

# IE – ECIJA DIGITAL LAW OBSERVATORY

ARTIFICIAL INTELLIGENCE Focus Group Report

March 9, 2023

## 1. Introduction

As part of the program of activities of the IE – ECIJA Digital Law Observatory, a focus group on artificial intelligence ("AI") was held on December 14, 2022. The purpose of the discussion was to analyze and address the implications that the arrival of this emerging technology is having on the legal profession and society as a whole.

During the discussion, the participants—renowned and experienced legal experts—analyzed, debated and shared their opinions and experiences in the field of artificial intelligence. They also considered challenges and discussed proposals for the future regulation of AI at Spanish and European level. Some of the participants were knowledgeable about the discipline and active in business projects that feature some type of artificial intelligence system. Other participants, despite not having experience using AI in business environments, showed interest in learning about the characteristics, benefits and challenges it entails.

The following is an organized and systematized summary of the content and discussion of the focus group.

## 2. Definition of artificial intelligence

First of all, as tends to be the case with any disruptive technology, there is no clear definition or defined idea of what constitutes artificial intelligence. Relevant questions such as what it encompasses, its characteristics, its most common applications and in what sense AI can affect the legal profession have yet to be resolved.

That being said, artificial intelligence can be defined overall as the ability of a machine or software to perform tasks that, if executed by a human being, would require the use of cognitive functions such as reasoning, planning, decision-making or language processing, among others.

As a matter of fact, this definition is very similar to the one that the AI system ChatGPT (version 3) offers:

### **ChatGPT:**

*ChatGPT: Artificial intelligence (AI) is a branch of computer science that deals with the creation of machines or software that can perform tasks that would normally require human intelligence to complete. These tasks include things like understanding natural language, recognizing images, making decisions and solving problems. AI systems can be designed to learn and adapt over time, and they become more effective as they gather more data and experience.*

*Broadly speaking, there are two main approaches to AI: "weak" or "narrow" AI and "strong" or "general" AI. Weak AI is designed to perform a specific task, such as speech recognition or image classification. It is often referred to as "task-specific AI" or "applied AI." Strong AI, on the other hand, is designed to perform any intellectual task that a human being can perform, and it is also referred to as "AGI (Artificial General Intelligence)."*

OpenAI's ChatGPT is a language model AI chatbot prototype, adjusted by both supervised and reinforcement learning techniques, which has gained special relevance in recent months due to the advances it has made and the output it offers for creating any type of text, answering questions and authoring content of all kinds.

For example, ChatGPT is currently capable of creating a model contract, resolving a legal question or analyzing the most relevant elements of a legal text, with varying degrees of error.

Along with ChatGPT, there are other AI tools, both for answering questions or generating texts (Grammarly, QuillBot), and for creating images and graphics (Dall-E), as well as for programming (SourceAI).

The first approach to a legal definition of AI can be found in the European Parliament and European Council's proposal for an Artificial Intelligence Act, where AI is defined as:

*"Artificial intelligence system (AI system) means a system that is designed to operate with elements of autonomy and that, based on data and input provided by machines and/or humans, infers how to achieve a given set of objectives using machine learning and/or logic and knowledge-based approaches and produces system-generated outputs such as content (generative AI systems), predictions, recommendations or decisions which influence the environment with which the system interacts."*

However, artificial intelligence today is not composed of intelligent machines per se, but rather of programs that produce results similar to those that a human would produce when performing the same task, but without "thinking" as a human would.

This result is achieved mainly through techniques and programs capable of recognizing patterns in data and using certain algorithms and/or a knowledge base and rules that have been previously programmed by humans.

At present, ChatGPT and other models available (for graphics, for example) are, for the time being fall into the category of artificial intelligence that is considered "narrow" or "weak" since, in order to produce results similar to those of a human, it must be limited to a certain type of task and be specifically programmed (or trained).

### **3. Regulation of AI**

The regulation of AI is one of the issues currently of greatest concern to the legal profession. The emergence of AI, while a potentially disruptive and transformative technology in many areas, functions and levels of society, also currently lacks a specific legal framework adapted to it.

In accordance with the above, the European Parliament began its study and analysis more than two years ago with the aim of drafting and approving a first EU Artificial Intelligence Act, expected in the first half of 2023.

The focus group participants specifically highlighted the following aspects, concerns and risks, as well as elements to incorporate into future regulation:

- 1) Due to the fact that there is currently no specific regulatory act on AI in Europe, and as long as the use of AI involves the processing of personal data, companies have been exercising the General Data Protection Regulation (GDPR) with particular caution in the cases and in the jurisdictions where it is applicable.
- 2) Equally, companies are taking special care to ensure compliance with any applicable regulations on intellectual property (copyright and related rights) or industrial property (patents, trade secrets, etc.). Coupled with this, the transparency of the algorithm and the functioning of AI itself and its nature as a business secret is one of the greatest legal risks that legislation will have to address.
- 3) Along with the purely legal aspect, the other major ramification foreseen in the field of AI is ethics. Considerations relating to the ethics of the patterns and data used to feed AI systems could generate great concern, as sources of responsibilities and obligations and also as potential game-changers in the market.
- 4) Similarly, questions arise about the criteria for assigning liability in cases of damage caused by AI, and the relationship between the creator of the AI and the final result. Classic institutions of attribution of liability now seem to be relativized by the emergence of multiple subjects—with and without legal personality—in the causing of damage and the weakening of the causal link between the AI manufacturer and the damage caused.

- 5) The participants were very concerned about the risks arising from the use of AI systems, both in terms of internal effects (change in production systems, loss of jobs, etc.) and external effects (liability, damages, etc.).
- 6) Doubts are also raised as to whether or not there is a need for a human to supervise the use of AI systems (human-in-the-loop).
- 7) There is also some concern about the uncertainty as to whether or not there will be a system of sanctions in this area, who will be the supervisory body and what powers it will have. It is highlighted that Spain will be the first country in the European Union to have an AI agency, prior to the future entry into force of European regulations that establish the need for all states to have a supervisory authority in this area. The headquarters chosen for the Spanish Artificial Intelligence Supervisory Agency (AESIA) will be in A Coruña.
- 8) Also on the table is the question as to whether or not self-regulation codes will be created by the companies that create and use AI. The general feeling is that a booming market such as AI needs this type of regulation.

As an example, below is a response from ChatGPT when asked about the biggest challenges of AI regulation:

**ChatGPT:**

*Lack of transparency: many AI systems are "black boxes," meaning it is difficult to understand how they make decisions. This can make it difficult for legal professionals to understand and interpret the results of an AI-assisted analysis.*

*Bias: AI systems may inadvertently perpetuate biases present in their training data. This can lead to unfair or discriminatory results in legal cases.*

*Lack of interpretability: some AI models are difficult to interpret, which can make it difficult for legal professionals to understand the reasoning behind an AI-assisted decision.*

*Legal liability: it is unclear how the legal system should hold AI systems accountable for their actions and how liability should be assigned in cases where AI systems make mistakes or cause harm.*

*Job displacement: AI-driven automation may displace jobs in the legal profession, particularly in areas such as document review and due diligence.*



*Ethical concerns: AI raises a number of ethical concerns, such as privacy, autonomy, and liability.*

Generally speaking, participants stressed that future regulation of AI should aim to provide AI with the legal certainty necessary for it to develop and reach its full potential. This is without prejudice to the fact that regulations should also seek to limit the risks of possible harm and dangers that the use of AI may cause.

#### **4. Current use of AI in organizations**

There is a widespread understanding that the use of AI can cover a wide range of functions in organizations, both in automating internal processes and in business opportunities that did not exist in the past.

The main benefits of the implementation of AI systems are related to their (automated) learning capabilities. Specifically in terms of the use of AI in organizations, the following benefits stand out:

- Product-delivery management.
- Business and economic outlook estimates and forecasts.
- Pre-selection of CVs.
- Commercial recommendations.
- Calculation of percentage of probabilities of success.
- Profitability expectations.
- Customer profiling.
- Decision risk assessment.

However, despite the enormous opportunities that AI offers, there are concerns that the use of Big Data in business environments (sometimes confidential internal data) will respect all the principles of privacy and data protection. Another concern is that organizations will have adequate cybersecurity measures in place to protect the system and its connections (IoT, human interaction and machine-machine connectivity within the company) from possible intrusion activities or computer damage.

As for ChatGPT, it recommends the following benefits and functions for organizations that AI systems:

### **ChatGPT**

- 📄 *Automating repetitive tasks and freeing employees to focus on activities that add greater value.*
- 📄 *Improving customer service through the use of chatbots and virtual assistants.*
- 📄 *Improving decision-making by analyzing large data sets to identify patterns and trends.*
- 📄 *Optimizing business operations by using predictive analytics and machine learning.*
- 📄 *Improving cybersecurity by detecting and responding to threats in real time.*
- 📄 *Personalizing marketing and sales efforts by understanding customer preferences and behavior.*
- 📄 *Improving supply chain efficiency through the use of automation and real-time data analytics.*

### **5. Preventing the use of discriminatory bias**

As mentioned above, historical data available to feed machine learning algorithms comprise the foundation of AI systems. At the same time, the existence of certain cognitive biases can significantly impact the results generated by AI. In this respect, the focus group participants pointed out several needs prior to being able to work with this data:

- 1) Identifying and understanding the source of such biases: understanding the data being used to train AI models and identifying any possible sources of bias, such as demographic, sociocultural, gender, racial or historical factors.
- 2) Cleaning and preprocessing the data: this includes removing or correcting any inaccuracies or errors in the data and ensuring that it accurately represents the population it is intended to serve.
- 3) Balancing the data set: this can be done by oversampling underrepresented groups, which can artificially balance the data set.
- 4) Using a diverse set of metrics: when assessing the performance of an AI model, it is important to use a diverse set of metrics that take into account different perspectives and possible sources of bias.
- 5) Monitoring and testing: regularly monitoring the performance of AI models and testing them on a diverse set of inputs can help identify and address potential sources of bias.
- 6) Transparency: AI models should be explainable and provide information on the decision-making process. It is important that AI models are transparent in their decision-making process and can be auditable by stakeholders.

- 7) Incorporating a plurality of perspectives in the development process: having a diverse team of developers, with different backgrounds and experiences, can help to identify and address potential sources of bias in the AI development process.

It is important always to keep in mind that preventing bias in AI is an ongoing process that requires continuous testing and improvement and will undoubtedly spark, as it is already doing, an ongoing ethical and legal debate.

## 6. Impact of AI on the labor market

According to various analyses, as well as the practical experience provided by the first AI systems already available, AI is expected to have a significant impact on the labor market in the coming years.

As already noted, AI has the ability to automate repetitive tasks, simplify processes and shorten deadlines, which will undeniably lead to greater efficiency and productivity at work. However, it could also lead to the displacement and disappearance of certain jobs and professions.

Nevertheless, the impact of AI will be very positive overall for the labor market and society.

The participants stressed that any technological advancement, beyond impacting certain tasks or jobs in the short term, always stimulates the creation of new, higher-value jobs in the medium and long term, in previously unknown areas. So, in general, the balance is always positive for the labor market. This means that AI will facilitate the creation of new job opportunities.

Specifically, AI is estimated to create new job opportunities particularly in areas such as data science, machine learning and AI development. In other fields, it will help professionals focus on higher value-added activities and creativity, relieving them of repetitive, monotonous and low-value tasks.

Specifically, the benefits of AI in the labor market and society as a whole can be summarized as:

1. **Improved decision-making.** AI can help improve decision-making by analyzing large data sets and identifying patterns and trends.
2. **Increased personalization.** AI can help personalize products, services and experiences for customers, which can lead to increased customer satisfaction and loyalty.



3. **Improved efficiency and productivity.** AI can help improve efficiency and productivity by automating repetitive tasks, optimizing workflows and providing real-time feedback.
4. **Changes in the nature of work.** AI is also expected to change the nature of work by shifting the focus from repetitive tasks to more complex, higher-value activities that require creativity, critical thinking and emotional intelligence.
5. **Training and retraining.** As AI continues to change the nature of work, it will be important for workers to develop new skills and train for new roles.

It's important to keep in mind that the impact of AI on the workforce will depend on how it is adopted and implemented. It is also advisable that adequate policies, regulations, and a social safety net be implemented to mitigate the negative impact on the labor market.

## 7. Challenges of AI in the legal profession

With regard to the legal profession, following on the above, the participants stated that, notwithstanding the challenges and dangers, AI represents a great opportunity for the legal profession.

The biggest challenges that AI may pose for the legal profession can be summarized as follows:

- 1) The automation of processes may lead, firstly, to a reduction of work and professionals in the provision of legal services.
- 2) The use of AI, without due caution, may lead to wrong decisions based on incomplete or incorrect data.
- 3) Lack of transparency: it may be difficult to understand how AI makes decisions, which could complicate accountability and responsibility.
- 4) Discrimination: AI may replicate and reinforce existing inequalities in training data, which could create result in instances of discrimination in legal decision-making.
- 5) Absence of ethical values: an AI system with biases and inadequate information may show results or recommendations that are not in line with the ethical values desired by the user, without prejudice to their legality. This fact, in any case, could lead to results contrary to those desired by the professional or law firm for using such an AI system.

The participants also noted that, in general, AI can imply great advantages and opportunities for the legal profession.

For example, various experiments to date show that an AI system is capable of analyzing a significant volume of contracts in a fraction of the time compared with an experienced lawyer, and with greater accuracy in detecting errors or inconsistencies in contracts.

Similarly, AI systems are being tested to assist judges and lawyers in drafting legal arguments or predicting the outcome of legal proceedings, with the aim not only of determining a possible error, but also, if necessary, avoiding it or changing the procedural strategy in this regard.

Specifically, the following advantages and opportunities are highlighted:

- 1) **Improved efficiency.** AI can automate repetitive legal tasks and analyze large amounts of data, which can help lawyers become more efficient and make more informed decisions.
- 2) **Improved accuracy.** AI can help lawyers find relevant information and identify patterns that might otherwise go unnoticed, which can improve accuracy in decision-making.
- 3) **Increased access to justice.** AI can help reduce costs and increase the accessibility of legal services, especially for those with fewer resources.
- 4) **Improved research and analysis.** AI can help lawyers analyze and understand large amounts of legal documents, which can improve their ability to research and prepare cases.
- 5) **Improved decision-making.** AI can help lawyers analyze data and trends, which can improve complex decision-making and help predict the outcome of a trial.

## 8. Conclusions

The following is a summary of the general conclusions reached in the first focus group:

- 1) There is a need to provide AI with a **specific legal framework**. Such regulations should not only enhance the market and the use of AI by providing legal certainty, but
- 2) also by creating the proper conditions, limits and obligations for its use. The aim of this is to avoid or minimize the risks of using AI. The new regulations will need to clarify the technology and data sovereignty criteria to be applied.

- 3) **The legal profession will be radically impacted** by the development and massive use of AI, as will, logically, most economic sectors and society as a whole. Through the use of AI, legal professionals will be able to focus on performing higher value-added, more creative, intellectual and strategic tasks, abandoning repetitive, monotonous and low-added-value tasks.
- 4) In terms of legal regulatory initiatives, **the EU is at the global forefront.**
- 5) **The GDPR is the beginning; its learning and best practices should serve as a basis** for AI regulation. In terms of expected guidelines, the UK is seen as the benchmark to follow, but would this approach be too lenient to regulate this growing technology and market?



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