"Ethical Challenges of AI in International Justice Systems"

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INTRODUCTION

The face of international justice system will be changed with the introduction of Artificial Intelligence (AI), which will usher in efficiency, precision, and accessibility. With the advent of AI technologies comes a promise of transforming the way legal processes are conducted, from automation of document review to prediction of case outcomes. With the integration of these innovative systems in global justice systems, comes the responsibility of monitoring the ethics. Fairness, accountability, and justice are globally the fundamental tenets of the international justice system, which is a keystone of civilization. No doubt, AI has immense potential to enhance itself but it is not bereft of the ethical challenges, which can be complex and may require careful consideration. This article also deals with IPR issues that arises with the development of AI.

ETHICAL CHALLENGES OF AI IN INTERNATIONAL JUSTICE SYSTEM

Artificial Intelligence (AI) has not only become a part of the international justice system, but has also entered various facets of modern society. With the advent of AI came several opportunities that promise to enhance the efficiency and effectiveness of these systems, but it also raised a host of ethical dilemmas that necessitate a careful examination.

1. Partiality and Fairness in AI Algorithms: The possibility of algorithmic prejudice is one of the primary ethical concerns in the implementation of AI within the international justice system. There are biases already present in the historical data, and AI systems can unintentionally reinforce or intensify such biases.[1] Due to this faulty AI algorithm, certain demographic groups can become an easy target to injustice. This would make it difficult to ensure non-discriminatory consequences in the context of criminal justice. It is imperative to work on the development of algorithms to address this issue, because that would not only be more precise, but also fair and impartial. The newly developed algorithms shall also work on performing monitoring and auditing tasks in order to identify and correct any potential biases.

2. **Transparency and Accountability:** The most significant ethical dilemma posed by AI algorithm is its opacity. AI has advanced to such an advanced level, that it becomes difficult to comprehend how specific decisions were made by it, which is often called "black boxes." Such advancement is witnessed in the AI models used for deep learning neural networks. Public trust comes at stake due to such absence of transparency, which is the essential feature of the international justice system and may impede the due process.[2] In order to ensure justice and

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[1] "Nicol Turner, *Algorithmic bias detection and mitigation,* BROOKINGS (Sept 21, 2023), https://www.brookings.edu/articles/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/."

[2] "Sarah Bouhouita, *Specific challenges posed by artificial intelligence in research ethics,* NLM (Sept 22, 2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10358356/."

ethicality, it is imperative to build procedures that provide transparency on the decision-making process of AI systems, as well as methods that hold individuals accountable for these decisions.

3. Data Privacy and Security: Sensitive and confidential information, such as court records, witness testimonies, and classified documents are the favourite food of the international justice system.Data privacy and security have become a major concern while using AI. Ensuring the protection of information from unauthorized access, breaches, or misuse is of utmost importance, necessitating the implementation of AI systems. In order to mitigate the risk of data leakage or exploitation and adhere to ethical principles, it is imperative to employ robust data protection measures and implement strong encryption techniques[3].

4. Consent and Data Collection: In order to train and validate AI, vast datasets are required. But using such data raises questions about informed consent, which is against the principles of international justice system. When utilizing data for the purpose of AI creation or analysis, it is imperative to uphold the privacy rights of individuals and acquire explicit agreement for the utilization of such data, encompassing personal information and case-specific data.[4]

INTELLECTUAL PROPERTY IN AI DEVELOPMENT

The significance of intellectual property rights (IPR) is increasing as growth and advancement is observed in the field of artificial intelligence (AI). The more AI is used, the more IPR issues arise, including patentability and copyright protection.

Patentability is one of major IPR issues related to AI. An invention is granted a patent when it is considered novel and useful, but the problem with AI-related inventions is that there is uncertainty around their patentability.[5]

Copyright protection for AI-generated works is another IPR issue. A copyright protection is granted to original works only, and AI-generated works completely lack originality which makes it difficult to determine who should own the copyright. For instance, if a piece of music is generated by an AI system, should the programmer who created the system own the copyright, the person who trained the system, or the system itself? The absence of any legal framework that address these questions leads to ambiguity and the copyright protection for AI-generated works becomes subject to controversy.[6]

Another area of concern is trade secrets and confidential information. With the advancement of AI systems, the sensitive information of a company's operations, customers, or products may

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[3] "Vasanth Rajasekaran, *AI in law: Revolutionising justice or perpetuating risks?* BL (Sept 23, 2023), https://www.thehindubusinessline.com/business-laws/ai-in-law-revolutionising-justice-or-perpetuating-risks/article66494626.ece."

[4] "Anthony J Rhem, *Ethical Use of Data in AI Applications,* INTECHOPEN (Sept 24, 2023), https://www.intechopen.com/chapters/1121510."

[5] "Sarala D, *Patent protection of AI-generated inventions,* IPLEADERS (Sept 22, 2023), https://blog.ipleaders.in/patent-protection-of-ai-generated-inventions/."

[6] "Andres Guadamuz, *Artificial intelligence and copyright,* WIPO (Sept 20, 2023), https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html."

become subject to AI's advanced analyzing and interpreting capabilities. The firms must ensure the protection of such information against illegal access, given its potential high value.

Data anonymization and differential privacy are two strategies that can be employed to safeguard sensitive information. Contractual agreements, like as non-disclosure agreements (NDAs), can be utilized to impose confidentiality responsibilities on individuals who possess access to data or systems. As artificial intelligence continues to advance, there is a need for the further development of intellectual property rights (IPR) in order to effectively address the associated challenges.[7]

It is imperative for companies, legislators, and legal experts to collaborate in order to establish precise frameworks and norms pertaining to patentability, copyright protection, and trade secret protection, given the ongoing expansion of AI systems. If these issues would be addressed with a proactive approach, the rights of inventors and creators will be protected and AI will continue to drive innovation and growth.

REGULATORY FRAMEWORK

Thanks to UNESCO's unique mandate and it's international hard work, science and technology have been developing with keeping the ethical values always in consideration for years now.

Be it a research of any kind UNESCO had a big impact and role to play. The global standards by UNESCO were brought to increase the benefits of scientific discoveries while decreasing the associated risks, making sure they contribute to a formation of a better world. Previously, some frontier challenges were also brought in areas such as the ethics of neurotechnology, climate engineering, and the internet of things.

The rapid advancement of AI on a global scale has resulted in a diverse range of possibilities, such as facilitating medical diagnoses, improving human interactions on social media, automating household tasks, and decreasing labor expenses. But these quick developments also gave a rise to serious ethical questions. These result from the potential for AI systems to introduce biases, contribute to climate change, endanger human rights, and other things. These AI-related hazards have already started to accumulate on top of already-existing disparities, harming already marginalized groups even more. The ethical compass is more important in artificial intelligence than it is in any other field.

A suggestion for AI ethics:

The "Recommendation on the Ethics of Artificial Intelligence" was released by UNESCO in November 2021 and made it the first significant milestone for AI ethics. The framework was adopted by 193 member states.[8]

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[7] "Ensuring Data Security in AI Systems, LEEWAYHERTZ (Sept 21, 2023), https://www.leewayhertz.com/data-security-in-ai-systems/."

[8] "*Ethics of Artificial Intelligence*, UNESCO (Sept 19, 2023), https://www.unesco.org/en/artificial-intelligence/recommendation-ethics."

The core principle behind the recommendation is to safeguard human rights and dignity. It is founded on the progression of core values like justice and transparency, always keeping in mind the importance of human supervision of AI systems.

The Policy Action Areas of the Recommendation make it easy to apply extensively. Through these, the core values and principles are translated into action by the policymakers in the field of data governance, gender, education and research, environment and ecosystems, and health and social wellbeing, among many other spheres.

The Recommendation incorporates four core values which act as the foundational stones for AI systems. These values not only work for the upliftment of humanity and individuals, but also for the society and environment:

1. To respect, protect and promote human dignity and human rights.
2. To live in societies that are an embodiment of peace and justice.
3. To maintain diversity and promote inclusivity.
4. To work for the flourishment of environment and ecosystem.

As of now, the copyright regimes did not have enough encounters with the AI generated works, but it was a difficult task to grant protection. The development of AI presented unique challenge as there is a near non-existent human intervention. Recently, AI has evolved to a level, where it is capable of generating news articles and books of sufficient quality to be considered for accolades.

When examining the matter of copyrightability pertaining to works produced by artificial intelligence (AI), the central inquiry revolves around whether AI-generated works necessitate human intervention or possess the ability to autonomously generate content. The process of categorizing contributes to clarity in this context.[9]

(1) Artifacts generated with the collaborative efforts of artificial intelligence and human involvement, commonly referred to as "AI-assisted" creations.

(2) Artifacts produced by artificial intelligence with minimal or no human involvement ("AI-generated").

Within the initial category, namely AI-assisted work, the involvement of humans and the application of human creativity (mostly by programming the AI) render the output produced by AI eligible for safeguarding. However, the ownership of copyright in AI-generated work, namely in the second category, remains an area that is currently uncertain.

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[9] Srishti Ojha, "*All about legal challenges pertaining to copyright under Indian law,* BUSINESS TODAY (Sept 23, 2023), https://www.businesstoday.in/technology/news/story/chatgpt-ai-content-all-about-legal-challenges-pertaining-to-copyright-under-indian-law-399393-2023-09-22"

There are two prevailing perspectives in this context. The first perspective posits that AI works are reliant, to varying degrees, on human minds for their generation. The second perspective asserts that AI works are entirely autonomous creations of AI.

According to a report in the IPR Division of the Supreme People's Court of China and got placed in the World Intellectual Property Organization (WIPO)[10], China's approach to granting protection for intellectual property has remained consistent with the conventional method. Protection is only extended to works that can be attributed to the author's intellectual creativity. The Chinese Court ruled that the article generated by the intelligent writing aid system known as 'Dream-writer' qualifies as a copyrighted written work. This determination was based on the understanding that the piece was a result of the intellectual invention of the human writers, who are the programmers. The individual who had the exclusive license for the AI software was granted ownership of the copyright for the AI's work.

This technique provides support for the hypothesis that AI has not reached a stage of complete autonomy, as it still requires some degree of human interaction in its applications. If this idea were to be included into the existing framework of copyright law, it has the potential to reconcile the divide between copyright protection and works generated by artificial intelligence. Nevertheless, this methodology gives rise to concerns pertaining to the delineation of criteria for human involvement that is necessary in order to bestow copyright protection onto a work generated by AI.

The copyright system in the United States exclusively acknowledges works that are considered to be the result of intellectual effort and rooted in the creative faculties of the human mind. The United States of America does not acknowledge the provision of copyright protection for computer-generated works that lack a human author. The AI "Creativity Machine" was denied copyright protection by the US Copyright Office's Review Board, as stated in its judgement on February 14, 2022. The primary basis for this rejection was the AI's inability to fulfill the fundamental criteria that an author must possess human attributes[11]. Throughout its history, the United States has consistently maintained the stance that copyright protection is exclusively applicable to works produced by human authors. It has emphasized the necessity of establishing a connection between the human intellect and the resulting expression as a fundamental requirement for the grant of protection. The lack of a clearly established framework has resulted in divergent and contradictory rulings. In its early stages, the United States of America provided copyright protection for a comic book titled "Zarya of the Dawn," which was authored

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[10]ZHOU Bo, "*Artificial Intelligence and Copyright Protection --Judicial Practice in Chinese Courts,* WIPO (Sept 22, 2023),
https://www.wipo.int/export/sites/www/about-ip/en/artificial_intelligence/conversation_ip_ai/pdf/ms_china_1_en.pdf."
[11]"*Copyrightable Authorship,* US COPYRIGHT OFFICE (Sept 22, 2023),
https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf"

by Kris Kashtanova and developed with the assistance of the text-to-image engine known as 'Midjourney'. Nevertheless, in late 2022, the ruling of the US Copyright Office was reversed.[12]

In the United Kingdom, there exists a legal provision that offers statutory protection to works that are generated by computers. This protection is granted to the individual who is responsible for making the essential preparations for the creation of the work. The duration of this protection is set at 50 years, commencing from the conclusion of the calendar year in which the work was produced. In addition, it is important to note that Section 178 of the Copyright, Designs and Patents Act of 1988 provides a clear definition of a computer-generated work, which is described as a work that is produced solely by a computer without any involvement or contribution from a human author.[13]

In India, the Copyright Act of 1957, provides legal protection for literary and artistic works that are deemed to be "original." According to a widely accepted hypothesis, AI currently lacks the ability to generate content that can be considered truly 'original'. Instead, the output produced by AI is a result of adapting or modifying existing knowledge that is publicly available. This AI relies on accessing and analyzing such information, as well as the training it has through. This assumption is predicated on the notion that all artificial intelligence systems are trained using datasets that inherently contain the biases and constraints of their human developers.

Furthermore, according to the Copyright Act, in order for a "work" to be eligible for copyright protection, it must satisfy the standard of "modicum of creativity" as established by the SC in the case of Eastern Book Co v. D.B. Modak[14]. The court determined that a "minimal degree of creativity" was necessary, emphasizing the need for "substantive variation" rather than trivial variation.

The potential for copyright infringement may arise if non-human entities, such as artificial intelligence, are allowed ownership of intellectual property, so expanding the scope of recognition beyond human individuals.

If artificial intelligence (AI) is seen as an autonomous entity, apart from its creator or owner, it follows that the AI can't be held accountable for instances of infringement as stipulated by the Act. This provides backing this perspective that AI might be considered as an extension of its creator, particularly with regards to issues of culpability in instances of data violation. Furthermore, this provision guarantees that the remuneration allocated for the licensing of copyright will be sent towards the rightful owners, so serving as a motivating factor for

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[12]*"Copyright Protection On AI Comic Book Revoked By US Government?* BLEEDING COOL (Sept 21, 2023), https://bleedingcool.com/comics/copyright-protection-on-ai-comic-book-revoked-by-us-government/."
[13]"Artificial Intelligence and Intellectual Property: copyright and patents, GOV. UK (Sept 19, 2023), https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/artificial-intelligence-and-intellectual-property-copyright-and-patents."
[14]Appeal (civil) 6472 of 2004.

individuals to generate a greater number of AI creations. This scenario would give rise to significant commercial concerns regarding the distribution of royalties, prompting inquiries on the rightful recipients and the necessity of payment.

Finally, the quandary arises as to whether the copyright ownership shall be attributed to the human creator or the AI system that was devised by this creator. Primarily, AI is a product of the cognitive abilities of its programmer, as it is the person who formulates and designs the algorithms that govern AI systems. Despite the significant advancements in AI, a certain degree of human interaction remains necessary, albeit minimal, in the current stage. This intervention mostly serves the purpose of operationalizing the AI system.[15] The responsibility for organizing and choosing data input, defining trigger conditions, and making decisions regarding template and corpus style choices in the field of artificial intelligence lies with a human programmer. Furthermore, it is worth noting that the advancement of machine learning and deep learning technologies may lead to the emergence of new algorithms that are autonomously generated by AI systems. These algorithms would complement the ones established by humans. Consequently, the outcomes derived from these artificially formed algorithms might be considered as entirely AI-generated works.

This situation presents a classic conundrum analogous to the chicken and egg paradox, hence raising the query as to whom the legal system would deem responsible for orchestrating the production of the work. Should the legal system acknowledge the role and impact of both programmers and users in relation to a certain program?

CONCLUSION

The collaboration of the International Justice System with the Artificial Intelligence has some Moral, Social and Ethical issues that demands a very close consideration. As the legal processes all around the world has started adopting AI into their Work it promises and helps them with better efficiency, accuracy and feasibility. However, a complex dilemma of social and ethical problems lies ahead that demands a very keen inspection.

The global community considers it necessary to address those ethical challenges as it is something that can't left unattended. 'Recommendation on the Ethics of Artificial Intelligence' is the framework given by UNESCO that sets the benchmark and foundation for the AI systems that respect the rights and dignity of the humans while considering the complete environment side by side. AI's future in the legal world only and only depends on us, the way we use it because we would need to strike the right balance between technological innovation and ethical responsibility.

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[15] Saakshi Agarwal, "*The Dilemma of Copyright Law and Artificial Intelligence in India,* SSRN (Sept 20, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3818280."