

CHATGPT: A POTENTIAL GAME-CHANGER IN THE LEGAL PROFESSION



INTRODUCTION

ChatGPT is an artificial intelligence chatbot crafted by OpenAI, a non-profit American artificial intelligence research laboratory, which was launched in November 2022 and is powered by generative pre-trained transformer (GPT) -3.5, now GPT -4.0 technology, and astounds with its human-like conversation skills. The artificial intelligence (AI) has Elon Musk among its co-founders and Sam Altman leading as CEO.

RELEVANCE AND THREAT TO THE LEGAL PROFESSION

Over the years, technology has been a tool for assisting legal professionals in helping clients solve their legal issues. Artificial intelligence such as chatbots (a computer program designed to simulate conversation with human users) has become prominent in providing legal information to professionals from legal research, to providing an overview of an area of law, and suggesting arguments in a case. ChatGPT has shown us the capacity and capability of Artificial Intelligence which can take in an enormous amount of information and later reproduce or create new content for a user. The use of AI by lawyers would mean a fusion of machine and human knowledge which would enhance considerable advancement in the profession.

Despite its tremendous assistance, the legal profession has become apprehensive of Artificial Intelligence. Lawyers often wonder, is this the end of us? Are we going to be replaced by mere robots? Questions like this have become the basis of conversations among lawyers in different parts of the world. ChatGPT can only produce answers to legal questions based on the data it has consumed, this means that where enough

resources or data has not been absorbed by the AI, it will be limited to the information stored, It is the typical garbage in garbage out.

Recently, a Chicago-based law firm, Edelson, sued the world's first robot lawyer, developed by a startup, DoNotPay, over allegations of fraud by appearing in the courtroom without a law license to practise in the United States. . The AI despite the broader range of data and human-like conversation skills, is still problematic and sometimes gives unintelligible, incorrect, or outdated answers which cannot be used as arguments in court. At best, it can make a lawyer's job easier in suggesting arguments and giving an overview of an area of law where it would still be



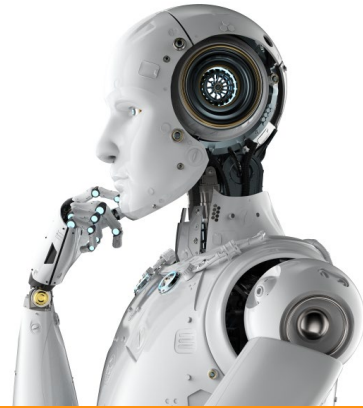
subjected to scrutiny by such professional. The chatbots in the nearest future would still be incapable of replacing a lawyer, because while chatGPT has proven human-like conversation skills, it does not have the requisite training and experience to fill in the roles of lawyers as even the chatbot creators on the OpenAI website also note that ChatGPT shouldn't be relied upon for advice

INTELLECTUAL PROPERTY RISK

Since ChatGPT draws from its broader training data rather than specific sources to generate responses, and its processes are generally unknown to the user, it is likely to be difficult to identify where there is a risk of infringement or who the copyright owner and/or author is. The question of whether developers of AI infringe copyright in materials on which the AI is trained is currently playing out in two recent lawsuits brought in the UK and the US. In the UK, Getty Images has brought a copyright infringement action against Stability AI, the developer of AI image generator Stable Diffusion, claiming that the processing of images in which Getty Images owns the copyright for the purpose of training Stable Diffusion infringed the copyright in those works. In the US, a class action has also been launched by software developers against Microsoft, GitHub and OpenAI claiming that the creation of AI-powered coding assistant GitHub Co-pilot constitutes software piracy on an unprecedented scale.

The outcomes of these cases could have significant implications for the viability of AI as a tool for businesses. They will consider the extent of fair use principles and, if the plaintiffs are successful, may even open the door to an entirely new form of copyright royalty payment. Furthermore, even if developers could be absolved of liability for infringement that does not necessarily mean the same protection would extend to users.

Aside the intellectual property risk, security experts has also warned that some of the risks involved are data privacy risk, data misuse and phishing attacks which are common technology exposure.



WHO OWNS THE COPYRIGHT IN AI- ASSISTED WORKS

The question of who owns the copyright in AI work is an important consideration when culling out answers from AI responses.

A law firm in Australia, Allen Linklaters in an article titled “Chatgpt in law: Unlocking new opportunities while managing the risks” carried out a test where ChatGPT was asked series of questions and here is how the Chatbot responded.

ChatGPT's response

- **Copyright ownership – In Australia, copyright protects certain subject matters which are expressions of ideas, including 'literary works', being materials expressed in print or writing, provided they are 'original'. That is, the work must have originated from a human 'author' who has applied some 'creative spark', 'independent intellectual effort' or 'skill and judgement', and not be copied from another work. On the one hand, copyright is likely to protect the various human-generated inputs which are used by ChatGPT (eg articles in its training dataset, or queries submitted by users) as well as the software code which makes up the chatbot itself, and would be owned by the respective human authors or persons deriving title from those authors. On the other hand, the originality threshold is unlikely to be satisfied in relation to ChatGPT's text output (to the extent it has not been copied from any inputs), which means that in Australia, copyright is unlikely to protect, and no one would be the author or copyright owner of, such output.**

This is to be contrasted with the position in the UK, where for computer-generated works which involve no human author, the author (and therefore first copyright owner) is taken to be 'the person by whom the arrangements necessary for the creation for the work are undertaken'. Therefore, lawyers wishing to use ChatGPT to generate legal documents or advice should be cognisant of the risk that their ability to prevent third parties from using or copying those documents or advice may be limited to the extent they simply comprise ChatGPT's responses, potentially undermining their commercial value. However, copyright could still protect a new work created by a human lawyer using ChatGPT's responses (e.g. by adding to, or editing, the responses), to the extent such additions, changes or new materials created are 'original'.

The outcomes of these cases could have significant implications for the use of AI as a tool for businesses. They will consider the extent of 'fair use' principles and, if the plaintiffs are successful, may even open the door to an entirely new form of copyright royalty payment streams. Further, even if developers could be absolved of liability for infringement (e.g. there are statutory text and data-mining exceptions to copyright infringement under EU and UK laws, which have no equivalents under Australian law), that does not necessarily mean the same protection would extend to users.

In other words, copyright is likely to protect the various human-generated inputs used by ChatGPT. If ChatGPT generates a response that copies a substantial part of any such input, and the input has been authored by and/or is owned by a third party, then a user who reproduces or distributes that response without permission from the copyright owner may be infringing copyright, and a user who fails to properly attribute the author or edits the response in a way which is prejudicial to the author's honour or reputation may be liable for infringement.

CONCLUSION

ChatGPT, just as other technological invention is a great innovation to simplify and enhance human life. However, I believe every country is required to put in place laws to regulate its use, such that an author's intellectual rights would not be infringed upon without any law to rely on and users would equally benefit from the data collected in the AI without fear of being sued because of wrongful use of an author's idea without permission. At the time of writing this article, no copyright exists for the texts in ChatGPT. This means that users can easily infringe on an original writer's right by using the data generated from the chatbot.

DISCLAIMER

The information provided in this publication does not, and is not intended to constitute legal advice. It is intended only for general informational purposes only. Please see contact below for further information you may require.

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