

Recent Developments on Artificial Intelligence

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Artificial intelligence (“AI”) is defined as “*the branch of computer science dealing with the simulation of intelligent behavior in computers*” or the “*capability of a machine to imitate intelligent human behavior*” (Merriam-Webster, 2017).

AI is currently used in several forms, including research softwares (first of which, the uber famous Google), as well as cognitive computing, such as self-driving cars or Apple’s Siri. The use of such technology remains largely unregulated.

From a legal standpoint, AI poses several problems that currently remain unaddressed in France: intellectual property rights, criminal liability (such as the recent case of the killing of a pedestrian by a self-driven Tesla car), or even professional liability.

In France, there is no specific regime for damages caused by AI, other than general product liability under article 1245 of the French Civil Code, and general tort liability under article 1240. Even so, French law would probably not hold individuals responsible, since AI operates with a high degree of autonomy; the required elements of “*human control*” and “*action*” are almost nonexistent, thus insufficient for both products and civil liability. While the use of AI is governed by general negligence regimes, the advancement of technology and the expansion of the use of AI would call for specific rules.

However, the regulation of AI could involve several legal and ethical problems. On the one hand, if a general liability rule were created, the question of whom to render liable would be difficult to answer (the creator, the seller, the user?), possibly involving dilution of responsibility between all the individuals who came to create or use the robot.

On the other hand, liability for specific types of AI, such as medical robots –which constitute a colossal advancement for medicine, could be threatening towards protected rights, such as the right to be forgotten forged under EU law (*ECJ decision, May 13th 2014, C131/12*). Lastly, a practical point remains unsolved: which of the involved parties would effectively contribute to damages to the injured party, the seller, the manufacturer, the user, the robot?

1. Shape-shifting the practice of the law: the expansion of the use of AI in the legal profession

The use of AI is not only becoming widespread in daily life, but in professional practice as well. The practice of law is one of the fields in which AI is spreading rapidly, and AI has the potential for being an important advancement in the performance of legal services.

Devices are expected to optimize legal work, but without having certain key tasks performed automatically.

The main attraction is an undeniable time gain for both professionals and clients, legal research being a time-consuming task, as well as very alienating and underproductive.

However, while AI proves to be faster than human hand at tasks that involve sorting out big data, can anything replace an attorney’s expertise and years of experience? For that reason perhaps, for now, the most widespread use of AI in France is confined to system-expert softwares, meaning more basic technology that assist professionals in sorting out data and cases.

Predictice, one of those softwares, is a new French subscription service that integrates artificial intelligence into daily legal services. The tool classifies legal arguments and calculates a probability of success on the case. It automatically performs due diligence normally performed by attorneys in anticipation of the filing of a case.

Expert tools create an understandable dismay among some attorneys who fear being displaced and claim the unreliability of robots to effect human tasks. Indeed, one of the inherent conditions for such technology to be sufficiently reliable is that its creators be trained adequately. For this reason, legal professionals will be needed in the creation and update of the information provided by these services.

Thus, lawyers cannot be replaced: they would simply be working for providers instead of working inside law firms. Even though Beta tools such as Kira Systems claim to act as intermediaries for contract-drafting and negotiation, those are not considered the most important progress of AI and not yet widely spread, as most still consider that professional tact and sentiment is irreplaceable.

2. French and European discussions on the regulation of the use of AI and its consequences

As with most technological advancements, the question of government regulation emerged *ex post facto*.

The French National Bar Council is accompanying those developments by leading think-tanks on AI, showing that even bar authorities are aware of the fact that the use of AI is spreading quickly. More than an automatization of justice, the Council wishes for a greater quality of services and an improvement of justice as a result of the time gain.

European institutions are observing the evolution of artificial intelligence with close attention. The European Parliament has published the “Delvaux report” on February 16th, 2017 (Resolution 2015/2103(INL)) which advises the Commission on a possible directive regulating the use of AI. The report contains recommendations on the regulation of robotics, and echoes a possible legal entity status for robots and AI.

The French government has also adopted “FranceIA” in February 2017, a national strategy think-tank on AI, expected to issue a strategic plan for France. The French Parliament also held a series of hearings in 2016 through the OPECST¹, expected to publish a report in Spring 2017.

Finally, even though France and the EU are considering regulating the use of AI, stringent regulations on AI could slow down start-up flourishing and technology development, Forbes² says. In AI as in other industries, countries and legal systems are competing to attract companies and their investors, and the countries with the most lenient rules will certainly attract many start-ups. This conflict of interests is but a classic one that will surely influence both countries and supranational entities in their decision as to the regulation of robotics and AI.

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¹ *Office Parlementaire d'évaluation des choix scientifiques et technologiques*

² Forbes, *Why Regulating AI is a Mistake*, January 9th 2017