Artificial intelligence in business: managing the risks and reaping the benefits?

April 11, 2023

Authors

Jean-Sébastien Desroches

Partner, Lawyer

Eric Lavallée

Partner, Lawyer Partner, and Trademark Agent

At a time when some are demanding that artificial intelligence (AI) research and advanced systems development be temporarily suspended and others want to close Pandora's box, it is appropriate to ask what effect chat technology (ChatGPT, Bard and others) will have on businesses and workplaces. Some companies support its use, others prohibit it, but many have yet to take a stand.

We believe that all companies should adopt a clear position and guide their employees in the use of such technology. Before deciding what position to take, a company must be aware of the various legal issues involved in using this type of artificial intelligence.

Should a company decide to allow its use, it must be able to provide a clear framework for it, and, more importantly, for the ensuing results and applications.

Clearly, such technological tools have both significant advantages likely to cause a stir—consider, for example, how quickly chatbots can provide information that is both surprising and interesting—and the undeniable risks associated with the advances that may arise from them.

This article outlines some of the risks that companies and their clients, employees and partners face in the very short term should they use these tools.

Potential for error and liability

The media has extensively reported on the shortcomings and inaccuracies of text-generating chatbots. There is even talk of "hallucinations" in certain cases where the chatbot invents a reality that doesn't exist. This comes as no surprise. The technology feeds off the Internet, which is full of misinformation and inaccuracies, yet chatbots are expected to "create" new content. They lack, for the time being at least, the necessary parameters to utilize this "creativity" appropriately.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

It is easy to imagine scenarios in which an employee would use such technology to create content that their employer would then use for commercial purposes. This poses a clear risk for the company if appropriate control measures are not implemented. Such content could be inaccurate in a way that misleads the company's clients. The risk would be particularly significant if the content generated in this way were disseminated by being posted on the company's website or used in an advertising campaign, for example.

In such a case, the company could be liable for the harm caused by its employee, who relied on technology that is known to be faulty.

The reliability of these tools, especially when used without proper guidance, is still one of the most troubling issues.

Defamation

Suppose that such misinformation concerns a well-known individual or rival company. From a legal standpoint, a company disseminating such content without putting parameters in place to ensure that proper verifications are made could be sued for defamation or misleading advertising.

Thus, adopting measures to ensure that any content derived from this technology is thoroughly validated before any commercial use is a must.

Many authors have suggested that the results generated by such AI tools should be used as aids to facilitate analysis and decision-making rather than to produce final results or output. Companies will likely adopt these tools and benefit from them—for competitive purposes, in particular—faster than good practices and regulations are implemented to govern them.

Intellectual property issues

The new chatbots have been developed as extensions to web search engines such as Google and Bing. Content generated by chatbots may be based on existing copyrighted web content, and may even reproduce substantial portions of it. This could lead to copyright infringement. Where users limit their use to internal research, the risk is limited as the law provides for a fair dealing exception in such cases. Infringement of copyright may occur if the intention is to distribute the content for commercial purposes. The risk is especially real where chatbots generate content on a specific topic for which there are few references online.

Another point that remains unclear is who will own the rights to the answers and results of such a tool, especially if such answers and results are adapted or modified in various ways before they are ultimately used.

Confidentiality and privacy issues

The terms and conditions of use for most chatbots do not appear to provide for confidential use. As such, trade secrets and confidential information should never be disclosed to such tools. Furthermore, these technologies were not designed to receive or protect personal information in accordance with applicable laws and regulations in the jurisdictions where they may be used. Typically, the owners of these products assume no liability in this regard.

Other issues

There are a few other important issues worth considering among those that can now be foreseen.

Firstly, the possible discriminatory biases that some attribute to artificial intelligence tools, combined with the lack of regulation of these tools, may have significant consequences for various segments of the population.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Secondly, the many ethical issues associated with artificial intelligence applications that will be developed in the medical, legal and political sectors, among others, must not be overlooked. The stakes are even higher when these same applications are used in jurisdictions with different laws, customs and economic, political and social cultures.

Lastly, the risk for conflict must also be taken into consideration. Whether the conflict is between groups with different values, between organizations with different goals or even between nations, it is unclear whether (and how) advances in artificial intelligence will help to resolve or mitigate such conflicts, or instead exacerbate them.

Conclusion

Chat technologies have great potential, but also raises serious legal issues. In the short term, it seems unlikely that these tools could actually replace human judgment, which is in and of itself imperfect. That being said, just as the industrial revolution did two centuries ago, the advent of these technologies will lead to significant and rapid changes in businesses.

Putting policies in place now to govern the use of this type of technology in your company is key. Moreover, if your company intends to integrate such technology into its business, we recommend a careful study of the terms and conditions of use to ensure that they align with your company's project and the objectives it seeks to achieve with it.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.