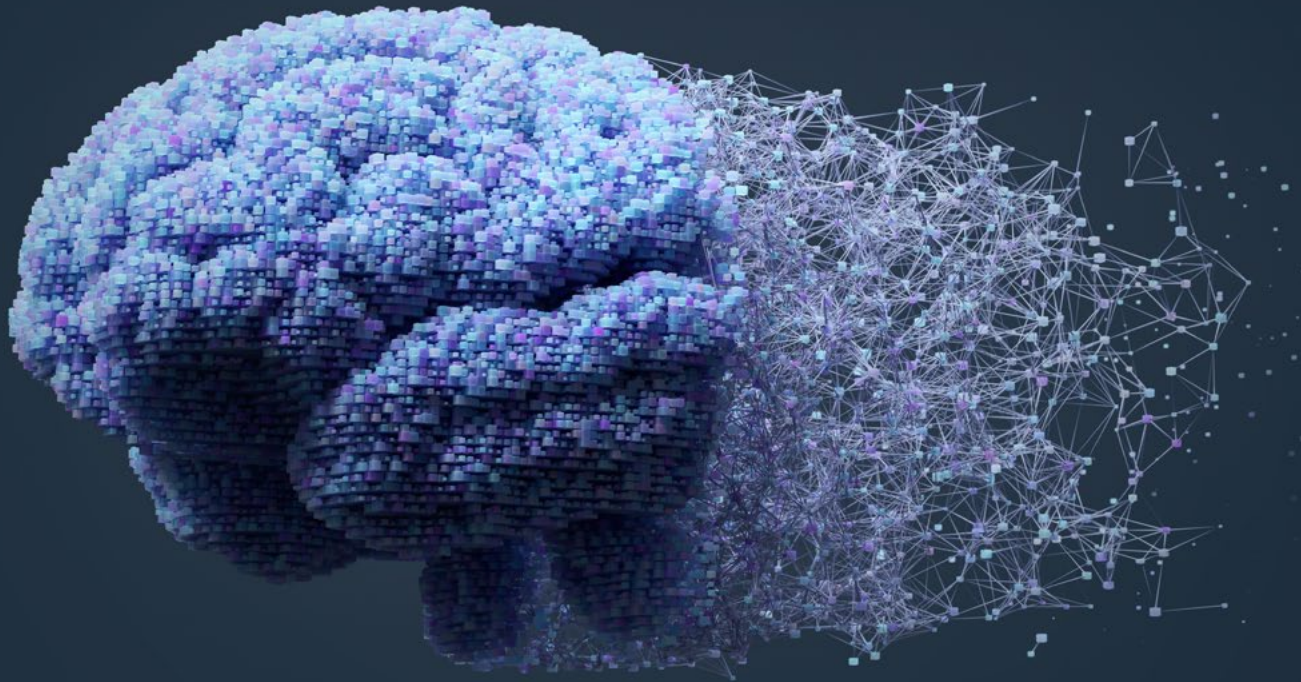




KEY TAKEAWAYS

Practical Legal Considerations

Vanessa van Coppenhagen



create it. own it.

spoor • fisher

patents • trade marks • copyright

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Introduction: The Blue Nodes, the Border Collie and the Shepherds

The Meeting

In our rapidly transforming world, where technological marvels redefine the conceivable, there's a fascinating intersection: the law and artificial intelligence (AI). What we are seeing is a border collie trying to herd something very different to sheep.

Together with our colleagues and clients from diverse fields, our seminar "Where Law Meets Machine Intelligence," held on 15 March 2024, explored this twenty first century shepherding of complex not-sheep, in all their magnificent blue node-ness splendour and their awesome applications in business, to their wicked acts of copyright heists and personality violations and their questionable ethical leanings.

Our plan

In our journey with the flock of blue nodes and the border collie we set out to:

1. **demystify the flock:** by providing a foundational understanding of AI systems and their transformative impact on commerce and society;
2. **understand how the border collie herds and how it's been "super trained" by the front runner shepherds:** by having a look at the current and emerging legal challenges posed by AI, particularly in relation to intellectual property (IP), data and privacy; understanding how these challenges are addressed in our current law and in the laws of the front runners of AI legislation – the front runner shepherds, bearing their "AI system risk classification" staves; and offering our own insights.
3. **foster ethical integration:** by highlighting the legal risks and ethical considerations inherent in deploying AI systems with a focus on developing strategies that promote the responsible use of AI in a way that supports organisational/ leadership ethics, responsible corporate citizenship and effective risk governance and management that is aligned with strategy; and
4. **encourage proactive adaptation:** by encouraging participants to anticipate future trends and prepare for the legal, ethical, and business implications of AI advancements.

With this retrospective we hope to inspire continued exploration and dialogue among those of us who journey with the flock of blue nodes, the border collie and the shepherds We invite you walk with us.

Practical Legal Considerations - Vanessa van Coppenhagen

Practical Legal Considerations for AI Systems

Vanessa van Coppenhagen's presentation offered an in-depth exploration of the practical legal considerations surrounding the deployment and use of AI systems. This segment considered the hallmarks of AI systems - autonomy, adaptiveness and the ability to infer how to generate outputs from inputs; and the legal implications for a host of affected people - providers, deployers, distributors, importers and users of AI systems.

Vanessa shared a structured and clear approach to navigating the intricate legal landscape surrounding AI. Her segment not only provided a methodical approach and framework, but also provided in-depth insights and practical tools in the form of practical examples and checklists.

Risks and Rights Violations

Vanessa examined the potential risks and rights violations inherent in AI systems, such as unauthorised use of copyrighted works and the generation of biased or inaccurate content. The autonomous nature of AI systems introduces a layer of opacity, raising concerns about accountability and liability in cases of errors or rights infringements. Notably, the presentation highlighted issues surrounding the unauthorized use of copyrighted works in the training of large language models (LLMs), with specific reference to high-profile legal challenges facing providers.

Checklist:

- **Rights Violation Assessment:** Identify potential third-party risks such as unauthorized copyright use.
 - **Accountability Framework:** Establish clear liability and accountability guidelines for AI outputs.
 - **Bias Detection and Correction:** Implement systems to monitor and rectify AI-generated inaccuracies and biases.
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Regulatory Landscape

Vanessa's presentation provided insight into the European Union's AI Act and its implications for AI systems. The AI Act adopts a risk classification structure, prohibiting AI practices that pose an unacceptable risk and placing onerous obligations on providers of high risk AI systems around implementation of management systems, dataset quality criteria, technical documentation, record keeping, transparency in design and development, human oversight, accuracy, robustness, cybersecurity and consistency in performance.

Checklist:

- **Assess whether the AI Act Applies:** the reach of the AI Act extends to developers and deployers in the EU or third country users where the output is used in the EU; and AI systems imported into the EU.
- **Undertake a Compliance Diligence and Develop an Implementation Plan:** Identify and understand obligations as developer, deployer and/or importer of (an) AI system(s) under the AI Act and determine how to implement those obligations.

Agreements

Vanessa's presentation considered AI agreements from the perspective of the developer, the provider, the user and the deployer of AI Systems.

Software Development

In developing AI software systems, Vanessa highlighted the necessity of securing appropriate licenses to use content for training and/or development purposes and the importance of securing copyright assignments from individual developers.

Checklist:

- **Licensing Arrangements:** Licensing terms must be negotiated and agreed prior to use.
- **Secure Written Deeds of Assignment from Developers:** Written and executed deeds of assignment, which comply with statutory requirements, must be negotiated, agreed and executed prior to use.

Terms and conditions of use of AI systems

Vanessa provided practical examples of terms and conditions of use of AI systems, including:

- provisions regulating the use of inputs, including "Customer Data", by AI system providers;
- provisions regulating liability for third party rights violations.

Checklist:

- **Familiarisation with Terms and Conditions of Use of AI Systems:** Applicable terms and conditions of use must be understood, and if possible, negotiated, prior to deployment.
- **Establish Usage Protocols:** usage protocols must be established before deployment. These should address risks identified in the system provider terms and conditions of use.

AI Usage Policy

Vanessa underscored the importance of a deployer of AI systems formulating a comprehensive AI usage policy that specifically, or more generally, authorises particular, or categories of, AI systems; outlines the functionality and purpose of those authorised AI systems; makes provision for compliance with laws, confidentiality, and protection of personal information. The policy should regulate human oversight, transparency in AI usage, and the ongoing monitoring, and regular updates to, the AI usage policy.

Checklist:

- **Deployer of AI System to Develop an AI Usage Policy:** identify authorised AI systems and regulate compliance with laws, confidentiality, protection of personal information, human oversight, transparency, ongoing monitoring and regular updates to the AI usage policy.
- **Assign Human Oversight:** Designate roles for human oversight to facilitate legal and ethical AI deployment, usage and decision-making.
- **Implement Transparency and Monitoring:** Establish continuous monitoring and transparency protocols.

Summary of Key Takeaways

Offering a deep dive into the practicalities of AI deployment, this presentation covered AI system characteristics, potential risks, and the regulatory landscape, particularly the EU AI Act. The importance of developing an AI usage policy and understanding regulatory requirements was stressed, alongside the need for agreements that ensure control and oversight.

Future Implications

For legal professionals and businesses, the insights from this seminar underscore a pivotal moment in adapting to the rapid advancements in AI. The legal considerations surrounding IP, privacy, and the deployment of AI systems call for a proactive stance in navigating the complex regulatory environment. As AI continues to evolve, staying informed and adaptable is crucial for leveraging its benefits while mitigating legal risks.

Next Steps

Seminar attendees are encouraged to take the following steps to integrate the knowledge gained into their practices or operations:

- **Review and Update Legal Frameworks:** Regularly assess and update your organization's legal and compliance frameworks to accommodate the latest in AI advancements and regulatory changes.
- **Develop and Implement AI Policies:** Based on the insights from the seminar, draft or refine AI usage policies that align with your organizational goals, legal requirements, and ethical considerations.
- **Continuous Education:** Engage in ongoing learning and training opportunities to stay ahead of the curve in AI technology and its legal implications.
- **Collaborate and Share Knowledge:** Foster discussions within your professional networks about the challenges and opportunities presented by AI, promoting a collective understanding and approach to navigating its legal landscape.

As we move forward, the dialogue between technology and law will continue to evolve. Embracing the insights and considerations presented in this seminar offers a solid foundation for legal professionals and businesses to navigate the future confidently and responsibly.

Glossary of Terms:

This glossary details some of the terms presented throughout the seminar, aiming to clarify concepts and facilitate a deeper understanding of the content discussed.

A

- **Adaptiveness:** The ability of an AI system to learn from data, improve its performance, and adapt its functions over time without being explicitly programmed to do so.
- **AI (Artificial Intelligence):** A machine-based system that can operate with varying levels of autonomy and adaptiveness, using data and inputs to generate outputs that influence physical or virtual environments.
- **AI System:** A machine-based system designed to operate with varying levels of autonomy, adapting post-deployment to generate outputs, such as predictions or decisions, based on inputs it receives.
- **Autonomy:** The degree to which an AI system can operate without human intervention, making decisions or predictions based on its programming and inputs.

B

- **Bias:** In AI, an unintended prejudice in decision-making, resulting from flawed programming or data inputs that lead to unfair outcomes or discrimination.

C

- **Copyright:** A legal right granted to the creator of original works, allowing them to control use and distribution.
- **Copyright Infringement:** The unauthorized use of copyrighted material without permission from the rights holder, which violates one or more of the copyright owner's exclusive rights.
- **Confidentiality:** The obligation to protect sensitive information from unauthorized access or disclosure.

D

- **Data Protection:** Legal controls and practices designed to safeguard personal information from misuse and ensure privacy.
- **Data Rights:** Legal rights and guidelines governing the collection, use, protection, and sharing of data, especially personal data.
- **Deployer:** An entity that operates or employs an AI system within a specific context or environment.

E

- **EU AI Act:** Proposed legislation by the European Union to regulate artificial intelligence systems, focusing on safety, transparency, and accountability.

F

- **Fair Use:** A legal doctrine that permits limited use of copyrighted material without requiring permission from the rights holders, typically for purposes such as commentary, news reporting, education, and research.

G

- **Generative AI:** AI technologies capable of creating or generating new content, data, or predictions based on training data.
- **General Purpose AI (GPAI):** AI models capable of performing a wide range of tasks across different fields and applications, demonstrating significant generality and versatility.

H

- **High-Risk AI System:** According to the EU AI Act, AI systems that pose significant risks to the health and safety or fundamental rights of persons, subject to stricter regulatory requirements.
- **Human Oversight:** The process of ensuring that AI systems operate under human supervision, enabling human intervention in decisions made by AI.

I

- **IP (Intellectual Property):** Legal rights that result from intellectual activity in the industrial, scientific, literary, and artistic fields.
- **Importer:** An entity that brings AI systems into a market from abroad, making it available for use within a new jurisdiction.

L

- **Large Language Models (LLMs):** AI models designed to understand, generate, or translate human language by analysing large datasets of text.

P

- **Patents:** Legal rights granted to inventors, giving them exclusive rights to their inventions for a limited period in exchange for public disclosure of the invention.
- **Personal Information:** Information relating to an identified or identifiable natural person.
- **Privacy Laws:** Regulations that govern the collection, use, and protection of personal information, ensuring individuals' rights to privacy are respected.
- **Provider:** An entity or individual that develops, creates, or makes available AI systems for use by others.

R

- **Retrieval Augmented Generation (RAG):** An AI approach that combines retrieving information from a database or corpus and generating new content based on that information.
- **Rights in Data:** Legal rights related to the control, use, and distribution of data, especially in contexts where data has been structured or organized in a way that adds value.

S

- **Stakeholder:** An individual, group, or organization that has an interest in or is affected by the deployment and use of AI systems.

T

- **Technical Documentation:** Documentation that provides detailed information about the design, development, deployment, and maintenance of an AI system, required for demonstrating compliance with regulatory standards.

U

- **User:** An individual or entity that interacts with or utilizes an AI system for various purposes.

Additional Resources

The following list compiles recommended reading material, legal documents, and case studies highlighted throughout the seminar.

1. AI Act of the European Union:

- EU AI Act [Full Text](#)
- Description: The proposed regulatory framework aims to ensure the safe and trustworthy development and deployment of AI systems within the EU.

2. Copyright in the Age of Artificial Intelligence:

- [WIPO Magazine - "AI and Copyright"](#)
- Description: An analysis of how copyright law interacts with AI-generated content and the challenges posed by AI in creative processes.

3. Ethics Guidelines for Trustworthy AI:

- [Ethics Guidelines by the High-Level Expert Group on AI](#)
- Description: These guidelines provide a framework for achieving trustworthy AI, emphasizing ethical principles and values.

4. AI and Privacy:

- [Article 29 Data Protection Working Party - Guidelines on Automated individual decision-making and Profiling](#)
- Description: Guidelines addressing the impact of AI on privacy and data protection, including profiling and automated decision-making.

Case Studies

1. Getty Images v. Stability AI:

- Description: A legal case involving copyright infringement allegations against Stability AI for using Getty Images' photographs to train its AI model without authorisation.

2. NYT v. OpenAI:

- Description: This case focuses on the unauthorised use of copyrighted content from The New York Times by OpenAI to train its language models.