INTERROGATING LEGAL IMPLICATIONS OF CONTEMPORARY ARTIFICIAL INTELLIGENCE EXPLORATIVE REGIME

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Abstract

The intersection of law and artificial intelligence (AI) is rapidly evolving, presenting both opportunities and challenges. The paper adopts doctrinal method to explore the legal implications of AI technologies, focusing on issues such as accountability, liability, privacy, and ethical considerations. As AI systems become more autonomous, questions arise regarding the allocation of responsibility for decisions made by these systems. It also examines the lawyers' professional responsibility to client with the emergence of AI. The paper examines existing legal frameworks and their adequacy in addressing the unique characteristics of AI, proposing potential regulatory approaches to ensure that AI development and deployment align with societal values and legal standards. Additionally, the ethical dimensions of AI, including bias, transparency, and fairness, are discussed, highlighting the need for interdisciplinary collaboration to create robust and adaptive legal structures. By analyzing current case studies and legal precedents, this paper aims to provide a comprehensive overview of the challenges and potential solutions in the realm of law and AI.

Keywords: Accountability, Artificial intelligence, Data Protection, Ethics, Legal Frameworks, Liability and Privacy

1.0 Introduction

The Covid-19 pandemic was a wakeup call to many countries including Nigeria. The pandemic forced many countries to adopt shelter-in-place (quarantines) directives, as well as partial or total lockdown and social distancing orders to contain the spread of the virus. As opined by Olubukola and David, Universities around the globe have been profoundly affected by stay-at-home orders, which have required them to close their doors and shift to online education. Courts also gave directives on the use of virtual hearing (Remote Court Proceedings, RCP) across the globe including Nigeria.

[1]Providing leadership, the remote court proceeding was recommended by the then Chief Justice of Nigeria by way of circular NJC/CIR/HOC/II/656 in April 2020 to mitigate the suspension of courts activities during Covid-19 pandemic.[2]

The reluctance and long-standing skepticism to online teaching and learning compared to active and in-person education was put to test. Online teaching became the main platform for education during the pandemic, creating colossal pedagogical changes. One of the biggest challenges that universities have had to confront due to the unexpected and sudden shift to online education concerns what kind of assessment techniques are appropriate in an online environment.[3] The intersection of law and artificial intelligence (AI) is rapidly evolving, presenting both opportunities and challenges.

Today, many legal practitioners are increasingly utilizing various types of AI and data analytics tools and smart virtual assistants to enhance their work efficiency, streamline tasks, and improve client services.[4] These virtual assistants can vary in complexity and

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[1] O Olubukola and A David *Remote Court Proceedings in Nigeria: Justice Online or Justice on the Line*. 13(2) International Journal for Court Administration (2022). Available at www.https://doi.org/10.36745/ijca.448 assessed on 7 July 2024.

[2] See National Judicial Council Covid – 19 Policy Report: Guidelines for Court Sitting and Related Matters in the Covid-119 Period, National Judicial Council, 2020, Circular No. NJC/CIR/HOC/II/660 [accessed 24 April 2022].

[3] L Colonna,*Legal implication of Using AI as an Exam invigilator*(Nordic Yearbook of Law and Informatics 2020-2021). https://irilaw.org/wp-content/uploads/2022/02/law-in-the-era-of-artificial-intelligence.pdfdate of access?

[4] D Linna and WMuchman*Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI.* The Professional lawyer (2020) 21(1) . available at:

functionality; with some being standalone platforms and others integrated into existing legal software or practice management systems. Evidently, the goal of those tools is to assist lawyers in managing their workload more efficiently, improving client services, and enabling them to focus on higher-level legal tasks that require human expertise, resulting in the transformation of legal tasks – from legal research and review to contract management and the prediction of litigation outcomes.

This paper explores the legal implications of AI technologies, focusing on issues such as accountability, liability, privacy, and ethical considerations. As AI systems become more autonomous, questions arise regarding the allocation of responsibility for decisions made by these systems. The paper examines existing legal frameworks and their adequacy in addressing the unique characteristics of AI, proposing potential regulatory approaches to ensure that AI development and deployment align with societal values and legal standards. Additionally, the ethical dimensions of AI, including bias, transparency, and fairness, are discussed, highlighting the need for interdisciplinary collaboration to create robust and adaptive legal structures.

The reality of AI has also become more relevant as the African Union (AU) and some African sub-regional groups have started paying attention to AI.[5] For example, the African Union High-Level Panel on Emerging Technologies (APET) has held consultative expert meetings on AI and recommended developing a continental AI strategy for Africa.[6] This was followed up by a draft of an AU-AI Continental Strategy for Africa is being finalized to be submitted to the AU member states for review and validation, after which a continentally-adopted version will be launched at the beginning of 2024 at the AU Africa Heads of State and Government summit.[7] Sometimes in 2023,

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https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/ethical-obligations-protect-client-data-when-building-artificial-intelligence-tools-wigmore-meets-ai/date of access?

[5] Diplo *Artificial intelligence in Africa: Continental policies and initiatives*(Diplomacy Education Resources, 2023). https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/ai-africa-continentalpolicies/author's initials and date of access missing?

[6] AUDA-NEPAD (2022) *The African Union artificial intelligence continental strategy for Africa*. https://www.nepad.org/news/african-union-artificial-intelligence-continentalstrategy-africa. ditto

[7] AUDA-NEPAD (2023) *Artificial intelligence is at the core of discussions in Rwanda as the AU High-level*

the African Commission on Human and Peoples' Rights (African Commission) commenced a focal point study and expert consultation on the impact of AI, robotics and other new and emerging technologies on African human and peoples' rights.[8]

According to Daniel and Wendy, in conducting legal research, there are several AI tools available to assist lawyers in their research. Examples are e-Discovery, Casetext, ChatGPT, LawGeex, voice dictation and idea generation.[9] There are others like Gavel, Harvey AI and Blue J L&E.[10]The authors have noted that these tools can quickly retrieve relevant case law, statutes, regulations, and legal articles to support attorneys in building strong legal arguments and staying up to date with legal developments. This role for AI is now quite well established. These can save lawyers from embarrassment especially of incompetence.[11]

The latest developments in the evolution of AI technology suggest the need to reconsider the history of AI in Law. Paliwala discovered that despite the significant changes in the application of information technology to legal work, which is largely due to common information technology processes (processing, storage, retrieval and data management in combination with communication with rich, fast and global information through internet resources). However, so far, in the opportunities when information technology has been applied to deeper legal processes (which involve the very nature of Law), the result has not been very successful — a good example of this concerns to the application of IA systems to Law.[12] At the 35th Nordic Conference on law and information technology[13]

Panel on Emerging Technologies convenes experts to draft the AU-AI continental strategy.
29 March 2023 available at: https://www.nepad.org/news/artificial-intelligence-core-of-discussionsrwanda-au-high-level-panel-emerging/. ditto

[8] African Commission 'Press Release: Inception workshop and experts' consultation on the study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa, 8-9 June 2023. Nairobi, Kenya', https://achpr.au.int/en/news/press-releases/2023-06-08/inception-workshop-and-experts-consultation-artificialintelligence/

[9] D Linna and WMuchman, Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI.incomplete citation?

[10] 5 AI Tools Lawyers can Use Today. Available at: https://gavel.io/resources/5-ai-tools-lawyers-can-use-today/. No date of access?

[11]*Dangote Cement Plc Vs Peter Ager* (2024) 10 NWLR (Pt.1945) 1

[12]APaliwala 'Rediscovering artificial intelligence and law*:* An inadequate jurisprudence*?' International Review of Law, Computers & Technology*, 30(3): 107-114. DOI: https://doi.org/10.1080/13600869.2016.1229651.

artificial intelligence is seen as a very useful tool for law and legal science. In AI there is a called “artificial intelligence and law” which aims to apply knowledge in AI to solve or at least facilitate solution of some legal problems. At the same time tools and techniques developed to solve specific problems in law are further utilized by AI in general.

2. What is Artificial Intelligence?

In Hizroglu’s paper on Artificial Intelligence and Application, Artificial intelligence (AI) is described as “intelligence demonstrated by machines, unlike the natural intelligence displayed by humans and animals, which involves consciousness and emotionality”. The distinction between the former and the latter categories is often revealed by the acronym chosen. "Strong AI" is usually labelled as artificial general intelligence (AGI) while attempts to emulate 'natural' intelligence have been called artificial biological intelligence (ABI). Leading AI textbooks define the field as the study of "intelligent agents" ‘any device that perceives its environment and takes actions that maximize its chance of successfully achieving its goals’. Informally, the term "artificial intelligence" is often used to describe machines that mimic "cognitive" functions that humans associate with the human mind, such as "learning" and "problem solving".[14] Oluwole corroborated that today, AI is playing a critical role in digitalisation in Africa, including in countries that are developing so-called “smart cities”.[15] In general, Scherer says, ‘an AI system includes both hardware and software components. It thus may refer to a robot, a program running on a single computer, a program run on networked computers, or any other set of components that hosts an AI’.[16] Goldberg and Carson posited that, AI is most often

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[13] L Colonna and S Greenstein (eds) *Law in the Era of Artificial Intelligence* (Nordic Yearbook of Law and Informatics 2020-2021). The Swedish Law and Informatics Research Institute. Available at https://irilaw.org/wp-content/uploads/2022/02/law-in-the-era-of-artificial-intelligence.pdf assessed on 7th July 2024

[14] A Hızıroğlu (2022) *Artificial Intelligence Theory and Application.* İzmir BakırçayÜniversitesi Available at https://dergipark.org.tr/en/pub/aita/aim-and-scope assessed on 7 July 2024

[15] V. Oluwole (2023) *Africa's smartest cities: Top countries embracing Urbanisation and Technology.* Business Insider Africa. July 28, 2023, https://africa.businessinsider.com/local/lifestyle/africas-smartest-cities-top-countries-embracing-urbanisation-and-technology/hszfjqk

[16] MU Scherer (2016) *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies.* Harvard Journal of Law & Technology. 29(2), pp. 353-400. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/hjlt29&start_page=353&collection=journals&id=365.

considered as work resulting from creative activity and is, therefore, protected by intellectual property as software through copyright.[17] Schaal found some impediments to AI under certain conditions, which he said can also be protected by a software patent. Also, AI software patents are, however, questionable regarding the level of protection. They might be infringed in a specific manner due to the continuous development and a possibility of being manipulated by a user.[18] AI systems in a form of software[19] as well as AI systems inseparably incorporated into physical devices such as robots (cyberphysical systems) are considered as products. In general, every product should meet certain safety and quality standards as well as reasonable expectations of an ordinary customer. If a product is defective, for instance when it does not properly operate or causes damage, its manufacturer can be held liable. An injured party can potentially sue for product liability, service liability, malpractice or negligence. A result of each case depends on many factors. Not only manufacturers of AI systems but also their users must take reasonable care to avoid mistakes and causing harm.[20] Complications in determining a liable person could occur in case of custom-made AI systems combining knowledge of a manufacturer with client's specifications. Moreover, specificities in product liability can be identified in various application domains, such as in automated driving.[21]

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[17] MD Goldberg and DO Carson (1991) *Copyright Protection for Artificial Intelligence Systems.* Journal of the Copyright Society of the U.S.A. 39(1), pp. 57-75. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/jocoso39&start_page=57&collection=journals&id=1.

[18] EJ Schaal (2004) *Infringing a Fantasy: Future Obstacles Arise for the United States Patent Office and Software Manufacturers Utilizing Artificial Intelligence.* Villanova Sports & Entertainment Law Journal. 11(1), pp. 173-202. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/vse11&start_page=173&collection=journals&id=179

[19] K. Alhelt (2001) *The Applicability of the EU Product Liability Directive to Software.* Comparative and International Law Journal of Southern Africa. 34(2), pp. 188-209. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/ciminsfri34&start_page=188&collection=journals&i=194.

[20] GS Cole (1990) *Tort Liability for Artificial Intelligence and Expert Systems.* Computer/Law Journal. 10(2), pp. 127-232. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/jmjcila10&start_page=127&collection=journals&id=131.

[21] BW Smith (2017) *Automated Driving and Product Liability.* Michigan State Law Review. (1), pp. 1-74. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/mslr2017&start_page=1&collection=journals&id=3.

Article 22 of GDPR[22] provides for the right not to be subjected to a decision based solely on "automated processing, including profiling" with legal or significant impact. AI laws also refer to driverless vehicles. This paper will define Artificial intelligence as that area of computer science that mainly focuses on the making of such kind of intelligent machines that work and give reactions same like human beings, faster and more accurate.

3. Legal Frameworks and AI

A. Existing legal frameworks applicable to AI (International laws and regulations)

The European Union General Data Protection Regulation (GDPR) of 2019 was the foremost legislation on AI. Article 22 of GDPR provides for the right not to be subject to a decision based solely on "automated processing, including profiling" with legal or significant impact. AI laws also refer to driverless vehicles.[23] Although, some sources refer to the Council of Europe (CoE) 1981 Convention for the Protection of Individuals with regards to automatic processes of individual Data as the first international legislation on personal data protection which came to force in 1985.

However, the convention and its proposed protocol has yet assumed the force of law.[24] In 2024, the parliament of the European Council adopted the Artificial Intelligence Act in March 2024 and the Council followed with its approval in May 2024.[25] Countries with specific legislation to AI in their respective national laws include: Argentina, Belarus, China, Denmark, Egypt, Estonia, Finland, Greece, Hungary, Iceland, Kazakhstan, Kyrgyzstan, Lithuania, Macau, Mauritius, Norway, Peru, Poland, Portugal, Qatar, the Republic of Ireland, the Russian Federation, Saudi Arabia, Serbia, the Slovak Republic, Spain, Sweden, Taiwan, the United Arab Emirates, the United Kingdom, and Uzbekistan. While legislation referring to AI has been proposed and is at various stages of the

[22] European Union General Data Protection Regulation EU (GDPR) (2019)
[23] PV Kadam and AP Kadam (2021) *Legal Framework and Artificial Intelligence: A Macro Review.* Journal of Emerging Technologies and Innovative Research (JETIR). JETIR December 2021, Volume 8, Issue 12
[24] K. Cantekin (2023) *Regulation of Artificial Intelligence Around the World.* The Law Library of Congress, Global Legal Research Directorate. Available at https://www.loc.gov/research-centers/law-library-of-congress/about-this-research-center/
[25]https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence

legislative process in the following national jurisdictions: Argentina, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Israel, Mexico, Panama, the Philippines, South Korea, and Thailand.[26]

B. Existing National and Regional Laws

In Nigeria, the National Assembly is still working in the bill on Artificial Intelligence and related subject.[27] However, there are some legislations that could be said to contemplate AI operation in Nigeria. In Africa generally, Nigeria was first country in the region to institutionalize a National Centre for AI and Robotics (NCAIR); and the establishment of dedicated government institutions who are fostering a knowledge-based economy and promoting the research and development of AI systems in Nigeria.[28] AI development and deployment techniques can impact data protection and ethical principles such as transparency, data minimization, purpose limitation, accountability, fairness, and so forth.[29] Nigeria has passed a number of legislation although not particularly targeting operation of AI. Some of which are Nigeria Data Protection Regulation (NDPR) 2019, Nigeria Data Protection Act (2023), Freedom of Information Act (FOIA) 2011, Cybercrime (Prohibition, Prevention, etc.) Act (CPPA) 2015, National Information Technology Development Agency (NITDA) Act 2007, Consumer Protection Council Act (CPCA) which birthed Consumer Protection Framework which includes, Central Bank Consumer Protection Framework (CBN-PF), National Pension Commission Consumer Protection Framework (NPCCPF). There is also African Union Convention on Cyber Security and Personal Data Protection (AUCC&PDP) which was adopted in 2014 to

[26] K. Cantekin*Regulation of Artificial Intelligence Around the World,* Ibid. p. 2

[27]The Guardian Newspaper. 10th NASS to provide legal framework for AI Regulation. Available at https://guardian.ng/10th-nass-to-provide-legal-framework-for-ai-regulation/ published on 22nd April 2024

[28]JO Effoduh (2021) *Towards A Rights-Respecting Artificial Intelligence Policy for Nigeria.* Paradigm Initiative publication. Available at https://link.springer.com/chapter/10.1007/978-3-031-08215-3_5

[29] E. Salami & I. Nwankwo (2024) *Regulating the privacy aspects of artificial intelligence systems in Nigeria:*
A primer. (2024) 1. African Journal on Privacy & Data Protection 220-247 available at https://research.ulapland.fi/en/publications/regulating-the-privacy-aspects-of-artificial-intelligence-systems

establish a legal framework for cyber-security and personal data protection entered into force in June 2023.[30]

On Thursday, 20 March 2025, the Nigeria Data protection Commission (NDPC) issued the Nigeria Data Protection Act- General Application and Implementation Directive (NDPA-GAID). The GAID seeks to enhance the understanding, implementation and effectiveness of the NDPA. By virtue of Article 3(3) of the GAID, the Nigeria Data Protection Regulation (NDPR-2019) and consequently the NDPR Implementation Framework (2020) cease to be operational as data protection regulation. By implication, the primary data protection instruments applicable and effective in Nigeria from 20th March 2025 are the Nigeria Data Protection Act 2023 and the Nigeria Data Protection Act-General Application and Implementation Directive.[31]

The ongoing process of digital transformation[32] is being accomplished in part with the use of artificial intelligence (AI), an interdisciplinary technology that aims to use large data sets (Big Data), suitable computing power, and specific analytical and decision-making procedures in order to enable computers to accomplish tasks that approximate human abilities and even exceed them in certain respects.[33] In Nigeria especially, legislation to regulate AI is still inadequate. National Information Technology Development Agency (NITDA) has begun drafting a Code of Practice for AI to regulate AI tools such as ChatGPT.[34] These legislations could not have been said to be adequate until they become tested at the courts.

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[30] See "Status List" at <https://au.int/sites/default/files/treaties/29560-sl-AFRICAN_UNION_CONVENTION_ON_CYBER_SECURITY_AND_PERSONAL_DATA_PROTECTION_0.pdf.> accessed 22 March 2025

[31] https://www.olaniwuajayi.net-introduction-the-nigeria-data-protection-commission/> accessed on 22/3/2025

[32] T. Cole (2017) *Digitale Transformation*. 2nd edn. Franz Vahlen, München. Available at https://www.vahlen.de/cole-digitale-transformation/product/17678749

[33] S. Russell and P. Norvig (2012) *KünstlicheIntelligenz. Ein moderner Ansatz*. 3rd edn. Pearson, Hallbergmoos. available at https://vowi.fsinf.at/images/b/bc/TU_Wien-Einf%C3%BChrung_in_die_K%C3%BCnstliche_Intelligenz_VU_%28Eiter%2C_Tompits%29_-_K%C3%BCnstliche_Intelligenz-_Ein_moderner_Ansatz_%283.%2C_aktualisierte_Auflage%29.pdf

[34] E. Ojukwu (2019) NITDA *drafting the Nigeria Code of Practice for artificial intelligence tools such as ChatGPT and others*. Available at: https://www.tekedia.com/nitda-drafting-the-nigeria-code-of-practicefor-artificial-intelligence-tools-such-as-chatgpt-and-others/.

4. Accountability and Liability

According to Sirvastava, all countries welcome AI trends. It is his position that AI is present everywhere, focusing on developed and underdeveloped countries and competing for supremacy in this area. China has ambitions to become a global superpower in the field of AI. China has announced that it will become a leader in AI by 2030, investing 150 billion USD. The goal is perfectly achievable, as it is already a leader because they already lead in research in this area, and the United States is competing fiercely with them. The future of AI in the US has become unclear and declining due to state involvement, funding cuts, increased education costs and strict immigration restrictions for international research experts. The UK is a leader with more than 121 AI companies as the country extensively funds and supports robotics and research in AI. Russia invests about $12.5 million a year in AI. Germany is technically efficient, having the appropriate skills to implement and promote technological innovation and play a leading role in robotics.[35]

However, a very important question often raised about AI is its trustworthiness. It has been asked who will take responsibility for the changes AI brings to the world? The competitive efforts of nations to outshine one another in AI supremacy may make the trustworthiness of AI to be a herculean task. Therefore, in the context of AI, accountability refers to the responsibility and transparency in the development, deployment, and outcomes of AI systems. The responsible AI accounting should involve ensuring that:

1. **Developers and Organizations**: Clearly define who is responsible for the AI system's decisions and actions. This includes developers, companies, and stakeholders involved in the AI lifecycle.
2. **Transparency**: Maintain openness about how AI systems function, including the data they use, the algorithms they employ, and the decision-making processes they follow.

[35] S. Sirvastava (2019) *Top 10 Countries Leading the Artificial Intelligence.* Retrieved from https://www.analyticsinsight.net/top-10-countries-leading-the-artificial-intelligence-race/

3. **Ethical Standards**: Adhere to ethical guidelines and standards to prevent harm and ensure fairness, bias mitigation, and respect for user privacy and rights.
4. **Oversight and Regulation**: Implement mechanisms for oversight, such as audits, compliance checks, and regulatory frameworks to monitor and enforce accountability.
5. **Responsiveness**: Address and rectify issues or errors in AI systems promptly, including unintended consequences or biases that may arise.
6. **User Awareness**: Inform users about the use of AI, its capabilities, and its limitations to ensure informed consent and understanding.

5. Legal Liability for AI-induced harm

Weng gave an illustration of a scenario in 1981 as narrated by Yueh-Hsaun Weng,[36] would make this question clearly appreciated. "In 1981, a 37-year-old Japanese employee of a motorcycle factory was killed by an artificial-intelligence robot working near him. The robot erroneously identified the employee as a threat to its mission and calculated that the most efficient way to eliminate this threat was by pushing him into an adjacent operating machine. Using its very powerful hydraulic arm, the robot smashed the surprised worker into the operating machine, killing him instantly, and then resumed its duties with no one to interfere with its mission. Unfortunately, this is not science fiction, and the legal question is: Who is to be held liable for this cold-blooded, premeditated murder? In the 1964, Isaac Asimov wrote 'The rest of Robots'[37] where he proposed laws of robot. In the first law, Asimov wrote, 'A robot may not injure a human being, or through inaction, allow a human being to come to harm. The second law says, 'A robot must obey orders given to it by human beings, except where such order would conflict

[36] YH. Weng, et al. (2009) *Toward the Human-Robot Co-Existence Society: On Safety Intelligence for Next Generation Robots.* No.1 International Journal Society, ROBOT 267, 273 (2009). Available at https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.researchgate.net/publication/39730975_Toward_The_Human-Robot_Co-Existence_Society_On_Safety_Intelligence_For_Next_Generation_Robots&ved=2ahUKEwj_gKXVvKeHAxUZU0EAHU7YCccQFnoECBUQAQ&usg=AOvVaw1AuOWaU_R8q3pTDLoqCQgx

[37] I. Asimov (1963). *The Rest of the Robots.* Available at: https://www.google.com/search?si=ACC90nzvCy6rkx5htLqWK8ZOeUaRl2vHVIDFhU1_SmRtMI6N2nlsYEe-xUJs1x_BeRzj7ES6yqF0QwJFfYf_oFSz4gWoQ1y6ftXmeTy3RXqskW6uL-eGyxmiyYVvP_zMCeAbrC2lSdW6&hl=en-NG&q=the+rest+of+the+robots+quotes&kgs=cb416b53f549b7b7&shndl=17&source=sh/x/kp/osrp/m5/2.

with first order'. Now, where the programming of the AI does not conform to the laws of robot who takes responsibility or what kind of laws or ethics are correct, and who is to decide?[38]

It becomes necessary to define legal liability. What is legal liability? Greenstein[39] defined liability as "the state of being legally responsible for something: the state of being liable for something … something (such as the payment of money) for which a person or business is legally responsible … someone or something that causes problems."[40] According to law.com[41] liability is:

> One of the most significant words in the field of law, liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves him/her/it open to a lawsuit for any resulting damages or a court order to perform (as in a breach of contract or violation of statute). To win a lawsuit, the suing party (plaintiff) must prove the legal liability of the defendant if the plaintiff's allegations are shown to be true. This requires evidence of the duty to act, the failure to fulfill that duty and the connection (proximate cause) of that failure to some injury or harm to the plaintiff. Liability also applies to alleged criminal acts in which the defendant may be responsible for his/her acts which constitute a crime, thus making him/her subject to conviction and punishment.

Therefore the ability to make informed and useful predictions about potential legal outcomes of a case puts understanding liability as one of the primary skills of lawyering.[42] Because lawyers are routinely called upon to make predictions in a variety of legal settings, a typical scenario may be where a client provides the lawyer with a legal

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[38] H. Gabriel (2010) *The Criminal Liability of Artificial Intelligence Entities - from Science Fiction to Legal Social Control.* Akron Intellectual Property Journal: Vol. 4: Iss. 2, Article 1. Available at: https://ideaexchange.uakron.edu/akronintellectualproperty/vol4/iss2/1.

[39] S. Greenstein (2020) *Liability in the Era of Artificial Intelligence.* Article is based on a presentation given at the 35th Nordic Conference on Law and IT, 10-11 November, 2020, which had the general theme of law in the era of
Artificial Intelligence (AI).

[40]Merriam-Webster legal dictionary. https://www.merriam-webster.com/dictionary/liability#legalDictionary

[41] LAW.COM https://dictionary.law.com/Default.aspx?selected=1151&bold

[42] T. Rostain (1998) *Ethics Lost: Limitations of Current Approaches to Lawyer Regulation*. 71 S. CAL. L. REV. 1273, 1281–82.

problem involving a complex set of facts and goals.[43]A lawyer might employ a combination of judgment, experience, and knowledge of the law to make reasoned predictions about the likelihood of outcomes on particular legal issues or on overall issue of liability, often in contexts of considerable legal and factual uncertainty.[44] On the basis of these predictions and other factors, the lawyer might counsel the client about recommended courses of action.

In the proposal of Surden where he contends that that machine learning techniques have often been able to produce "intelligent" results in complex, abstract tasks, often not by engaging directly with the underlying conceptual substance of the information, but indirectly, by detecting proxies and patterns in data that lead to useful results. It becomes useful that adopting these principles, it may be suggested that there is a subset of legal tasks often performed manually today by attorneys, which are potentially-partially automatable given techniques such as machine learning, provided the limitations are understood and accounted for.[45]

It should be emphasized that these tasks may be partially automatable, because often the goal of such automation is not to replace a lawyer, but rather, to act as a complement, for example in filtering likely irrelevant data to help make a lawyer more efficient. Such a dynamic is discussed below in the case of automation in litigation discovery document review. There, the machine learning algorithms are not used to replace (nor are they currently capable of replacing) crucial attorney tasks such as of determining whether certain ambiguous documents are relevant under uncertain law or will have significant strategic value in litigation.

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[43] P. Brest and LH Krieger. (2010) *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policymakers*. 1st Edition. Oxford University Press 2010. Available at: https://global.oup.com/academic/product/problem-solving-decision-making-and-professional-judgment-9780195366327?cc=us&lang=en&.

[44]E. Malemi. (2017) *The Nigerian Constitutional Law with Fundamental Rights (Enforcement Procedure) – Rules 2009.* Princeton Publishing Company, Lagos, 3rd Edition

[45] H. Surden. (2014) *Machine Learning and the Law.* Volume 89 Number 1 Symposium: Artificial Intelligence and the Law. Available at: https://digitalcommons.law.uw.edu/wlr/vol89/iss1/.

6. AI and Human Rights

Human rights are very fundamental rights that every human is entitled to regardless of their colour, nationality, ethnicity, religion, language or any other status. Human rights are universal, inalienable and indivisible so much so that persons cannot live without them. Human rights are what enable a person to continue his humanity.[46] Without human rights, life is meaningless, worthless and a mere shadow.[47] To wit, human rights are too precious to be infringed upon without sufficient and convincing justification. Human right was succinctly defined by Kayode Eso J.S.C (as he then was) in the case of *Ransome Kuti & ORS v. A.G Federation & ORS*[48]as thus:

> *[Human rights] are rights that have always existed, even before orderliness prescribed rules for the manner they are to be sought. It is a primary condition to a civilized existence which stands above the ordinary laws of the land.*

Since AI cannot be classified as human, where the machine infringes on the rights of humans, how will the law resolve this matter? In Germany, the German Federal Constitutional Court as early as 1983, elaborated a 'fundamental right to informational self-determination' in response to the risks to the protection of the right of privacy that were associated with emerging digitalisation.[49] In 2008 the Court took the innovative step of extending the reach of fundamental rights protection to the 'fundamental right to the guarantee of the confidentiality and integrity of information technology systems'.[50]Although owing to the subject matter of the dispute, this decision was directed at online searches of an individual's personal computer, the Court later held in 2016 that the protection afforded to information technology systems covers more than simply the computers used by individuals but also includes the networking of those computers with other computers, such as in connection with storage of data in the cloud.[51]

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[46] Ibid.
[47] ibid
[48]*(1985) 2 NWLR*
[49] W. Hoffmann-Riem (2020). *Artificial Intelligence as a Challenge for Law and Regulation.*Bucerius Law School. Available at: Regulating Artificial Intelligence. https://doi.org/10.1007/978-3-030-32361-5_1.
[50] ibid
[51] ibid

7. Privacy and Data Protection

The right to privacy is an element of various legal traditions that intends to restrain governmental and private actions that threaten the privacy of individuals.[52] Privacy has been determined to be the right to be left alone; freedom from interruption, intrusion, embarrassment or accountability; control of the disclosure of personal information; protection of the individual's independence, dignity and integrity; secrecy, anonymity and solitude; the right to protection from intrusion into your personal life.[53] The right to privacy involves rules governing the collection and handling of personal data, the protection of physical autonomy, the right to limit access to oneself and the right to control one's identity.

Privacy and data protection have long been leading concerns with eLearning, and when it comes to online proctoring systems the issues only multiply.[54] A first concern is that of the legality of processing, especially concerning the processing of biometric data like student' faces as well as student's living spaces. The rights of a data subject become significant in discussing data protection and privacy. A data subject is any individual person who can directly or indirectly be identified via an identifier such as a name, an ID number, and location data or via factors specific to the person's physical, psychological, genetic, mental, economic, cultural or social identity.[55] Regional and international instruments such as the African Union Convention on CyberSecurity and Personal Data Protection,[56] the Organisation for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data,[57] and the General Data Protection Regulation (GDPR) of Europe have laid down data rights to

[52]Wikipedia,'Right to Privacy'<https://en.wikipedia.org/wiki/Right_to_privacy> accessed 16 July 2024.
[53] Law Teacher, 'The Right to Privacy'<https://www.lawteacher.net/free-law-essays/human-rights/right-to-privacy.php> accessed 20 October 2021.
[54] FF. Kharbat, and AS. Abu Daabes. (2021) *E-proctored Exams During the COVID-19 Pandemic: A Close Understanding, Education and Information Technologies.* Article is based on a presentation given at the 35th Nordic Conference on Law and IT, 10-11 November, 2020, which had the general theme of law in the era of Artificial Intelligence (AI).
[55]https://www.atinternet.com/en/glossary/data-subject/.
[56] African Union Convention on Cyber Security and Personal Data Protection. Available at: https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf.
[57] OECD (2013) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.* Available at: https://one.oecd.org/document/C(2013)79/en/pdf.

rights include the right to access personal information, the right to prevent the processing of personal data, and the right of individuals to be informed of the intended use of their personal data, including in cases of automated data processing where the decision significantly affects the data subject.[58] Data protection embodies the underlisted principles:

i. Lawfulness, fairness and transparency: Processing of personal data should be done lawfully and fairly, and data subjects should be consulted to ensure transparency.
ii. Purpose limitation or specification: Personal data must be collected for a specific purpose and a lawful purpose.
iii. Storage Limitation: The data must be retained for a period which the purpose serves.
iv. Data minimisation: Personal data should be processed for a specified purpose and should be relevant, adequate and not excessive.
v. Accuracy: All personal data that is collected should be complete, accurate, up-to-date and not misleading.
vi. Integrity and confidentiality (security): Security safeguards should be in place for personal data to ensure the integrity and confidentiality of data and to safeguard the data against loss or damage and unlawful access.
vii. Accountability: The responsible party should ensure that all measures and conditions in place are complied with to ensure that all principles are given effect.

Therefore, a data collector must ensure strict adherence to the listed principles. Although, concerns have been raised especially with respect to AI's automated programmed system's ability to respect and adhere to these principles.

Canadian government has enacted several laws at the federal and provincial levels that relate to the protection of personal information. The Personal Information Protection and Electronic Documents Act (PIPEDA) is a federal privacy law that is applicable to the

[58] General Data Protection Regulation (GDPR). Available at: https://gdpr-info.eu/.

private sector.[59] In 2017, the Privacy Commissioner of Canada appearance before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, stated that:

> Consent has always been considered a foundational element of PIPEDA. Legally, organizations must obtain consent to collect, use and disclose an individual's personal information, subject to a list of specific exceptions. But obtaining meaningful consent has become increasingly challenging in the age of big data, the Internet of Things, artificial intelligence and robotics.[60]

It therefore becomes expedient that the privacy rule in AI should be concerns of legal practitioners.

8. Ethical Considerations

Stahl in his paper, 'Artificial Intelligence for a better future' enumerated about 40 ethical issues.[61] Ethical problems in AI can lead to a variety of consequences with different levels of severity; these consequences include everything from increased inequality to extended litigation processes to resist social uprising. While in most cases one might intuitively accept that the issues can be seen as ethically relevant, no context or reason is provided as to why they are perceived to be ethically problematic. Many of them are not only ethically problematic but also directly linked to regulation and legislation. Being an ethical issue thus clearly does not exclude a given concern from being a legal issue at the same time.

The ethical issues are furthermore highly diverse in their specificity and likelihood of occurrence. Some are certain to come to pass, such as issues around data protection or data accuracy. Others are conceivable and likely, such as misuse or lack of trust. Yet

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[59] Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, as amended, http://lawslois.justice.gc.ca/eng/acts/P-8.6/FullText.html archived at https://perma.cc/KY5R-7YEM.

[60] Appearance before the Standing Committee on Access to Information, Privacy and Ethics (ETHI) on the Study of
the Personal Information Protection and Electronic Documents Act (PIPEDA), OFFICE OF THE PRIVACY
COMMISSIONER OF CANADA (Feb. 16, 2017), https://www.priv.gc.ca/en/opc-actions-and-decisions/advice-toparliament/2017/parl_20170216/ archived at https://perma.cc/6VQX-Y6LW.

[61] BC Stahl (2021) *Artificial Intelligence for a Better Future, Springer Briefs in Research and Innovation Governance*. Available at: https://doi.org/10.1007/978-3-030-69978-9_4.

others are somewhat diffuse, such as a negative impact on democracy, or on justice. The question as to who should be interested in AI ethics is answered as everyone. Citizens, businesses, governments, and academia are all users or adopters of AI applications and technologies. They all face, or will face, AI-related ethical challenges that will impact their lives or livelihoods in some way. And they all have a perspective to add to our society's conversation surrounding ethical AI use.

The most frequently raised ethical issues in AI are data protection and privacy. An example of this risk is captured by Jernigan and Mistree[62] when they identified sexual orientation from Facebook friendship. In Australia, concerns relating to maintaining the data privacy of global indigenous peoples in the face of new AI technologies have been raised as well. One example is Maori Principles for Data Sovereignty.[63] There are other AI guiding principles adopted by different organizations and that are fixed in internationally recognized documents, such as the Montreal Declaration for Responsible AI.[64]

9. Regulatory Approaches

In September 2021, the Secretary-General of the United Nations, António Guterres, released the report Our Common Agenda. It made broad proposals for the future of multilateralism, which built on the 2020 Roadmap for Digital Cooperation. It proposed a Global Digital Compact to be agreed at the Summit of the Future, which will be held in 2024. In October 2022, the President of the UN General Assembly appointed the

[62] C. Jernigan and BFT Mistree (2009) *Gaydar: Facebook friendships expose sexual orientation.* First Monday 14. https://firstmonday.org/ojs/index.php/fm/article/download/2611/2302. Accessed 17 July 2024

[63] Maori Principles of Data Sovereignty. (2016) Available at: https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/.

[64] The Montréal Declaration for Responsible AI Development. (2018) Université de Montréal. https://monoskop.org/images/d/d2/Montreal_Declaration_for_a_Responsible_Development_of_Artificial_Intelligence_2018.pdf.

Permanent Representatives of Rwanda and of Sweden as Co-facilitators to lead the intergovernmental process.[65]

The problem of regulating artificial intelligence or creating a specialized legal framework for it lies in the very nature of AI. There exist a few definitions of AI but none of them is universally pertinent while being truly unequivocal at the same time. This is mainly due to the ambiguities pertaining to defining the very concept of intelligence. In general, "an AI system includes both hardware and software components. It thus may refer to a robot, a program running on a single computer, a program run on networked computers, or any other set of components that hosts an AI."[66]

The Secretary-General's 2020 Roadmap for Digital Cooperation recommended action to support global cooperation on AI. The Roadmap set out a vision for AI that is trustworthy, human rights based, safe and sustainable, and that promotes peace.[67] To achieve this goal, we strongly believe there is a need to promote research that is independent, interdisciplinary, and international. We propose four principles to guide these efforts, along with four recommendations for the Global Digital Compact. International corporations also play several critical roles in the regulation of artificial intelligence (AI). International corporations often participate in the development of global standards for AI technologies. They contribute to organizations like the International Organization for Standardization (ISO) and the Institute of Electrical and Electronics Engineers (IEEE), which set technical and ethical standards for AI. Corporations ensure that their AI systems comply with international regulations and ethical guidelines. They implement governance frameworks to oversee the development and deployment of AI, ensuring responsible use. International corporations engage with policymakers and regulators to influence the creation of AI regulations.

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[65] Gray et al. (2023) *Knowledge across boundaries: Promoting global cooperation on AI Regulation.* A Supplementary Report ART-AI submission to the Global Digital Compact. Theme: 6 Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&/.

[66] MU. Scherer. (2016) *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies.* Harvard Journal of Law & Technology. 29(2), pp. 353-400. Available at: http://heinonline.org/HOL/Page?handle=hein.journals/hjlt29&start_page=353&collection=journals&id=365

[67] Gray et al. ibid, p.7

The corporations advocate for policies that balance innovation with safety and ethical considerations. Corporations collaborate with governments, academic institutions, and other organizations to promote the responsible development and use of AI. These partnerships can help shape regulatory frameworks and ensure they are informed by the latest technological advancements. By promoting transparency in their AI practices, corporations help build trust and accountability. They publish reports on their AI activities, engage in public discourse, and participate in initiatives that promote ethical AI. Corporations invest in AI research and development, which can inform regulatory approaches. Their innovations can highlight new areas where regulation is needed and provide insights into effective regulatory strategies. Corporations often support education and training programs to build a workforce skilled in AI. They also provide resources and training for policymakers and regulators to better understand AI technologies and their implications.

10. Future Directions

The current state of licensing for most open-sourced AI models is dominated by a mix of permissive software licences such as Apache 2.0 or MIT and open data licences such as Creative Commons (CC). While these licences are mainly designed to prioritise rapid development and establish guardrails for ownership of the software or data, users are given minimal usage restrictions. These include the freedom to use, modify, redistribute, and build over current work without substantial emphasis on responsible use. Permissive licences also do not require developers to adhere to any specific ethical guidelines or principles, which can lead to ethical concerns regarding the use of AI.[68]

Responsible AI Licences or RAILs[69] are a special type of responsible licence that acts as a contractual agreement between developers and downstream users who want full access to a model. Specifically, these responsible licences contain explicit behavioural-use

[68] P. Keller and N. Bonato (2023) *Growth of Responsible AI Licensing. Analysis of License Use for ML Models* Published on OpenFuture. Available at: https://openfuture.pubpub.org/search/. Assessed on 17th July 2024

[69] D. Contractor, et al. (2022) *Behavioral Use Licensing for Responsible AI*. In 2022 ACM Conference on Fairness, Accountability, and Transparency (FAccT '22), June 21–24, 2022, Seoul, Republic of Korea. ACM, New York, NY, USA, 11 pages. https://doi.org/10.1145/3531146.3533143/.

clauses, which, in contrast to permissive software and data licences, are designed to promote responsible AI practices. They do so by requiring developers to adhere to specific ethical principles and guidelines. Moreover, any downstream derivations, including redistribution and transformation from AI models licensed with RAIL, must also abide by use restrictions clauses. This approach means that any AI-based technology can be developed and deployed in a way that is more aligned with specific values and principles, including those set out in instruments like the OECD Principles or in legislation.

11. Conclusion and Recommendations

The evolution of AI presents opportunities and challenges for personal data. With increased digitalisations, data subjects may have no option but to surrender data to AI systems to access goods and services including from government and financial institutions, and in business and trade. Amidst the challenges and ethical considerations posed, maintaining a balance between innovation and privacy protection is crucial. This balance can be achieved through reinforcing legal and regulatory frameworks, advocating for transparency and accountability, and cultivating education and awareness. Through this approach, it is possible to leverage the advantages of AI while ensuring the protection of the fundamental rights and privacy of individuals. In view of the risks associated with digitalization generally and the use of AI, it is doubtlessly indispensable to have law that is set by state authorities, or in which they at least play a role, and that is furnished with sanctioning options. The verbal acknowledgement of ethical principles must not be used as an alibi for dispensing with legal constraints. As a result of territorial break-downs, which are also typical for the use of AI national efforts, including national legal rules, are often insufficient for solving the problems in this area. What are needed, therefore, are also transnational and globally effective tools that, ideally, are based on corresponding transnational and international agreements, at least where they are intended to take legal form. This includes new concepts, agreements, and institutions of transnational governance[70] in which public actors collaborate with the stakeholders

[70] One example is the (not binding) NETmundial Multi-stakeholder Statement of 24 April 2014, which outlines a set of 'Internet Governance Principles' and contains a 'Roadmap for the future evolution of the

concerned, i.e. with associations and companies in the digital economy, but also with NGOs and other entities representing the interests of civil society. To have any sustained effect, such transnational agreements require law that is set by state authorities, or in which they at least play a role, and that is coupled with measures for enforcing it.

Lawyers are increasingly utilizing various types of AI and data analytics tools to enhance their work efficiency, streamline tasks, and improve client services. Smart virtual assistant tools based on ML and NLP are proving useful to assist lawyers in legal research and e-discovery, document automation, predictive legal analysis, legal review, case management, legal advice and expertise automation, and information and marketing. On the African level, at least 36 African countries have enacted data protection and privacy laws that regulate the collection and processing of personal data.[71] Similarly, the African Union Convention on Cyber Security and Personal Data Protection which was adopted in 2014 to establish a legal framework for cybersecurity and personal data protection entered into force in June 2023.[72] Legislation across African states is still deficient in addressing emerging AI challenges. The role of AI in accessing an effective remedy is straightforward. What is not in doubt is that AI has the potential to violate and perpetrate abuse of the rights of human and the data subject. To this end, this paper recommends thus:

i. Policymakers urgently need a stronger interdisciplinary evidence base to understand and formulate effective responses to the challenges AI presents for our societies.
ii. AI is inherently interdisciplinary. We must draw on a richer ecology of knowledge to develop, practice, and regulate AI. This requires the creation of new vocabularies[73] and plural methodologies.
iii. Regulation must be underpinned by inclusive policy processes and research practices. These processes should draw on the insights and leadership of communities likely to be impacted by

Internet Governance Ecosystem'. Available at: https://www.alainet.org/images/NETmundial-Multistakeholder-Document.pdf.

[71] Data Protection Africa, https://dataprotection.africa/

[72] "Status List" at https://au.int/sites/default/files/treaties/29560-sl-AFRICAN_UNION_CONVENTION_ON_CYBER_SECURITY_AND_PERSONAL_DATA_PROTECTION_0.pdf

[73] Y. S. Benitez(2021) *AI Now, A New Lexicon: Technologies.* Available at: https://ainowinstitute.org/publication/a-new-ai-lexicon-technologies/. Assessed 17th July 2024

AI. This must also be supported by a more equitable distribution of research resources, including funding and compute power.

iv. AI regulatory policy should be informed by research which is independent[74] and conducted according to the highest ethical standards.[75] Integrity in AI research also includes considerations about labour exploitation,[76] data governance, and climate.

[74] N. Ahmed et al. (2021) *The growing influence of industry in AI research Industry is gaining control over the technology's future.* Insight. Policy Forum. VOL 379 ISSUE 6635. Available at: https://ide.mit.edu/wp-content/uploads/2023/03/0303PolicyForum_Ai_FF-2.pdf assessed on 17/7/24

[75] UNESCO (2017) *Recommendation on Science and Scientific Researchers.* Document code SHS/BIO/PI/2017/3 rev. available at: https://unesco.org/.

[76] M. Gray and S. Suri (2019) *Ghost work: How to stop Silicon Valley from building a new Global Underclass.*