

Law Society Loses The Plot Over AI and Ethics

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A new ethical guidance report by the Law Society of England & Wales has stated that lawyers 'should discuss the decision to use AI in providing legal services with the client' and 'obtain informed consent'. This is so out of touch with reality it's hard to know where to start. This kind of narrative is ill-informed and undermines the use of legal tech tools just when they are most needed by an industry going through profound change.

Let's start with some baseline reality checking. When we say 'AI' in relation to the legal world we are primarily talking about using Natural Language Processing (NLP) software to perform a sort of 'word search on steroids' to find information contained in contracts and court records. It's called 'AI' or 'legal AI' because the NLP is trained up using machine learning, whether assisted by a lawyer while using it, or prior to that by the software vendor, and in many cases both. These tools are used in the commercial legal sector for things such as due diligence review, eDiscovery, legal research or review and red-lining of contracts during the negotiation phase.

If a law firm had to inform a client every time they used a tool that had NLP and machine learning built into it they'd constantly be on the phone because today the largest legal research platforms are using these approaches – and they might be used by a large law firm dozens of times a day to do preliminary research on a case. Those tools are also now widely used by larger commercial law firms. The output is not some sort of massive 'AI decision', with the work product spat out at the end with no lawyers involved at all, and then it's all digested by the client, also without any lawyers involved. That's a science fiction view of how lawyers and 'AI' work. In reality lawyers are involved at every stage of a review process. The NLP tools are only there to assist with the heavy-lifting, or process work of searching through 1,000s of pages of text. Moreover, if the Law Society has a thing about machine learning then lawyers will also have to tell their clients every time they use Google to search for some information, as this is also an NLP system that uses machine learning. Google just doesn't bother to call it an 'AI' system[...]

As you can see, the position that you need consent and to talk to the client about using these tools on an ethical basis is absurd. Clients should for sure talk to law firms about how NLP tools, especially for transactional work, can help improve efficiency.....but to talk about ethics.....? Why? There is no ethical component here....

Part of the problem is that fears about this technology grew out of the 'AI is biased' idea that got started some years ago with challenges around the use of software to filter CVs – which unsurprisingly led to accusations of bias. And of course, they were – as everything that contains a decision also contains some form of bias. Then came the whole COMPAS fiasco, which was a not very well-made piece of software that allowed judges in the US to decide, by using an algorithm, whether to allow a prisoner out of custody on remand. It was clunky and also left itself open to claims of bias. And in this case the critics look to be right. However, no law firms use software like that to conduct work for their clients. [...]

The real risk is that small-to-medium-size law firms, which already are grappling with the challenges of improving efficiency may be put off from engaging with legal tech, which may be essential to reaching that goal. This matters on a national economic level. Less productive law firms mean less productive clients. Unnecessarily slow legal work slows down the economy. This has a real world impact on many people.

Frankly, this report by the Law Society is at odds with the aims of the UK Government to embrace innovation and to make this country a leader in legal technology. This is an absurd position to take, and likely will lead to confusion and undermine efforts to improve the capabilities of the UK's legal services sector.