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Artificial Intelligence and Media Law- the implications of ChatGPT and other systems of replicating human communications production robotically 30th April 2023 (Updated 26th August 2023)

Artificial intelligence has been used in journalism and many other forms of professional work for many years. The spelling and grammar checking software in word processing programmes is a form of AI. So are data processing online platforms such as Google and Bing.

Data Journalism software which ‘scrapes’ data online to create visual representations of data and information is also AI as are the programmes which vocalise text- some of which provide sound presentation that can sometimes and rather eerily appear as though this has been performed by a professional broadcast journalist or actor. AI programmes can absorb prior recordings of an individual’s voice and be used by a fraudster to imitate convincingly the voice of this individual in sound only communications.

Siri provided by Apple and Alexa provided by Amazon are examples of the rapidly developing forms of AI which are becoming close to providing representation of human robots which used to be the stuff of Science Fiction.

ChatGPT’s engagement with journalism and digital intelligence and programmes like it raise a range of legal and ethical issues. As already reported on this companion website page, IMPRESS is the first UK journalism regulator to recognise professional ethical obligations in the use of AI.

In April 2023, the first reported dismissal of a journalism editor for using CGTGPT to construct a fake interview with seven-times F1 world champion Michael Schumacher emerged from Germany. *Die Aktuelle* had published a mock interview. Mr Schumacher’s family said they were considering taking legal action against the magazine which is owned by Funke media group.

The managing director of the group Bianca Pohlman apologised and said: ‘This tasteless and misleading article should never have appeared. It in no way meets the standards of journalism that we and our readers expect from a publisher like Funke. As a result of the publication of this article, immediate personnel consequences will be drawn. *Die Aktuelle* editor-in-chief

Anne Hoffmann, who has held journalistic responsibility for the paper since 2009, will be relieved of her duties as of today.'

See: Observer and Reuters 'Magazine editor sacked over AI-generated Schumacher interview' at: <https://www.theguardian.com/sport/2023/apr/22/michael-schumacher-formula-one-interview-die-aktuelle-editor-sacked> and Mail Online: 'The editor of German magazine Die Aktuelle has reportedly been fired,' at: <https://www.dailymail.co.uk/sport/formulaone/article-12002195/Editor-Die-Aktuelle-fired-producing-fake-interview-Michael-Schumacher.html>

AI and copyright/intellectual property law is already being addressed, largely because sophisticated forms of AI such as ChatGPT depends on sourcing information. If the information has IP rights issues then image rendering and/or textual production using source materials beyond fair dealing/fair use discretion could lead to litigation.

For example, Getty Images is suing the creators of AI art tool Stable Diffusion for scraping its content. (See: <https://www.theverge.com/2023/1/17/23558516/ai-art-copyright-stable-diffusion-getty-images-lawsuit>) *Sui generis* and copyright database laws protect the intellectual property of subscription protected and open source database providers.

This is still active and fully applying in the UK. Copyright database and *Sui generis* database laws are summarized by the government at <https://www.gov.uk/guidance/sui-generis-database-rights#sui-generis-database-rights-in-the-uk>

In addition, contractual law where users have to agree terms and conditions provides further protection.

Robotic systems of human style production, like animals, do not have legal personality in law. The legal responsibility and liability in litigation, as well as criminal law *actus reus* and *mens rea* lies with individuals, government bodies or private corporate bodies who/which use the AI for communications and publication.

Consequently, where AI generates inaccuracy, libel, contempt of court, breach of privacy, and breach of professional ethics codes, the legal trail in prosecution and litigation will be to the person or persons who deployed and used it.

There could be an interesting test case in the courts where an individual created a publication and an outside and intervening form of AI changed the content without permission to create a risk of media law infraction. This set of circumstances would need evidential forensic analysis and explanation. The issues of consent, permission and human agency in the operation and impact of the AI programmes/systems would have to be legally explored.

Test cases are emerging. Allegations are being pursued that ChatGPT is fashioning defamatory online conduct and actually faking articles which were never written. A libel action is being prepared in Australia. Arab News and Reuters reported: 'Australian mayor readies world's first defamation lawsuit over ChatGPT content.' See: <https://www.arabnews.com/node/2281861/media> Chris Moran has written for the Guardian that: 'ChatGPT is making up fake Guardian articles. Here's how we're responding.' See: <https://www.theguardian.com/commentisfree/2023/apr/06/ai-chatgpt-guardian-technology-risks-fake-article>. At the same time the Mail Online has been reporting 'ChatGPT falsely

accuses a law professor of a sex attack against students during a trip to Alaska that never happened – in shocking case that raises concerns about AI defaming people.’ See: <https://www.dailymail.co.uk/sciencetech/article-11948855/ChatGPT-falsely-accuses-law-professor-SEX-ATTACK-against-students.html>

One of the gravest injustices caused by over-reliance on AI in recent times is undoubtedly the Post Office ‘Horizon’ computer scandal. Between 2000 and 2014, the Post Office prosecuted 736 sub-postmasters and sub-postmistresses – an average of one a week – based on information from a recently installed computer system called Horizon.

A court would later rule that the system contained ‘bugs, errors and defects, and that there was a ‘material risk that shortfalls in branch accounts were caused by the system. The consequences were appalling and tragic. Hundreds of people had been wrongly prosecuted and convicted for fraud/theft crimes they had not committed, but were the fault of the artificial intelligence generated by the Horizon programme.

The use of digital algorithms that set a template decision making process for much more complex circumstances than the task imagined and designed for can result in discrimination and injustice. Pierluigi Bizzini explains such a case which ‘blew up Italy’s school system.’ It was supposed to save time by allocating teachers on short-term contracts to schools automatically. Failures in the code and in the design severely disrupted teachers’ lives. See: <https://algorithmwatch.org/en/algorithm-school-system-italy/>

Mainstream news publishers have frequently complained that Google and other ‘search engines’ and digital platforms can disadvantage their present and referral rate. The simple issue here is that digital information technology and artificial intelligence is constructed by codification that is different to the language appearing before you in terms of reading written text.

By way of example, if you are using a Macbook, ctrl right click and then click on ‘inspect’ and the representation of hidden html code will be apparent. Without computer code education and training, how are you to know what it means and how it works along with all the icons and layouts used?

It is the hidden language behind or ‘inside the screen’ as it were. Consequently, the very concept of ‘media literacy’ has changed into something which is much more complicated and technical in the 21st century. The maxim ‘knowledge is power’ has an enhanced significance in this context.

Should AI generate accurate and reliable journalistic communications which do not breach primary and secondary media law, the question of whether AI as authorship should be transparent to the audience is a matter of ethics and is now being debated.

The issue of plagiarism in all forms of education is certainly being debated and investigated. Should universities and schools abandon digital online assessment and submission and revert wholly to the old-fashioned method of unseen invigilated examination restricted to pen and paper and quarantined from all mechanical/machine aids? Universities use artificial intelligence to check for plagiarism. An example is the Turnitin programme.

Plagiarism in journalistic professional work is already an issue for commissioning editors and their receipt and payment for freelance work. Can they be sure features and articles they are buying are original and authentic to the contributors? Does it actually matter if AI such as ChatGPT is a significant part of, or most of the source of the work?

The quality of voice activation programmes is such that a single journalist working in a radio station could use one to provide an alternative reporter's voice for a report of a court case in a news bulletin. But how should the report be cued and what would be the impact on listener's trust if it was not possible to tell the difference between an AI report and actual radio journalist's voiced report? More ethical issues arise if high quality digital production techniques are deployed to pretend that a report has been originated on location.

AI image enhancement software can transform an image into something which is not seen by the naked eye. This is certainly true of images shown in online news sites and television news of the Aurora Borealis or Northern Lights. A news story might say why go to Reykjavik when you can see it in Ramsbottom or Biggleswade? But isn't there an obligation to explain that the photograph has been filtered and enhanced.

The potential for AI digital photography to create and masquerade analogue authenticity has been recently tested by photographer and German artist Boris Eldagsen who admitted that a prize-winning image to the Sony world photography awards was AI-generated. He refused the prestigious award after admitting to being a "cheeky monkey" in order to provoke debate. See: <https://www.theguardian.com/technology/2023/apr/17/photographer-admits-prize-winning-image-was-ai-generated> and "AI isn't a threat" – Boris Eldagsen, whose fake photo duped the Sony judges, hits back' at: <https://www.theguardian.com/artanddesign/2023/apr/18/ai-threat-boris-eldagsen-fake-photo-duped-sony-judges-hits-back>

We are now very much aware of social media programmes which can improve physical appearances, remove wrinkles and look younger. The notorious online deception practice of catfishing is often perpetrated through voice distortion and transformation and visual masking. The immoral and unlawful utilisation of such digital intelligence devices raise questions about integrity, trust, honesty and notions of originality and authenticity.

The use of such technology does engage criminal and civil legal liability and while the prospect of such developments may cause apprehension about the extent to which honest people could be tricked and deceived, digital technology does leave a fingerprint evidentially and should in theory make investigation, prosecution and conviction easier.

General ChatGPT systems reliant on global data mining cannot be trusted to overcome and apply the varying IP laws across national legal jurisdictional boundaries where copyright duration varies widely, and information can be legally private and covered by reporting restrictions in the UK and European countries but not so in the USA. However, AI can be specifically tailored in journalistic production by the selection of specific sources and pre-moderation and checking for accuracy.

And, of course, there is nothing to prevent the development of an AI Comparative Media Law Bot that substantially replaces the function and employment of media lawyers.

Angus McBride, News UK's General Counsel, has argued in *The Times* 'News conjured by rogue algorithms must be avoided.' This is because the AI chatbot depends on scraping content from online sources to generate and inform its intelligence.

Mr McBride thinks the new regulator, the Digital Markets Unit, should urgently grapple with the issue of AI-written news. (See: <https://www.thetimes.co.uk/article/news-conjured-by-rogue-algorithms-must-be-avoided-hp7fhlptn>)

Donna Lu's informative article in the Guardian sets out 'Misinformation, mistakes and the Pope in a puffer: what rapidly evolving AI can – and can't – do.' See: <https://www.theguardian.com/technology/2023/apr/01/misinformation-mistakes-and-the-pope-in-a-puffer-what-rapidly-evolving-ai-can-and-cant-do>

The UK government published a white paper 'AI regulation: a pro-innovation approach' 29th March 2023. 'This white paper details our plans for implementing a pro-innovation approach to AI regulation. We're seeking views through a supporting consultation.'

See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146542/a_pro-innovation_approach_to_AI_regulation.pdf

The Office of Information Commissioner provided the following response 11th April 2023. See: <https://ico.org.uk/media/about-the-ico/consultation-responses/4024792/ico-response-ai-white-paper-20230304.pdf>

London School of Economics: 'The JournalismAI Report- New powers, new responsibilities. A global survey of journalism and artificial intelligence.' See: <https://blogs.lse.ac.uk/polis/2019/11/18/new-powers-new-responsibilities/>

La rédaction de Heidi.news prend position sur l'usage des intelligences artificielles. See: <https://www.heidi.news/cyber/la-redaction-de-heidi-news-prend-position-sur-l-usage-des-intelligences-artificielles>

Persbureau ANP stelt 'leidraad met vangrails' op voor inzet van kunstmatige intelligentie. See: <https://www.villamedia.nl/artikel/persbureau-anp-stelt-leidraad-met-vangrails-op-voor-inzet-van-kunstmatige-intelligentie>

DPA: 'Offen, verantwortungsvoll und transparent – Die Guidelines der dpa für Künstliche Intelligenz.' See: <https://innovation.dpa.com/2023/04/03/kuenstliche-intelligenz-fuenf-guidelines-der-dpa/>

The Google translate artificial intelligence facility online has been used to translate five recommended DPA guidelines into English:

- 1.The dpa uses AI for various purposes and is open to the increased use of AI. AI will help to do our work better and faster - always in the interest of our customers and our products.
- 2.The dpa only uses AI under human supervision. The final decision about the use of AI-based products is made by a human. We respect human autonomy and the primacy of human choices.
3. dpa only uses legitimate AI that complies with applicable law and statutory provisions and

that meets our ethical principles, such as human autonomy, fairness and democratic values.
4. dpa uses AI that is technically robust and secure to minimize the risk of errors and misuse. Where content is generated exclusively by AI, we make this transparent and explainable. A person is always responsible for all content generated with AI.

5. The dpa encourages all employees to be open and curious about the possibilities of AI, to test tools and to make suggestions for use in our workflows. Transparency, openness and documentation are crucial.'

Prior to the freely available use of such AI provided by Google this kind of translation work would have been commissioned from a professional linguist most likely educated to degree and postgraduate level in German and modern languages. The technology here clearly replaces human agency, reduces employment opportunity and effectively standardises a method and style of interpretative translation.

Bayerischer Rundfunk: 'Ethics of Artificial Intelligence' - See: <https://www.br.de/extra/ai-automation-lab-english/ai-ethics100.html>

Here are some recent articles exploring and debating Artificial Intelligence media law and ethics issues:

Guardian and AFP report: 'AI generated news presenter debuts in Kuwait media. Kuwait News introduced Fedha, promising that it could read online news in the future.' See: <https://www.theguardian.com/world/2023/apr/11/ai-generated-news-presenter-debuts-in-kuwait-media>

Guardian reports: "'I didn't give permission': Do AI's backers care about data law breaches? Regulators around world are cracking down on content being hoovered up by ChatGPT, Stable Diffusion and others." See: <https://www.theguardian.com/technology/2023/apr/10/i-didnt-give-permission-do-ais-backers-care-about-data-law-breaches>

Guardian reports: "'I'm terrified': what does AI Tom Brady mean for the future of media? The hosts of the Dudesy podcast were shocked when their robot companion created an hour-long standup special." See: <https://www.theguardian.com/technology/2023/apr/10/tom-brady-standup-ai-dudesy>

New York Times reports (behind paywall) 'Can We No Longer Believe Anything We See? Human eyes — and even technology — often struggle to identify images created by artificial intelligence.' See: <https://www.nytimes.com/2023/04/08/business/media/ai-generated-images.html>

Marco Giannangeli writes for Sunday Express: 'The terrifyingly real risk of AI with China now leading the robot march.' See: <https://www.express.co.uk/news/science/1756313/artificial-intelligence-china-threat-robot-data>

Press Gazette- 'Journalists: ChatGPT is coming for your jobs (but not in the way you might think' 9th March 2023, See: https://pressgazette.co.uk/media_law/journalists-chatgpt-jobs-ai-copyright/

Press Gazette- ‘ChatGPT, AI and journalism: Legal and ethical pitfalls’ 2nd March 2023, See: <https://pressgazette.co.uk/comment-analysis/ai-journalism-legal-ethical-considerations/>

The London School of Economics hosts JournalismAI. See: <https://www.lse.ac.uk/media-and-communications/polis/JournalismAI>

‘JournalismAI is a global initiative that empowers news organisations to use artificial intelligence responsibly. We support innovation and capacity-building in news organisations to make the potential of AI more accessible and to counter inequalities in the global news media around AI. JournalismAI is a project of Polis – the LSE’s journalism think-tank – and is supported by the Google News Initiative.’

Reuters Institute, Oxford University. ‘UK media coverage of artificial intelligence dominated by industry, and industry sources.’ See: <https://reutersinstitute.politics.ox.ac.uk/news/uk-media-coverage-artificial-intelligence-dominated-industry-and-industry-sources> & <https://reutersinstitute.politics.ox.ac.uk/our-research/industry-led-debate-how-uk-media-cover-artificial-intelligence> & https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-12/Brennen_UK_Media_Coverage_of_AI_FINAL.pdf

For a perspective on what Artificial Intelligence represents in the long-term, Bill Gates believes there is significance in appreciating that ‘The Age of AI has begun.’ He argues: ‘Artificial intelligence is as revolutionary as mobile phones and the Internet.’ And he concludes: ‘Finally, we should keep in mind that we’re only at the beginning of what AI can accomplish. Whatever limitations it has today will be gone before we know it.’ See: <https://www.gatesnotes.com/The-Age-of-AI-Has-Begun>

John Naughton writes for Observer: ‘You wait ages for an AI chatbot to come along, then a whole bunch turn up. Why?’ See: <https://www.theguardian.com/commentisfree/2023/mar/25/you-wait-ages-for-an-ai-chatbot-to-come-along-then-a-whole-bunch-turn-up-chatgpt>

Guardian: “Elon Musk joins call for pause in creation of giant AI ‘digital minds.’ More than 1,000 artificial intelligence experts urge delay until world can be confident ‘effects will be positive and risks manageable.’” See: <https://www.theguardian.com/technology/2023/mar/29/elon-musk-joins-call-for-pause-in-creation-of-giant-ai-digital-minds>

The Open Letter of AI ‘Pause Giant AI Experiments: An Open Letter We call on all AI labs to immediately pause for at least 6 months the training of AI systems more powerful than GPT-4.’ See: <https://futureoflife.org/open-letter/pause-giant-ai-experiments/>

Alex Hern writes for Guardian: ‘My week with ChatGPT: can it make me a healthier, happier, more productive person?’ See: <https://www.theguardian.com/technology/2023/apr/06/my-week-with-chatgpt-can-it-make-me-a-healthier-happier-more-productive-person>

Press Gazette reports: ‘The ethics of using generative AI to create journalism: What we know so far. The use of generative AI tools can impact trust, accuracy, accountability and bias in newsrooms.’ See: <https://pressgazette.co.uk/publishers/digital-journalism/ai-news-journalism-ethics/>

Press Gazette reports: 'What will generative AI do to journalism? Experts and execs sound off at NewsXchange. Although there were notes of caution, most speakers were optimistic about AI and journalism. 23rd June 2023. See:

<https://pressgazette.co.uk/platforms/generative-ai-journalism-news-xchange/>

Press Gazette reports: 'How Mediahuis is easing generative AI into its newsrooms. The European publisher explains how it uses AI in its newsroom. 29th June 2023. See:

<https://pressgazette.co.uk/publishers/digital-journalism/how-mediahuis-is-easing-ai-into-its-newsrooms/>

Press Gazette reports: "Generative AI and The Guardian: 'What we do can't be reproduced synthetically.' How The Guardian is experimenting with gen AI tools - and why it has not deployed any yet." 6th July 2023. See:

<https://pressgazette.co.uk/publishers/nationals/guardian-ai/>

Press Gazette reports: 'Why action is needed to save quality news from destruction by AI and big tech. Press Gazette editor-in-chief Dominic Ponsford delivers the 2023 Olsen Lecture at St Bride's Church.' 7th July 2023 See: https://pressgazette.co.uk/media_business/dominic-ponsford-olsen-lecture-st-brides-2023-journalism-generative-ai-threat/

Press Gazette reports: "Sky News identifies the major 'red flag' around AI-powered news reporting. Tom Clarke said the experiment was "perfectly decent" in some ways but hugely inaccurate in others." 11th July 2023 See:

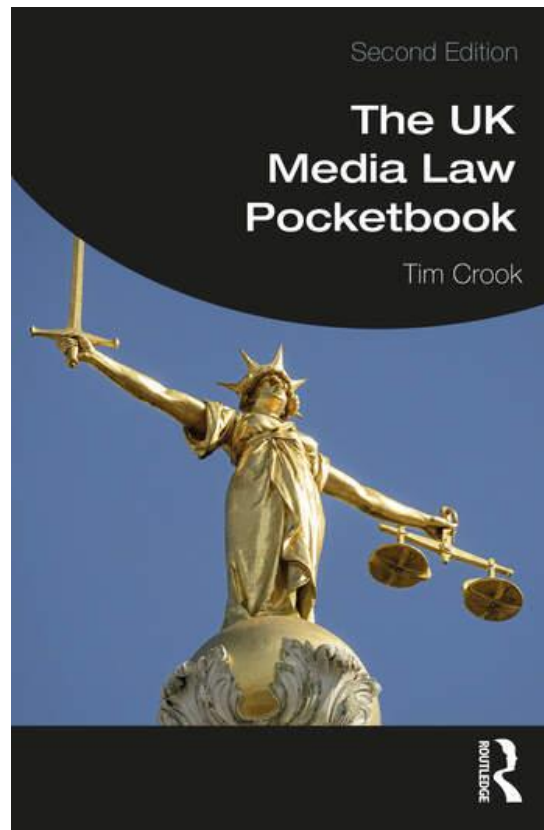
<https://pressgazette.co.uk/publishers/broadcast/sky-news-ai-reporter/>

Press Gazette reports: 'Swedish daily Aftonbladet finds people spend longer on articles with AI-generated summaries. Swedish daily says AI-generated article summaries have increased read time.' 26th July 2023. See: <https://pressgazette.co.uk/publishers/digital-journalism/aftonbladet-sweden-biggest-daily-use-chatgpt-in-the-newsroom/>

Press Gazette reports: 'How BuzzFeed is using AI to boost engagement as social traffic wanes. BuzzFeed investors told AI-assisted content is boosting time spent and keeping clients happy.' 11th August 2023. See: <https://pressgazette.co.uk/publishers/digital-journalism/buzzfeed-ai/>

Press Gazette reports: 'Generative AI and journalism: New York Times 'could sue OpenAI' while AP and Shutterstock sign deals. Updates on publishers and their use of, and deals with, generative AI companies.' 18th August 2023. See:

<https://pressgazette.co.uk/news/generative-ai-journalism-updates/>



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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