or flat out wrong). A lawyer that fails to correct errant information will be liable for those errors.

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# AUSTRIA

## **"Regulating AI. Is it possible?" - Are there any legal regulations on Artificial Intelligence in Austria? What are the current and/or expected legislative directions thereof?**

The Austrian government recognized the potential of AI technologies and published the "Artificial Intelligence Mission Austria 2030 (AIM AT 2030)" as early as 2021. As of now, however, the Austrian legal framework does not contain (general) legal provisions that deal with the regulation of AI systems. Nonetheless, isolated (often indirect) approaches to regulating specific AI applications can be found, such as in the "Automatisiertes Fahren Verordnung – Automated Driving Ordinance" (essentially for testing purposes). Within the "Forschungsorganisationsgesetz – Research Organization Act", a specific legal basis for processing personal data relating to the transfer of technology and knowledge can be found, provided that the data and the underlying technology cannot be separated (as it is often the case with non-symbolic AI).

Likewise, national courts have already dealt with various AI cases, as shown by a recent decision by the Austrian High Court dealing with a legal tech company providing legal services using AI.

At the European level, the GDPR (which is also directly applicable in Austria) contains provisions on automated decision-making including profiling, thus indirectly covering certain AI systems. The European Commission has also presented several proposals to regulate AI systems, which are expected to be adopted soon: the AI Regulation, the Directive on Non-Contractual Civil Liability rules to Artificial Intelligence, and (indirectly) the Directive on Liability for Defective Products. In view of the technological progress and public reception, we expect to see an increased number of national and European legislative measures as well as court actions.

## **"Is AI an author?" – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

To be eligible for copyright protection pursuant to Austrian copyright law ("Urheberrechtsgesetz – UrhG"), a work must constitute a peculiar, intellectual creation and must be assigned to a work category of the UrhG. If the result of an AI is presented in natural language, it could – at first sight – be assumed a literary work. Peculiarity means that the work must have an individuality and originality resulting from the personality of the creator and the inner essence of the intellectual creation, meaning in consequence that the process must start from a human being. It is discussed that if a human being operates the AI, the input could constitute a work within the meaning of the UrhG under the required criteria as long as the origin lies in the action of a human being; thus, the input must already be a peculiar, intellectual creation – insofar as the human being only provides a brief input and the AI system, however, provides a very detailed result, the output of the AI system may not be considered the origin of a human creation because no independent thought process was at the basis. It is therefore necessary that the input itself already represents the result of an intellectual creation, whereby the individuality and originality are expressed. Despite extensive discussion in the literature, however, many questions await to be answered by the competent courts.

## **“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients’ businesses?**

The implementation of AI systems gives rise to numerous emerging problems, especially in the fields of warranty and liability law, leading to considerations in the literature on the development of a new strict liability. With regard to Large Language Models (LLM) that may be used by companies to gather legal advice, hallucinating poses a major problem that may lead to severe consequences for the company using such systems. From a data protection perspective, data-driven AI models require enormous amounts of (also) personal data to function properly. Ensuring that this data is processed in line with the legal framework (especially regarding the principles of data processing as defined in Art 5(1) GDPR and the exercise of data subject rights), may be considered a major challenge.

Regarding copyright law, the use of LLM may incidentally lead to a violation of copyrighted works that were used as training material. Biased decisions of such systems, based on insufficient training data, may also infringe the rights and freedoms of individuals, leading to a careful consideration of the use of such systems.

## **Legal AI – a threat or an opportunity for legal business? Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

Provided that suitable and legally secure models are available, it is conceivable that in the future these models will be able to support lawyers in everyday legal work, both in literature and case law research and in the preparation of draft contracts and pleadings.

We are also constantly looking at which legal tech tools are being developed and which possible applications are conceivable for us. In the medium term, specialized applications might replace "manually performed" due diligence in terms of their ability to analyze large-scale unstructured data. This will result in a win-win situation: lawyers will be largely relieved of the routine task of data entry, which will lead to efficiency and time benefits. At the same time, clients' costs are reduced. However, not least in view of possible hallucinations of the system, the lawyer must always retain control as to whether the results generated by the AI are deemed to be correct and complete. It must also be noted that intelligent data processing has already existed in the day-to-day work of law firms for more than 30 years (e.g. speech recognition, automated translations or spell checks). What we are currently experiencing, however, is that the level of complexity and performance of intelligent applications has increased exponentially in the last five years.

We are convinced that in the near future more products will appear that are tailored to the specific needs of law firms, such as personal assistants, project management tools or strategy planners. However, their use requires a legally sound framework, which has yet to be created; it remains to be seen whether the AI regulation currently being negotiated in the trilogue procedure may bring relief. In ten years' time, however, the profession of lawyer will no longer be comparable with today's job description in some areas.

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# CHINA

## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in China? What are the current and/or expected legislative directions thereof?**

China is now world leader in the number of AI-based patent applications. Policy basis for the sector is the 2017 Plan (Roadmap) for the Development of New Generation Artificial Intelligence (Guo Fa [2017] No. 35), 国务院关于印发《新一代人工智能发展规划》的通知(国发〔2017〕35号). The Roadmap addresses diverse application areas of AI, from military use to individual IoT applications and smart cities.

There is no comprehensive AI-related law in China at this stage, but several individual regulations have been issued in 2023, including Administrative Provisions on Algorithm Recommendation for Internet Information Services, Provisions on Management of Deep Synthesis in Internet Information Service and Provisional Provisions on Management of Generative Artificial Intelligence Services.

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

We have to differentiate between patentability issues and questions of copyright.

In Chinese Patent Law, invention is a "new technical solution brought about for a product, method or improvement thereof". The technical nature of the invention is an indispensable prerequisite for the grant of a patent. Scientific inventions, rules and methods for intellectual activities are not patentable. "Intellectual activities" also include "computer programs that merely rely on an algorithm or rules of arithmetic, computer programs per se, or computer programs recorded in media, or rules and methods for games" (PRC Patent Examination Guidelines).

However, computer programs, software or algorithms can be patentable if they solve technical problems and have a technical effect. Since February 2020, a new section in PRC patent examination guidelines is in force, providing additional guidance in assessing the patentability of computer-implemented inventions, incl. positive and negative examples for AI-related patent applications.

An Inventor is understood by Chinese Patent Law as any natural person who makes a creative contribution to the essential features of an invention. The applicant for a Chinese patent can be an individual inventor or the employer in the case of employee inventions; or several persons, companies, organizations, or institutions in the case of joint inventions. AI itself cannot be named as inventor under current Chinese law. If AI is used during development work, the result can be exploited by the owner of the AI.

AI as computer software can be protectable under the PRC Copyright Law. Only natural persons, legal entities and other organizations can be recognized as authors of works under the Chinese Copyright Law.



In a decision of April 2019, the Beijing Internet Court ruled regarding a report generated by the Wolters Kluwer China Law & Reference software, among other things, that while the software itself cannot be the author of the report, the owner of the AI can be, provided that the latter makes changes, additions, etc. to the report.

**“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients’ businesses?**

Contested issues discussed in Chinese legal literature at present include the conclusion of contracts through smart network devices, and the attribution of declarations of intent (legal capacity of the AI?). The new Chinese Civil Code (in force as of January 1, 2021) does not contain any express provisions in this respect. Possible solution approaches discussed in China include an analogy to legal persons, or the creation of a separate category of “ePerson” by the legislator.

When it comes to liability, various types of liability are currently being considered (contractual liability, liability in tort, product liability, liability under traffic law). New challenges also exist for the insurance industry. Manufacturers of smart devices, including medical smart devices, are dealing with liability issues when drafting general terms and conditions, or individual contracts for the Chinese market.

There is currently (still) no independent “data ownership” in China, only ownership of physical data carriers is possible, but local legislation (e.g. in Shenzhen) appears to embrace the concept of data property rights.

**“Legal AI – a threat or an opportunity for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

The general attitude to AI in Chinese legal circles is very positive. Beijing Internet Court has what it claims to be the world's first “AI judge,” designed to improve the quality and efficiency of court work by taking over repetitive routine tasks (e.g., accepting cases, and providing navigation assistance when using the online court platform). Wider use of AI-automated processes is planned in the Chinese judicial system. We also expect law firms in China to increase the use of legal AI. Lawyers may benefit from enhanced database applications and other means of legal research, which may contribute to the transparency of the Chinese legal environment. However, proficiency in Chinese will be necessary for many of these applications.

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# FRANCE

## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in France? What are the current and/or expected legislative directions thereof?**

Currently in France, the General Data Protection Regulation (GDPR) is the main regulatory safeguard from the illicit artificial intelligence systems as they collect users' personal data.

Thus, European data protection agencies have released guidelines on the appropriate and lawful use of AI. The French Data Protection Authority (CNIL), for instance, provided organisations with a self-assessment guide for artificial intelligence systems. It is an analysis grid which they can use to assess by themselves the maturity of their artificial intelligence systems with regard to the GDPR.

However, there is the Artificial Intelligence Act which is a regulation proposed by the European Commission in April 2021, and now needs to be reviewed and adopted jointly by the European Parliament and the Council of the EU in order to be applicable.

The "trialogue" (European Parliament, Commission and Council) on the Artificial Intelligence Act has been meeting since 18 July 2023 to reach a compromise on the draft legislation. This negotiation phase could last several months.

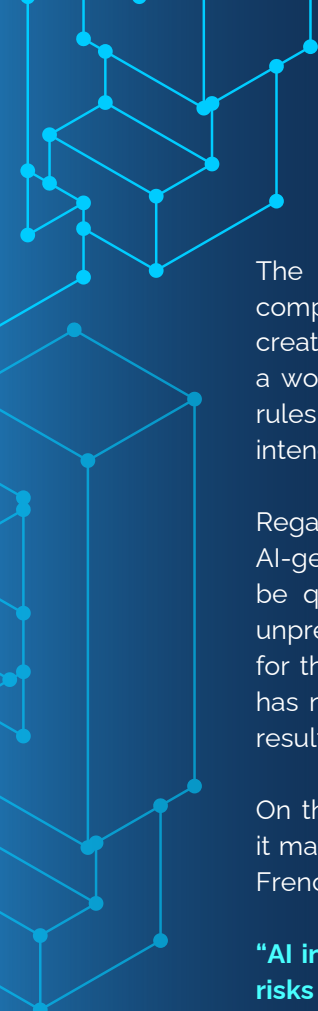
Most of the provisions will be applicable another 24 months later, during which time companies and organizations will have to ensure that their AI systems comply with the requirements and obligations set out in the regulation.

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

French copyright law protects "*works of the mind*" if they are "*original*". The courts consider a work to be original when it bears "the imprint of its author's personality", resulting from free and creative choices. A machine or a software cannot therefore be recognised as the author of a work within the meaning of the French Intellectual Property Code.

Among the creations resulting from processing by artificial intelligence, we could schematically consider two types of "AI creations". The first, computer-assisted creations, are independent of the software used, with artificial intelligence acting merely as a tool in the creative process supervised by a human being. The second, creations generated spontaneously by artificial intelligence, are the result of the software, without any decisive human intervention at the time of creation.

In the case of AI-assisted creations, where AI is used as a simple tool, it is possible to consider that the mark of the author's personal intervention remains. The creation could then be elevated to the status of a work and protected by copyright.



The Paris Judicial Court ruled on 5 July 2000 that "computer-assisted musical composition, where it involves human intervention of the author's choosing (...) leads to the creation of original works"; and the Bordeaux Court of Appeal, on 31 January 2005, "that a work of the mind, even one created using a computer system, may benefit from the rules protecting copyright, provided that it reveals even in a minimal way the originality intended by its creator".

Regarding creations generated spontaneously by an AI, the question arises as to how AI-generated content obtained from a human being giving its instructions should be qualified. If AI-generated content relates solely to raw results, these are in fact unpredictable for the user since all it takes is one or two different keywords for the AI-generated content to be drastically different. From the moment that the user has no control over the results generated by the AI, it is difficult to consider that these results reflect his/her personality.

On the other hand, if the result generated by AI is subsequently reworked by the user, it may be protected by French copyright law if it meets the originality requirement of the French Intellectual Property Code.

**"AI in business – is this the end of human skills?" - What types of legal and economic risks associated with the use of AI you recognize in your clients' businesses?**

While the benefits of AI are undeniable, many ethical and legal issues are being raised by the arrival of this new technology. Indeed, there are many emerging risks: protection of personal data, breaches of privacy, misinformation, protection of copyright, legal liability of users, etc.

In the ChatGPT case, several obligations arising from the GDPR were not complied with, such as insufficient information for users, a lack of a legal basis for data processing, processing of inaccurate data and the absence of a filter to check the age of users. After receiving no fewer than five formal complaints, the French Data Protection Authority (CNIL) has decided to open an investigation into the ChatGPT artificial intelligence system.

The use of AI may give rise to acts of counterfeiting based on the unauthorized reproduction of protected content to create the database required for AI to operate. On this point, it should be remembered that Article 4 of Directive 2019/790 on copyright and related rights (transposed in France by Article L122-5-3 of the French Intellectual Property Code) provides for a new exception in favor of data mining concerning "copies or digital reproductions of works lawfully accessed (...) for the purpose of text and data mining carried out by any person, whatever the purpose of the search".

The directive stipulates that such an exception only applies on condition that there is an opt-out possibility for rights holders in AI systems, enabling them to reserve the use of their works and other protected content. Uncertainties remain, however, as to the effectiveness of such an opt-out mechanism, given the lack of transparency in the operation of AI systems.

**“Legal AI – a threat or a chance for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

The use of artificial intelligence (AI) technologies in the legal field is attracting growing interest from law firms. AI is ideal for efficient information retrieval, providing access to a considerable amount of knowledge while saving time in the research process.

To this end, we use the Doctrine platform, which can also be used to check the validity of the opposing party's legal arguments, via the Document Analyzer tool, to detect the legal sources cited in a legal document and make them instantly clickable to consult their content. In the event of a dispute, the opposing party's legal reasoning becomes easily accessible, allowing instant verification of the applicability and interpretation of the sources cited.

However, we do not use Chat GPT as this tool presents risks in terms of confidentiality and data security, as such data may be intercepted or compromised during transmission. Indeed, it is important to consider the risks associated with the collection and storage of sensitive legal data when using ChatGPT. We are aware that legal data collected and stored by ChatGPT may potentially be exposed to cyber-attacks or data security breaches, which can lead to serious consequences, such as the disclosure of confidential data or the loss of important data.



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# GERMANY

## **Regulating AI. Is it possible?" - Are there any legal regulations on Artificial Intelligence in Germany? What are the current and/or expected legislative directions thereof?**

As of today there are no specific legal regulations addressing the use of artificial intelligence (AI) in Germany.

However, the European Union (EU) is currently developing a draft law on artificial intelligence. The draft refers to high-risk AI systems, emotion recognition systems, biometric categorization systems and AI systems generating or manipulating images, sounds or video contents (so-called "deepfakes"). In the future there will be an EU-wide regulation especially on the following aspects: how to place AI on the market, the use of AI systems, prohibitions on certain practices, requirements for high-risk AI, obligations for operators, transparency requirements and rules on market monitoring and surveillance. But that's still a long way off.

However, there are already EU-wide regulations that regulate the use of AI indirectly. This concerns in particular the processing of personal data (General Data Protection Regulation - GDPR) and the sharing of non-personal data (Data Governance Act - DGA).

## **"Is AI an author?" – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

German law does not contain any explicit provisions regarding the question whether or not AI can be identified as an author of a work protected by copyright.

According to the current legal situation in Germany, AI cannot qualify as an author under German copyright law. German copyright law only protects intellectual creations made by human beings, not by machines or animals.

Whether the increasing importance of AI would justify a change of the current copyright law, is still under discussion. The basic question, however, whether non-human beings could be seen as an author, is not new. The so called "monkey selfie copyright dispute" found a broad echo in Germany. The authorship of an ESA satellite for outer space pictures is also frequently discussed.

Therefore, it remains to be seen if the rise of AI will change one of the fundamental concepts of German copyright law and will let AI benefit as an author from copyright protection in the future.

## **"AI in business – is this the end of human skills?" - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

Despite all opportunities artificial intelligence offers for companies, the risks of AI have recently come into focus of our clients. We recognize that our clients are particularly concerned about privacy and data protection issues.

The use of AI is often provided by companies from the US. Therefore, companies in Germany are worried that its use might violate GDPR regulations. In most cases it is not sufficiently transparent how AI companies use the data provided by its users. Especially companies that work with customer data continue to use "proven" IT solutions and refrain from using AI for the time being.

Based on our observations, copyright risks and liability risks play only a minor role for companies in Germany. However, many companies have so far used AI only to optimize their internal processes, and refrain from delivering AI-generated work results to their customers without further checks. Therefore, liability risks towards third parties (customers) are lower anyway. However, the economic and legal risks will change, if businesses will use AI to provide services directly to customers in the future.

**"Legal AI – a threat or an opportunity for legal business?" Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

In our experience, the use of AI in the German legal market is limited to specific fields of law. Where previously routine M&A/due diligence work was delivered by many associates, AI provides solutions to have these activities completed more efficiently and accurately. Considering the demographic development and the lack of specialists this aspect will become even more important in the future.

Futhermore, some providers have started offering AI-supported contract review in Germany. However, these services are still limited to standard contracts such as non-disclosure agreements and commissioned processing agreements. Some U.S. providers already offer more sophisticated services, but only on the US market and not on the German market.

Beyond these specific fields of law, AI does not yet play a major role in the day-to-day business of lawyers in Germany. Court documents, legal opinions, letters to other parties, etc. are regularly created without AI by using legal databases, research tools, automated forms and other "basic" IT Solutions.

However, the German legal market is currently developing and changing rapidly. Large German and international law firms heavily invest in the field of digitization. Some of the big players even establish separate companies specialising in AI and digital solutions. This makes it very exciting to see what impact further technological developments will have on the German legal market.

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# HUNGARY

## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in Hungary? What are the current and/or expected legislative directions thereof?**

In Hungary, the national strategy until 2030 was announced in September 2020, but no special regulation so far.

Furthermore, the National Data Assets Agency (NAVÜ), which is responsible for the management of Hungarian data assets, began its operations, and also the AI National Laboratory (MILAB) was launched, which focuses its activities on artificial intelligence-related R&D and innovation. The AI Innovation Centre complements the activities of these institutions.

The national strategy also set as an important goal, that by 2030 one million people would get a well-paying job with the help of artificial intelligence.

Based on the above, the main goals of the Hungarian national strategy for AI must be developed in the future in accordance with fundamental rights and democratic and national values, to ensure the trust of the public in technology.

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

Generally, Hungarian intellectual property laws are established to protect works created by human authors, and AI does not fit the traditional definition of a human author.

AI technologies are being integrated into various aspects of creative work (like software development, graphic design, marketing and advertising, content creation, video and animation) to enhance productivity, streamline processes, and create innovative solutions.

In the meantime, Hungarian legislation has provisions for "free use" allowing limited use of copyrighted materials for purposes such as scientific research or education. Whether AI-generated content falls under free use can be a matter for legal interpretation.

## **“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

### Legal risks:

#### *Intellectual Property:*

As mentioned above, companies using AI may face legal disputes over intellectual property rights, including patents, copyrights, and trade secrets.

#### *Liability:*

Determining liability when AI systems make errors or cause harm can be challenging.

#### *Regulatory Compliance:*

Some of our clients' businesses are subject to specific regulations that were not originally established with AI in mind (e.g., healthcare, education, retail). Ensuring compliance with existing and emerging regulations can be a significant legal challenge.

*International public law:*

International public law risks may also arise. If the use of AI for weapons is poorly regulated, it could lead to a loss of human control over dangerous weapons and even generate international conflict.

Economic Risks:

*Implementation Costs:*

Companies may need to invest substantial resources in advance, however, the return on such investment may not be guaranteed.

*Job Displacement:*

Automation through AI can lead to the rearrangement of workforce in certain industries.

*Technical Failures:*

AI systems can encounter technical failures, leading to breakdowns and associated costs. System reliability is very important to mitigating these risks.

**“Legal AI – a threat or an opportunity for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

Our law firm started to use AI for document review, legal research, and contract analysis. AI is mostly used by our colleagues to get inspiration and serves as a kind of kick-off for legal reviews. The risk of using AI in the legal industry is the misleading interpretation of legal regulations by AI, which is why we do not use AI in our litigation practice.

The use of AI provides our law firm with various benefits, like efficiency, meaning that AI can automate repetitive and time-consuming tasks like document review, contract analysis, and legal research, allowing us to focus on more complex and strategic aspects of our work. AI-powered legal research tools can quickly analyse vast amounts of legal data, helping lawyers find relevant case law, statutes, and precedents more efficiently. However, it is important to double-check all legislative assumptions provided by AI.

Big data-driven legal decisions are already happening, but for the time being more in areas outside the legal sphere, such as in business, marketing campaigns, or even in the mechanisms of banking decisions.

A very useful use of AI would be the possibility of so-called due intelligence (or due diligence). This term refers to the process of scanning large amounts of text by machine to shed light on so-called "non-standard" patterns in various legally relevant problems. Examples include the use of termination clauses, the exploitation of non-standard liability clauses, etc. The main advantage of the method is that it saves a huge amount of mechanical work - this type of "robotic" activity is no longer only humanly possible. But for now, AI cannot provide us with this kind of help.

Finally, please note that the above material is for information purposes only and that you should use the information at your own risk. If you have any specific questions on the subject, Kántor, Szilasi, Sárközy will be happy to provide more detailed information.

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**“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in India? What are the current and/or expected legislative directions thereof?**

Technically speaking, it appears regulating AI is possible and is in fact required to certain extent without obstructing the innovation. The issue of having an effective regulation over AI is actively being pursued by the Indian Government along with various stakeholders.

Presently, India does not possess any single codified law exclusively for the use of AI, and the subject is being insufficiently governed by different legislations in scattered manner. The Information Technology Act, 2000 (“IT Act”) along with the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 seeks to safeguard sensitive personal information held digitally by the businesses. Further, the Information Technology (Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules 2013 has created obligations on organisations for reporting cybersecurity incidents to CERT (Computer Emergency Response Team) which is tasked to take suitable remedial actions. In addition, the automated functioning of AI may attract risks of violation of laws due to intellectual property rights infringement, anti-competitive practices, infringement of fundamental rights of digital citizens, etc.


Further, there are various bills in the legislative pipeline, pending presentation before the Parliament in India which shall indirectly govern the AI within the country.

The closest such legislation in India that indirectly governs AI use is the recently enacted Digital Personal Data Protection Act, 2023, which is yet to be implemented. This comprehensive law outlines privacy safeguards, data processing constraints, security measures against data breaches, and protective provisions for vulnerable users, such as children. It envisages and empowers Government to create a sandbox for artificial intelligence.

In addition, the Ministry of Electronics and Information Technology (MEITY) has also expressed its intent to regulate AI, with the forthcoming Digital India Act which is in the making and will replace the existing IT Act. MEITY has also constituted a few committees and released their policies with challenges and recommendations.

The Securities and Exchange Board of India (SEBI) had issued circulars outlining reporting requirements related to AI and Machine Learning applications and system for capital markets.

The Reserve Bank of India (RBI) had introduced a regulatory sandbox within a well-defined space and duration where the financial & banking sector regulator will provide the requisite regulatory guidance, so as to increase efficiency, manage risks and create new opportunities for consumers, and test the use of innovative technologies like AI in the financial & banking sector.



The Government of India's national policy making & planning organisation Niti Ayog has developed a set of Seven Responsible AI Principles which shall guide ethical and responsible AI deployment in India. These Principles include safety & reliability, equality, inclusivity and non-discrimination, privacy and security, transparency, accountability and the protection and reinforcement of positive human values.

India is a member of Global Partnership on Artificial Intelligence, which is an international, multi-stakeholder initiative to guide the responsible development and use of AI, grounded in human rights, inclusion, diversity, innovation and economic growth.

The sentiments around these initiatives and ongoing legislative process seem to acknowledge the need for having optimum compliance oriented yet intensive framework for AI technology to promote innovation while protecting digital citizens from potential harm from AI. It is likely that India may not have a single comprehensive law to govern AI which will continue to be governed by many subject legislations like data protection laws and sectoral regulations.

### **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

The question whether AI is an ‘author’ and who would own the works created by AI are evolving legal issues within the domain of intellectual property laws. In India, the fundamental concept of copyright is pillared on the principle that copyright protection is extended to works emanating from human creative effort. Currently, the Indian Copyright Act does not directly address the issue as to who shall be the author of the works created by AI.

In situations where humans engage in the creative process by configuring inputs, parameters, or algorithms that guides the AI output, the question of ownership of AI-generated content becomes considerably intricate. Such individuals who are significantly involved in contributing to the AI creativity could be said to potentially hold specific copyright interests.

Nonetheless, a critical challenge persists in that AI generates work by learning from extensive datasets, giving rise to concerns about novelty and authenticity of such works and involve risk of copyright infringement.

To confront these challenges, it is imperative to introduce amendments to the Indian Copyright Act, as it lacks explicit provisions for addressing the aforesaid concerns. A clear guideline should ascertain liability in cases of copyright infringement related to AI-generated work and distinguish between deliberate human infringement and unintentional or algorithmic infringement.

### **“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

AI can certainly not be the end of human skills in the near future because time and again there are incidents all around the world questioning the accuracy and reliability of the AI generated work. In many cases, AI has been seen hallucinating and inventing things on its own which do not exist in real world. In addition, AI does not possess the analytical and critical skills which are the most important skills in order to run business.

Though AI has many potential benefits in terms of basic functions across different sectors, AI poses various challenges and risks in terms of compliance with ethics, ensuring accuracy, maintaining accuracy, data privacy and confidentiality, preventing infringement and security threats and discrimination.

Since AI can operate independent of its coders or programmers through its self-learning capabilities, this could potentially harm and disrupt the market without much human interference and may be difficult to curb. The significant issues in this scenario is the accountability for such acts and liability in relation thereto.

**“Legal AI – a threat or an opportunity for legal business?” Do you use Artificial Intelligence in your legal practice? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

Legal AI can be both a threat as well as an opportunity depending upon how it is embraced and integrated into the legal profession in future.

The adoption of AI for legal works such as contract review, legal research, translation, etc. may seem to deliver rapid results and streamline legal processes, and in turn reduce the time investment typically required by lawyers. It also portrays the potential of simplifying laborious and repetitive tasks. However, this is marred by inherent challenges in using AI in terms of compliance with ethics, ensuring and maintaining accuracy, data privacy and confidentiality, preventing infringement and security threats and discrimination.

The legal profession involves a laborious process of understanding the client's problems, fact finding, in-depth analysis of facts and interpretation and application of law which is based on legislations as well as judicial precedents and final delivery of accurate and correct legal advice to enable business.

AI in its current form seems to be lacking at every step of this process. At the outset, one should know what to ask AI to do as only a correct input can lead to correct output. In legal profession, lawyers sit with clients to first understand their problems, which sometimes is not even known to them. It is extremely important because knowing the correct and complete facts forms the basis and significant portion of legal work, which AI seems to be not good at. Therefore, checking the accuracy of AI generated works becomes a task in itself. Further, the law is to be interpreted as per the rules of interpretation which are to be appropriately applied to arrive at a proper legal advice. AI has been seen hallucinating in this aspect, particularly while reading and quoting judgements. This can lead to wrong and even misleading legal advice. In such cases, the issue of responsibility and accountability also arises. Hence, AI as of now remains incapable of handling strategic decision-making and complex legal analysis and advice.

Certainly, AI cannot replace lawyers, but it can complement the profession with AI driven applications which may be tailor-made to do specific tasks using specific authenticated database base subject to accuracy and relevance checks.

The above is besides the critical issues relating to determination and fixing of professional liability and regulation of profession by the Bar. We do not use AI in our profession as we encountered the above critical issues during trial phases.

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## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in Italy? What are the current and/or expected legislative directions thereof?**

Although there are no real legal regulations on Artificial Intelligence in our country, in the last 5 years Italy experienced a significant production of legal documents by various authorities/entities, aimed at outlining a useful framework for such regulations. The most relevant acts are the following:

1. The ‘White Paper on Artificial Intelligence in the service of citizens’, published by the Italian Agency for Digitalization, providing an initial overview of the possible use of AI in connection with services and public administration.
2. The document ‘AI for Future Italy’ drafted by the National Laboratory of Artificial Intelligence, focusing on scientific and industrial research needs and problems of education, planning and joint activities between institutions and industry.
3. The ‘National Research Program 2021-2027’ of the Ministry of University and Research, focusing on several areas of interest, including, for the first time, Artificial Intelligence.
4. The ‘National Strategy for Artificial Intelligence’, identifying 6 priorities: i) AI for more competitive businesses; ii) AI for a more modern public administration; iii) AI for conscious and empowered citizens; iv) creation of competent professionals in all fields; v) better regulation the use of data; vi) development of a program for resource investment and governance;
5. The ‘Italian Plan 2025’, a comprehensive strategy presented by the Ministry of Innovation outlining 20 innovation actions, including the design and testing of Artificial Intelligence solutions applied to administrative proceedings and justice, in consistency with European principles.

With specific reference to European principles, Italy is awaiting the outcomes of negotiations between European institutions in connection with the AI Act, the future EU Regulation on Artificial Intelligence.

## **“Is AI an author?” - Who owns the right to works created by Artificial Intelligence from a legal perspective?**

Italian law/practice does not currently contain rules, regulations or case law decisions specifically relating to copyright in artificially-generated works.

Italian Copyright law does not expressly require that a work has to be created by a human to be protected by copyright; however, this can be inferred by a number of provisions, including the provision on the duration of copyright protection (which lasts 70 years from the death of the author) and the requirement of ‘creative character’, according to which, in order to enjoy copyright protection, a work must be the result of a personal choice of the author in the expression of an idea and must reflect his/her personality.

In light of the above, it is hard to believe that an AI-generated work can be protected under copyright in Italy.

However, in case of artificially-generated works involving a certain degree of human intervention, protection under copyright law is conceivable and the copyright owner can be identified in the natural person whose personality and intellectual efforts are reflected in the work.

In the context of copyright and AI, another interesting aspect is the regulation of the use of other authors' works by Artificial Intelligence. Although Articles 70-ter and 70-quater of Italian Copyright Law, implementing in Italy Articles 3 and 4 of the EU Copyright Directive, introduced the text and data mining (TDM) exceptions to copyright, which may be relevant for the training of AI systems, the issue of copyright infringement by automated systems is likely to become increasingly relevant in the near future.

### **“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

In our opinion the main risks that our clients' businesses face when using AI can be summarized as follows:

- False or inaccurate outputs: as known, various AI applications have been guilty of a number of glaring errors, which cannot help but affect the reputation of the businesses using them.
- Model and output bias: AI bias may depend on errors in the data used to train the system or on errors in the algorithm used to process such data. A training based on such data that do not take into account changes in the market or consumer preferences or on data belonging to a specific demographic group could lead to the development of bias and, consequently, to biased results.
- Privacy and data protection: considering the efficiency of the Italian Data Protection Authority in identifying automatic forms of data processing contrary to GDPR, companies that make use of chatbots or other AI systems without training their employees in relation to privacy risks exposing themselves to the risk of sanctions.
- Consumer protection: in Italy, the use of Artificial Intelligence to create bots capable of generating clicks or false views or untrue reviews to illicitly promote one's business represents a violation of the Consumer Code and exposes companies to sanctions by the Antitrust Authority.
- Intellectual Property and Copyright: on this point we refer to the considerations set out above on copyright in AI generated works and on violations of works carried out by AI.
- Cybersecurity and computer crimes: one of the main risks associated with the use of AI systems is the possibility that such systems are compromised by hacking techniques, such as prompt injection.

**“Legal AI – a threat or an opportunity for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

Although we have not used Artificial Intelligence in our legal practice yet, we can already glimpse the risks and benefit of using AI as lawyers.

Benefits are easy to guess. First of all, time and costs savings: many lawyers' time consuming activities, such as search for legal precedents, filling out standard documents and some due diligence activities, may be profitably performed by Artificial Intelligence.

Artificial Intelligence can also provide help in analyzing law firm data in order to identify areas for improvement, drafting content for law firm websites and keeping legal practitioners updated on regulatory changes and industry news.

With specific reference to the risks, the main ones appear to be related to the reliability of AI's results and findings: as mentioned, not all automated decisions are logical and correct and this would have an impact also on the reliability and reputation of the lawyers who make use of AI.

Another critical aspect regards data protection and confidentiality: feeding AI algorithms with personal data or information covered by attorney-client privilege may result in a violation of GDPR and of Attorneys' Code of Ethics.

Finally, the relational, empathic component is of essence in the legal profession: the use of automated systems such as chatbots in the practice of law runs the risk of losing the human relationship with the client.

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# PACIFIC ISLANDS

**“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in the Pacific Islands? What are the current and/or expected legislative directions thereof?**

Most Pacific Islands do not have AI-specific regulation.

Several Pacific jurisdictions are considering the development of regulations, including PNG, Vanuatu, Solomon Islands and Fiji. Beyond governments identifying the need for AI regulation, there has been limited steps toward institution regulation.

**“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

The drafting of copyright laws across the Pacific preclude AI from being an author of a copyrighted work.

Relevantly Tonga, PNG, Vanuatu, Samoa and Fiji stipulate that a natural person, physical person or an individual may be an author. While, in Solomon Islands an individual or body corporate may be deemed an author.

**“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

The risks are the same as for Australia.

**Legal AI – a threat or an opportunity for legal business? Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

The risks are the same as for Australia.

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## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in Poland? What are the current and/or expected legislative directions thereof?**

Currently, there are no specific laws in Poland that regulate the use of Artificial Intelligence (AI). However, as a member of the European Union (EU), Poland is required to follow AI-related regulations and guidelines set at the EU level. The European Commission has been actively involved in creating these regulations and policies, which will influence how AI technologies are implemented in Poland.

A significant development occurred in April 2021 when the European Commission introduced a legal framework for AI in the EU (AI Act). This framework assesses and categorizes AI systems based on the risks they pose to users, with different risk levels leading to varying legal obligations. Once implemented, this legislation shall be the first European comprehensive regulation governing AI.

When considering EU regulations, it's important to keep in mind the General Data Protection Regulation (GDPR) when using AI. GDPR includes rules related to the processing of personal data by AI systems and imposes strict requirements on organizations that use AI to protect individuals' privacy and data rights. In Poland, the Data Protection Authority, known as Urząd Ochrony Danych Osobowych (UODO), oversees data protection matters, including those involving AI systems. UODO provides guidance and enforces compliance with data protection laws relevant to AI applications.

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

Polish copyright laws do not provide explicit provisions regarding whether AI systems can be recognized as authors of copyright-protected works. This issue remains a subject of ongoing legal debate and interpretation.

Traditional copyright law is strictly related to human creators. AI, being an algorithm mostly based on machine learning, does not fit the traditional definition of an author. However, complications arise when AI plays a significant role in the creative process. In Poland, specific legal guidelines on the ownership of works generated by AI are absent. Ownership may depend on factors such as the level of human involvement and how the work was produced. If a human significantly contributes to creating or shaping the AI-generated work, they may have a stronger claim to copyright.

According to current Polish law, AI cannot be officially recognized as an author for copyright purposes. Copyright protection is explicitly reserved for individuals. Consequently, the copyright for a work generated by AI does not belong strictly to the AI itself and may not automatically belong to the person who developed the AI, as AI systems make autonomous decisions. If there is no recognized copyright for the AI's work, the work itself may not have copyright protection.



**"AI in business - is this the end of human skills?" - What legal and economic risks associated with AI do you see in your clients' businesses?**

Our clients, primarily software engineers and software development companies, raises significant concerns about collecting, processing, and storing data for AI applications. Their main concerns include data privacy and compliance with the General Data Protection Regulation (GDPR) to protect individuals' data and avoid legal issues.

Our clients also emphasize the importance of fairness and transparency in AI algorithms. They are aware that for example AI systems making biased or discriminatory decisions can lead to legal disputes, reputational damage, and potential further legal liabilities.

Another key issue our clients face is determining copyright ownership for works, especially software, created with AI involvement. Determining the rightful owner of AI-generated content or innovations can be legally complex and a source of concern. Clients often encounter challenges related to patents, copyrights, and trade secrets when using AI for creative or innovative purposes.

Additionally, establishing liability for decisions or works produced by AI within their contractual agreements poses a significant challenge for our clients. They seek to clarify responsibilities in case AI-generated outcomes result in unexpected issues or disputes.

**"Legal AI - a threat or an opportunity for legal business?" - Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits and risks do you see when using AI as a lawyer?**

In our daily legal practice in Poland, Artificial Intelligence (AI) has not yet played a significant role beyond specific legal domains. Lawyers continue to create legal documents, opinions, and communications mostly without active AI use, relying on established legal databases, research tools, and basic IT solutions. Our law firm is planning to implement a chatbot to provide clients with responses to regulatory and tax-related inquiries, particularly focusing on tax schemes.

However, the legal landscape in Poland is rapidly changing. Large domestic and international law firms are investing heavily in digitalization efforts. This transformation raises anticipation among professionals as they await the impact of advancing technologies on the Polish legal sector.

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# SINGAPORE

## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in Singapore? What are the current and/or expected legislative directions thereof?**

Singapore does not have specific legislation governing the use of AI. However, certain products that utilise AI are regulated under the respective legislation for such products.

For example, all medical devices (whether AI-enabled or not) are regulated by the Health Products Act 2007 and the Health Products (Medical Devices) Regulations 2010. AI-enabled medical devices would therefore be regulated under these statutes.

Singapore also has legislation concerning the use and testing of autonomous vehicles (“AVs”) – given that its road traffic laws were premised on there being a human driver. Under the requirements of the Road Traffic (Autonomous Motor Vehicles) Rules 2017, testing and use of AVs is only permitted if the individual or entity has specific authorisation from the Land Transport Authority of Singapore. Conditions may be attached to any authorisation provided, such as limiting the testing and use of the AV to a specific geographical area.

In addition, Singapore regulators have issued several guidelines on AI, such as:

- Model Artificial Intelligence Governance Framework (the “Model Framework”): A voluntary, sector-agnostic framework issued by the Infocomm Media Development Authority and Personal Data Protection Commission that sets out principles of AI governance and practical methods by which they can be achieved;
- Principles to Promote Fairness, Ethics, Accountability and Transparency in the Use of Artificial Intelligence and Data Analytics in Singapore’s Financial Sector: Issued by the Monetary Authority of Singapore;
- IP and Artificial Intelligence Information Note: Issued by the Intellectual Property Office of Singapore to provide AI innovators with an overview of how to protect their AI inventions; and
- Artificial Intelligence in Healthcare Guidelines: Issued by the Ministry of Health, the Health Sciences Authority (“HSA”) and the Integrated Health Information Systems to set out good practices for AI developers in healthcare settings and to complement the HSA’s regulatory requirements for AI-enabled medical devices.

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

Singapore’s copyright regime is premised on human authorship. Accordingly, the length of copyright protection is linked to the author’s lifespan plus 30 years.

The Singapore Court of Appeal opined in *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] SGCA 37 that “[s]hould companies and like entities qualify as authors, they would be entitled to claim a perpetual monopoly over their works to maximise the economic returns of copyright protection. This would be contrary to the underlying policy of the [Singapore Copyright Act] which is to accord copyright protection for a limited duration that best strikes a balance between the competing public and private interests”.

That being said, it is necessary to distinguish works created by AI and works created through the assistance of AI. It is possible for there to be human authorship behind works generated by humans with the assistance of AI, especially if the creation of the work required “intellectual effort, creativity or the exercise of mental labour, skill or judgment... towards authorial creation” (*Global Yellow Pages Ltd v Promedia Directories Pte Ltd and anor matter* [2017] SGCA 28).

**“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

AI will only accelerate the pace of technology, and even automate some of the hard skills individuals have to offer, which means soft skills will only become more important.

In terms of risk, one that is likely to come to mind is cybersecurity. AI-based tools may be manipulated to scope vulnerabilities in applications, used for deep fake creation, or even to mimic the writing style of authorities, increasing the success rate of phishing attacks. There may also be concerns with the accuracy of AI-generated data and the infringement of intellectual property rights if the AI-generated work uses third-party IP.

**“Legal AI – a threat or a chance for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

Our firm is currently working with service providers to utilise AI to enhance our work. We are testing tools that can assist with summarising or identifying relevant portions of cases, or even identifying missing clauses in documents.

AI has the potential to assist lawyers in various areas of their work when used correctly. However, echoing Singapore's Chief Justice Sundaresh Menon's caution to the fresh advocates and solicitors called to the Bar in August 2023, “[s]uch tools are obviously not bound by values like honesty and integrity, and can therefore provide wholly incorrect answers”. It is therefore imperative that each individual exercises care and diligence by verifying the accuracy of AI-generated data and works before relying on the same.

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## **“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in Spain? What are the current and/or expected legislative directions thereof?**

There is no specific legislation on AI in Spain, with one exception: The Spanish equality and non-discrimination Law (Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación, <https://www.boe.es/eli/es/l/2022/07/12/15/con>) explicitly requires public authorities to implement mechanisms to ensure that algorithms used in public decision-making through AI are designed to minimize bias. They must also promote the use of ethical, reliable, and rights-respecting AI.

Spain has some laws that could be applied to certain aspects of AI, including the Data Protection Act and guarantee of digital rights, the Law on information society services and electronic commerce or the Law that establishes a regulatory framework for contracting with general conditions in the consumer field.

To this end, the Spanish government published the National Artificial Intelligence Strategy (“Estrategia Nacional de Inteligencia Artificial”) in 2020, which establishes a framework for the development of AI in Spain. The Strategy provides for the creation of a Spanish Artificial Intelligence Agency, responsible for promoting AI and supervising its regulation, whose statutes were approved on August 22, 2023.

Spanish government has also published the Spanish Digital Charter, which is a non-normative document that establishes a framework for guaranteeing and strengthening the rights of people in the digital environment. It was approved by the Spanish Government in July 2021, following a public consultation process.

The Digital Spain 2025 agenda is also a plan by the Spanish government to accelerate the digital transformation of the country. It sets out a series of measures, reforms and investments to improve connectivity, digital skills, cybersecurity, and the digital transformation of public services, businesses, and the economy.

Moreover, the Spanish strategy and regulations on IA are fully aligned with those of the European Union:

<https://www.europarl.europa.eu/news/en/headlines/society/20230601STOg3804/eu-ai-act-first-regulation-on-artificial-intelligence>

## **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

### AI as an author/creator of works

The Spanish Intellectual Property Law Real Decreto Legislativo 1/1996, de 12 de abril, (<https://www.boe.es/eli/es/rdlg/1996/04/12/1/con>) defines the author (Art. as “the natural person who creates a literary, artistic or scientific work”, so, we could say that the current legislative model does not contemplate as beneficiaries of copyright those autonomous systems responsible for new works, as they are not natural persons.

In addition, the same law establishes that "all original literary, artistic or scientific creations expressed in any medium or support, tangible or intangible, currently known or that is invented in the future (...)" are subject to intellectual property.

The fundamental requirements for a work to be protected are that it must have been the result of a creative act of a natural person, and that said result must be original. Therefore, if the work is created entirely by an AI system, and there are no free and creative decisions of the author, because there is no author beyond an automated processing, the result cannot be protected by copyright, nor the work subject to intellectual property.

#### AI users as authors

However, if the AI system is used merely as an instrument for the creation of an author, who directs the work through free and creative choices, and the result is original, it could benefit from the protection conferred by copyright, and the result could be qualified as "work" for the purposes of Spanish Intellectual Property Law.

#### The use of AI in creative work (including software engineers / graphic designers)

This is what would happen in the case of graphic designers or software engineers who contribute their creativity when designing a specific software or advertising image, but code or create through AI mechanisms.

#### The use of other authors works by AI / Licensing in Spain

The use of other works protected by the Spanish Intellectual Property Law by AI requires the consent of the copyright holder.

However, the law also establishes exceptions to this general principle. For example, it allows the use of protected works without the authorization of the copyright holder in the following cases such as private and non commercial use, use for educational or research purposes, use for criticism or information, etc.

In these cases, the use of other works protected by the law by AI is allowed as long as the requirements are met.

#### Conclusion

Due to the legal uncertainty that this new scenario poses for us, it is very likely that this aspect will be addressed in the new regulations that allow for specific (de)protection for this type of works and authors. One of the most popular alternatives would be to create a new *sui generis* category that develops an appropriate protection regime taking into account its nature and origin.

**"Legal AI - a threat or an opportunity for legal business?" - Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits and risks do you see when using AI as a lawyer?**

One of the main concerns is that Legal AI could lead to job losses in the legal industry. Legal AI systems can automate many of the tasks that lawyers currently perform, such as legal research, document drafting, and dispute resolution. This could lead to the need for fewer lawyers, which could have a negative impact on employment and wages in the legal industry.

At our law firm, we use DeepL, which is a neural machine translation (NMT) system with high accuracy for technical and legal documents, which of course helps us to make the translation of documents into our clients' native languages much faster.

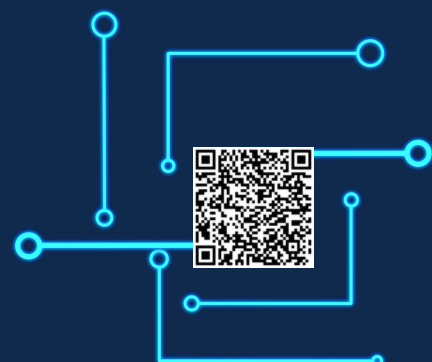
We haven't used AI for research or to replace lawyers' expertise yet. However, we can use it as a tool to help us with administrative tasks, translation, or marketing.

We consider AI as a tool to maximize performance. It will allow us to focus on the most strategic part of the business, becoming more competitive.

Lawyers need to learn and understand the correct use of legal AI. Investing in legal AI solutions can help them improve their efficiency and productivity. With better tools, the lawyers will be able to offer better services to their clients.



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# UNITED KINGDOM

**“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in the UK? What are the current and/or expected legislative directions thereof?**

## Current legislation:

Current UK legislation which protects consumers surrounding the use of Artificial Intelligence is as follows:

### *Equality Act 2010*

- The Equality Act 2010 provides protection against discrimination; however, AI may pose the increased the risk of unfair bias or discrimination.

### *Data Protection laws*

- The current data protection laws require all AI systems to process personal data fairly and properly.

### *Product safety laws*

- Product safety laws are in place to ensure that goods manufactured in the UK are safe. Some products are subject to specific legislation that have integrated AI (e.g. toys, electronic equipment, medical devices). The safety and use of AI in products should be monitored carefully.

### *Consumer rights law*

- Consumer rights may apply to consumers where there is a sales contract ie. if an AI product or system is sold via contract, then consumer rights apply in the usual manner such as whether it is of satisfactory quality, fit for purpose, as described.

## Anticipated legislation:

Currently, there is no defined legislation, but rather a set approach to how a framework may be created. The government want to engage with industries and the public to ensure that they are creating something which is desired by the UK population regarding AI legislation.

The government set out proposals in March 2023 in a white paper titled “A pro-innovation approach to AI regulation”: A pro-innovation approach to AI regulation - GOV.UK ([www.gov.uk](http://www.gov.uk)). The white paper addresses both the risks and rewards of AI but stresses that it is essential to build public trust and confidence in AI and with any new regulations. The government has said that it will put in place a framework for AI regulation which will be underpinned by the following 5 principles:

- Safety, security and robustness
- Appropriate transparency and explainability
- Fairness
- Accountability and governance
- Contestability and redress

Whilst these aims will form part of the AI framework, the government will not introduce these principles into any statutory framework initially as “New rigid and onerous legislative requirements on businesses could hold back AI innovation and our ability to respond quickly and in a proportionate way to future technological advances”. However, expectations to follow the principles is expected to be placed on regulators.

The government is concerned that if regulations are not proportionate businesses may spend a lot of time and expense in complying with rules, which will disproportionately place additional burden on smaller businesses.

This raises the concern that if the government have concerns that if they were to legislate too tightly, they would stifle the creativity and utility of AI in advancing all areas of life – the NHS, business, education, etc. Any legislation they do want therefore would have a light-touch approach, allowing AI to grow and make the UK an AI “superpower”.

We are awaiting a report on the outcome of the consultation which finished on 21 June 2023.

#### Legislation concerns

It is important to note that whilst there is legislation currently in place, they have not been properly tested in the use of AI and therefore regulators and users of AI should take a cautious approach when using AI.

#### **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

Currently intellectual property laws and ownership of works created by artificial intelligence do not sit well together. In particular, under section 9 of the Copyright Designs and Patents Act 1988, a piece of work always has to be owned by a human or corporate person – this means that, if a piece of work were created by AI, then the true owner would be “the person by whom the arrangements necessary for the creation of the work are undertaken”.

Current IP laws are therefore not well suited to AI as traditionally ownership of computer-generated arise where there is a human creator. If there is no human inventor because it is an AI generated invention, then there is no legal owner – quite simply there is no legal owner. AI technology cannot own an invention which creates potentially complex implications.

We expect to see changes in the future to address the complexities around the owners of AI generated works.



## **“AI in business – is this the end of human skills?” – What types of legal and economic risks associated with the use of AI you recognise in your clients’ businesses?**

Whilst AI can certainly have advantages and benefits for business, there are various risks associated with the use of AI. We have identified below some of the risks we consider to be the most common:

1. Data protection, confidentiality and privacy concerns are a significant legal risk for businesses using AI. The essence of AI requires the processing of a vast amount of personal data, which makes compliance with GDPR more onerous. Businesses using AI must consider the data protection implications and ensure that the collection and processing of data is proportionate. GDPR requires the fair processing of personal data. However, there is an increased risk of discrimination and bias when AI is used, which can be due to a biased algorithm or underlying bias in the dataset used.

2. Intellectual property – as stated above, the issues around IP are complex. There is a risk of copyright infringement if protected material is used and reproduced by AI. Currently, AI providers are only permitted to use text and data mining for non-commercial purposes, and they pass the risk of compliance onto users through their terms and conditions. There is also the question of ownership of work produced through AI. Unlike most other jurisdictions, UK law enables computer-generated work to be protected by copyright, even where there is no human author.

3. A further legal risk is liability for AI errors and resultant damage/harm. Since AI is still a new phenomenon, there is not yet any law or statutory guidance addressing liability specifically. Therefore, each case will turn on its facts and it is likely that liability will be determined by reference to the cause of the AI's fault under the law of negligence.

4. The use of AI carries an economic risk of job displacement, whereby the prevalence of AI in businesses over time is likely to reduce and possibly eradicate the requirement for certain job roles. A report produced by PwC in 2021 revealed that 7% of jobs in the UK labour market are at high risk of being automated in the next 5 years; increasing to almost 30% in the next 20 years. Sectors such as manufacturing, transport and logistics, retail and public administration are particularly susceptible to job losses because of AI. Whereas some industries, like healthcare and social work, education and IT may benefit from increased job opportunities as a result of AI.

5. Another economic risk that AI poses to businesses is the potential cost caused by mistakes and cyberattacks. If AI is incorporated into the infrastructure of a business, the damage caused by technical issues or hacking can be extensive, including both financial and reputational harm.

**Legal AI – a threat or an opportunity for legal business? Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognise when using Artificial Intelligence as a lawyer?**

AI has been adopted in the firm's marketing strategy through the use of a chatbot on the website to take initial details of prospective client enquiries. The chatbot takes brief details of the enquiry and the individual's contact details, which are then passed onto the relevant team to follow up. However, due to the risks outlined below, artificial intelligence is not widely used in the firm's legal practice.

AI is in its infancy and there is considerable risk associated with its use in legal practice. Firstly, transparency is an issue since lawyers are required to be open with their clients as to the rationale behind their advice, but it is not possible to clearly ascertain and explain the algorithm which controls the decision-making of an AI tool. This is compounded by the increased risk of data bias when AI is used, which raises concerns of reliability and questions the accuracy of any documents or advice produced. This issue was highlighted in the recent US case of *Mata v Avianca*, where an American lawyer relied on fabricated case examples generated by ChatGPT.

A further risk is confidentiality and data protection. Lawyers have a continuing duty of confidentiality to their clients and law firms are legally required to carefully protect their clients' personal data. It is unknown what happens to data inputted into AI tools, such as ChatGPT. Therefore, use of such tools to draft contracts and legal documents for clients poses a serious risk of data breaches as the clients' personal information will no longer be held confidentially. A further risk is the vulnerability of AI systems to cyberattacks and hacking, which would expose clients' personal data.

Despite the above risks, there are benefits to using legal AI, such as improved productivity. The use of AI in legal practice enables lawyers to focus their efforts on the most complex and demanding aspects of their work, while the simple, process-driven tasks are automated. Provided that confidential information and client data is removed, some use of AI may be beneficial and provided it is robustly checked to ensure that any documents produced are legally up to date and compliant. If used effectively and compliantly, lower costs are incurred and fee earners have increased capacity, so law firms can provide a better-quality service to their clients for the same fee.

Another advantage of legal AI is a reduction in mistakes and omissions since the use of AI lessens the scope for human error. Effective use of AI can also improve efficiency and enable transactions and claims to be progressed more quickly. For example, AI legal research tools can instantaneously search through extensive databases to find the most relevant case law precedents and contract analysis tools can be used to quickly check for amendments to documents and identify risk.

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## UNITED STATES

**“Regulating AI. Is it possible?” - Are there any legal regulations on Artificial Intelligence in the US? What are the current and/or expected legislative directions thereof?**

At present, the United States does not have comprehensive federal legislation dedicated solely to regulating Artificial Intelligence (“AI”). However, AI regulation has been a prominent topic of discussion in Washington this year, and Congress is currently engaged in an examination of policies and guidelines to be established for the use of AI. Both the Democratic and Republican parties admit that “Congress is too slow, it lacks the tech expertise, and the army of Big Tech lobbyists can pick off individual efforts easier than shooting fish in a barrel.”<sup>1</sup> Nonetheless, the U.S. government acknowledges that the road to AI regulation requires input from tech industry leaders and experts, and the Senate has held multiple hearings on this subject this year. The most recent Senate hearing on the matter of AI regulation, held on 13 September 2023, was attended by tech giants such as Sam Altman of OpenAI, Mark Zuckerberg of Meta, Bill Gates and Satya Nadella of Microsoft, Sundar Pichai and Eric Schmidt of Google, Elon Musk of Tesla and SpaceX and Twitter (n/k/a “X”), and Arvind Krishna of IBM. The non-public hearing, lead by Senate Majority Leader Chuck Schumer, addressed issues of societal risks posed by AI, federal investment in AI research and development, an independent federal agency to oversee AI regulation, conducting AI testing, and promoting education and transparency on AI.<sup>2</sup> Although the U.S. is far behind the European Union on, and years away from, implementing any legislation to regulate AI, the federal government’s commitment at the early stage shows hopeful progress.

In October 2022, the White House Office of Science and Technology Policy (“OSTP”) published a Blueprint for an AI Bill of Rights (“Blueprint”). The Blueprint is a white paper that sets forth principles and practices that address issues of the safety and effectiveness of AI systems, algorithmic discrimination, data privacy, providing notice and explanation to users, and availability of human alternatives to automated systems in an effort to direct the design, use, and deployment of AI systems to safeguard the rights of the public.<sup>3</sup> Although the Blueprint is a non-binding and unenforceable document, the OSTP holds that the protections it advocates for already exist under the current laws in some form and the guidelines can be adapted to be compatible with and incorporated into potential future laws. For example, concerning algorithmic discrimination, the Equal Employment Opportunity Commission and the Department of Justice have delineated how employers’ use of AI systems can result in discrimination against protected classes of job applicants.<sup>4</sup>

Other notable efforts by federal agencies and national organizations to regulate and guide the use of AI include:

- Executive Order 13960 - Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government: The Order requires certain federal agencies to adhere to nine principles when designing, developing, acquiring, or using AI for purposes other than national security or defense.<sup>5</sup>

[1] Lindsey Graham and Elizabeth Warren, Lindsey Graham and Elizabeth Warren: When It Comes to Big Tech, Enough Is Enough, *The New York Times*, (27 July 2023), available at <https://www.nytimes.com/2023/07/27/opinion/lindsey-graham-elizabeth-warren-big-tech-regulation.html>.

[2] See Brian Fung, Bill Gates, Elon Musk and Mark Zuckerberg meeting in Washington to discuss future AI regulations, *CNN*, (13 Sep. 2023), available at <https://www.cnn.com/2023/09/13/tech/schumer-tech-companies-ai-regulations/index.html>.

[3] See Office of Science and Technology Policy, *Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People*, The White House, accessed on 13 Sep. 2023, available at <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

[4] See U.S. Equal Employment Opportunity Commission, *The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees*, (12 May 2022), available at <https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>; U.S. Department of Justice, *Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring*, (12 May 2022), available at <https://beta.ada.gov/resources/ai-guidance/>.

[5] See Executive Order (EO) 13960, U.S. Chief Information Officers Council, accessed on 13 Sep. 2023, available on <https://www.cio.gov/policies-and-priorities/Executive-Order-13960-AI-Use-Case-Inventories-Reference/>.

- The National Institute of Standards and Technology's AI Risk Management Framework: The Framework is developed for voluntary use to foster trustworthiness in the design, development, use, and evaluation of AI products, services, and systems through considerations for accuracy and reliability, explainability and interpretability, safety and security, transparency and accountability, privacy, and mitigation of unintended or harmful uses.<sup>6</sup>
- The Interagency Task Force on Property Appraisal and Valuation Equity's Action Plan to Advance Property Appraisal and Valuation Equity: The Plan includes a commitment from the agencies that oversee mortgage lending to include a nondiscrimination standard in the proposed rules for Automated Valuation Models.<sup>7</sup>
- The Department of Labor's Office of Labor-Management Standards: Federal law requires employers, and any consultants they may retain, to report expenditures related to surveillance of employees to provide transparency and prevent abuse of privacy.<sup>8</sup>
- The Fair Credit Reporting Act and the Equal Credit Opportunity Act: The Acts require lenders to provide adverse action notices to consumers who are denied credit. The Consumer Financial Protection Bureau reasons that "[t]he law gives every applicant the right to a specific explanation if their application for credit was denied, and that right is not diminished simply because a company uses a complex algorithm that it doesn't understand."<sup>9</sup>
- The Biden-Harris Administration's support of Healthcare Navigators: For the 2022 plan year, the Biden-Harris Administration increased funding to healthcare organizations to enable training and certification of more than 1,500 Navigators to provide human-facing interactions to help uninsured consumers find affordable and comprehensive health coverage.<sup>10</sup>

Conversely, state and local legislatures have been expeditious in initiating regulation of AI in a wide-range of areas, including: law enforcement, voting, transportation, employment, housing, healthcare, social media, government services, public services, consumer protection, data privacy, surveillance, entertainment, education, environmental protection, business activities, human rights, research and development, and etc.<sup>11</sup> See Trends in AI Regulation, Practical Law Article w-036-4106 ("In the US, the number of proposed bills containing the term "AI" grew from 2 to 131 in a nine-year period (2012 to 2021)").

## “Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?

Ownership, copyright, and patent protections of AI-generated content is also currently unclear or non-existent. Like Congress, the Supreme Court of the United States has been disinclined to address issues concerning AI. In April 2023, the Supreme Court declined to hear a challenge by computer scientist Stephen Thaler to the U.S. Patent and Trademark Office's ("PTO") refusal to issue patents for inventions his artificial intelligence system created.<sup>12</sup> Thaler, the founder of Imagination Engines Inc, created a Device for the Autonomous Bootstrapping of Unified Sentience ("DABUS"). According to Thaler, DABUS then created unique prototypes for a beverage holder and emergency light beacon entirely on its own. Thaler then filed two patent applications for these inventions and listed DABUS as the sole inventor. The PTO denied the applications on the ground that the AI did not qualify as inventor.

[6] See National Institute of Standards and Technology, AI Risk Management Framework, accessed on 13 Sep. 2023, available at <https://www.nist.gov/itl/ai-risk-management-framework>.

[7] See Interagency Task Force on Property Appraisal and Valuation Equity, Action Plan to Advance Property Appraisal and Valuation Equity, accessed on 13 Sep. 2023, available at <https://pave.hud.gov/actionplan>.

[8] See Office of Labor-Management Standards, Labor-Management Reporting and Disclosure Act of 1959, As Amended, U.S. Department of Labor, accessed on 13 Sep. 2023, available at: <https://www.dol.gov/agencies/olms/laws/labor-management-reporting-and-disclosure-act>.

[9] See Consumer Financial Protection Bureau, CFPB Acts to Protect the Public from Black-Box Credit Models Using Complex Algorithms, (26 May 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acts-to-protect-the-public-from-black-box-credit-models-using-complex-algorithms/>.

[10] See Centers for Medicare & Medicaid Services, Biden-Harris Administration Quadruples the Number of Health Care Navigators Ahead of HealthCare.gov Open Enrollment Period, (27 Aug. 2021), available at <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-quadruples-number-health-care-navigators-ahead-healthcaregov-open>.

[11] For a comprehensive list of regulations governing AI that have been proposed, adopted, or rejected by State Legislatures, see National Conference of State Legislatures, Artificial Intelligence 2023 Legislation, (updated 20 July 2023), available at <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation>.

[12] See Blake Brittain, US Supreme Court rejects computer scientist's lawsuit over AI-generated inventions, Reuters, (24 Apr. 2023), available at <https://www.reuters.com/legal/us-supreme-court-rejects-computer-scientists-lawsuit-over-ai-generated-2023-04-24/>.

Thaler sought review of the PTO denial from the U.S. District Court for the Eastern District of Virginia. The Court granted the PTO's motion for summary judgment. *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 1783 (2023). The Court reasoned:

“This case presents the question of who, or what, can be an inventor. Specifically, we are asked to decide if an artificial intelligence (AI) software system can be listed as the inventor on a patent application. At first, it might seem that resolving this issue would involve an abstract inquiry into the nature of invention or the rights, if any, of AI systems. In fact, however, we do not need to ponder these metaphysical matters. Instead, our task begins – and ends – with consideration of the applicable definition in the relevant statute.” *Id.* at 1209.

The Court concluded that the Patent Act defines “inventor” as natural persons; that is, human beings. *Id.*

The U.S. Copyright Office has also held that AI cannot hold a copyright for works of art it creates. The Copyright Office's determination was recently upheld by the U.S. District Court for the District of Columbia. The Court reasoned: “[D]efendants are correct that human authorship is an essential part of a valid copyright claim, and therefore plaintiff's pending motion for summary judgment is denied and defendants' pending cross-motion for summary judgment is granted.” *Thaler v. Perlmutter*, No. CV 22-1564 (BAH), 2023 WL 5333236, at \*1 (D.D.C. Aug. 18, 2023).

Limiting the definitions of “inventor” and “author” to apply only to human beings implicates that regardless of the vast potential uses for AI, there are certain areas where human skills and perspectives are still indispensable.

### **“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients’ businesses?**

While rapid advancements in AI tools, such as legal research and document processing platforms, have increased their utilization in the legal field, it is clear that human roles in information analysis and decision-making remain irreplaceable. For example, earlier this year, one New York lawyer learned this the hard way. Steven A. Schwartz of Levidow, Levidow & Oberman, used ChatGPT to supplement legal research he performed when preparing a response to a motion to dismiss. The research provided by ChatGPT were “bogus judicial decisions with bogus quotes and bogus internal citations.”<sup>13</sup> After a nearly two-hour long hearing, during which Schwartz was repeatedly scolded by Judge P. Kevin Castel, Schwartz, his partner and their law firm where each ordered to pay \$5,000 in fines.<sup>14</sup> After Schwartz’s error made national news, several of the largest law firms in the U.S. banned ChatGPT.<sup>15</sup> This prohibition, however, is not indicative of the use of the AI generator by American firms. Instead, most firms are “asking lawyers to get comfortable with [generative AI] in their day-to-day work so, as we see more functions in this tool in this space, we are not playing catch-up.”<sup>16</sup> In response to the increasing use of AI tools in the legal profession, the American Bar Association has finally stepped forward to address associated challenges and impacts and created the Task Force on the Law and Artificial Intelligence to guide and oversee the use of AI in the practice of law.<sup>17</sup>

[13] Lyle Moran, Lawyer cites fake cases generated by ChatGPT in legal brief, Legal Dive, (30 May 2023), available at <https://www.legaldive.com/news/chatgpt-fake-legal-cases-generative-ai-hallucinations/651557/>, (citing Judge P. Kevin Castel).

[14] See Benjamin Weiser and Nate Schweber, The ChatGPT Lawyer Explains Himself, The New York Times, (8 June 2023), available at <https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html>; Dan Mangan, Judge sanctions lawyers for brief written by A.I. with fake citations, CNBC, (22 June 2023), available at <https://www.cnbc.com/2023/06/22/judge-sanctions-lawyers-whose-ai-written-filing-contained-fake-citations.html>.  
[15] See <https://www.law.com/americanlawyer/2023/08/03/big-law-nixing-chatgpt-for-legal-work-seeks-secure-ai-solution/>.

[16] Justin Henry, Big Law, Nixing ChatGPT for Legal Work, Seeks Secure AI Solution (August 3, 2023), The American Lawyer, See American Bar Association, Task Force on the Law and Artificial Intelligence, accessed on 13 Sep 2023, available at [https://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/artificial-intelligence/](https://www.americanbar.org/groups/leadership/office_of_the_president/artificial-intelligence/).

[17] See American Bar Association, Task Force on the Law and Artificial Intelligence, accessed on 13 Sep 2023, available at [https://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/artificial-intelligence/](https://www.americanbar.org/groups/leadership/office_of_the_president/artificial-intelligence/).

In the meantime, the debate about whether AI will replace lawyers is quite the “hot” topic in the United States. “[W]hen Vice released a documentary film featuring an AI that proved capable of reviewing an NDA both faster and with fewer errors than its human counterpart,” the reality of the future became quite clear.<sup>18</sup> As Niels Martin Brochner, Co-founder and CEO of the Copenhagen-based company Contractbook, observed:

The foretold promise seems true. Given the latest developments in artificial intelligence, it’s not hard to see how the technology will revolutionize legal work. AI can analyze complicated legal issues. It can read, review, redline and digest long bodies of text, translate difficult legal concepts for ordinary people and even generate perfectly articulated legal paragraphs—in seconds and with a very low error margin. The latest version can even pass the U.S. bar exam. It’s tireless, it’s cheap and it won’t quiet quit on you.<sup>19</sup>

As Neils Martin Brochner also reports, clients have begun using ChatGPT to analyze contracts and then request confirmation that the AI review is correct, thereby dramatically decreasing legal bills, and since the outdated use of hourly billing is largely antithetical to increased efficiency, it likely will be necessary for clients to drive and require changes in law firm practices that will be painful for law firms and their employees.<sup>20</sup> And, as Raquel Gomes, Founder & CEO of Stafi noted, AI-powered robot lawyers will likely arrive in US courtrooms soon:

The day when AI-powered robot lawyers will represent clients in the courtroom may be fast approaching. In fact, it almost arrived on February 22, 2023, the day that DoNotPay—an online legal services company—was scheduled to send its AI-powered chatbot to court to guide a client contesting a traffic ticket. According to DoNotPay, the historic moment was put on hold when “State Bar prosecutors” informed the company that using the robot lawyer could result in jail time for its founder.<sup>21</sup>

That is probably a good thing in the United States, which shockingly ranks 115th out of 140 countries on “accessibility and affordability of civil justice,” according to The World Justice Project’s 2022 Rule of Law Index.<sup>22</sup> Neils Martin Brochner opines as follows on the impact of AI on the legal profession: “I feel confident that the legal industry will change for the better. There is a massive potential to create a more affordable legal industry and increase access to justice.”<sup>23</sup> Although all change can be inherently difficult to confront and adaptability surely will be required of most members of the legal profession around the world, in the case of the U.S., we wholeheartedly concur.

**Legal AI – a threat or an opportunity for legal business? Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

A recent panel discussion analyzing the European Union (“EU”) AI Act provided valuable insight on its implications for potential regulation of AI in the U.S. The discussion was hosted by Stanford University’s Human-Centered Artificial Intelligence, and the panel was comprised of several experts in AI and policy and Dragos Tudorache, a European Parliament member involved in the creation of the EU AI Act.<sup>24</sup>

[18] Niels Martin Brochner, Will AI Replace Lawyers?, *Forbes* (25 May 2023), available at <https://www.forbes.com/sites/forbestechcouncil/2023/05/25/will-ai-replace-lawyers/sh=408b46ee3124>

[19] *Id.*

[20] *Id.*

[21] Raquel Gomes, AI And The Legal Industry: How To Amplify Efficiency, *Forbes* (16 May 2023), available at <https://www.forbes.com/sites/forbesbusinesscouncil/2023/05/16/ai-and-the-legal-industry-how-to-amplify-efficiency/?sh=388a42ae516c>.

[22] United States, World Justice Project, accessed at <https://worldjusticeproject.org/rule-of-law-index/country/2022/United%20States/Civil%20Justice>

[23] *Id.*, supra at 18.

We believe the U.S. should consider the following notable points, discussed by the panel, when proceeding with implementing regulations of AI:

- From a law and policy perspective, provided the fundamental differences between the U.S. common law system and the EU civil law system, the U.S. should be cautious about modeling The EU AI Act.
- Additionally, provided the dynamics of federal versus state governance in the U.S. and the fact that state legislatures are ahead of the federal legislature in the development of AI regulations, the U.S. must address how disagreements be harmonized.
- Likewise, if the U.S. AI laws differ or conflict with AI laws of other countries, the U.S. must consider how these discrepancies be reconciled to ensure international cooperation and economic activities.
- From an economic and international point of view, the U.S. government should consider how it will induce agreement and compliance with restrictive AI regulations from businesses.
- From a technical standpoint, given the divergent goals of businesses (profit) and researchers (innovation), the U.S. will need to consider how to tailor its AI regulations to these goals.

[24] See Shana Lynch, *Analyzing the European Union AI Act: What Works, What Needs Improvement*, Stanford University Human-Centered Artificial Intelligence, (21 July 2023), available at <https://hai.stanford.edu/news/analyzing-european-union-ai-act-what-works-what-needs-improvement>.

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# BRAZIL

**Regulating AI. Is it possible?" - Are there any legal regulations on Artificial Intelligence in Brazil? What are the current and/or expected legislative directions thereof?? What are the current and/or expected legislative directions thereof?**

In Brazil, the regulation of Artificial Intelligence (AI) is actively being discussed, and the primary legislative direction is the "Marco Legal da Inteligência Artificial" (AI Legal Framework), outlined in PL 2338/2023. This framework aims to establish a risk-based regulatory approach for AI, taking into account the varying degrees of risk posed by different AI systems.

As of now, there is no specific law in Brazil exclusively dedicated to regulating AI comprehensively. However, existing legislation indirectly touches upon various aspects of AI. The General Data Protection Law (Lei Geral de Proteção de Dados - LGPD), which came into effect in September 2020, plays a significant role in AI regulation by imposing rules on the processing of personal data, which is closely linked to AI applications. Additionally, Brazil has consumer protection laws, such as the Consumer Defense Code (Código de Defesa do Consumidor), which could apply to AI systems that interact with consumers.

The AI Legal Framework represents a comprehensive and forward-looking approach to AI regulation in Brazil. It focuses on several key aspects, including risk-based regulation. The framework adopts a risk-based approach to AI regulation, distinguishing between low-risk and high-risk AI systems. High-risk AI systems will be subject to more stringent regulations, including mandatory algorithmic impact assessments.

The framework also recognizes certain rights for individuals affected by AI systems. This includes the right to prior information about their interactions with AI systems, the right to an explanation regarding decisions made by AI systems, and the right to challenge decisions or predictions made by AI that have legal or significant impacts.

Moreover, the AI Legal Framework prohibits the deployment of high-risk AI systems that include subliminal techniques that may induce harmful behavior, exploit vulnerabilities of specific groups, or are used by the government to classify or rank individuals.

The framework addresses the responsibility and liability of AI system operators. It stipulates that operators causing harm, whether the AI system is of high or low risk, are obligated to fully compensate the victims. For high-risk AI systems, operators are held objectively liable for damages, meaning that the operator is liable regardless of fault.

Sanctions, including fines and suspension of AI system operation, are introduced for non-compliance with AI regulations. Regulatory agencies or authorities responsible for enforcing these laws will likely be defined as part of the implementation process.

Public consultations and discussions are expected to take place before finalizing the AI Legal Framework. This inclusive approach aims to gather input from stakeholders and the public to shape the legislation. The AI Legal Framework is still under discussion and may undergo revisions based on feedback and evolving technology trends.

Once approved, the legal framework is expected to provide comprehensive guidelines for AI development and usage in Brazil, addressing issues related to risk, individual rights, prohibitions on risky AI applications, liability, and transparency.

In summary, while Brazil does not currently have specific AI legislation, it is actively working on the AI Legal Framework to provide a regulatory foundation for AI in the country. This framework is designed to ensure a balanced and responsible approach to AI, taking into account the risks and rights associated with its use. Public consultations and ongoing discussions will contribute to shaping the final legislation, which is expected to have a significant impact on AI practices in Brazil. Our law firm is available to provide further insights and answer any questions on this evolving legal landscape.

### **“Is AI an author?” – Who owns the right to works created by Artificial Intelligence from a legal perspective?**

The issue of AI authorship and intellectual property rights is a multifaceted and evolving area within the legal landscape. In the context of Brazilian law, several considerations come into play when discussing who owns the rights to works created by Artificial Intelligence (AI).

As of now, Brazilian law does not explicitly recognize AI as an independent author or creator of works. Instead, works generated by AI are typically attributed to their human creators or users who employ AI tools to generate content. This attribution aligns with the traditional understanding of copyright law, where human creativity and intentionality are integral to authorship.

1. AI as an Author/Creator of Works: Brazilian copyright law, governed primarily by Law No. 9.610/1998 (the Brazilian Copyright Act), emphasizes human authorship. This means that AI itself is not considered an author in the legal sense. Copyright protection is generally granted to works that result from a human creative process and reflect individual expression. AI, while capable of generating content, does so based on algorithms and data inputs, without the intrinsic creative intent that is typically associated with human authors.

1. **Use of AI in Creative Work:** In creative industries such as software development, graphic design, and music composition, AI tools are increasingly being utilized to assist human creators. These tools can aid in generating content, enhancing productivity, and providing creative suggestions. However, the ultimate authorship and ownership of the resulting works are typically attributed to the human creators who make creative decisions and inputs during the creative process.
2. **Use of Other Authors' Works by AI:** AI systems can also be used to analyze, transform, or generate derivative works based on existing copyrighted material. In such cases, it is essential to consider issues of copyright infringement and fair use. The use of copyrighted material without proper authorization or within the bounds of fair use may lead to legal challenges. Copyright law principles continue to apply, and AI does not exempt users from copyright obligations.
3. **AI Users as Authors:** The legal status of AI users who employ AI tools to generate content is a subject of debate. In cases where human users actively make creative choices and substantial inputs, they may be recognized as authors of the resulting works, even if AI tools were used in the process. The determination of authorship may depend on the extent of human involvement and creative decision-making.
4. **Licensing in Brazil:** Licensing agreements and contracts play a pivotal role in specifying ownership and usage rights related to AI-generated works. These agreements can define who holds copyright, how royalties are distributed, and the terms under which AI-generated content can be used, modified, or distributed. It is essential for parties involved in AI-driven creative processes to have clear contractual arrangements to address copyright issues and ownership.

It is worth noting that the question of AI authorship is a dynamic area of law and may evolve in response to technological advancements and changing societal perspectives. As AI technology continues to advance, legal frameworks may adapt to address the unique challenges and opportunities presented by AI-generated works.

Given the evolving nature of AI and intellectual property law, our law firm remains available to provide further insights and guidance on navigating the complexities of AI-related legal issues and copyright matters in Brazil.

**“AI in business – is this the end of human skills?” - What types of legal and economic risks associated with the use of AI do you recognize in your clients' businesses?**

This topic is of great significance in the context of AI regulation and its implications for businesses in Brazil. Legal and economic risks associated with AI in businesses in Brazil include:

**Liability for AI Actions:** One of the primary concerns is defining liability when AI systems make decisions or take actions that result in harm. Brazilian law traditionally holds individuals or legal entities accountable for their actions. However, with AI, it can be challenging to pinpoint responsibility. Questions arise about whether it's the AI developers, operators, or users who should be held liable for adverse outcomes. Legislation should address these issues to provide clarity and fairness.

**Copyright Infringement:** AI can generate content, such as written articles, music, or visual art, often without direct human input. This raises questions about copyright ownership and infringement. Brazil, like many countries, should adapt its copyright laws to determine whether AI-generated works can be protected and who holds the rights to them.

**Privacy and Data Protection Violations:** AI systems often require vast amounts of data to function effectively. Ensuring that this data is handled in compliance with privacy and data protection regulations is crucial. In Brazil, the General Data Protection Law (Lei Geral de Proteção de Dados or LGPD) governs data privacy. Any AI systems that process personal data must adhere to these rules.

**AI Users' Risks:** Businesses utilizing AI face the risk of relying too heavily on automated decision-making, potentially neglecting the human element. Overreliance on AI can lead to poor decision-making in situations where human judgment and empathy are essential. Balancing AI capabilities with human expertise is crucial.

It's worth noting that the Brazilian government and legal experts are actively working on addressing these challenges. The recently proposed Marco Legal da Inteligência Artificial (AI Legal Framework) in Brazil is a significant step toward establishing regulations that balance innovation and ethical use of AI. The framework aims to create a risk-based regulatory approach, promoting responsible AI development and use.

As these legal and economic risks associated with AI in businesses evolve, it's essential for companies in Brazil to stay updated on the legal landscape and adapt their practices accordingly. Collaborating with legal experts who specialize in AI and data privacy can help businesses navigate these challenges effectively while maximizing the benefits of AI technologies.

**“Legal AI – a threat or an opportunity for legal business?” Do you use Artificial Intelligence in your legal practice (please describe the scope and purpose)? What benefits/risks do you recognize when using Artificial Intelligence as a lawyer?**

In the legal field in Brazil, AI is seen as both an opportunity and a challenge. Legal professionals are starting to use AI for various purposes, including legal research, document review, and contract analysis. The benefits include increased efficiency, reduced costs, and improved accuracy in repetitive tasks. However, challenges include adapting to new technologies, ensuring data security and privacy, and addressing potential biases in AI systems. Legal AI is seen as a tool to enhance legal practice rather than replace human skills.

In conclusion, Brazil is actively working on regulating AI, with the Marco Legal da Inteligência Artificial in development. Legal professionals are exploring the use of AI to enhance their practices, but they also face challenges related to liability, copyright, data privacy, and ethics in AI adoption. The legal landscape regarding AI in Brazil is evolving, and a balanced approach between regulation and innovation is essential.

Certainly, our office is at your disposal to further explore this topic and address any questions or concerns you may have regarding the legal landscape of Artificial Intelligence in Brazil. We understand the importance of staying informed and compliant in this rapidly evolving field. Please feel free to reach out to us for more in-depth discussions, insights, or any legal assistance related to AI. We are here to assist you in navigating the complex and dynamic world of AI regulation and its impact on various aspects of business and law.



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# CONCLUSION

The above report presents a global cross-section of national and regional AI legislation. The data presented in the article shows that all countries have recognized the dynamic development of AI technology and its impact on today's economic sectors.

Countries have started working on the legal regulation of AI, but as of today, AI is mostly regulated by existing legal solution such as data protection law, consumer law, product safety law such as medical products, also traffic regulations in terms of autonomous vehicles (Singapur). None of the countries in the report above have introduced a single piece of legislation such as an Artificial Intelligence Act. As this report shows, in terms of legislation, Europe is well ahead of the United States in this aspect. However, all countries mentioned in this report are currently working on creating legislation to address current issues such as copyright ownership of works created by AI and look forward for some global solutions governing abovementioned issues (EU countries).

An analysis of the global legal regulation of AI leads to the conclusion that the vast majority of countries do not qualify AI as a copyright author or inventor due to the lack of human or individual contribution to the created work. In countries such as India or the United States, there is no explicit regulation that precludes AI from qualifying as an independent creator. By contrast, Italian Copyright law does not expressly require that a work has to be created by a human to be protected by copyright, however additional provisions indicate the necessity of the human factor existence in a creative process (copyrights protection lasts 70 years from the author's death).

AI can become an employee's best friend, but there are clouds on the horizon. The report identifies a number of existing and potential problems with AI including:

- the veracity of the output data provided by AI,
- the risk of disclosure of sensitive data, including professional secrecy breach,
- data protection breaches,
- reproducibility of solutions,
- AI-outputs/actions liability problems,
- potential data leaks to or from AI systems as well as the legal problems of medical law in the case of medical devices that use AI as their software basis,
- IP ownership problems.

Loss of employment in sectors such as public administration or logistics are also a real threat.

Based on the reflections of the authors' reports, further development of AI will, in the long term, impact the lawyers work around the world, primarily due to the automation of basic processes in their daily professional activities. It may certainly change the way the rest of the society perceives lawyers today and will certainly change the way they work in a law firm. AI will not replace lawyers, but will become another useful and smart tool being used on their daily basis. For example, analyzing the use of AI by the Chinese justice system, we can observe the potential of using AI to speed up and improve routine and repetitive activities including accepting cases and providing navigation assistance when using the online court platform. From the other perspective, French law firms are using AI to search for information or to check the validity of the opponent's legal arguments.

The report highlights that AI can be a threat to both the lawyer and their clients. As for now, the lawyer takes full responsibility for acting with AI and possible breaches of professional secrecy or citing outdated or false legal sources (especially while using ChatGPT power tool). It should always be remembered that the Clients often do not know how to describe their legal problem, but they know what they want to achieve by entering the legal path. In cases such as criminal or family matters, clients will also look to their attorneys for trust and support.

Technological developments have always affected the work of people, including lawyers. Since the dawn of the digital age, a lawyer's work has moved from traditional work with documents in the form of a stack of paper to working on files stored on servers. What we can conclude from the past is that computers have not replaced lawyers yet have become a tool to facilitate their work. In the same way that the transition from paper documents to electronic documents has taken place, AI will help lawyers to speed up and facilitate their work. However, as this report indicates, specific regulations and attentiveness of lawyers while using the powerful tools provided by AI are essential.

*Legal notice:*

*This report does not constitute legal advice in whole or in its parts. The use of this report by its recipient is at his own risk. Should any questions arise, the authors of the respective parts of the report are pleased to share their professional experience and detailed information regarding issues raised in this report.*



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