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# Legal and ethical aspects of Generative AI

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# Presentation outline

- I. Definition of generative AI
- II. The main legal issues raised by AI
  - A. *Intellectual property rights*
  - B. *Personal data breach risk*
  - C. *Risk of violation of commercial secrecy: private domain*
  - D. *Risk of breach of official secrecy: public domain*
  - E. *Risk of violation of personality rights*
  - F. *Risk of error and ethical issues*

# I. Definition of Generative AI

- Definition of AI by the European Parliament
- Operation of Generative AI
- Examples of Generative AI:
  - *a. Text generation*
  - *b. Melody creation*
  - *c. Voice cloning*



## II. The main legal issues raised by AI

# A. Intellectual property rights

## Input

- Deep learning processes involve actions that may potentially infringe upon the intellectual property rights of protected works.
- Two exceptions may be applicable: transient reproduction and use of works for scientific research purposes, but these are generally considered inapplicable to AI.
- Without the consent of copyright owners and proper remuneration, the use of protected works for AI training may constitute copyright infringement under Swiss law.

# A. Intellectual property rights

## Output

- In Switzerland: Works are literary and artistic intellectual creations with individual character, irrespective of their value or purpose (art. 2 al. 1 Copyright Act)
- Debate over whether AI-generated creations should be protected by copyright, based on the level of human influence on the creative process.
  - *Works created by humans using AI tools with significant human intervention.*
  - *Content generated entirely by an AI system without human intervention.*
- Who owns the copyright when content is generated by AI?
  - **Developers:** *Their contribution may not be significant enough to qualify them as authors of AI-generated works.*
  - **AI:** *AI cannot be qualified as a co-author as it lacks human will and expression of human thought.*
  - **Prompter:** *Simply formulating a textual query or choosing a result isn't sufficient for authorship. Significant modifications may confer authorship.*
- Challenges and potential solutions:
  - *Difficulty in determining the level of human involvement in AI-generated works without disclosure of the creative process.*
  - *Suggestions for solutions include watermarking AI-generated results and requiring proof of minimum individual contribution by the author.*

## B. Personal data breach risk

- Sources of personal data:
  - *Freely accessible content on the internet*
  - *Data embedded within user queries or “prompts”*
- Privacy risks and potential violations:
  - *Users may potentially violate privacy regulations by feeding personal information into AI systems to receive targeted suggestions.*

## C. Risk of violation of commercial secrecy: private domain

- Art. 162 of the Swiss Criminal Code: involves the disclosure of confidential information that one is obligated to keep secret, especially if it pertains to business secrets.
- By using confidential information obtained under an NDA as a prompt in the AI system, the employee indirectly exposes commercial secrets.



## D. Risk of breach of official secrecy: public domain

- Official secrecy laws encompass all individuals engaged in public tasks, including appointed officials, auxiliary staff, trainees, and other personnel within the administration.
- Art. 320 of the Swiss criminal code: outlines the repercussions for breaching official secrecy. Revealing entrusted secrets, whether as a member of an authority or civil servant, is considered an offense.
- When public sector employees use AI for tasks like report writing or data analysis, they handle information falling under official secrecy.
- This utilization of AI may inadvertently lead to the disclosure of sensitive information, potentially constituting a breach of official secrecy and inviting legal consequence

# E. Risk of violation of personality rights

- Generative AI poses a significant risk of spreading false and defamatory information that infringes upon individuals' rights.
- Concerns about Deepfake Technology
- Recent incidents underscore the urgent need for heightened vigilance and safeguards against such risks.
- Government response:
  - *The Federal Council announced plans to draft regulations for major communication platforms by March 2024 to address these threats, aligning with EU Digital Services Regulation rules.*
  - *New provision (art. 179decies) in the Swiss criminal code targets identity theft in specific situations, enabling criminal complaints against creators and users of deepfakes.*
  - *A new law targeting sexual offenses, including "revenge porn" or non-consensual distribution of sexual content, will come into effect on July 1.*

# F. Risk of error and ethical issues

- Major risks and ramifications
  - *Reliability of data and results*
  - *Algorithmic bias*
  - *Lack of transparency*
- Ethical concerns
  - *Automatic decision-making*
  - *AI ethics*
- Efforts needed
  - *Raising awareness*
  - *Integration with ethics*



Any questions? Any  
comments?



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Thank you for your attention!

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