

## IBA 2024

### European Regional Forum Scholarship

*The next generation's comments and suggestions on current and expected challenges for the legal sector regarding artificial intelligence developments*

#### Introduction

Artificial intelligence (AI) is part of our daily lives: it's in our phones, cars, domestic and office appliances, we use it to communicate and to work, it manages currencies, trade and infrastructure and, most recently, it has been integrated with the human brain.<sup>1</sup>

Companies of all sizes and sectors are rushing to adopt artificial intelligence to gain efficiencies and streamline their processes: according to IBM, in 2023, 42 per cent of companies with over 1,000 employees had actively deployed AI while an additional 40 per cent were actively exploring using it.<sup>2</sup>

Just as companies are striving to keep the dizzying pace of technological advancement, law firms are increasingly under pressure to adapt to a world that is changing at previously unseen levels. This strive for innovation in legal services comes at a time when the profession is already facing major challenges such as market consolidation,<sup>3</sup> salary wars and employee retention,<sup>4</sup> lower mergers and acquisitions (M&A) rates<sup>5</sup> and the rise of alternative legal service providers (ALSPs).<sup>6</sup>

The use of artificial intelligence in the legal sector is not a new phenomenon. In 2016, law firms were already using AI tools for legal research and analytics and legal chatbots were making their appearance on the market.<sup>7</sup> Just like any other sector, law firms have increasingly been recurring to AI:

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<sup>1</sup> Mariko Oi, "Neuralink: Musk's Firm Says First Brain-Chip Patient Plays Online Chess," *BBC*, March 21, 2024, <https://www.bbc.com/news/business-68622781>.

<sup>2</sup> "IBM Global AI Adoption Index 2023," IBM and Morning Consult, January 10, 2024, <https://www.multivu.com/players/English/9240059-ibm-2023-global-ai-adoption-index-report/>.

<sup>3</sup> "Law Firm Mergers Increase in Q1," Fairfax Associates, April 1, 2024, <https://fairfaxassociates.com/wp-content/uploads/2024/04/2024-Q1-4.1.24.pdf>.

<sup>4</sup> Erin Mulvaney, "Law Firms Escalate Talent War Even in Slower Economy," *Wall Street Journal*, December 8, 2023, <https://www.wsj.com/us-news/law/law-firms-escalate-talent-war-even-in-slower-economy-f5cc66f5>.

<sup>5</sup> "Number of Merger and Acquisition (M&A) Transactions Worldwide from 1985 to April 2023," Statista, June 6, 2023, <https://www.statista.com/statistics/267368/number-of-mergers-and-acquisitions-worldwide-since-2005/>.

<sup>6</sup> Eve Starks and Tom Snavelly, "Growth, Opportunity & Possible Consolidation in the ALSP Market," *Thomson Reuters*, May 18, 2023, <https://www.thomsonreuters.com/en-us/posts/legal/alsp-growth-consolidation/>.

<sup>7</sup> Robert Ambrogì, "The 10 Most Important Legal Technology Developments of 2016," *LawSites*, December 20, 2016, <https://www.lawnext.com/2016/12/10-important-legal-technology-developments-2016.html>.

in 2022, the global legal AI market was estimated to be worth US\$1.04bn and was expected to grow at an astonishing pace, with a compound annual growth rate (CAGR) of 18.2 per cent from 2023 to 2030.<sup>9</sup>

If implemented correctly, AI has the potential to be a driving force for the growth of law firms of all sizes; however, its widespread adoption and diverse uses pose numerous challenges for current and prospective adopters, especially from the ethical and organisational points of view.

### **Uses and opportunities of AI in the legal sector: a kaleidoscope of possibilities**

The global market for AI legaltech solutions is quite prolific and comprises tools and services that aim at assisting lawyers in disparate areas of their activities, ranging from administrative tasks to court case prediction. Some of the main applications of AI in the legal industry are discussed below.

#### *i. Document analysis and management*

AI tools are used to analyse and review large quantities of legal documents, allowing to single out relevant information in a fraction of the time that would be required to do so manually. This allows, eg, to browse contracts to highlight the most relevant clauses and the related issues, making contract review more efficient and to compare documents to determine differences and similarities. Some solutions also support lawyers in establishing model contracts and clauses that can be drawn up and combined based on the circumstances. Due diligence activities can also be streamlined through the adoption of AI systems that review large quantities of documents and identify potential red flags.

#### *ii. Legal research*

AI makes legal research and analysis faster and easier, allowing to sift through large repositories of laws, judgements and doctrine and providing results tailored to the user's preferences. These tools can

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<sup>9</sup> "Legal AI Market Size, Share & Trends Analysis Report by Component (Solution, Services), by Technology, by Application (E-discovery, Legal Research, Analytics, Legal Chatbots), by End-user, by Region, and Segment Forecasts, 2023 – 2030," Report Overview, Grand View Research, accessed April 29, 2024, <https://www.grandviewresearch.com/industry-analysis/legal-ai-market-report#:~:text=Report%20Overview%20The%20global%20legal,from%202023%20to%202030>.

also identify connections between cases and legal principles, supporting lawyers in establishing their line of reasoning.

### *iii. Predictive analytics*

One of the most novel areas of legaltech is predictive analytics. Some AI solutions allow professionals to prognosticate the opposing party's legal arguments by analysing opinions used in similar cases in the past and to devise strategies consequently, tracking different variables and case outcomes, and identifying the arguments that are likely to be most successful. Other tools predict the winner of a case based on the analysis of previous similar judgements. On the other side of the courtroom, judges have been using AI to produce sentence recommendations and to assess the risk of flight and recidivism of defendants.

### *iv. E-discovery*

AI is proving useful in enhancing e-discovery activities by sorting through documents, e-mails, text messages, audio and video files, social media, websites and other electronically stored information to find evidence and insights to be used in investigations or proceedings.

### *v. Client support*

Chatbots and virtual assistants can schedule meetings and answer basic legal questions, streamlining client service and allowing lawyers to focus on more billable activities while answering instantaneously to clients' queries.

### *vi. Finance*

AI can make timekeeping and billing more efficient, simplifying clerical and administrative work through automated invoicing technologies and tools that analyse financial data, offering valuable insights into profitability and cost management for law firms.

In addition, lawyers are increasingly recurring to generative artificial intelligence (GenAI) to assist them, eg, in legal research, writing e-mails, summarising documents and to translate text. GenAI is at the forefront of discussions on the employment of artificial intelligence in the legal sector due to the fact that, to some extent, it can mimic part of the intellectual activity that is at the heart of the legal profession.<sup>10</sup> That is probably why lawyers seem to be more cautious on its implementation: according to recent research, whereas roughly 50 per cent of law firms believe GenAI should be applied to legal work, only five per cent are currently using or have plans to introduce it.<sup>11</sup>

Artificial intelligence has immense potential to benefit law firms, clients, and the justice system itself. As AI continues to spread and evolve, yielding increasing practical and commercial advantages, society gets more comfortable with it. The primary risk faced by law firms may not stem from embracing AI, but rather from neglecting to do so.

AI can allow law firms to streamline administrative tasks, increase productivity, reduce costs, provide new services, and create new business structures.<sup>12</sup> At the same time, the risks and challenges presented by the adoption of AI by legal professionals cannot be overlooked, especially those that pertain to the ethical realm.

### **Current challenges: the difficult intersection between AI ethics and professional deontology**

While proving advantageous, the employment of AI in the legal domain poses significant risks and challenges. From an ethical standpoint, the adoption of artificial intelligence by legal practitioners presents dual challenges. First, there are ethical concerns intrinsic to AI itself, irrespective of the domain in which it operates. Second, there are ethical considerations specific to lawyers, who are bound to determined sets of deontological principles.

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<sup>10</sup> For an analysis on legal reasoning and AI and how legal reasoning is, to some extent, intrinsically analogic, see Cass R. Sunstein, “Of Artificial Intelligence and Legal Reasoning,” 8 *University of Chicago Law School Roundtable* 29 (2001), [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=12376&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=12376&context=journal_articles).

<sup>11</sup> “ChatGPT and Generative AI within Law Firms: Law Firms See Potential, Eye Practical Use Cases and More Knowledge Around Risks,” Thomson Reuters Institute, April 17, 2023: 7-11, <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/04/2023-Chat-GPT-Generative-AI-in-Law-Firms.pdf>.

<sup>12</sup> “Risk Outlook Report: The Use of Artificial Intelligence in the Legal Market,” Solicitors Regulation Authority, November 20, 2023, <https://www.sra.org.uk/sra/research-publications/artificial-intelligence-legal-market/>.

Whereas AI poses a hoard of ethical dilemmas, the main issues can be reconducted under the FAT acronym: Fairness, Accountability and Transparency.

Fairness in AI pertains to the need for unbiased and non-discriminatory decisions. AI draws on large datasets to produce outcomes that are considered valid due to their statistical significance, but data is not fair or equal in itself: data is a representation of reality that is generated under human conceptual constructs; therefore, it can be inherently biased to the extent that all human beings and artifacts are biased albeit unwillingly or unconsciously. Moreover, statistical biases can emerge when a sample is not representative of the population or the AI draws on partial data, even if the data itself is not prejudiced or discriminatory.<sup>13</sup> AI biases can have dire consequences: a 2016 investigation found that a software employed by US courts to predict recidivism likelihood in criminal defendants exhibited bias against African-Americans.<sup>14</sup> It is nevertheless difficult for lawyers to tackle this issue directly, inasmuch as it pertains to the design of the AI; legal professionals, bar associations and law societies shall therefore cooperate with AI developers to ensure that sector-specific AI is bias-free.

Transparency is another critical principle to be considered in the adoption of AI within legal contexts. AI often operates as a black box, leaving lawyers and clients struggling to understand how inputs are categorised and how outputs are generated. It can therefore render inscrutable the legal reasoning behind a decision even to the lawyer who ultimately took the decision, putting the professional in the position of not being able to explain their legal reasoning to the client.

Lastly, accountability in the context of AI is multifaceted and crucial, particularly when applied to legal services. AI can draft documents, predict case outcomes, identify opposing legal strategies and recommend optimal paths for lawyers. These AI-enabled results directly impact the rights and obligations of those involved. Who then is accountable when an AI system makes an error with legal consequences? An emblematic representation of this dilemma is *Mata v Avianca, Inc*, where two lawyers submitted a legal

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<sup>13</sup> For a comprehensive description of the different types of bias in AI and the possible management solutions, see Reva Schwartz et al., “Towards a Standard for Identifying and Managing Bias in Artificial Intelligence,” March, 2022, <https://doi.org/10.6028/NIST.SP.1270>.

<sup>14</sup> Julia Angwin et al., “Machine Bias: there’s Software Used Across the Country to Predict Future Criminals. And it’s Biased Against Blacks,” *ProPublica*, May 23, 2016, <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

brief generated by ChatGPT that cited six cases which turned out to be fictitious. The judge handling the case fined the lawyers' firm for US\$5,000, stating that whereas 'technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance' existing rules "impose a gatekeeping role on attorneys to ensure the accuracy of their filings".<sup>15</sup>

Even though the lawyers were held responsible and sanctioned, other questions arise: can ChatGPT be held liable? Can the client sue for malpractice? How do deontological rules apply to the use of AI by legal professionals?

Lawyers, along with other select professional categories such as doctors, journalists, and engineers, are deemed by society to perform sensitive functions. As a result, they are subject to professional codes of conduct that outline ethical responsibilities and duties. These codes are set by bar associations and law societies and cover various aspects, including competent representation, maintaining client confidentiality, acting in the best interest of the client, avoiding conflicts of interest, and refraining from introducing false evidence in trials.

Lawyers who employ AI must thus operate at the intersection of these two sets of ethical principles. Consequently, adherence to the duty of competent representation translates into being aware of how AI systems used by the firm operate and make decisions and to be transparent with the clients as to the use of AI, documenting each stage of its design and running to be able to provide clear explanations to the clientele.<sup>16</sup> At the same time, the duty of competence requires lawyers to thoroughly and consistently verify the output of AI systems (particularly of GenAI) and its legal soundness, to avoid dangerous mistakes such as the one committed in *Mata v Avianca, Inc.*

In using AI tools, lawyers may share confidential information with the developers and the providers of such tools. In this context, legal professionals shall fulfil their duty of confidentiality by safeguarding their clients' information, including by making sure that developers and providers have

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<sup>15</sup> *Mata v. Avianca, Inc.*, 22-cv-1461 (PKC) (S.D.N.Y. Jun. 22, 2023).

<sup>16</sup> See *supra* note 12.

adopted sufficient technical and organisational measures to ensure the security of data processed by AI.<sup>17</sup> This also means that lawyers shall not use clients' confidential information as inputs on GenAI systems, given the fact that such data would then be permanently acquired by the system and could be provided to other users as output of their queries.<sup>18</sup>

Lawyers are also generally subject to the prohibition to introduce false evidence in trials. This entails that legal professionals who use AI for e-discovery shall be able to reconstruct the process that brought to the evidence suggested by the AI and to verify its accuracy and trueness.

These examples show how lawyers who adopt artificial intelligence shall navigate through two distinct sets of ethical imperatives that are not coordinated and do not perfectly overlap. It is therefore necessary to develop new rules and guidelines for the development and employment of reliable and ethical AI in the legal sector, to ensure effective interoperability between the two ethical domains.<sup>19</sup> Bar associations and law societies, which, to date, have not yet extensively addressed AI and its use by their members, should develop such rules and guidelines to provide legal professionals with a clear integrated set of ethical principles. In this context, bar associations and law societies should be assisted by large law firms, who are the only ones in the legal industry that currently possess experience in the development and full-scale deployment of AI.

### **Future challenges: adaptability and resilience**

As AI evolves and becomes more widespread, the legal sector will face new and more complex challenges. Lawyers will need to upskill and reskill to use AI responsibly and effectively and integrate it seamlessly into their practice. Employing AI, especially for bigger firms, will require adopting a

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<sup>17</sup> Anthony E. Davis and Steven M. Puiszis, "An Update on Lawyers' Duty of Technological Competence: Part 1," *New York Law Journal*, March 1, 2019: 3, <https://www.hinshawlaw.com/assets/htmldocuments/Articles/ADavis-NYLJournalArticle%2003-01-2019.PDF>.

<sup>18</sup> Recently, Amazon has warned its employees not to share sensitive information with ChatGPT after reportedly witnessing ChatGPT responses that mimicked internal Amazon data. See Eugene Kim, "Amazon Warns Employees Not to Share Confidential Information with ChatGPT After Seeing Cases Where Its Answer 'Closely Matches Existing Material' From Inside the Company," *Business Insider*, January 24, 2023, <https://www.businessinsider.com/amazon-chatgpt-openai-warns-employees-not-share-confidential-information-microsoft-2023-1>.

<sup>19</sup> Mehmet B. Unver, "Rebuilding 'Ethics' to Govern AI: How to Re-set the Boundaries for the Legal Sector?" *Nineteenth International Conference on Artificial Intelligence and Law (ICAIL 2023)*, (June 19-23, 2023): 6-7. <https://doi.org/10.1145/3594536.3595176>.

comprehensive approach, blending legal expertise with other skills, establishing multidisciplinary tech teams.<sup>20</sup>

Whereas AI will bring significant advantages for those who will be able to harness it, law firms will be also be facing the competition of commercially available legal AI solutions. ChatGPT has been tested as provider of legal advice with good results,<sup>21</sup> and it's not even specialised in legal services; other lawyerbots hold just as many promises.<sup>22</sup> AI-powered legal services available to the public will most definitely have an impact on how and when consumers interact with legal professionals, just as health websites influence those who visit them and the decisions concerning their health.<sup>23</sup> This poses a challenge particularly for high street lawyers – those who primarily serve consumer legal needs. Their services are susceptible to automation, yet small law firms often lack the resources or expertise to heavily invest in technology and may succumb to commercially available AI services. Larger law firms, on the other hand, may not experience dramatic effects due to AI commodification. Over time, they will enhance productivity and efficiency through internal legaltech automation, potentially reducing their reliance on hiring numerous lawyers. Research shows that AI can automate 44 per cent of legal tasks.<sup>24</sup> Against this background, the high-end of law firms' pyramids will most certainly not be affected,<sup>25</sup> also given the fact that they are the ones who perform the most critical functions for a law firm that are not automatable: they bring in and curate relations with clients, which still requires interpersonal skills and interactions.

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<sup>20</sup> John Armour, Richard Parnham and Mari Sako, "Augmented Lawyering," *European Corporate Governance Institute - Law Working Paper* 558, (August 21, 2020): 57-60, <http://dx.doi.org/10.2139/ssrn.3688896>.

<sup>21</sup> Rupert Macey-Dare, "ChatGPT & Generative AI Systems as Quasi-Expert Legal Advice Lawyers - Case Study Considering Potential Appeal Against Conviction of Tom Hayes," January 30, 2023: 24-26, <http://dx.doi.org/10.2139/ssrn.4342686>.

<sup>22</sup> For example, DoNotPay is having a good commercial success, being increasingly used by consumers for a wide range of legal services. See "Most Popular Features," DoNotPay, accessed April 29, 2024, <https://donotpay.com/learn/most-popular-features/>.

<sup>23</sup> Research shows that, whereas seeking health-related information online frequently led to scheduling doctor appointments, 22% of users decided to cancel or postpone visits, 6.8% to abandon planned tests and 8.7% of users decided to adjust medication without consulting a doctor. See Maria Magdalena Bujnowska-Fedak and Paulina Węgierek, "The Impact of Online Health Information on Patient Health Behaviours and Making Decisions Concerning Health," *International journal of environmental research and public health* 17, n. 3 (January 31, 2020): 881-3, <https://doi.org/10.3390/ijerph17030880>.

<sup>24</sup> Jan Hatzius et al., "The Potentially Large Effects of Artificial Intelligence on Economic Growth," Goldman Sachs, March 26, 2023, <https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.html#>.

<sup>25</sup> Tara Chittenden, "Images of the Future Worlds Facing the Legal Profession 2020-2030," Law Society of England & Wales, June 8, 2021: 54-46, <https://www.lawsociety.org.uk/topics/research/future-worlds-2050-images-of-the-future-worlds-facing-the-legal-profession-2020-2030#report>.



Conversely, the toll of automation will be paid by associates, paralegals, clerks and other legal staff.<sup>26</sup> This will have an effect on law schools as well: graduates who intend to build careers in small legal practices will find it increasingly more difficult due to the gradual disappearance of many small-sized firms that will not be able to compete with AI commercial services. At the same time, automation-driven efficiency gains in large and medium law firms will mean that demand for graduates will dwindle.<sup>27</sup>

AI has the potential to accelerate the radical changes that law practice is already undergoing, such as aggregation, hyper specialisation and the emergence of ALSPs. It remains to be seen what is the model lawyer that can navigate this uncertain future. A scenario could be that future challenges will not change the essence of the lawyer, who will remain a legal expert supported by other professionals (eg, data scientists, project managers, design thinkers, etc) with distinct functions and career paths. A second model is the 'lawyer-coder', a conception that suggests that most lawyers should familiarise themselves with AI, if not learn coding, expanding their responsibilities beyond legal advice, adopting a systematic approach to provide comprehensive legal solutions for their clients. A third possibility could be that legal professionals diversify beyond traditional roles. New positions emerge that focus on the development of technology-driven legal services, such as legal engineering, legal project management and legal product development. Their work does not revolve around legal practice; instead, they represent 'hybrid professionals' in legal markets. However, due to existing regulations, they remain outside the traditional legal profession, working, eg, for ASLPs. This scenario becomes increasingly plausible if regulations governing unauthorised practice of law remain unchanged or evolve too slowly. The legal sector faces a choice: adhere strictly to existing occupational boundaries, potentially excluding categories of professionals, or recognise specialisation within the profession beyond traditional areas.<sup>28</sup>

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<sup>26</sup> Roger E. Barton, "How Will Leveraging AI Change the Future of Legal Services?" *Reuters*, August 23, 2023, <https://www.reuters.com/legal/legalindustry/how-will-leveraging-ai-change-future-legal-services-2023-08-23/>.

<sup>27</sup> Dan Hunter, "The Death of the Legal Profession and the Future of Law," *University of New South Wales Law Journal* 43, no. 4 (March 17, 2020): 1203-04, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/11/Hunter.pdf>.

<sup>28</sup> Armour, Parnham and Sako, "Augmented Lawyering", 63-66.

## **Conclusions**

The legal sector faces both opportunities and challenges in the AI era. As technology progresses and the legaltech market expands, law firms of all sizes will gain substantial advantages in terms of reduced costs, increased productivity and efficiency and better customer service.

At the same time, the implementation of AI by lawyers requires a responsible and prudent approach: incorrect and careless use of such powerful technology can have serious repercussions on clients, firms and on the whole justice system. Bar associations and law societies shall develop new rules to ensure that the cardinal deontological principles that guide the legal profession are translated into codes of conduct in the use of artificial intelligence services, supported by large law firms that have already fully implemented AI in their practice.

Artificial intelligence is a double-edged sword: it will augment lawyers' capabilities while at the same time compete with law firms for shares of the consumer market. Over the last decades, the legal sector has demonstrated great resilience and adaptability facing major challenges (the economic crisis of 2008, the Covid-19 pandemic, the current conflicts in Ukraine and Palestine), changing its structure and business models to respond to external and internal threats. The rise of AI will put to the test those same qualities that law firms have shown in the past, disrupting the profession once more.

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