Trial Briefs

The Rise and Fall of the Robot Lawyer: The Beginning of AI Regulation in Legal Practice

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In 1956, artificial intelligence ("AI") was defined as "allowing a machine to behave in such a way that it would be called intelligent if a human being behaved in such a way."[1] AI is measured off of human intelligence, or "the ability to reason abstractly, logically and consistently, discover, lay and see through correlations, solve problems, discover rules in seemingly disordered material with existing knowledge, solve new tasks, adapt flexibly to new situations, and learn independently, without the need for direct and complete instruction."[2]

In simplest of terms, AI is machine-driven technology drawing information from large amounts of data, analyzing the data for patterns, and using patterns to make predictions. AI is effective because it uses machine learning (ML)[3] and natural language processing (NLP)[4] technology to recognize, comprehend, and respond to human language, which leads to faster results.

The advancements of AI over the last five years have progressed well beyond simple speech and image recognition (i.e., Siri), and gained rapt attention of public and private sectors across the world. In the legal field, AI is now used in contract review, analytics, and negotiations, and its capabilities include conducting research prior to and during a case, scanning and sorting documents, and using algorithms to predict the likely outcome of a case.[5] The legal field was even set to experience a breakthrough at the beginning of this year with the first-ever robot lawyer scheduled to appear in traffic court.[6]

On February 22, 2023, a robot lawyer was set to represent an unnamed defendant in an unidentified court in the United States on a speeding ticket in traffic court, by listening to real-time court arguments using a smartphone and telling the defendant what to say via headphones. Less than a month before the scheduled court appearance, however, the company behind the robot lawyer pulled the plug on the "experiment" and exited the legal field altogether. The abrupt end to the robot lawyer was a result of alleged threats of jail time from state bar officials against the company's CEO.[7]

Most courts do not allow electronic devices in courtrooms and regulate the flow of information between litigants, which means that feeding a defendant information through an electronic device would likely be considered the unauthorized practice of law. This is not the end of the robot lawyer, despite the consequences to the profession and the issues that must be overcome before allowing AI to take over the outcome of cases.

Is comprehensive regulation what's missing to keep the legal field up to date with emerging technology or is the legal field once again failing to progress with the times?

Is AI Regulated at the Federal or State Level?

There is no comprehensive federal legislation on AI in the United States, although the United States government has published a blueprint for a potential AI "Bill of Rights,"[8] and a few agencies have worked on proposing AI regulatory initiatives.

For example, the Federal Trade Commission (FTC) issued publications on the topic of AI regulation and set forth ground rules for AI use and development.[9] Those rules include making sure that AI uses data sets which are representative, tested before deployment and periodically thereafter, and ensures that AI outcomes are explainable.[10]

The National Institute for Standards and Technology (NIST) has similarly proposed standards to address AI risks and how to manage them, including ensuring explainable and interpretable outputs, and providing transparency and accountability.[11] The Equal Opportunity Employment Commission (EEOC) has launched a technical assistance document

for compliance with the Americans with Disabilities Act when using AI tools in hiring.[12]

Beyond that, initial approaches to AI regulation have been state specific. In 2020, Illinois enacted the Artificial Intelligence Video Interview Act (AIVIA), which imposes duties of transparency, consent, and data destruction on organizations using AI to evaluate interviewees for jobs that are based in Illinois. 820 ILCS 42/1, *et seq*. The statute was among the first of its kind in the country, and it was followed thereafter by New York and Maryland in regulating automated employment decision tools (AEDTs) that leverage AI to make, or substantially assist, candidate screening or employment decisions.[13]

Within the last year, California, Connecticut, Colorado, and Virginia passed general data privacy legislation which goes into effect in 2023. The laws are privacy statutes, but they contain provisions governing "automated decision-making," incorporating technology using AI to process personal information.[14] This legislation contains similar provisions to those in the European Union's General Data Protection Regulation (GDPR) which was approved in 2016 and went into effect in 2018.[15] Some important highlights are: consumer opt-out rights when AI algorithms make high-impact decisions; privacy policies to include AI-specific transparency; and data privacy impact assessments (DPIA).[16] With the current trend in privacy law and data security, a similar framework may soon exist throughout the United States.

How Does Regulation Affect AI in Practice?

It doesn't – at least not yet. There are no specific standards, restrictions, or courses of discipline related to AI use, or rather misuse, in the legal field. There are no set parameters of what legal professionals can do, cannot do, should do, or should not do when it relates to everyday use of AI.

At present, the trend of AI use is one of trial and error by legal professionals and courts alike. Some have only succeeded in implementing the use of certain AI features, while others have tested the use

of "robots" in hopes of becoming the first to successfully launch the concept. Since it is still unclear whether any use of AI is considered unauthorized practice of law, it is important to follow these trends to determine areas of success.

One important potential use-case has been AI's feature of predicting the likely outcome of cases. The first time "predictive justice" was seen in the United States was in 2013 in *State v. Loomis*.[17] In that case, the circuit court was assisted by a predictive machine learning tool in its sentencing decision of Mr. Loomis, a US citizen charged with driving a car in a drive-by shooting, receiving stolen goods, and resisting arrest.[18]

The machine learning tool predicted that there was a high probability that Mr. Loomis would re-offend in the same way.[19] On appeal, the Supreme Court of Wisconsin affirmed the legitimacy of the tool, finding that the same result would have been reached with or without the circuit judge using the machine learning tool, and that such tools may be used to enhance the judge's evaluation.[20]

Similarly, researchers in New Zealand have built an AI algorithm predicting the length of court sentences to prevent inconsistencies when judges handle small claims cases in court.[21] The algorithm learns the patterns within a set of data and then predicts outcomes based on those patterns.[22] On the civil side, outcomes in small claims cases are thought to be predictable and can be systematized through algorithms.

There have even been reports of the creation of robot judges in Estonia and China in 2019 designed specifically to handle small claims disputes by "internet courts."[23] In 2022, the Estonian Ministry of Justice denied the development of an AI robot judge, but the idea is right on point with DoNotPay's abandoned robot lawyer.[24]

Additional AI concepts that may soon be more prevalent in the legal field include the regular use of AI assistants. Emerging applications already include AI interpreting video feeds from drones carrying out visual inspections of infrastructures, organizing personal and business calendars, and flagging inappropriate content online.[25] These features use similar intelligence

systems to those used by Siri (speech and language recognition) and self-driving cars (vision recognition).[26] Most professionals are familiar with these features, which would make using them at work quite simple.

Open-source AI such as ChatGPT, on the other hand, is still evolving and has experienced limitations such as generating plausible, but confusing statements.[27] ChatGPT, however, did manage to pass a University of Minnesota law school exam with a C+ last semester.[28] Around the same time, ChatGPT-3.5 also managed to pass the evidence and torts sections of a multiple-choice, multistate bar exam.[29] Although not yet capable of passing the attorney licensing test, the free chatbot is both alarming and delighting legal professionals.[30]

While ChatGPT, and AI overall, still has room for improvement, its abilities are progressing rapidly, and AI has already begun to enhance the legal field with greater efficiency and new product implementation.

What Is the Future of AI?

The future of AI is limitless, especially considering open-source AI exists, making it accessible, practical, and easy to use. It provides detailed answers at a remarkable speed across a wide array of subjects and it achieves something no other program has done to date – it merges technology with human creativity. AI will soon disrupt the legal field as we know it and fully answer discovery, conduct all legal searches, draft and create forms, write briefs, and analyze cases to make predictions.[31] Startups such as Lawgeex,[32] Clearlaw,[33] and LexCheck[34] are even working on its automation, while platforms such as Relativity,[35] Exterro,[36] and Everlaw[37] are directly implementing technology assisted review (TAR) into the products that they are selling.[38]

The concern, then, is not about the capabilities of AI related to the legal field, but rather the legal field's aversion to change. Not surprisingly, many legal professionals have reservations about AI and are reluctant to use it in their work. However, if the legal profession does not adapt to the progression of technology, including AI, it will risk becoming stagnate.

It is evident that advancements in technology are not going to cease anytime soon, which means that routine legal matters such as collection disputes and traffic tickets will likely become systematized through the use of AI.

The legal field will either try to ban AI or, more likely, find a way to optimize its potential in a way that improves productivity and efficiency, but only after determining the appropriate rules and regulations regarding its use.

Takeaway

Only time will tell how AI will affect the legal profession, but it is evident that significant changes are underway, requiring comprehensive regulations. For now, it is fair to reason that the use of AI is subject to all rules of professional responsibility and existing law when used in the legal field.■

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