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GUEST ARTICLE

GENERATIVE ARTIFICIAL INTELLIGENCE: LAW AND REGULATION



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INTRODUCTION

The concepts like deep learning, natural language processing, and computer vision result from contributions from many pioneers rather than one person. AI is a technology that mimics human cognitive abilities to process data and provide fast, accurate results. Over the last decade, technology has profoundly impacted humanity, improving ease of living and connectivity and making decision-making and operational tasks easier.

The growth of AI has been stellar and data-driven. However, the unregulated growth of AI raises complex issues around data protection, management, and alteration, along with ethical use, commercial implications, ownership, and liability. It also entails potential risks of opaque decision-making and discrimination and raises IPR and data privacy issues. These aspects require legal regulation. Despite the slow start, some jurisdictions have begun to take steps to regulate AI with legal instruments.

Among the multiple trends emerging in AI, the most profound one that has captured everyone's attention is Generative Artificial Intelligence ("GAI"). GAI is an AI type that can quickly generate diverse content using inputs like text, images, sounds, and 3D models. It's versatile and useful for creative applications across various domains. A well-known example of it is Chat GPT.

It is evident that the quality and accuracy of work produced by generative AI systems are starting to reach a level previously only possible for human creation. It has led to an abundance of personalised content, as evidenced by the variety of questions you might have posed on ChatGPT as a user.



Jammu and Kashmir and Pondicherry are the only two union territories which have a Legislative Assemblies.

Despite their effectiveness, they have blurred the line between concepts like authorship and work in the domain of intellectual property rights and raised multiple questions on who owns the work generated by the AI, exposing an underlying trend that there might be a gap between the new generation methods and existing copyright law.

Another question is whether GAI generates a unique and original work, whether it might be eligible for copyright protection, and whether the creator or author of the AI could be considered the owner. However, the ownership of GAI might also involve considerations beyond intellectual property laws. For instance, contractual agreements between developers, organisations, or individuals creating or training the generative AI might define ownership rights. Further, in the case of ownership of data, all the platforms have their own stand.

DIFFERENT APPROACHES TO OWNERSHIP OF DIFFERENT COMPANIES

- Google Bard: It states that the license holder does not have the right to claim ownership of content other than for personal use. [1]
- ChatGPT: It makes it clear that the owner and affiliates own the title, interests and rights of this platform provided that it may be duplicated across prompts. [2]
- Scribe: It claims ownership over graphics, designs, services, transcriptions, etc and entails that no one may use such services until expressly agreed by the owner. [3]
- Copilot: It covers third-party claims based on copyright, patent, trademark, and right to publicity, but surprisingly, it makes no claims regarding commerce, defamation, false light or any other causes related to Intellectual Property Rights. [4]

- **Writesonic:** In it, owners hold complete rights over deliverables, and the user cannot distribute them without prior permission. [5]

Thus, in the absence of clear legal regulations, each company has its perspective and Terms of Use on who owns the content being created by the GAI.

ETHICAL ISSUES IN GENERATIVE ARTIFICIAL INTELLIGENCE

There are multi-dimensional ethical concerns that arise concerning GAI:

- **Dissemination of Toxic Content:** Deepfakes are being used for unethical purposes, such as creating misleading content. [6]
- **Copyright Infringement and Legal Issues:** GAI models rely on diverse datasets, which raises the risk of unintentional copyright infringement. Brands using GAI may unknowingly incorporate intellectual property from competitors, hence leading to potential legal disputes.
- **Data Privacy Violations:** Training GAI models with datasets containing sensitive information, such as personally identifiable information, pose a risk.
- **Disclosure of Sensitive Information:** Rapid democratisation of AI increases the likelihood of unintentional disclosure of sensitive information. Legal issues may arise from AI-generated content revealing compromising details about individuals.
- **Biases in AI Models:** GAI models reflect the biases in the data they are trained on, potentially perpetuating societal prejudices. The scale of hate speech and toxicity could be substantial if deep-seated biases are fed into these models. [7]



The first Republic Day Chief Guest was Indonesian president Sukarno. In the years 2021 and 2022, no one could be invited on account of the pandemic restrictions.

- **Workforce Displacement:** GAI's ability to outperform humans in writing, coding, and content generation raises concerns about widespread workforce displacement.
- **Lack of Transparency:** The opaque nature of GAI processes raises ethical concerns. Without transparency, there is an increased risk of biased outcomes, inaccurate decisions, and harmful consequences.

GLOBAL AND NATIONAL LEGAL FRAMEWORK

Governments worldwide are emphasising the need for responsible development and ethical use of AI. While there is no unified global framework, there are various regions which have implemented their approaches:

- **United States of America:** The USA lacks a comprehensive federal AI law but relies on sector-specific regulations and general principles. For instance federal agencies like the Federal Trade Commission (FTC) provide guidance on fairness and transparency. States such as California have enacted privacy laws affecting AI-driven data processing. [8]
- **China:** China released the *'New Generation AI Development Plan'* [9] in the year 2017, which covered data security and AI ethics, including export control. There are still ongoing efforts, which include the development of AI standards and certification processes with public inputs sought on new rules in China.
- **United Kingdom:** The UK government has published AI ethics guidelines and strategies titled *'The Ethics Guidelines for Trustworthy AI'* [10] for AI development. The Information Commissioner's Office (ICO) oversees AI's data protection and privacy aspects.

- **India:** The Information Technology Act, 2000 was the first legislation to address cybersecurity in India. Although the act doesn't define AI explicitly, it does prioritise cybersecurity. Despite undergoing amendments, the IT Act doesn't have provisions for addressing risks posed by emerging technologies like AI, blockchain, and cloud computing. The Digital Personal Data Protection (DPDP) Act of 2023 focuses on the automated processing of personal data, but it still doesn't mention AI explicitly.
- **European Union:** There is a political agreement in Europe on the Artificial Intelligence Act ("EU AI Act") [11] proposed by the European Commission in April 2021, which aims to balance innovation with ethical and responsible use of AI.

BEST REGULATORY PRACTICE

The EU AI Act serves as a model for global discussions on responsible AI governance, emphasising the importance of transparency, accountability, and the ethical use of artificial intelligence.

This Act will apply to both the providers and deployers of AI systems that fall under its scope. This includes any AI systems that are used or have an effect in the European Union, regardless of where the providers or deployers are located. This means that even third-country providers or deployers of AI systems will have to comply with this Act if their output is being used in the EU.

- However, the Act defines a few exceptions. The Act will not apply to:
- AI used exclusively for military/defence purposes,
- AI used solely for research and innovation,
- AI used for non-professional reasons.



The 5-Judge bench in the Triple Talaq judgement were from different religions.

The Act further categorise risks caused by AI and related regulations:

- **Unacceptable Risk:** AI systems pose a high risk and may be banned due to practices such as social scoring, workplace emotion recognition, and biometric categorisation. These practices may infer sensitive data, such as sexual orientation, and are considered a threat to individuals.
- **High-Risk:** High-risk AI systems in sensitive areas such as welfare, employment, education, and transit will require a mandatory impact assessment. Citizens have the right to receive explanations regarding judgments made using high-risk AI that affect their rights.
- **Limited risk:** The systems exposed to less harsh monitoring are subjected to more light touch transparency obligations, such as alerting the users that the content they are engaging with is AI-generated.

For violating the laws or non-compliance with this Act, several fines will be enforced. Fines would range from 35 million Euros or 7 % of the global turnover (whichever is higher) for violating banned AI applications, 15 million Euros or 3 % for violating other obligations, and 7.5 million Euros or 1.4 % for supplying incorrect information. However, appropriate caps will be in effect when issuing administrative fines against small and medium firms and start-ups. Citizens will be able to launch complaints against the use of AI systems that impact them.

REGULATION OF GENERATIVE ARTIFICIAL INTELLIGENCE UNDER THE EU AI ACT

The regulation mandates that the creators of foundational models are responsible for ensuring the protection of fundamental rights, health, safety, environment, democracy, and the rule of law. To comply with the design, information, and environmental requirements, they need to assess and mitigate the risks associated with a particular model. After fulfilling those obligations, they need to register the model in an EU database.

It is important for generative foundational AI models, such as Chat GPT, which generates art, music, and other content using large language models (LLMs), to abide by transparency obligations.

The creators of such models and generative content must disclose that the content was generated by AI and not by humans. They also need to design their models to prevent the generation of illegal content. Moreover, they should publish information on the use of training data that is protected under copyright law.

Finally, all foundational models must provide all necessary information for downstream providers to comply with their obligations under the EU AI Act. Although the EU AI Act requires model providers to conduct a risk assessment, this is the first legislation to regulate Generative AI, which creates a balance between self-regulation and deterrence by imposing appropriate fines. The scope



The Supreme Court Collegium consisted of 6 members from November, 2022 to May, 2023.

and impact of the regulation on safeguarding the rights of various stakeholders remains to be seen, but the regulatory framework is comprehensive and has a solid foundation.

LESSONS FOR INDIA

Digital technology has become central to almost every aspect of people's lives in India, resulting in a vast amount of data being generated. This data can be utilized by companies and model developers to further train and enhance their LLMs. Therefore, it is essential to regulate the usage, training, and development of GAI in India. In India, as we are yet to implement the DPDP Act of 2023, the EU AI Act, which is in addition to the General Data Protection Regulation (GDPR), will provide an opportunity for lawmakers in India to comprehensively assess and create regulatory structures that enable fair and equitable development and use of AI and cater to the best interest of the country.

CONCLUSION

The development and widespread use of Generative AI is a global phenomenon that will have an impact on all of us. As with any new technology, Generative AI presents both opportunities and risks. Without proper regulation, people may face unequal access to information due to algorithmic decision-making, as well as potential misuse by corporations. Therefore, conversations about GAI regulations should prioritise fundamental human rights, such as dignity, inclusivity, non-discrimination, and privacy protection. This approach will allow for the growth of GAI in a transparent, inclusive and accountable manner and will ensure the social and economic well-being of all stakeholders.

ENDNOTES:

1. Googlebardai.co, <https://googlebardai.co/terms-condition/>, (last visited on 21.12.23).
2. Openai.com, <https://openai.com/policies/terms-of-use>, (last visited on 21.12.23)
3. Scribe.ai, <https://www.scribe.ai/terms>, (last visited on 21.12.23)
4. Copilot-cx, <https://www.copilot.cx/terms-conditions>, (last visited on 21.12.23)
5. Free Privacy Policy, <https://www.freeprivacypolicy.com/blog/intellectual-property-copyright-clause-terms-conditions/>, (last visited on 21.12.23)
6. Lawton, G. (2023a, November 1). Generative AI ethics: 8 biggest concerns and risks. Enterprise AI. <https://www.techtarget.com/searchenterpriseai/tip/Generative-AI-ethics-8-biggest-concerns>
7. Binmile. (2023, September 8) What Ethical Concerns Are Associated with Generative AI? <https://www.linkedin.com/pulse/what-ethical-concerns-associated-generative-ai-binmile/>
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9. State Council of the People's Republic of China (2017). New Generation Artificial Intelligence Development Plan (J. Liu, Trans.). <https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/>
10. Centre for Data Ethics and Innovation, The Ethics Guidelines for Trustworthy AI (2019).
11. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6473



The Annual Status of Education Report (ASER), 2023 found out that about 25% of Indian students in the 14-18 age group were unable to read a Std II level text fluently in their regional language.