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SOME LEGAL AND ETHICAL CONCERNS REGARDING (MIS)USE OF CHAT GPT

Abstract:

The development of information technologies, especially during the 21st century, has two sides: the first, the brighter one is depicting a world of new, unimagined opportunities for work, advancement, learning, development of business activities; but the second side, the darker one, is showing us another world of unimagined ways of abusing the same technologies, for doing serious frauds, violent acts, threats and other criminal acts. Crime scenes still exist, but tools for their execution became wider and more unpredictable, as they come from the world of information and communication technologies.

In this paper some serious legal and ethical problems that arise with the application of various IT solutions, especially after the emergence of ChatGPT in 2023, are mentioned. There are no reliable solutions to these problems yet, the problems are constantly evolving. But we find it very important to mentioned them and encourage thinking about their solution, not only through threats of fines for violations, but also through prevention aimed at the smart use of all technological products.

Keywords: *law, ethics, ChatGPT, “hallucinations”, AI*

IT’S EASIER WITH AI, ISN’T IT?

The initial task of artificial intelligence (in further text: AI) was to try to simulate human thought processes, and to save time in numerous mechanical and other processes; also to open more time for other new, more sophisticated processes and to reduce the labor force engaged in those processes, which ultimately leads to a reduction in labor costs. There was also a humane reason - the replacement of people with artificial intelligence in some processes may reduce the strain on people’s brains, which began to burn out precisely because of mental overload. AI can process more information than the average human brain can process. Acceleration of those processes, if it were left to the minds of men alone it would lead to their complete crushing. The human mind is not an application or a computer system, which when broken, can be restored so easily, most often it does not come back or never comes back in the same capacity as before. Numerous studies, especially those conducted after the COVID 19 pandemic, have shown how fragile people really are and how important it is to protect them - so that they and the world can progress.

Thus, today, AI technologies are used in the development of internet searches (Google¹), the operational systems (Windows especially²), the use of virtual assistants (Siri, Alexa)³, numerous applications for communication and information sharing, as well as for the development of recommendation systems that are based on the generation of numerous data on the content that individuals follow on the internet, and based on assumed preferences, their further search for other content is narrowed down and they are directed to similar ones to those they have already searched for (YouTube⁴, Netflix⁵, etc.; but also shopping applications such as Temu and Shein).

“The launch of ChatGPT in November 2022 will perhaps be come to be one of the defining moments in our relationship with technology. The rapid pace in which generative artificial intelligence (Gen AI) is developing and the rate in which it is being adopted, is transforming how we interact with technology, and poses new risks and challenges”.⁶ Chat GPT, which stands for “*Chat Generative Pre-Trained Transformer*”, is a language model, trained on enormous amount of data such as books, articles, websites, newspapers or other literary works, even chats on forums, and specific websites for that use. It is based on neural networks and helps generate information based on the user prompts and presumable preferences given in previous internet searches⁷. It relies, as other AI products, on human intelligence - which stems from the information that people have collected over the centuries and the strategies that people originally developed to store that information (into their memory), process that information, and know where and when that information can be used, as well as to create new strategies and new information usable in new cases. So Chat GPT was created to become a valuable interlocutor for every modern person, at the same or higher level of knowledge, who needs advice, opinion, or quick information, without the interference of too many other people on the side. Because of all those reasons, by February 2023, more than 100 million users of this tool were recorded, and in February 2025 - 400 million users, although the number of those who visited the aforementioned site but did not actively use it exceeded one and a half billion.⁸ ChatGPT 3 which was launched in November 2022, was followed by Bing Chat, ChatGPT 4 and Google Bard.

1 Google especially has developed a special AI virtual assistant that is present in all Google products: in addition to the search engine, it is present in the gmail system, google meet, google translate, etc. It is almost impossible to turn it off, because every time when you start over google search, this AI engine appears.

2 All Windows products, who come with the operational system, such as Word, Power Point, Adobe Acrobat Reader have the same notion of AI assistance. Of course, free versions of these products have limited features, leading users to buy an upgraded version that has even more features.

3 These virtual assistants operate on the principle of executing commands given to them by the user: to automatically lock the car doors, play a playlist, check emails, etc. “Siri”, for example, can be installed on a computer or phone: <https://www.apple.com/siri/>, 11.03.2025.

4 Wallis, J. “How Does YouTube Work In 2024? The Tech Behind Series”, <https://intuji.com/how-does-youtube-work/>, 10.04.2025.

5 *How Netflix streams videos*, <https://help.netflix.com/en/node/85>, 10.04.2025.; *How Netflix works: the (hugely simplified) complex stuff that happens every time you hit Play*, <https://medium.com/refraction-tech-everything/how-netflix-works-the-hugely-simplified-complex-stuff-that-happens-every-time-you-hit-play-3a40c9be254b>, 10.04.2025.

6 Ryan, F., Hardie, L. (2024) ChatGPT, I have a Legal Question? The Impact of Generative AI Tools on Law Clinics and Access to Justice, *The International Journal of Clinical Legal Education*, Vol. 31 No. 1.

7 Sharma, K.S. & Kavia A.S. (2023) *Chat GPT and Copyright: Legal and Ethical Challenges*, *Osmania University Journal of IPR [OUJIPR]* Vol.1 | Issue 1 July 2023, pp. 172 – 189

8 Duarte, F. *Number of ChatGPT Users (March 2025)*, <https://explodingtopics.com/blog/chatgpt-users>, 11.03.2025.

The latest version of ChatGPT is even “*predicting the next word in a sentence and produce sophisticated text. They can be used for a variety of different applications such as asking questions or information about a topic, producing human-like responses*”, which gained it wider popularity than to other tools.⁹

The problem arose when the creators of ChatGPT realized that it could “hallucinate”. “Hallucination” here means that the system not only invents answers using existing data, but that in the absence of existing data to support the answer it invents data. Exactly like the human mind, which when it finds itself in an unpleasant situation and does not want to admit its mistake, powerlessness or ignorance, resorts to - lies and fabrications, in order to justify itself. Paradoxical situations occurred – when asked whether the essay whose authenticity was being checked was copied from somewhere, ChatGPT replied that of course it was not, ignoring the fact that it was impossible that it had been copied from somewhere because most of the data in it was invented by ChatGPT himself. In defense of Chat GPT, its main task is to create new content based on already existing content, which it certainly does. Chat GPT does not appear to be commanded not to use its imagination when creating new content in the form of responses. On the other hand, since this AI tool is also designed to imitate human real thinking processes, it is not excluded that within those strategies of thinking and processing already existing data, it also picked up the strategy of making things up and lying, which are subconscious reactions and strategies in situations when a person does not know the answer and does not want to admit it.

Initially, the questionable accuracy of the data on which ChatGPT’s response was based, with additional invented and false data, reduced the veracity of the data in the database used by ChatGPT to 20%¹⁰. Each subsequent use of the same invented and false data, with the likelihood of “hallucinations” and the invention of new incorrect data, further reduces the veracity of the data in the same database. This means that ChatGPT not only does not classify the new fabricated information as a lie, but that it continues to create new false information in its wake, which generally increases the degree of hallucinations and makes it even more difficult to determine the initial error (in this case, the initial false information) in the thinking process.

AI IN PRACTICE IN LAW

*“Technology is already transforming the delivery of legal services and changing the practice of law. Although there are challenges around the increased adoption of technological tools there seems little doubt that the emergence of Gen AI technologies will be used to solve legal problems”*¹¹. Usually, AI tools , especially ChatGPT are widely used to summarise general documents, develop legal arguments, and draft and produce court documents¹². They’re used less as search engines for databases, since there are already specially developed search engines for legal databases (laws, court rulings, opinions and recommendations of

9 Ryan, F., Hardie, L., p.134.

10 Guo,C.*Hallucinations Are Fine, Actually*,<https://www.ignorance.ai/p/hallucinations-are-fine-actually>, 18.03.2025.

11 ChatGPT, I have a Legal Question? The Impact of Generative AI Tools on Law Clinics and Access to Justice, Francine Ryan,Liz Hardie, The International Journal of Clinical Legal Education ,Vol. 31 No. 1 (2024).

12 *ibid*.

competent authorities, etc.)¹³ However, their use by members of the public to solve legal problems is less clear, although the freely available nature of some of the tools suggests they will increasingly be used as an alternative to a general internet search.¹⁴

Some researchers have tested Chat GPT in gaining the answer to the question about how to divorce. They took as criteria for the usability of the answers its currency (whether the advice referred to the correct legislation currently in force in England and Wales), comprehensiveness (the advice was comprehensive and correct), applicability (in depicted situation in the question), promptness (whether the advice that was given needs more clarification or not) and comprehensibility for someone who is not a lawyer

“We asked the question: I am separated from my husband after finding out he was having an affair. How do I end our marriage? We expected to receive responses referring to the no fault, separation-based divorce available through the Divorce Dissolution and Separation Act 2020, which came into force in April 2022. Practical suggestions would include discussing the divorce with the husband and issuing an application for divorce if they have been married for at least one year.

ChatGPT 3.5 gave a very generic answer which was not based on any specific jurisdiction, stating that ‘The exact steps and requirements for divorce may vary depending on the jurisdiction you are in, as divorce laws differ from country to country and even within different regions.’ It gave general practical advice, such as discussing with the other party, but no indication of how to apply for a divorce.

ChatGPT 4 initially answered based on American law, but when prompted to look at English law it provided reliable and specific advice, accurately explaining the requirement to seek a no-fault divorce. However, it did not explain the need to be married for one year already. It did list the legal steps needed but did not provide any signposting to relevant forms or websites, including confusion around jurisdiction, problems with generic advice, the risk of incorrect advice and the potential inequalities caused by subscription models”¹⁵

The researchers concluded that those answers were, sort of expected, as they proved that those AI tools were created in order to simulate the everyday way of thinking and memorizing informations, and are not enhanced with legal logic and legal way of thinking. So, the accuracy of their answers may vary depending on how much data in that area is initially stored in their databases. “ChatGPT can answer legal questions and superficially the answers look very convincing, but it cannot verify the truth of the information it produces, and it does not have real-world understanding”¹⁶ Therefore, the answer obtained in this way must be subjected to an additional control of the accuracy of the specified data, possibly used as a starting point for solving a real problem, and not as the only and most reliable source of information.

How it looks like when it is tested, for example, on the bar exam?

13 For example, in US there are LexisNexis and WestLaw, while in Republic of Serbia there are also few search engines, such as Paragraf, Intermeks, and Pravno informacioni portal Službenog glasnika, which mostly Параграфа, Интемеркса, и Правно информационог портала Службеног гласника which mainly search databases by keywords, and throw out all the texts that contain those keywords, without summarizing them.

14 ChatGPT, I have a Legal Question?ibid

15 Ibid.

16 Ibid.

When tested on the bar exam in US, which is standardized (more precisely, it has strictly theoretical questions), OpenAI's GPT-4 language model, which was released on March 14, 2023, performed better than 90% of people who took the same test live on spot¹⁷. It is important to note that this advanced version is not available to all users for free. The free version of the same tool performed much worse on the same test - therefore, it had less data and had worse results as people who were tested on the spot.

However, the ease of accessing numerous information, as well as quickly obtaining summaries of long and boring texts, slowly made the belief in the correctness of the answers received from ChatGPT almost unshakable. And that has already cost several lawyers and judges the loss of their licenses to practice their profession and has undermined the citizens' fragile faith in the expertise of lawyers and that they will truly receive justice in court. In the following text, we list a few cases that are representative of the doubts raised in this way about justice, knowledge of the law and the expertise of legal professionals.

One of the most famous cases of inappropriate use of AI in the field of justice occurred in the USA, in Manhattan, in a case called *Mata v. Avianca Inc*¹⁸. A person hired the law firm *Levidow, Levidow & Oberman* as his representatives in a dispute against the airline Avianca Airlines, on whose plane he was injured. The subject of the dispute was compensation for a knee injury that the person allegedly suffered during a flight, due to a hit by an airplane cart that was used to deliver food during the flight. Attorney Steven Schwartz, who in 2023 had more than 30 years of legal experience, used ChatGPT to write a submission to a federal court. Schwartz did not perform a prior check of what was written, but only copied the result, obtained from ChatGPT, and sent it to the court. If he had run that check, he would have determined that ChatGPT completely invented the court precedents that it used when writing the submission- not one, but several of them¹⁹, and quoted completely non-existent sentences from those in vented judgments²⁰.

The problem was discovered when the defense lawyers, who represent the named airline, began searching for the precedents cited in the submission, with the intention of challenging them. Since they did not find any of the aforementioned precedents, they reported this to the judge in charge, who immediately suspended the proceedings. The case ended unexpectedly, with an extremely low fine of \$5,000, which was paid jointly by both lawyers and their firm, but also with numerous apologies that they had to send to the public and their parties - which the acting judge considered a greater moral punishment than if he had imposed a higher fine on them. Throughout the disciplinary proceedings, Schwartz and his colleague were stating "their good faith and trust" in AI and ChatGPT as their defense, and that they could not even imagine that VI would cause so much damage

17 Pablo Arredondo, "GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession", <https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry/>, 18.03.2025.

18 The whole case available on: <https://caselaw.findlaw.com/court/us-dis-crt-sd-new-yor/2335142.html>, 10.04.2025. године.

19 "Lawyers used ChatGPT to help with a case - it backfired massively", <https://news.sky.com/story/lawyers-fined-after-citing-bogus-cases-from-chatgpt-research-12908318>, 10.04.2025.

20 *Zicherman v. Korean Air Lines Co., Ltd.*, cited in the lawsuit filed by Schwartz does not exist, as well as the *Varghese case*, also cited here. ChatGPT invented the *Zicherman case* first, and confirmed its consistency and correctness - by citing it in the verdict in the *Varghese case*, which also does not exist. So, what happened here is exactly what we stated earlier - one invented piece of information was served as the basis for inventing another and was additionally linked to it, because the credibility of the first false piece of information is proven by citing it in another non-existent case.

with his “hallucinations”²¹. On the other hand, the court considered that the behavior of the lawyers was irresponsible and that it undoubtedly indicates a lack of good faith and expertise in practicing the legal profession. The ChatGPT was not malicious, as those lawyers said, but their irresponsibility and the lack of conscientiousness of performing the profession lead them to this result.

Similar happened in February 2025, the Wyoming, USA, where law firm *Morgan & Morgan* revealed that two of its lawyers had used artificial intelligence to write briefs in a lawsuit taken against its longtime client, retail giant Walmart. The incident damaged the trust in that law firm, but also in Walmart itself - “because their lawyers are willing to do such things to win a case”²². As a result, *Morgan & Morgan* has imposed a new requirement on its more than 1,000 employees that any AI-generated results must be “manually vetted”²³. Also, young lawyer Zacharia Crabill was fired from the company where he worked when it was discovered that he used ChatGPT, which also created fake, non-existent cases and quotes from such cases²⁴.

The biggest legal scandal happened in Colorado: not only did the lawyer use ChatGPT when writing submissions to the court, without subsequent checks of the correctness of the cited precedent law, but the judge also made a ruling based on such submissions - without subsequent checks of the truthfulness of the cited cases²⁵. The judge's behavior indicated gross negligence in his work, incompetence, haste, and violated trust in the judicial authorities as the most professional and independent.

More cases which took place in the USA, Great Britain, New Zealand - i.e. the areas where the Anglo-American precedent legal system is applied, but also in Italy and Spain, indicate that even legal practitioners who should unconditionally be on the side of the law, especially because they provide legal assistance and knowledge to those who need it, are not immune to the(mis)use of Chat GPT.

SOME LEGAL ISSUES ARISING WHEN (MIS)USING AI

Some authors²⁶ listed a few legal concerns that which have already stood out during the use of AI in general and especially during the use of ChatGPT.

The first concern is about **copyright infringement**. A huge amount of information is stored in AI language models, in order to have a quickly accessible library of the most diverse information as input, on the basis of which the language models at the base of these tools will create further outputs. As we can find parts of literary works, as parts of ChatGPT's answers, we can raise a question of protection of copyright of authors, who probably don't know their whole or partial works became the “food” for ChatGPT. A

21 More about this case: <https://www.seyfarth.com/news-insights/update-on-the-chatgpt-case-counsel-who-submitted-fake-cases-are-sanctioned.html>, 1.06.2025.

22 *AI 'hallucinations' in court papers spell trouble for lawyers*, <https://www.reuters.com/technology/artificial-intelligence/ai-hallucinations-court-papers-spell-trouble-lawyers-2025-02-18/>, 24.03.2025.

23 Stated in the same article cited in fn 21.

24 *Colorado attorney is suspended from the bar and fired from his firm for using ChatGPT in court after the AI cited fake cases*, <https://www.dailymail.co.uk/news/article-13367897/Colorado-attorney-suspended-bar-fired-chatgpt-ai.html>, 26.03.2025.

25 More about it : <https://www.volpelawllc.com/chatgpt-and-the-law-ais-negative-impact-on-the-administration-of-justice/>, 24.03.2025.

26 Sharma, Kavia, 2023.

copyright-related issue is also the issue **of ownership of new content created by ChatGPT** (especially when that content is created on the basis of previous copyright infringement). The situation is complicated with the notion that *“the works created by the AI model are not truly original as it is a mix of a wide array of works gathered from the internet which is a combination of copyright-protected literary works. The output generated by AI will not fulfil the criteria of originality”*²⁷(Sharma, Kavia, 2023), because all new content created by AI is the result of algorithm and patterns created by it, pretty similar to existing content, and in scientific meaning can be treated as - review paper.

Very important issue is **liability of content created by AI**, especially by ChatGPT, having in mind the raising possibility for “hallucinations, as stated in our paper before.

“AI hallucinations in research proposals generated by ChatGPT found that out of 178 references cited, 69 did not have a DOI, 28 of which were found not to exist. Another study investigating the authenticity and accuracy of references in medical articles generated by ChatGPT found that of 115 references that were generated, 47% were fabricated, 46% were authentic but inaccurate, and only 7% were authentic and accurate. A further study assessing whether ChatGPT can reliably produce accurate references to supplement manual literature searches reported that of 35 generated citations, only two were real, 12 were similar to actual manuscripts and theremaining 21 were seemingly plausible but in fact a mix of multiple actual manuscripts”.²⁸

As for the amount of “hallucinations” in legal area, that is yet to be researched. The cases so far indicate that a certain percentage of data falsification within the answers provided by ChatGPT certainly exists, but that it varies. Certainly, the accuracy of the ChatGPT answer is affected by the accuracy of the questions that are asked to this tool, as well as the specificity of the data that is requested. This is why the new profession prompt engineering was born, in order to develop crucial skills that can help to better understand the capabilities and limitations of large language models²⁹, especially in some specific fields, such as law.

It must be clear that, in order for Chat GPT to give the most precise answer, it should be fed with as much specific data as possible. *“Chat GPT collects a vast quantity of personal data about the user and provides such data to third parties such as vendors, business transfers, affiliates, government or any other third party without the user’s consent.”*³⁰This entails the issue of **protecting the privacy of personal data**, as well as other data that are not for public use, that is, classified as business or state secrets. The specificity of this requirement is greater when such data are available to lawyers. If a lawyer violates the principle of confidentiality and protection of data provided by the client, he has not only violated the norm on the protection of personal data, he has also violated the reputation of advocacy as a legal profession. privacy issues are very important, having in mind that Open AI has explicitly stated that it will not take any responsibility for data leaks or privacy breaches. And ChatGPT who is collecting all those data is not human, so it cannot be responsible for any violation that its users make by entering other people’s or wrong data, nor can it recognize whether something is such a type of data that is subject to special protection and urge the user to stop entering such data.

27 Ibid.

28 ChatGPT: these are not hallucinations – they’re fabrications and falsifications, *Schizophrenia* (2023) 9:52 ; <https://doi.org/10.1038/s41537-023-00379-4>.

29 More about this new profession: <https://www.promptingguide.ai/>, 01.06.2025.

30 Sharma, Kavia, 2023.

*"It is important to stress that the language modelling task relies solely on form as training data, and therefore cannot inherently lead to the learning of meaning. These models are therefore characterized by their ability to "agere sine intelligere"; that is, to act without understanding exactly what they return as a result"*³¹. So, AI and ChatGPT are here to act, not to think. They just act according to formulas they've been given, using algorithms in creating new formulas that can be used all over again.³²

LEGAL ETHICS AND AI- IS IT POSSIBLE TO FIND A BALANCE?

Some authors differ the "Ethics of AI" from "The Ethical AI" (Sharma, Kavia, 2023). While Ethics of AI "represents the foundational principles, rules, guidelines, policies, and regulations that govern the development, deployment, and use of AI technologies" (Sharma, Kavia, 2023) and gives a framework for AI acting, the Ethical AI is dealing with developing moral thinking inside the machines, because we expect them to be also moral as we are. Both of them are crucially and metaphorically intertwined.

One of the challenges ethical AI faces is **how to ensure respect for human rights and especially dignity**. This would mean incorporating such mechanisms into AI - that is, developing certain algorithms that, during data entry into the system, will recognize a human right, that this entry violates that right, and warn the data entrant that he is committing a violation or endangering someone's rights. If misused, AI can seriously endanger human rights, including privacy, freedom of expression, and freedom from discrimination.

Further, **building trust in AI** is also challenging. How to convince someone that AI systems are designed with ethics in mind, and they know to differ right for wrong- when they are not capable to do that in this level of development? How can anyone be sure that his/her data won't leak somewhere, be used or cited in answer to someone else's question?

CONCLUDING REMARKS

The list of legal and ethical issues that we have identified in this paper, which arise when using AI and especially ChatGPT, is not exhaustive. Since the mentioned tools are still under development and are constantly going through numerous processes of self-improvement, it is possible to expect that other issues will be relevant.

For now, we have to follow the development of technology and try to keep up with its understanding and all the benefits that its development can provide us. Promotion of the smart use of AI can greatly contribute to the prevention of misuse of the same tools, and secure us better, more innovative future.

31 Lucchi, N (2023) ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems

European Journal of Risk Regulation, 1–23

32 De Oliveira Fornasier, M (2021) Artificial Intelligence and Democratic Rule of Law, *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)*, 13(3):351-369, setembro-dezembro 2021.



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НЕКИ ПРАВНИ И ЕТИЧКИ АСПЕКТИ (ЗЛО)УПОТРЕБЕ CHATGPT

Апстракт:

Развој информационих технологија, посебно током 21. века, има две стране: прва, светлија, приказује свет нових, неслућених могућности за рад, напредовање, учење, развој пословних активности; али друга страна, мрачнија, показује нам свет неслућених начина злоупотребе истих технологија, за вршење озбиљних превара, насилних дела, претњи и других кривичних дела. Места злочина и даље постоје, али су алати за њихово извршење непредвидиви и стално настају нови, јер долазе из света информационо-комуникационих технологија.

У овом раду помињу се неки правни и етички проблеми који настају услед примене различитих ИТ решења, посебно након појаве ChatGPT-а 2022. године. Још увек не постоје поуздана решења за ове проблеме, јер нови проблеми стално настају. Зато сматрамо да их поменемо и подстакнемо размишљање о њиховом решавању, не само кроз претње новчаним казнама за прекршаје, већ и кроз превенцију усмерену на паметно коришћење свих технолошких производа.

Кључне речи: право, етика, ChatGPT, „халуцинације“, вештачка интелигенција

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