

ITU

International Telecommunication Union Liability for Machine-Made Decisions

Overview

In a world where technology such as Artificial Intelligence is increasingly prevalent, the question of “who” is liable for machine-made decisions begins to arise. Artificial Intelligence technologies can be used in ill-natured ways, giving rise to violations of fundamental rights, while even simple manufacturing and programming errors can lead to significant harm.¹ However, it is important to acknowledge that Artificial Intelligence also contributes to society positively, as seen in instances where AI saves patients in surgeries that are beyond human capability.² Due to the state of modern Artificial Intelligence, legal experts have to refer to legal frameworks that predate the advent of AI; this indicates that a clear and comprehensive framework that deals with AI is, at best, in its earliest stages.

The International Telecommunication Union

Regarding establishing liability over machine-made decisions, the International Telecommunication Union, abbreviated ITU, feels it is its responsibility to assemble different countries to help determine a clear answer to this question of liability. The ITU is an organization founded in Paris in 1865, which then became a specialized agency of the United Nations in 1947. This committee has the mission of integrating new technologies into society for the benefit of humanity. Additionally, this committee places a strong emphasis on respecting the existing legal frameworks within sovereign nations while simultaneously striving to foster a global understanding.

¹ Marr, Bernard. “The 15 Biggest Risks of Artificial Intelligence.” Forbes, October 5, 2023. <https://www.forbes.com/sites/bernardmarr/2023/06/02/the-15-biggest-risks-of-artificial-intelligence/?sh=2ca5f4f02706>.

² Metz, Cade. “The Robot Surgeon Will See You Now.” The New York Times, April 30, 2021. <https://www.nytimes.com/2021/04/30/technology/robot-surgery-surgeon.html>.

AI Biases

While Artificial Intelligence may give the impression of acting independently, it's essential to recognize that people program AI, and as a result, their biases can inadvertently influence the code, along with biased data sets. According to the National Library of Medicine, the “human masters who create AI may invent something that is racially biased or egocentrically oriented to harm certain people or things... the United Nations has voted to limit the spread of nuclear power in fear of its indiscriminate use to destroy humankind or target certain races or regions to achieve the goal of domination. AI has the potential to target specific races or programmed objects to carry out destructive commands by the programmers, thus contributing to a global disaster”.³ Thus, there is a critical need for ethical considerations and vigilant oversight in AI development to mitigate such risks.

Harvard Business Review further expands on this, stating that “AI systems learn to make decisions based on training data, which can include biased human decisions or reflect historical or social inequities, even if sensitive variables such as gender, race, or sexual orientation are removed.”⁴ These biases pose significant challenges, particularly when applied in contexts where pivotal decisions shape the course of individuals' lives. For instance, a criminal justice algorithm implemented in Broward County, Florida, inaccurately classified African-American defendants as “high risk” nearly twice as often as white defendants.⁵ Bias is unequivocally a collective responsibility. It inflicts harm on those who have historically faced systemic discrimination, perpetuates stereotypes, and significantly impacts their ability to thrive in life and access various opportunities. Delegates should carefully consider what constitutes instances of injustice within their respective countries, as well as identify areas where accountability for Artificial Intelligence must be maintained.

³ Federspiel, Frederik, Ruth Mitchell, Asha Asokan, Carlos Umana, and David McCoy. “Threats by Artificial Intelligence to Human Health and Human Existence.” *BMJ global health*, April 3, 2023. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10186390/#:~:text=One%20example%20of%20harm%20accentuated,the%20undertreatment%20of%20their%20hypoxia>.

⁴ Manyika, James, Jake Silberg, and Brittany Presten. “What Do We Do about the Biases in Ai?” *Harvard Business Review*, November 17, 2022. <https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai>.

⁵ *Ibid.*

Risk of Harm

Consequences in Finance

Artificial Intelligence has the potential to inflict financial harm, as AI may provide inaccurate financial advice and lead to erroneous investment decisions.⁶ Moreover, AI can be utilized in sophisticated schemes aimed at stealing and exploiting financial information, posing significant risks to individuals and organizations.⁷ For instance, sociologist William Julius Wilson's research on urban poverty highlights how redlining disproportionately affects marginalized communities, exacerbating economic disparities.⁸ Financial institutions can engage in practices such as redlining, wherein certain demographic groups are systematically denied access to financial services or offered unfavorable terms based on factors like race or location. Delegates are urged to investigate how their respective countries examined cases where individuals have pursued legal action for financial harm, as well as if there are any already existing laws addressing potential inequalities in AI-driven financial practices.

Consequences in Coding

Errors in programming can lead AI to make extremely damaging consequences, potentially leading to the generation of incorrect code. According to the offices of Morris, Manning & Martin, improper coding can “lead to bugs, errors, and other problems in the software being developed... an AI software coding tool used to generate code for a medical device could generate code containing errors.”⁹ It is crucial to address these issues to ensure the ethical and safe development of AI technologies.

Consequences in Medicine

Today, artificial intelligence is being introduced to further develop the medical field. However, errors will undoubtedly occur, and therefore injuries may be caused due to the

⁶ Vynck, Gerrit De, and David J. Lynch. “Ai Fears Are Reaching the Top Levels of Finance and Law - The ...” The Washington Post, January 13, 2024. <https://www.washingtonpost.com/technology/2024/01/13/davos-ai-risk-finra/>.

⁷ Manyika, James, Jake Silberg, and Brittany Presten. “What Do We Do about the Biases in Ai?” Harvard Business Review, November 17, 2022. <https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai>.

⁸ Steinberg, Stephen. “The Role of Racism in the Inequality Studies of William Julius Wilson.” The Journal of Blacks in Higher Education, no. 15 (1997): 109–17. <https://doi.org/10.2307/2962712>.

⁹ “Ai Software Coding Tools: Risks and Recommendations.” Morris, Manning & Martin, LLP â“ Full Service Law Firm, May 23, 2023. <https://www.mmmlaw.com/news-resources/ai-software-coding-tools-risks-and-recommendations/#:~:text=Accuracy%20Risks,generate%20code%20that%20contains%20errors>.

malfunction. Tort law is an important part of liability as it is “considered to be a form of restorative justice since it seeks to remedy losses or injury by providing monetary compensation. There are three main categories of tort law”, one of which being liability.¹⁰ A tort can also be described as a civil wrong. The domain of tort liability regarding AI is still in its early stages. AI has not been addressed extensively due to how new the technology is.

Physicians are responsible for treating their patients according to previously established standards of care. The new development of AI challenges standards of care due to the complex interactions between both factors. At the moment, there are no cases that have addressed how the standards of care are affected by artificial intelligence, so therefore one’s analysis of the situation must depend on medical malpractice laws.

However, AI recommendations can/may be part of the standard of care depending on how the rules governing a medical system are changed. Also, whether AI is part of the standard of care, is a wholly application-based question. Then, the question of liability becomes increasingly complicated.

According to a legal theory, if a patient has a malpractice claim relating to a healthcare provider’s improper use of artificial intelligence, and the use of the artificial intelligence was within the institution’s scope, then liability might endanger the institution.

¹¹ A hospital may be directly liable for the negligent selection and supervision of artificial intelligence. Hospitals generally review the competency and performance of a physician, and one might argue that, by integrating artificial intelligence within the hospital, they are not purchasing it, but rather “hiring” it. Similarly to hiring an employee, the hospital will become responsible for the AI’s decisions, though the programming is external to the institution.

AI and Legal Entities

A legal system holds legal subjects or entities accountable. Is artificial intelligence a legal person or entity? Legal personhood “is a legal concept that grants certain rights and responsibilities to entities, such as corporations or natural persons.”¹² But if artificial intelligence

¹⁰ Adam Hayes, “Tort Law: What It Is and How It Works, with Examples,” Investopedia, accessed February 16, 2024, <https://www.investopedia.com/terms/t/tort-law.asp>.

¹¹ Nikitha, “Respondeat Superior,” B&B Associates LLP, January 29, 2020, <https://bnblegal.com/respondeat-superior/#:~:text=The%20above%20league%20doctrine%20holds.the%20concept%20of%20%27vicarious%20liability>.

¹² Robayet Syed, “So Sue Me: Who Should Be Held Liable When AI Makes Mistakes?,” Monash Lens, March 29, 2023,

is purchased as property, could it have the same legal rights as humans or legal entities like corporations? According to the Indian Institute of Technology, “conventional computer systems, and thus current-day AI, can never be conscious—they don’t have the right causal structure.” Artificial intelligence has a rather narrow intelligence because it can only make decisions in the domain it is programmed to make decisions in. It cannot make decisions independently and consciously, like a subject and entity. Nonetheless, its choices can cause harm. So the question remains: can AI be held accountable in the same way a conscious being can? It will be the delegates' responsibility to research the laws within their countries concerning AI and its responsibilities in accidents, as well as legally what can be done.¹³

The Impact of AI in Today’s Contemporary World

Another notable example of AI bias is the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) system, which US courthouses use to determine the likelihood of a convicted criminal to reoffend. The model predicted twice as many false positives for this likelihood among Black individuals, highlighting deep-rooted biases within AI algorithms that disproportionately affect marginalized communities. This disparity underscores the systemic biases embedded within AI algorithms, reflecting broader issues of racial and social inequality in algorithmic decision-making.

Moreover, if one considers automated cars as being controlled by artificial intelligence, then we can see that these programs have also caused immense harm. As of June 10, 2023, there have been 17 fatalities and 736 crashes attributed to Tesla’s autopilot mode. These incidents raise significant concerns about the safety and reliability of AI-driven technologies in critical domains such as transportation, emphasizing the urgent need for comprehensive oversight and accountability measures to mitigate potential risks and ensure public safety.

Conclusion

<https://lens.monash.edu/@politics-society/2023/03/29/1385545/so-sue-me-wholl-be-held-liable-when-ai-makes-mistakes#:~:text=Sometimes%2C%20the%20AI%20system%20may,case%2Dby%2Dcase%20basis.>

¹³ Grace Huckins, “Minds of Machines: The Great Ai Consciousness Conundrum,” MIT Technology Review, October 16, 2023,

<https://www.technologyreview.com/2023/10/16/1081149/ai-consciousness-conundrum/#:~:text=According%20to%20IIT%2C%20conventional%20computer.it%20has%20gone%20outside%20attention.>

As artificial intelligence becomes more pervasive in society, it will increasingly influence human lives through its decision-making capabilities. Establishing a robust framework to evaluate liability for decisions made by machines will be crucial within this committee. This entails addressing various complex issues, including the applicability of traditional tort law, identifying accountable entities, and exploring the notion of whether artificial intelligence itself can be held responsible; as delegates navigate this issue in the ITU, it is imperative to engage in thoughtful discourse and enact policies that ensure accountability, fairness, and ethical use of AI technology for the betterment of global society.

Questions to Consider

1. What is your country's stance on AI? Does your country have any AI technologies implemented in its government?
2. Is a warning of a potential malfunction enough to relieve oneself from liability?
3. Is the degree of liability different when the machine makes harmful decisions after being programmed by software developers or companies with malicious intentions? If so, what legal action must be taken accordingly?
4. How severely should those deemed liable be punished in the case of a harmful machine-made decision?
5. What procedures must be taken to facilitate attributing liability to the right entity in the case of a harmful machine-made decision?

Useful Delegate Resources

[Tort Law Overview](#)

[Bias Exhibited by AI](#)

[Stanford Law School on AI](#)

[The "Intelligence" of AI](#)

[Potential Risks of AI](#)

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