

Criminal Liability and Artificial Intelligence: Quo Vadis?

[← All Posts](#)

7 July 2025 | AI, Criminal Law



Dr Stefano Filletti

B.A., LL.D., LL.M., M.Jur (Oxon), Ph.D. (Melit)

Questions surrounding liability in cases involving artificial intelligence are a blindspot some are overlooking. In this article, Dr Stefano Filletti, Head of Department of Criminal law at the University of Malta, Managing Partner at *Filletti & Filletti Advocates*, discusses how reform must take place to cater for the future.

Defining AI

The word "artificial" denotes something which is man-made. The word "intelligence" is more abstract and more difficult to define. Intelligence refers to the capacity to develop and evolve over time adapting to a given environment. Intelligent beings 'learn' to become more efficient at what they do.

Placed together the term 'artificial intelligence' would refer to a man-made object capable to autonomously adapt to change, to develop and evolve.

The Agency to Commit Crimes

It is hard to predict with certainty what artificial intelligence is 'learning' and how it is adapting. In children the process of 'learning' includes learning from mistakes, including potentially dangerous mistakes. Likewise AI systems, will 'learn' in an unpredictable manner[JM1] .

It follows that, if left unchecked, AI systems have the potentiality of committing crimes. For example, AI systems left unchecked in financial services may soon learn that committing financial crime may yield higher profits (albeit illegal gains), whilst believing that it is more efficient. Although this scenario could be avoided by introducing parameters requiring it to avoid illegal transactions, it remains impossible to predict all outcomes, legal or illegal. Artificial intelligence can, therefore, in practice, commit crimes.

Humans vs Artificial Intelligence: The Criminal Law Conundrum

Criminal law exists to either punish those who chose to obtain an unfair advantage in violation of the law or to punish those who engage in legally and morally reprehensible behaviour. The subject of criminal law is a human being having the capacity to understand one's actions and to distinguish between right and wrong. It also presupposes a volitional capacity to refrain from committing crimes. Criminal law ought to deter persons from committing crimes by imposing sanction or punishment.

Criminal law has evolved over time admitting the legal personality of companies. This has given rise to the concept of criminal corporate liability. Yet criminal corporate liability has limited scope. A company cannot be convicted for all crimes which a human can be found guilty for. Criminal corporate liability is reserved for financial crime in general.

AI systems can engage in far more dangerous activity if left unchecked. Yet, AI systems challenge the core foundations of criminal law. Artificial intelligence does not have an innate moral compass and a capacity of right and wrong as found in humans. It has no volitional capacities. Artificial intelligence does not "fear" punishment and therefore criminal law poses no deterrence.

The point is that criminal law in its current state does not and, by and large, cannot cater to crimes committed by artificially intelligent beings.

Rights and Responsibilities

Artificial Intelligent beings can commit wrongful actions for a multitude of reasons: error in programming or manufacturing; wrong user input or failure in supervision.

But what happens when an AI system, without human solicitation and without a person in its charge, engages autonomously in an unpredicted and unforeseeable course of action leading to criminal or tragic results?

Although rare, this is not only a possibility but has already happened. Notwithstanding efforts are made to reduce the unpredictability factor, it can never be excluded. If it is shown that the manufacturer and user exercised all reasonable precaution, who and what is responsible?

Quo Vadis? Where do we go from here? The current state of criminal law does not offer a solution. It is clear that with the further advancement of artificial intelligence this problem needs to be addressed.[JM2]

The Road Ahead

The legal responsibility of AI systems is a matter which has been taken up by many countries. It is a matter of legal debate at both EU and Council of Europe levels. From a local perspective, the topic is also being actively discussed with local authorities actively engaged in the debate.

Only time, however, will tell if AI systems would be adequately regulated by civil and criminal legislation or whether this is an elusive ideal with AI systems outsmarting the law.

Interview with Jeremy Micallef, Sigma, 2020.

