

Chapter 6

AI Guidelines – A Compatibility Check with the Standards and Guidelines issued by Regulatory Bodies

In December 2020, a video by Boston Dynamics showed its robots dancing to the song ‘Do You Love Me?’ The post attracted over 35 million views on YouTube. But one withering remark from a Twitter user stood out - “Do you love me? Not when you come to annihilate us.” The response evokes some uncomfortable questions on whether the promotion and use of the AI technology makes them an ideal fit for military, industrial, or police use. Spot, the robot dog, for instance, appeared in exercises by the French military and US police departments and featured with a gun on its back at a US trade show.³¹⁵ The potential abuse of AI could be curbed by ensuring that that the programme’s rights, if any, are appropriately balanced by duties and liabilities within the legal framework. Additionally, there is an ethical accountability on developers of the AI to ensure that the technology is properly used for the benefit of mankind.

Ethical regulation of AI as a legal person would play a vital role in ensuring that it can function as interrelated and independent part of the same legal system in which human beings are situated. The concept emanates from the ‘functionalist theory’ of sociology which tries to establish a cohesive model of the collective functioning of the different constituent elements of the society. ‘Conflict theory’ on the other hand lays down a model which operates on the basis of reconciliation of the conflicting interests and the tensions generated by the clash of its constituent elements.³¹⁶ Unless, the principles of patent and copyright laws are adequately qualified with ethical principles and rules of behaviour, a model of governance involving the AI as inventor/author and owner will be difficult to establish.

³¹⁵ Carys J. Craig, *The AI-Copyright Challenge: Tech-Neutrality, Authorship, and the Public Interest* 12-2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4014811

³¹⁶ Michael Callier and Harly Callier, *Blame it on the Machine: A Socio-Legal Analysis of Liability in an AI World* 14 Wash. J. L. Tech. & Arts 49, 53 (2018)

A heartening development on the AI ethics front took place in 2017 when the Future of Life Institute prepared a set of guidelines pursuant to the ‘Beneficial AI Conference’. The guidelines were proposed to assist in the production of AI technology that would assure social welfare, safety, and ethics. These principles represented a benchmark affirmed by more than 90% attendees extending to various segments of the academia, practitioners, and administrators including the likes of the late Stephen Hawking and Elon Musk. The guidelines were segregated into the following parts: 1) research problems; 2) ethics and values; and 3) longer-term problems. Self-regulatory bodies like the Institute of Electrical and Electronics Engineers (“IEEE”) have started formulating standards in AI. These guidelines are not merely restricted to the scientific aspects but also include the ethical and moral issues of AI producers and users.³¹⁷

The main objective of the IEEE standards is to ensure that the operators of technology are able to prioritize ethical parameters in the production of autonomous and intelligent systems. The ‘Ethically Aligned Design--A Vision for Prioritizing Human Well-being with Autonomous and Intelligent Systems’ was issued primarily to achieve this purpose. This IEEE P7000 series specific proposals may be adopted by developers of AI. The report titled “Ethically Aligned Design” contain necessary guidelines that provide a primer for scientists who are designing these autonomous systems. The standards initially highlight pertinent ‘Issues’ and ‘Candidate Recommendations’ to lay the foundation for domestic and international policies. The ‘Candidate Recommendations’ can be used as a basis for the development of operational standards.

The High-Level Expert Group on Artificial Intelligence (‘HLEG’) was created by the European Commission, which formulated the ethical principles for AI. Taking stock of the shared objectives and principles in the various AI charters, the HLEG's aim is “to create a culture of trustworthy AI for Europe’ through which the positive effects of AI can benefit all in a way that is in tune with our ‘basic

³¹⁷ Kay Firth-Butterfield, *Artificial Intelligence and the Law* 14 ABA SciTech Lawyer 28, 30 (2017)

values, fundamental rights, democracy and the rule of law'. There are three main characteristics of these principles – 'legal, ethical and robust'. Following are the relevant HLEG principles for a model code of AI conduct”

5. Diversity, non-discrimination and fairness

Including the avoidance of unfair bias, accessibility and universal design, and stakeholder participation

6. Societal and environmental wellbeing

*Including sustainability and environmental friendliness, social impact, society and democracy***”³¹⁸*

The general tone was set with the onboarding of Okinawa Charter on Global Information Society, Agenda for the Tunis Commitment, 2005³¹⁹, where the participating countries agreed to work on improving the trust and confidence in technology used in all walks of human life. A specific example in this regard would be the Report on Civil Law Rules on Robotics issued by the European Parliament as a series of recommendations to the European Commission in 2017.³²⁰ The report emphasises on the importance of integrating security and ethics in the scientific use of AI. Additionally, the report suggests inclusion of liability of producer of AI. The common theme of all the international developments is to strike a uniform approach in both the hardware and software aspects of AI.³²¹

The concept of 'algorithmic due process' represents a way forward for optimum utilization of AI capabilities. There are three principles of this due process - transparency, accountability, and understandability. According to Citron and Pasquale, however, these three principles cannot have an absolute and unqualified application in all legal scenarios. The better way would be to apply them

³¹⁸ European Commission, Artificial Intelligence - A European Perspective 61 (2018)

³¹⁹ International Telecommunication Union, Tunis Agenda for the Information Society, <http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html>

³²⁰ European Parliament, Report with recommendations to the Commission on Civil Law Rules on Robotics, https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html

³²¹ Y S Kharitonova and V S Savina, *Artificial Intelligence Technology and Law: Challenges of Our Time* 49 Perm U Herald Jurid Sci 524, 540 (2020)

across a spectrum of situations. The extent to which the AI is made to account for its actions would depend on whether it conflicts with a constitutional right or a critical decision which requires extra legal protection. This would typically include public interest matters like health, nutrition, education, poverty alleviation etc. where the patent law may mandate additional disclosures to satisfy itself that granting patent to the AI will not disturb social sensibilities.³²²

Liu and Zaweiska argue as a part of their ‘Responsible Robotics/AI’ project that responsibility for the actions of the AI would depend on the role of the person associated with the design, development and deployment of the AI. A similar sentiment is echoed by the Council of Europe study DGI(2019)05 conducted by the Expert Committee on Human Rights Dimensions of Automated Data Processing and Different Forms of Artificial Intelligence (MSI-AUT) which quotes the following paragraph from the Report of the EU Group of Ethics (2017):

“Where is the morally relevant agency located in dynamic and complex socio-technical systems with advanced AI and robotic components? How should moral responsibility be attributed and apportioned and who is responsible (and in what sense)?”

The report further states that lack of institutional mechanisms cannot be treated as an excuse to apportion liability for violations of law by AI. It is the responsibility of law to secure and institutionalize responsibility. In the absence of an external body creating and enforcing standards through sanctions, any ethical code is purely voluntary.³²³

³²² Danielle Keats Citron & Frank Pasquale, ‘The Scored Society: Due Process for Automated Predictions’ 89 Wash. L. Rev. 1, 1 (2014).

³²³ Karen Yeung, *A Study of the Implications of Advanced Digital Technologies (Including AI Systems) for the Concept of Responsibility Within a Human Rights Framework* MSI-AUT (2018) 05