

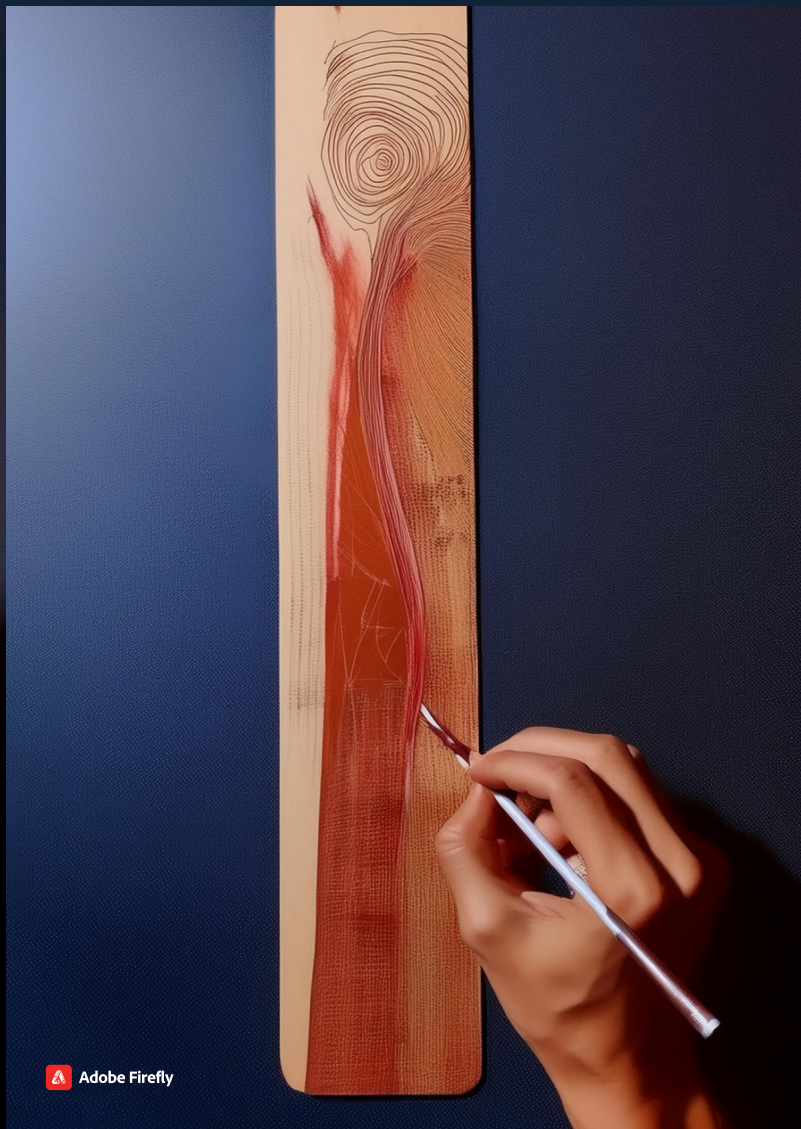
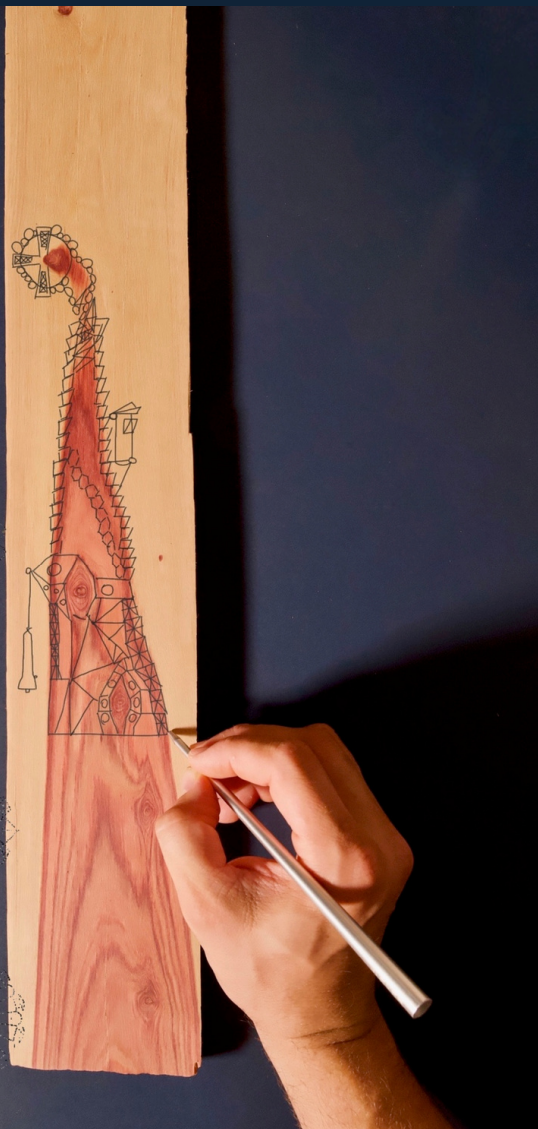


INTERNATIONAL BAR ASSOCIATION AND
THE CENTER FOR AI AND DIGITAL POLICY

THE FUTURE IS NOW: ARTIFICIAL INTELLIGENCE AND THE LEGAL PROFESSION

SEPTEMBER 2024

'Two views of a secret', Francesco Arecco



The International Bar Association (IBA), established in 1947, is the world's leading international organisation of legal practitioners, bar associations, law societies, law firms and in-house legal teams. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 lawyers, 190 bar associations and law societies and 200 group member law firms, spanning over 170 countries. The IBA is headquartered in London, with offices in São Paulo, Seoul, The Hague and Washington, DC.

[This research was undertaken in collaboration with The Center for AI and Digital Policy]

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Cover image

'Two views of a secret'. A diptych demonstrating the irreplaceability of human intellectual (art)work, Francesco Arecco, 2024. Left: *bois de rose* (natural intelligence), a lawyer's desk, photography, eternal pencil and digital drawing (human intelligence). Right: machine learning, computer generated image (artificial 'intelligence').
Courtesy of the artist.

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Foreword

The transformative impact of artificial intelligence (AI) can no longer be ignored. If the internet changed the way we live and work, AI may have an even greater impact on our profession and our society. Not all of the consequences of AI have been identified yet, but it is clear the future is upon us.

The International Bar Association (IBA), as the global voice of the legal profession, cannot turn a blind eye to such a challenge. We have the duty to meet this moment, dedicating our expertise and insights to provide guidance on the legal aspects of AI to our members, to the legal profession and to society.

That is the thinking behind *The Future is Now: Artificial Intelligence and the Legal Profession*, the first comprehensive IBA report on AI. In the report, we examine the impact of AI on law firms, on regulation, and on the profession's ethical obligations. And the report could not exclude considering the impact of AI on the rule of law as the foundation for all of our basic rights. The IBA's core mission is the protection and promotion of the rule of law.

The *Future is Now* report would not have been possible without the great contributions of the IBA Task Force members and the Working Group members dedicated to this project, who have generously dedicated their knowledge and scarce time to this joint effort. My recognition and gratitude goes to all of them, as well as to our members who have shared their experiences and insights through surveys, questionnaires and interviews. Thank you also to the IBA staff, whose support has been essential for this endeavour.

I have led this project jointly with Vice President Claudio Visco. Thank you, Claudio, once again, for having shared this aspiration with me and for your continued support on so many fronts. I also thank Marc Rotenberg, Founder and Executive Director of the Center for Artificial Intelligence and Digital Policy (CAIDP), a global network of AI policy experts and human rights advocates, our partner for this report. Marc has been the captain of this project, helping us navigate these uncharted waters with the amazing help of Natalia Alarcón Rueda. You have helped us to achieve a much better result than we would have attained working on our own.

In the years ahead, AI will present new opportunities and new challenges to our profession and our society. We will explore these new worlds with a commitment to our mission and our purpose. With the publication of the report *The Future is Now*, we aim to set a good course on behalf of our Association.

I hope you enjoy reading the work of our Association.

Almudena Arpón de Mendivil Aldama

IBA President 2023–2024

Purpose of the report

The public release of generative AI services, such as ChatGPT, has stirred intense public interest across all sectors of society, including the legal profession. The question of whether AI could replace lawyers, as well as how society should govern AI through the law, has ceased to be a concern belonging solely to science fiction movies. It is now front and centre for the legal profession and for governments around the world.

Given the scope of AI and its potential adoption across many industries, it is evident that AI's impact on the law encompasses aspects from legal practice to rules of professional conduct and AI governance.¹ From the legal profession's perspective, the arrival of AI services marked the first time that a widely available technology could perform writing and research tasks with a level of proficiency approaching trained lawyers. Nonetheless, warning signs emerged, such as 'hallucinations' that generated case citations that did not exist, as well as distorted training models that produced biased outcomes. These experiences led law firms to see both promise and peril. On a positive note, this technological advancement holds the promise that the effective incorporation of AI techniques will enable the offering of a range of legal services at a lower cost and improved efficiency. Conversely, law firms that do not embrace AI may struggle to remain cost-competitive, leading to client loss and hindering their ability to attract and retain legal talent.² The question that remains is how to navigate this moment and achieve the effective integration of technology while maintaining trust and confidence, minimising risk of error and bias, and ensuring sufficient training across the legal profession. In addition, the use of AI in law firms also raises important issues concerning the rules of professional conduct.

On the governance side, there have been dramatic developments in just the last few years. The European Union (EU) has enacted the AI Act, a comprehensive law for the regulation of AI.³ The United States has put in place a sweeping Executive Order to regulate AI systems across the federal agencies and to establish new safety standards for AI companies.⁴ The Council of Europe has set out the first international treaty for AI.⁵ China has an ambitious plan for AI regulation.⁶ Many countries are also developing legal frameworks for national AI governance.

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- 1 Generative AI is typically defined as 'a machine-learning model trained to create new data, rather than making predictions about a specific dataset. A generative AI system learns to generate more objects that resemble the data it was trained on.' Adam Zewe, 'Explained: Generative AI' (*MIT News*, 19 November 2023), <https://news.mit.edu/2023/explained-generative-ai-1109> accessed 8 August 2024. Generative AI is a subset of AI, which refers broadly to techniques that automate human perception and decision-making.
 - 2 John Villasenor, 'How AI will revolutionize the practice of law' (*Brookings*, 20 July 2023), www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/ accessed 8 August 2024.
 - 3 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L2024/1689.
 - 4 Executive Office of the President, Federal Government of the United States, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (14110, 30 October 2023) 88 FR 75191.
 - 5 Council of Europe, 'Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law' (*Council of Europe*, 2024), www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence accessed 13 August 2024.
 - 6 See Ulrich Jochheim, 'China's ambitions in artificial intelligence' (*At a Glance*, 9 September 2024) [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2021\)696206](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2021)696206) accessed 8 August 2024; and Matt Sheehan, 'Tracing the Roots of China's AI Regulations' (Carnegie Endowment, 27 February 2024), <https://carnegieendowment.org/research/2024/02/tracing-the-roots-of-chinas-ai-regulations?lang=en> accessed 8 August 2024.

“ Lawyers have played an essential role in these developments, drafting texts, clarifying terms and working with national governments, international organisations, AI experts and human rights advocates to establish consensus rules for AI governance.

And lawyers will be called upon to ensure compliance with these new legal rules and their own ethical regulations, to promote harmonisation of different legal frameworks and to identify emerging challenges in the years ahead.

In the midst of these recent developments and empowered by its mandate to assist members of the legal profession develop and improve their legal services, and protect and advance the rule of law globally, the IBA took on the challenge of providing guidance on the impact of AI on the legal profession and the law. At the 2023 IBA Annual Conference in Paris, IBA President Almudena Arpón de Mendivil Aldama announced the formation of an AI Project Task Force, encompassing all parts of the Association, to (1) provide IBA members and the legal profession with relevant and credible guidance on AI-related issues from both a legal and a practical perspective; (2) position the IBA as a leader in addressing such legal issues and enhancing its profile; (3) comply with the IBA Strategic Plan to safeguard the core values of the profession, improve member offerings and educate on developments affecting legal practice; and (4) engage with members of the Association.⁷

“ Thus, with the goal of producing a report to be presented at the IBA 2024 Annual Conference in Mexico City, the IBA AI Task Force established three Working Groups, entrusted with the responsibility of (1) examining the regulation of AI;⁸ (2) assessing AI’s impact on the legal profession;⁹ and (3) advocating for best practices among bar associations and legal regulatory bodies.¹⁰

Each of these groups developed its own research methodology to produce insights and recommendations, and thus successfully achieve the objectives of the IBA AI Task Force. The contributions of these Working Groups are the fundamental basis of this report, which ultimately provides insights and guidance to the legal profession globally.

“ The IBA report *The Future is Now: Artificial Intelligence and the Legal Profession* is the result. *The Future is Now* marks the beginning of an essential endeavour that will require ongoing investigation and periodic updates to ensure that the assessment and recommendations are relevant and timely, and reflect the expertise of the profession, uniting members of this organisation across borders.

7 International Bar Association, ‘Presidential project: Artificial intelligence and technology’ (International Bar Association), www.ibanet.org/Presidential-project-AI-Tech accessed 8 August 2024.

8 Working Group 1 – Regulating AI (Chair: Lawrence Teh).

9 Working Group 2 – AI and the Legal Profession (Chair: Sönke Lund).

10 Working Group 3 – AI and Best Practices (Chair: Steven Richman).

Executive summary

“ The impact of AI on the legal profession is far-reaching, with implications for the practice of law worldwide and for the governance of AI.

This report offers an overview of these developments, drawing on insights from the three IBA Working Groups. These groups focused on the regulation of AI, assessing its impact on the legal profession and advocating for best practices among bar associations.¹¹ This methodology makes it possible to see a multifaceted reality in which lawyers are interacting with AI as users of this technology, while also assessing compliance with applicable laws and ethical standards, and simultaneously evaluating the emerging norms for AI governance.

“ The IBA is dedicating its best efforts to providing ongoing support and guidance to ensure that AI technologies are developed and used in a manner that benefits the legal profession and society as a whole.

This report serves as a foundational step in that ongoing endeavour, offering valuable insights and practical recommendations for legal practitioners worldwide.

A. Key findings of the report

From the perspective of the impact of **AI on the legal profession**, with a focus on law firms (including solo practitioners) as users of this technology, the IBA found:

- there is widespread AI adoption with regional and size disparities. The larger the law firm, the greater, better, and more sophisticated the integration of AI;
- AI is primarily used internally for back-office administration, business development, marketing and organisational management. Again, in larger law firms, there is a higher percentage of AI usage in client-facing applications such as legal research, document assembly, contract drafting and due diligence, driven by large language models (LLMs) and AI services.
- data governance, security, intellectual property (IP) and privacy remain significant challenges in AI governance, regardless of the law firm's size. Smaller law firms and solo practitioners are facing more challenges in terms of AI governance and often lack policies and resources;
- there is an expectation that AI will have a significant impact on law firm structure, hiring and business models. This could include shifts towards fixed or value-added fees, changes in hiring policies to prioritise AI-competent attorneys and a broader cultural shift towards innovation and change; and

¹¹ See Appendix, page 32.

- training is a key priority in the context of AI. Law firms need extensive training, primarily to overcome trust issues, mitigate risk and unlock AI's full potential. Law firms also need to continue training younger associates on legal work that may be carried out by AI, which allows them to have well-rooted expertise when they reach senior roles.

From the perspective of **AI's regulatory landscape**, the IBA found that:

- stakeholder consultation is crucial for AI regulation. Organisations such as the IBA have a crucial role in the development and implementation of AI governance frameworks. Stakeholders are not limited to licensed lawyers and law firms; non-lawyer service entities engaged by the legal profession should also be considered;
- almost half (48 per cent) of the IBA favour comprehensive AI regulation that also enables innovation and technology adoption;
- consistency and coherence are the most prominent priorities in AI regulation from the perspective of the legal profession. Alignment – ensuring that outcomes produced by AI systems are aligned with human intentions – has also emerged as a key concern; and
- major challenges in AI regulation include the potential chilling effect on innovation due to rapid enforcement of regulations, the constantly evolving nature of AI technology, and the difficulty in evaluating tools and understanding compliance requirements.

Last but not least, from the perspective of ethical guidance for law societies and bar associations, the survey of IBA members found:

- lawyers must keep abreast of changes in technology relevant to their practice. This includes understanding AI and its implications, ensuring lawyers can competently use AI tools while being aware of the ethical challenges and risks involved;
- lawyers must be diligent in ensuring professional conduct rules and guidance standards are upheld when using AI technologies. Existing rules emphasise the importance of maintaining confidentiality and professional secrecy, especially in electronic communications and data stored on computers;
- lawyers are responsible for supervising AI tools and ensuring their proper use. They must ensure that AI-generated work adheres to professional standards and that any legal work produced with AI meets the required ethical guidelines; and
- lawyers should inform their clients when they have made use of AI, disclosing the scope of such use and the type of AI used.

B. Key recommendations for the IBA and its members

Aiming to provide the IBA and its members with useful guidance on AI-related issues from both a legal and practical perspective, position the IBA as an AI legal policy leader and comply with the IBA Strategic Plan to safeguard the core values of the profession, the IBA will consider undertaking relevant actions in the below fields:

- *Promote widespread AI adoption with special support for smaller firms.* Develop programmes and resources specifically targeted at smaller law firms to assist them in integrating AI technologies. This can include providing access to AI tools, training sessions and financial incentives to lower the barriers to AI adoption and narrow the technological gap between large and small firms.
- *Enhance AI governance and policy development.* Establish comprehensive guidelines and best practices for AI governance, emphasising data governance, security, IP and privacy. Encourage law firms to develop and implement AI policies that align with these guidelines to ensure responsible AI use across law firms of all sizes.
- *Support structural and cultural changes in law firms.* Provide guidance on the organisational changes required to integrate AI effectively. This includes providing fora for discussions on transitioning to fixed or value-added fee structures, adapting hiring policies to ensure human resources are adequately equipped to accomplish different tasks, prioritising to the required extent AI-competent attorneys and fostering a culture of innovation and change within law firms.
- *Facilitate AI training.* Develop or identify training programmes focused on the legal profession and AI literacy. These programmes should aim to build trust in AI technologies, educate lawyers on the ethical implications of AI use and provide practical guidance on using AI tools.
- *Encourage comprehensive stakeholder consultation for AI regulation.* Advocate for the inclusion of diverse stakeholders – tech experts, industry representatives, academia and others, perhaps including civil society end-users and consumers, in the AI regulatory process. This will ensure that regulations are well-informed, balanced and reflective of various perspectives. Promote legal sector and professional associations such as the IBA as key stakeholders in the AI regulation process.
- *Promote consistency and coherence in AI regulation.* Work with regulatory bodies to develop consistent and coherent AI regulations that avoid fragmentation and disorganisation. Special consideration should be given to cross-border issues and where possible, harmonisation. Emphasise the importance of stable yet flexible regulatory frameworks that can adapt to the evolving nature of AI technology while protecting legal and ethical standards.
- *Update ethical guidelines to reflect AI use.* Revise and update ethical guidelines to include specific provisions for AI use. This should encompass the proper supervision and use of AI tools, the setting of standards for AI-generated work to meet professional ethical guidelines and include disclosure obligations regarding the use of AI. This initiative should also be undertaken with national bar associations and regulators.
- *Foster global collaboration and knowledge-sharing.* Promote international collaboration and knowledge sharing among national bar associations, law societies and legal professionals. This can help establish global standards for AI use in the legal profession and provide a platform for sharing best practices, addressing common challenges and staying informed about the latest developments in AI regulation and ethical guidance.

The impact of AI on law firms

AI, particularly generative AI, has had a significant impact on the practice of law. As the title of the report states, ‘the future is now’, especially when it comes to the impact this technology has on the delivery of legal services.

“ This technology will probably shape legal practice for many years. Attorneys need to understand AI and how to make use of it.¹²

The appeal of generative AI lies in its promise to optimise resources and achieve economies of scale across various industries, including law firms and consulting services. This universal applicability, coupled with the right ingredients of talent formation and strategic governance, has the potential to redefine market dynamics and even reshape the way lawyers conduct daily tasks. The goal is to enhance legal expertise, to give lawyers new tools and added value, not to replace them.

A. Research overview

With the aim of exploring the current state of AI usage by law firms, identifying key challenges and best practices, the IBA’s AI Task Force conducted an investigation combining three main components: questionnaires, interviews and a literature review. The questionnaire, distributed to all IBA members, ensured diverse and comprehensive representation within the legal profession. Additionally, significant member firms, particularly leaders in AI, were directly contacted to explore their responses and gather further insights. Focused interviews with AI leads at larger law firms gathered detailed information on the use of generative AI and its impact on firm members, structure, processes and business development. The literature review provided an understanding of the challenges facing law firms and broader legal issues, drawing on publications from international associations, academic institutions, legal sources and the IBA itself. This methodology provided real insights into the global impact of AI on law firms.

B. Findings

The research undertaken by the Working Groups enabled the IBA to obtain an overview of the current state of implementation of AI in law firms. The research focused on private practitioners who are already in the implementation stage, revealing the main challenges they have faced and how they have addressed them.

i. Current state of implementation of AI

Based on the survey, 210 out of 333 respondents are law firms that reported using AI in their operations. The responses indicate adoption of AI technology in private practice within the legal profession, with the majority of AI-utilising law firms located in Europe (including the UK), the US and operating in multiple jurisdictions through subsidiaries in different countries. This is significant because companies

¹² Sofia Larrea, ‘Artificial intelligence is not the future, but the present’ (*IBA Young Lawyers’ Committee*), www.ibanet.org/article/522BA7E3-EA7C-4A76-AA9F-013553A5756A accessed 13 August 2024.

implementing AI will need to comply with new regulations governing the development and use of AI. Likewise, companies with a presence in multiple regions will need to establish complex compliance models based on the jurisdictions where they operate. As of the date of the survey, the majority of the surveyed firms would be regulated directly by the EU AI Act, and those with a presence in other jurisdictions, such as in South America or Asia, would probably have headquarters in the EU. Therefore, it is foreseeable that their subsidiaries in other countries, even in the absence of specific regulations, would implement strategies considering this regulatory framework.¹³ It is noteworthy that the AI Act applies to the outputs of AI systems used within the EU, even if the AI providers or deployers are themselves not located in the EU.¹⁴

Furthermore, regarding the size of the firms that reported using AI, the larger the firm, the higher the use of AI.¹⁵ For firms with over 500 lawyers, 100 per cent reported implementing AI in their workflow. In contrast, for smaller firms, specifically those with between one and 100 lawyers, the results show that 68 per cent are not yet using AI. This could be concerning, as achieving full implementation will probably widen market gaps, allowing larger firms to continue growing and gaining market share at the expense of smaller firms.

“ Firms primarily use AI for internal purposes such as back-office administration, business development and marketing, organisational management and knowledge management.

It is noteworthy that over a hundred law firms are using AI for drafting newsletters, social media posts and even logo generation. Firms are using AI services such as Microsoft Copilot and Azure. This differs from client-facing uses, such as legal research, document assembly, contract drafting, due diligence and discovery for litigation cases. For these functions, generative AI, chat bots, e-diligence and e-discovery platforms, are being deployed. Notably, many law firms are adopting a portfolio approach by using a mix of models. These disparities in usage purposes may be attributed to distrust in the tools, the need for testing before making final choices, concerns related to the high cost of implementation or licensing, and a lack of AI/technical talent and skills. However, many of the firms plan to expand their budget and prioritise AI implementation.

13 The AI Act applies to:

- 1) providers placing on the market or putting into service AI systems or placing on the market general-purpose AI models in the EU, irrespective of whether those providers are established or located within the EU or in a third country;
- 2) deployers of AI systems that have their place of establishment or are located within the EU;
- 3) providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the AI system is used in the EU;
- 4) importers and distributors of AI systems;
- 5) product manufacturers placing on the market or putting into service an AI system together with their product and under their own name or trademark;
- 6) authorised representatives of providers, which are not established in the EU;
- 7) affected persons that are located in the EU.

Regulation (EU) 2024/1689 of the European Parliament and of the council of 13 June 2024 laying down harmonised rules of artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L1689.

14 *Ibid.*

15 For the purposes of this report, the law firm's size is defined in terms of number of legal practitioners who work at the firm/organisation (including interns and paralegals but excluding employees such as support staff).

The vast majority of law firms use AI for purposes that do not involve predicting or citing argumentative foundations for briefs and other legal filings. In fact, for most law firms, generative AI remains largely in the testing and development phase, particularly when it comes to legal client work. Internally, law firms are developing chat functions and using vendor tools such as Harvey for creating first drafts, as these tools are not yet trained with firm-specific data. In the meantime, firms are building experience, developing prompt libraries and working on their knowledge management structures for AI use. Various firms are designing tools around LLM models and are developing proprietary LLM models to utilise their own data.

“ For most law firms, generative AI remains largely in the testing and development phase.

When it comes to using generative AI and other AI tools, firms tend to prioritise confidentiality and information management over potential revenue and investment requirements. This approach is probably the result of discussions with clients about AI usage, which typically prohibit the use of client data for training purposes. As a result, firms have undertaken extensive trial and error searches among generative AI vendors, leading to varied results when using different models for the same questions, with concerns such as hallucinations still being mentioned. This lingering distrust remains a significant factor in the challenges and implementation. The implementation of AI in law firms represents a significant shift towards integrating advanced technologies to enhance legal processes. However, the journey is ongoing, requiring continuous development and refinement to fully realise AI's potential in the legal industry.

ii. AI governance

Out of the 210 law firms that reported using AI in their operations, only 91 reported having policies in place for using AI solutions, while 21 reported lacking these policies. Additionally, 114 respondents mentioned having an internal AI-dedicated team, while 117 reported that they lacked such a team. Notably, the findings indicate that larger law firms are more likely to have a specialised AI team. Ideally, the implementation of AI should go hand in hand with a comprehensive governance strategy and internal usage policies.

Interviews provided further insights into AI governance practices. All firms interviewed have policies in place and emphasised that establishing these policies was one of the first steps taken before adopting AI solutions. A critical aspect of these policies is the stipulation that lawyers are always responsible for the outcomes and use of AI, often driven by client requirements. Various firms also require their staff to sign AI policy statements to ensure compliance and awareness.

“ AI governance is still a work in progress for many firms.

AI governance is still a work in progress for many firms, presenting several challenges such as data governance and distribution, AI tool requirements, security, IP and privacy. These challenges are reflected in the survey, where barriers to AI use were commonly mentioned. The ongoing development of AI governance frameworks is essential to address these issues, ensuring responsible and effective AI integration in legal practice.

Small and medium-sized law firms should learn from larger ones and implement governance measures as soon as possible. Internal governance measures such as corporate policies, user manuals, work regulations and other processes are essential for identifying and mitigating risks such as contractual breaches, service quality deficiencies, cybersecurity incidents compromising proprietary or third-party information, non-compliance with current regulations and legal liability towards enforcement authorities and clients. Implementing AI in an organisation without these tools means that the operation of the firm will lack guardrails.

iii. Substantial impact on law firm structure, organisation and business model

“ The adoption of generative AI is poised to bring significant changes to the structure, operation and strategy of law firms.

According to the questionnaire, more than 80 per cent of respondents acknowledged the necessity for these adjustments.

AI is already having its most significant impact on office management and quality control aspects, leading to improved efficiency and cost reduction for clients. While some firms have begun using AI for pricing purposes, the integration of AI in pricing structures is still in its early stages. However, all firms anticipate a future shift towards fixed or added value fees, influenced by AI's impact. This shift is expected to include additional technology and development surcharges, as firms aim to avoid a race to the bottom and engage in discussions with clients about sharing financial gains. Moreover, the business model of law firms will probably undergo fundamental changes. Firms' internal finance functions are already involved in reviewing cost structures to align with AI's impact, indicating a broader trend towards reevaluating and adapting traditional business models to incorporate AI advancements.

As some interviewees mentioned, these changes brought by AI should not be limited to the administrative aspects of firms. Working with new AI tools requires a change in mindset and processes. Therefore, operational changes, pre-launch activities, betas and testing are important at all levels of the service. This emphasises the importance of creating manuals, guidelines, ethical codes and training, along with regular post-implementation quality audits. Respondents expect the transition to have a significant impact on workflow and workload, as it takes time to adjust, and workload may increase during the adoption period before the positive effects become evident. Consequently, many firms are now prioritising the employment of attorneys who are willing to use AI and are open to new forms of technology. This shift involves changing hiring policies and recruitment strategies to focus on more educated and AI-trained lawyers.

Furthermore, interviewees comment about how this integration of AI in the workflow necessitates changes in decision-making processes, with less time spent on preparation work. Perhaps the most significant change will be cultural. Lawyers will need to become more innovative and adaptable, supported by their firms to confidently embrace AI. This cultural shift is crucial for the successful implementation and widespread adoption of AI tools.

iv. Training and adoption

Taking a step further and building on the impact of AI on strategic, structural and cultural shifts, the implementation of AI in law firms requires extensive training and the use of development programmes to ensure successful integration and utilisation. According to the questionnaire, 74 per cent of respondents believe that the full implementation of AI can potentially replace certain roles within their firms, highlighting the significant impact AI may have on the legal profession.

“ The implementation of AI in law firms requires extensive training and the use of development programmes to ensure successful integration and utilisation.

Moreover, the perceived impact of AI on different categories of lawyers varies. For younger lawyers, 47 per cent of respondents indicated a significant impact, while 14 per cent viewed the impact as moderate. Junior associates are also expected to be significantly affected, with 51 per cent of respondents reporting a significant impact. Senior associates and partners, however, are seen to be less affected, with only 15 per cent and 11 per cent of respondents, respectively, viewing the impact as significant. The development of these categories shows a similar pattern, with trainee and junior lawyers expected to experience the most significant changes as a result of AI integration.

The correlation between the use and development of different lawyer categories suggests that the adoption of AI will necessitate the creation of new roles or the evolution of existing ones. Also, training young lawyers beyond their use of AI represents a new challenge, with the risk of losing the expertise needed at more senior roles or directly losing talent if work were limited to the use of AI and the review of its outcome. Respondents reported various challenges in adopting AI, with larger firms showing more robust training and adoption programmes. These programmes emphasise data and AI literacy, ensuring that employees are well-equipped to use AI tools effectively.

Furthermore, the interviews revealed that most firms require their employees to undergo training before they can use AI or participate in pilot programmes. Larger firms, in particular, are able to offer more comprehensive internal development programmes and communicate these initiatives effectively.

“ Firms that prioritise training report fewer concerns about AI adoption and receive more positive feedback on AI development and potential use within the firm.

This indicates that without proper training, professionals will be at a significant disadvantage and risk, which, combined with the low implementation rates of training programmes among the larger group of law firms that participated in the survey, could be a potential weakness not only for organisations but also for individuals and professionals, as well as for the dynamism of the labour market.

“ A significant barrier to adoption is the lack of trust in AI, with many respondents expressing hesitation to fully rely on AI results.

To address this challenge, several of the surveyed firms reported training lawyers and paralegals to critically evaluate AI outputs. The training activities also cover the legal and ethical implications of AI, as well as providing practical guidance on using AI tools efficiently.

As can be seen, the success of AI adoption in law firms depends on thorough training programmes that cover both technical and ethical aspects. These programmes should aim to cultivate a culture of trust and competence in AI technologies. At the same time, law firms should not forget to train lawyers in the most fundamental aspects related to their professional activities from a technical legal and practical perspective.

v. Competitive advantages

In-house development of AI technology is found to be a significant competitive advantage for law firms, particularly the largest ones. According to the data, firms with 101–500 legal practitioners are leading in developing and designing their own AI tools or programs internally. This trend highlights that larger firms are better positioned to invest in proprietary AI solutions, probably due to their greater financial and budgetary resources. On the other hand, AI may help ‘level up’ smaller firms. Commentary on access to justice also noted the potential benefits of AI.

The ability to build proprietary AI solutions provides large firms with a unique edge, enabling them to tailor AI tools to their specific needs and workflows. This customisation can lead to more efficient operations, enhanced service quality and ultimately, a stronger market position. Smaller firms, by contrast, may face challenges in allocating the necessary resources for such developments, potentially widening the gap between large and small firms in terms of technological advancement and competitive capabilities.

Overall, the strategic investment in in-house AI development by larger law firms underscores the importance of financial capacity in leveraging AI for competitive advantage. This capability not only enhances operational efficiency but also positions these firms as leaders in innovation within the legal industry.

Additionally, the data shows that this opportunity opens up for these firms, and only these firms, the possibility to participate in a new market by offering services and technology designed by lawyers and for lawyers, which does not preclude them from adapting to other industries and uses. Furthermore, the vast majority of clients in this new market have their own legal technology needs for their in-house teams, and currently there are no providers offering solutions. Moreover, providing these services to third parties could even lead larger firms to become providers of legal technology services to smaller firms, which will probably make them dependent. As previously seen in the survey results and interviews, due to the high costs involved in the development and implementation of these technologies, only large firms currently have the resources to develop in-house. This could also create an emerging incentive for firms with this technology to refuse to sell these services to other firms to maintain and strengthen their competitive advantage, a conduct that should be seriously considered from a competition law perspective. This could have a negative impact on medium and small firms.

vi. Media and advertising strategies

“ The adoption of AI technologies in law firms has introduced new considerations for media and advertising strategies, particularly regarding liability risks.

The questionnaire revealed that 139 respondents have taken into account the liability risks of AI-related advertising, while 71 have not. Interestingly, despite this concern, 142 respondents have invested in new technologies to improve service efficiency and quality without implementing corresponding media or advertising strategies, compared to 68 who have not made such investments.

This discrepancy suggests that while firms are eager to leverage AI to enhance their operations, there is a notable hesitation to advertise these capabilities due to potential liability risks. Misleading advertising could pose significant legal challenges, necessitating careful risk assessments by firms. This gap between technological investment and advertising strategy highlights the need for comprehensive guidelines to help law firms navigate the complexities of promoting their AI capabilities responsibly.

vii. The challenges

Looking to the future, the survey of law firms reveals several key challenges with AI:

- the development of AI policies and governance standards to promote trust and confidence, and mitigate risk;
- adequate testing and assessment of AI tools prior to deployment and subsequent evaluation throughout the AI lifecycle;
- training of lawyers and administrators;
- discussions with clients regarding the use of client data for training purposes; and
- compliance responsibilities for both legal rules and ethical obligations.

The regulatory landscape – convergence, divergence and harmonisation

As with users in any industry, law firms must stay informed about current and prospective regulations that affect them and their clients. This awareness influences adoption strategy, budgeting decisions, risk analysis and more. Additionally, due to the versatile but also opaque nature of AI, it significantly impacts existing regulations and, in some cases, poses a threat to established legal values such as the ability to determine the basis of an automated decision. Consequently, new regulations or reinforcements are necessary to maintain or enhance user protection in the era of AI.

Here it is worth highlighting the impressive work recently conducted by the Artificial Intelligence Working Group of the IBA Alternative and New Law Business Structures (ANLBS) Committee. The ANLBS produced the first IBA publication on the existing guidelines and statutory regulations on the use of AI as a professional tool (the ‘ANLBS Report’). As a publication of the ANLBS Committee, the ANLBS Report is intended to be updated every two years.¹⁶

The ANLBS Report covers initiatives by multilateral organisations regarding AI governance and their impact on AI policies. In this respect, the ANLBS Report discusses the role of organisations such as the Organisation for Economic Co-operation and Development (OECD), the G20 and the UN Educational, Scientific and Cultural Organization (UNESCO) in shaping AI regulations and standards. In more detail, the ANLBS Report identifies and analyses AI regulations in countries including Argentina, Australia, Brazil, Canada, France, Germany, India, Italy, Japan, South Africa, Spain, Sweden and the US, among others. Each country chapter provides an understanding of AI definitions, existing AI tools in legal services, regulatory approaches and sector-specific legislation. Additionally, these chapters also outline the various approaches countries are taking to regulate AI, including ethical guidelines, statutory regulations and the creation of dedicated AI regulatory bodies, as well as providing examples of AI tools specifically designed for legal purposes, such as Prometea in Argentina and Legal One in Australia.¹⁷

Notably, the ANLBS Report addresses challenges in AI regulation, such as ensuring ethical AI use, balancing innovation with regulation and the potential impact of AI on the legal profession. The ANLBS Report also emphasises the need for international cooperation and convergence on AI standards. Furthermore, the ANLBS Report concludes that while there is significant progress in AI regulation, achieving global convergence remains challenging. The ANLBS Report highlights the importance of ongoing dialogue and cooperation to ensure that AI technologies are developed and used in a manner that benefits society as a whole.¹⁸

16 International Bar Association Alternative and New Laws Business Structures Committee, *Guidelines and Regulations to Provide Insights on Public Policies to Ensure AI's Beneficial Use as a Professional Tool* (IBA, 2024), www.ibanet.org/PPID/Constituent/Multi-disply_Pract/anlbs-ai-report accessed 8 August 2024.

17 *Ibid.*

18 *Ibid.*

A. Research overview

The AI Task Force conducted an investigation to recommend principles for governing AI regulations worldwide, with the purpose of taking one step further beyond the work of the IBA ANLBS Committee. While the ANLBS Committee's work provides information on current regulatory frameworks, the AI Task Force was entrusted with the identification of the common principles that should apply globally when considering AI regulation. The ultimate goal of this workstream was to make recommendations to coordinate and bring closer together global regulatory frameworks, despite the devil being so often in the details.

The investigation of the AI Task Force included a questionnaire sent to IBA Legal Practice Division (LPD) committees and regional fora, with key questions addressing: (1) the importance of consulting diverse stakeholders (including the AI industry, tech experts, academia and others) before enacting AI regulations; (2) opinions on the appropriate regulatory approach for the specific area of law of each committee/regional fora, and whether a light-touch or detailed regulation of AI is preferred; (3) specific aspects of AI regulation considered important by the committee/regional fora; (4) insights on key features of AI relevant to current and future legal work activities, and suggestions on how governments should regulate them; and (5) language issues.

B. Findings

i. Joint stakeholder efforts

Most respondents agree that legislators should consult with tech experts, industry representatives, academia and others before regulating AI. Interestingly, some respondents also suggested consulting with end users, consumers or the general public.

“ Almost half (48 per cent) of respondents support a comprehensive approach to AI regulation.

Additionally, a significant portion (30 per cent) favour moderate regulation, while a smaller percentage (16 per cent) prefer light touch regulation. Only a small portion of respondents seem to support exhaustive regulation of AI. This may reflect a trend toward favouring innovation and adopting technology, which could be interpreted as a positive outlook rather than the doomsday scenario often portrayed by the media.

ii. The importance of consistency, coherence, transparency, accountability and fairness

“ Fifty-seven per cent of respondents considered ‘consistency’ to be the most important characteristic for AI regulation, while 51 per cent said ‘coherence’.

Respondents gave a lower weight of importance to ‘stability’, with only 30 per cent considering it relevant. Coherence and consistency minimise the risk of regulatory conflicts that could negatively impact the various legal interests protected by regulation. On the other hand, the fact that little weight has been given to stability could imply that the respondents are aware of the evolving and changing nature of AI, and are open to flexibility that allows policy development in parallel with the protection of legal interests and regulation.

Some respondents added comments highlighting transparency, fairness, ethical foundation, enforceability and human-centred design as key technical and unique aspects of current AI models that they deem important for AI regulation. These aspects align with current regulatory trends and public policy approaches.

Respondents are similarly divided on the main regulatory goals regarding AI, with (1) data privacy and security at 66 per cent, (2) ethical guidelines at 63 per cent, (3) transparency and accountability at 61 per cent, and (4) bias and fairness at 50 per cent. Interestingly, the respondents rated ‘explainability and interpretability’ lower than expected, which might be expected, given that the audience is mainly composed of lawyers, who are traditionally inclined towards evidence and factual-based reasoning in legal argumentation. However, the respondents ranked ‘continuous monitoring and evaluation’ highly, which can be seen as a moderate preference. It could be said that the respondents accept that AI could function without explanation, as long as parallel efforts are made to understand, test and maintain control over these algorithms, and provided that they function safely.

The IBA institutional view is that explainability, or more precisely ‘contestability’, should be at the centre of any AI regulation, as the capacity to express why an AI system reached a particular decision, recommendation or prediction allows human users to comprehend and trust the results and output created by machines. It is also important to ensure that an adverse decision can be meaningfully contested, particularly in decisions concerning fundamental rights.¹⁹ Opaque systems generating a black box effect should be avoided, as otherwise accountability will be at risk.

A significant portion of respondents (69 per cent) are unaware of AI regulations that are impacting their practice. This could be seen as an opportunity for the IBA to fulfil the need to keep its network of members informed in this area. Given the evolving nature of AI regulation, it may be beneficial to consider implementing a Customer Relationship Management system or dashboard that allows for country-specific selection and the ability to monitor, compare and map the current state of regulation worldwide, particularly in countries relevant to the organisation. The IBA could utilise the same important aspects identified in the survey as search parameters or filters, as these not only impact the professional practice of lawyers, but also other areas of law related to the development, use and distribution of AI.

19 Marc Rotenberg, ‘CJEU PNR Decision Unplugs the “Black Box”’ (2022) 8 *European Data Protection Law Review* 431, edpl.lexxion.eu/article/EDPL/2022/3/15 accessed 8 August 2024.

iii. The challenges

Survey respondents highlighted several challenges in complying with existing AI regulations. These include:

- different regulatory regimes;
- ensuring core principles to apply to regulations;
- fast changing environment and rules;
- compliance and policies;
- a lack of education on several fronts: the tools, their use and their job impact;
- opaque systems that make it difficult to assess outcomes; and
- sustainability and the environmental impact of large language models.

Additional comments urge the IBA to continue monitoring and updating its members on AI development, tools to be used, the impact on the legal industry and suggestions to practitioners to cope with foreseeable challenges and capture possible opportunities.

Guidelines on best practices for bar associations and regulators

The AI Task Force was also tasked with considering whether the current rules of professional conduct²⁰ are sufficient or need fine-tuning to provide a resource for member bars to understand the implications and the available tools. The AI Task Force identified key issues that bar associations need or want to know and provided best practice and guidance for how they should address them.

A. Research overview

The AI Task Force first reviewed the approaches already taken by various bars and law societies in different jurisdictions regarding the effects of AI use on professional regulations. The survey has not been exhaustive, as bars and regulators continue to address the issue. Thereafter, the Task Force looked at the current IBA guidelines for the legal profession and identified the challenges in terms of the professional regulatory framework regarding the use of AI by private practitioners:

B. Findings

When approaching the rules affecting the legal profession, the main issue is how AI might affect lawyers' deontological (ethical) duties and whether new duties arise because of the use of AI in the provision of legal services. However, in the broader AI context, much of the discussion about ethics has not been lawyer-related, but rather to broader 'moral' issues relating to AI. Those jurisdictions that have directly addressed deontological issues regarding the principles governing professional practice of lawyers (ie, legal ethics) have focused on core issues (the 'common denominators') of client communication, honesty, competence, confidentiality, supervision, independence, and proper allocation of costs and fees. Some bars that have issued guidance have noted others, whereas some have not identified all of these. The question is whether adding technological competence is sufficient, given that AI – and particularly generative AI – goes beyond the kind of basic technology (computerised case research based on Boolean connectors, use of email and so forth) and might require more guidance.

Guidance to bars from the IBA that focuses on the common, shared denominators identified above by most legal systems, and appropriate amendment to the explanatory notes to the IBA Principles – if not even a new principle to address certain issues such as cost allocation and the need for communication in how the client objectives are achieved – should be considered. It is important to remember in this regard that not only are all jurisdictions not the same, but within jurisdictions, there are differences between small and large firms, in-house attorneys and so forth, so a common thread of reasonableness under the particular circumstances should be woven into the commentary or proposed principles.

²⁰ Different jurisdictions may refer to professional 'ethics' as opposed to rules of conduct or other terminology. Regardless of the particular term, the reference is to the rules for which lawyers may be disciplined for violations.

i. IBA International Principles on Conduct for the Legal Profession (2018)

The IBA International Principles on Conduct for the Legal Profession outlines core values and provides guidance for bars and regulatory bodies regarding the rules of professional conduct for the legal profession. It is not a model code with comprehensive rules, but rather includes core principles that establish common rules for professional conduct and the foundation for the ethical use of AI.²¹

Under the IBA Principles, lawyers have an obligation to maintain the confidentiality of their clients' information. This responsibility extends to adapting to the evolving technological standards to ensure that electronic communications and data stored on computers are secure. As technology advances, lawyers must stay informed about the required professional standards to uphold their duty of confidentiality effectively. The use of proprietary client information in generative AI prompts, for example, could compromise client confidentiality. Notably, the IBA General Principle on Competence states that 'A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner'.²² In 2024, the IBA adopted commentary to this principle to specifically address technology in general and AI in particular:

'A lawyer should keep abreast of changes in the law and be competent in their response to, awareness, and use of technology relevant to their practice. Technological competence is a spectrum, ranging from the effective use of electronic communications to engaging with Artificial Intelligence. Lawyers should aim to be conscious of the opportunities, risks, and ethical challenges that technology presents for themselves as well as their clients'.²³

Additionally, these rules call on lawyers to diligently honour any professional promises made during their practice. This includes ensuring that any commitments or undertakings given can be fulfilled. Lawyers must exercise due diligence to maintain full control over their ability to meet these promises, thereby upholding the integrity of their professional obligations. This principle could impose an obligation on attorneys to be fully responsible for the outputs of AI systems. Certainly submissions to courts mean that the lawyer is responsible for the content of the document generated by AI, and lawyers generally can be held responsible for content generated by others (human or machine) and relied on by clients, adversaries and third parties.

Furthermore, lawyers must prudently manage and protect any property of clients or third parties that has been entrusted to them. This includes keeping such property separate from the lawyer's personal assets, and providing prompt and accurate accounting for it. By doing so, lawyers ensure the safeguarding of client property and maintain trust in their fiduciary responsibilities. This principle could apply to the use of client data for AI training purposes.

Moreover, these rules also provide that maintaining competence is a fundamental ethical principle for lawyers, which involves staying updated on both legal and technological advancements. With the integration of AI into legal practice, it is crucial for lawyers to understand these developments and their implications. Competence encompasses not only knowledge of legal principles but also the practical application of these principles through effective client file and practice-management strategies.

21 'International Principles on Conduct for the Legal Profession' (International Bar Association, adopted on 28 May 2011, and updated on 11 October 2018 in English. The Explanatory Note at para 9.2 in the *Principles* was further updated in May 2024), www.ibanet.org/document?id=International-Principles-on-Conduct-for-the-Legal-Profession-2018 accessed 13 August 2024.

22 *Ibid.*

23 *Ibid.*

Finally, these rules state that lawyers are entitled to charge reasonable fees for their services and must avoid generating unnecessary work. When involving other lawyers, it is essential to clarify responsibilities and fees with the client and the involved lawyers beforehand. This transparency helps prevent misunderstandings and ensures that clients are fully aware of the cost implications of their legal representation. As AI techniques are deployed for certain legal functions, it may be necessary to review billing practices.

ii. IBA International Principles on Social Media Conduct for the Legal Profession

The IBA International Principles on Social Media Conduct for the Legal Profession identify factors for bar associations and regulatory bodies seeking to establish ethical rules for use of social media by members of the legal profession and provide an overview of applicable principles for such members to be guided by. Of note are Principle 3 (Responsibility), Principle 4 (Confidentiality) and Principle 5 (Maintaining Public Confidence). Some of these of course relate back to ethical principles and the highlights noted above; others emphasise broader issues, such as public confidence. For example, public confidence in the use of AI by lawyers was shaken in a case in which lawyers submitted a court filing using research generated by ChatGPT.²⁴ The cases cited were fictitious and the quotations were fabricated. As a result, several courts in the United States issued orders to require attestation of human review.²⁵

iii. Approaches in different jurisdictions

The American Bar Association (ABA) has established a Task Force dedicated to addressing AI in legal contexts.²⁶ This Task Force emphasises the importance of technological competence and ethical issues such as confidentiality and supervision, ensuring that lawyers are equipped to handle AI technologies responsibly and effectively within their practice. On the state level, New Jersey has issued guidelines that highlight critical aspects of AI use, including accuracy, honesty, confidentiality and the prevention of misconduct. These guidelines are designed to ensure that AI tools are used ethically and that their outputs meet the high standards required in the legal profession. In addition, the State Bar of California provides comprehensive guidance on the use of AI in law.²⁷ This guidance emphasises the need for confidentiality, competence, supervision and a thorough understanding of ethical considerations. The detailed recommendations help lawyers navigate the complexities of integrating AI into their practices. Also in the US, Florida's ethical guidelines focus on key areas such as confidentiality, oversight, costs and advertising related to AI-generated work. By addressing these aspects, the guidelines aim to ensure that AI use in legal practice is both transparent and accountable. Most recently, the ABA has issued a Formal Opinion that states that to ensure clients are protected, lawyers and law firms using generative AI tools must 'fully consider their applicable ethical obligations', which include duties to provide competent legal representation, to protect client

24 *Mata v Avianca, Inc* [2023] SDNY 22-cv-1461 (2023) WL 4114965; Siddhartha Rao and Andrew Ramstad, 'Legal Fictions and ChatGPT Hallucinations: "Mata v. Avianca" and Generative AI in the Courts' (*Law.com*, 21 December 2023) www.law.com/newyorklawjournal/2023/12/21/legal-fictions-and-chatgpt-hallucinations-mata-v-avianca-and-generative-ai-in-the-courts accessed 8 August 2024

25 *Ibid.*

26 American Bar Association Center for Innovation, 'Task Force on Law and Artificial Intelligence: Addressing the Legal Challenges of AI' (*American Bar Association*) www.americanbar.org/groups/leadership/office_of_the_president/artificial-intelligence accessed 13 August 2024.

27 State Bar of California, Standing Committee on Professional Responsibility and Conduct, 'Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law' (The State Bar of California 2023) www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf accessed 8 August 2024

information, to communicate with clients, to ensure candour toward the tribunal and to charge reasonable fees consistent with time spent using generative AI.²⁸

Canada's Model Code of Professional Conduct doesn't directly address the use of AI. However, several of the principles have implications for the use of AI.

In Australia, the ethics framework provides general ethical principles for AI use, with a strong emphasis on privacy and confidentiality. These principles guide lawyers in using AI tools responsibly, ensuring that client information is protected. The New South Wales Bar Association has issued specific guidelines on the use of generative AI. These guidelines emphasise competence, integrity and honesty, ensuring that AI technologies are used in a manner that upholds the highest ethical standards. In Victoria, the Supreme Court of Victoria has outlined principles for the use of AI in litigation, focusing on technological competence and privacy. These principles are designed to ensure that AI tools are used effectively and ethically in the legal process with appropriate accountability.

Ethical considerations for AI use issued by the Law Society of England and Wales focus on maintaining competence, confidentiality and independence. The guidelines ensure that lawyers uphold these core values while integrating AI into their practice

The Council of Bars and Law Societies of Europe (CCBE), provides a comprehensive guide on AI tools for lawyers, emphasising the importance of communication, competence and privacy. The guidelines help lawyers understand and manage the risks associated with AI, ensuring that these technologies are used responsibly in legal practice.

In Asia, AI is also the subject of selected ethical commentary. In Japan, the Ministry of Justice has issued a memo titled 'Relationship between AI-based Contract Review and Related Services and Article 72 of the Lawyers' Act', which described AI contract review as not being regulated as legal practice under the statute, though the AI entity will have its own liability.²⁹

The Dubai International Financial Centre (DIFC) has issued *Practical Guidance Note No. 2 of 2023 Guidelines on the use of large language models and generative AI in proceedings before the DIFC Courts* that specifically addressed client confidentiality and truthfulness to the Court and other parties, and competence to the extent of explaining appropriate AI usage, among other admonitions to comply with all other ethical obligations.³⁰

While not all country bars have issued guidelines or rules changes, a sampling of the blogs and commentary indicate that the concerns expressed here, and amplified in the materials in the appendix, indicate a recognition on all continents that practitioners need to be aware of ethical implications of competence, integrity and confidentiality.³¹

28 American Bar Association, Standing Committee on Ethics and Professional Responsibility, 'Formal Opinion 512: Generative Artificial Intelligence Tools' (American Bar Association, 2024), <www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf> accessed 8 August 2024

29 Toshiyuki Arai, 'Lawyers' Supremacy over AI?: a Japan's Tentative Perspective - MOJ issues Guidelines on AI-based review of contracts and how that can be permitted under Article 72 of Lawyers' Act (prohibition on non-lawyer practicing law)' (*JDSUPRA*, 4 June 2024) www.jdsupra.com/legalnews/lawyers-supremacy-over-ai-a-japan-s-1138166 accessed 8 August 2024.

30 DIFC Courts, *Practical Guidance Note No. 2 of 2023 Guidelines on the use of large language models and generative AI in proceedings before the DIFC Courts* (DIFC Courts 2023), www.difccourts.ae/rules-decisions/practice-directions/practical-guidance-note-no-2-2023-guidelines-use-large-language-models-and-generative-ai-proceedings-difc-courts accessed 8 August 2024

31 See, for example, Simon Dippenaar & Associates, 'AI and the legal profession' (*Artificial Intelligence*, 22 March 2024), www.sdlaw.co.za/blog/ai-and-the-legal-profession accessed 13 August 2024.

iv. The challenges

“ A challenge to the use of AI by lawyers when providing their services is building trust and confidence.

It appears to be difficult for national bars and law societies to deal with this matter in a simple and effective manner. The potential use of international guidelines could prove to be useful in this regard.

The application of those AI-oriented rules could face some difficulties. For example, how can the level of technical knowledge required for a lawyer to use AI be measured at different points in time? Should policies regarding the use of AI be required to any practitioner, thus, how can you prove their adoption? Can the use of certain AI systems be ‘prohibited’, if such systems proved wrong?

AI systems being of an international nature, plus the practice of law being more and more often of a global nature, raises the additional challenge of the harmonisation required among the rules affecting the legal profession issued by different jurisdictions.

AI and the rule of law

“ As a global association established shortly after the creation of the United Nations, with the principal aim of protecting and advancing the rule of law globally, the International Bar Association has a unique responsibility to sustain modern democracies and protect human rights.

Beyond the practical opportunities and challenges facing the legal profession today, the IBA should strive to ensure that new technologies strengthen democratic institutions and safeguard fundamental rights. In the context of AI policy, the IBA should support international efforts to strengthen the rule of law and speak up when threats to the rule of law emerge.

“ Central to the administration of justice is a legal system that is fair, accountable, efficient and transparent. Human decision-making and human accountability, expressed through the work of lawyers and advocates, judges and magistrates, and courts and tribunals is the foundation of law.

As more legal tasks are delegated to AI systems, it is vitally important to ensure that impact assessments of AI systems are undertaken prior to deployment and throughout the AI life cycle to ensure that these AI systems comply with the rule of law and do not diminish or distort the administration of justice. Emerging norms for the governance of AI also make clear that AI systems that fail to comply with international human rights standards should not be permitted.³² This includes the prohibitions on social scoring and mass surveillance contained in the UNESCO Recommendation on AI Ethics, as well as the various AI systems that are prohibited under the EU AI Act.

“ Opaque decision-making systems that produce results that cannot be replicated, traced, contested or proven are at odds with the legal profession, which seeks to determine the truth through open and transparent proceedings.

At the same time, AI may help improve the administration of justice. AI may lower the workload of courts all over the world and improve the processing of administrative tasks. AI may make legal education more widely accessible to more people and also improve public understanding of the legal system and the practice of law. AI may reduce costs for those seeking legal assistance.

32 United Nations, ‘General Assembly Adopts Landmark Resolution on Steering Artificial Intelligence towards Global Good, Faster Realization of Sustainable Development’ (UN, 2024), <https://press.un.org/en/2024/ga12588.doc.htm> accessed 13 August 2024.

“ AI may help improve the administration of justice.

The need for human oversight and the expertise of lawyers during the transition to these new practices does not diminish. Indeed, in this moment the need for trained lawyers to critically assess these new technologies may be greater than ever. The International Bar Association should ensure that AI technologies advance the rule of law.

Future challenges

As the legal profession navigates the rapidly evolving landscape of AI, several critical challenges and opportunities emerge for the IBA, the rule of law, access to justice and the global legal profession. These challenges underscore the need for continuous engagement, adaptation and proactive measures to ensure that AI's integration into legal practice enhances the profession while safeguarding fundamental legal principles.

“ The integration of AI into the legal profession requires proactive and coordinated efforts from the IBA and its members.

By addressing these challenges head-on, the legal profession can enhance its services, uphold the rule of law and ensure that technological advancements benefit society as a whole. The IBA's role in providing guidance, resources and advocacy will be crucial in navigating this transformative era and maintaining the profession's integrity and relevance in the face of rapid technological change. Review of current codes of professional conduct is critical to ensure that black letter rules and commentary are updated appropriately.

“ The relentless pace of technological advancement, particularly in AI, demands that legal professionals remain at the forefront of these changes.

AI's ability to perform complex tasks previously reserved for highly trained lawyers presents both a threat and an opportunity. Law firms that effectively incorporate AI can offer services at lower costs and improved efficiencies, potentially leading to better outcomes in legal proceedings. However, firms that fail to embrace AI risk becoming uncompetitive, losing clients and struggling to attract and retain talent. This dichotomy highlights the necessity for the IBA to provide guidance and resources that help law firms of all sizes navigate this technological transformation effectively.

The regulatory landscape for AI is evolving, with the establishment of new governance frameworks in the EU and the US. International bodies such as the Council of Europe, the OECD and the UN are also establishing frameworks. These frameworks aim to ensure AI technologies are developed and used responsibly. However, the rapidly changing nature of AI poses a challenge to creating stable yet flexible regulatory frameworks that protect legal and ethical standards while promoting innovation. The IBA must advocate for regulations that balance these needs and that include the key principles for a good regulatory framework, while ensuring that AI's adoption does not compromise the integrity of the legal profession or the rule of law. At some point, the IBA may wish to assess the differences in regulation of AI in different countries and regions. Business is already borderless but has to navigate and comply with the different regulations in each country or region that it touches. It would make for more efficient business, trade and economic wellbeing if efficient ways were created to navigate and comply with the differences in regulation between each country or region.

Effective AI governance remains a critical challenge, particularly for smaller law firms. Issues such as data governance, security, intellectual property and privacy require robust policies to manage AI tools responsibly. The IBA can play a pivotal role in developing comprehensive guidelines and best practices that law firms can adopt. These guidelines should emphasise the importance of maintaining high standards of confidentiality and professional responsibility, even as AI tools become more integrated into daily legal operations.

The successful adoption of AI in the legal profession hinges on training and a cultural shift towards innovation and change. Legal professionals need to be equipped with the knowledge and skills to use AI tools effectively while understanding their ethical implications.

“ Training programmes focusing on data literacy and AI proficiency are essential to build trust in AI technologies.

Additionally, fostering a culture that embraces technological advancements while maintaining core legal values will be crucial for the profession’s future.

“ Lawyers and the legal profession will play a leading role in the development of norms for the governance of AI.

The International Bar Association should ensure effective implementation of the legal standards for AI governance. Moreover, promoting international collaboration among bar associations and legal professionals can help promote convergence and harmonisation for legal frameworks, leading to coherence and consistency. This collaboration will enable the legal community to be informed about the latest developments in AI regulation and provide guidance to address emerging challenges.

Appendix

Purpose of the initiative

The initiative aimed to: (1) provide IBA members and more broadly, the legal profession, with relevant and credible guidance on AI-related issues from a legal perspective or for the legal profession; (2) position the IBA as a significant player in addressing such legal issues and enhancing its profile; (3) comply with the IBA Strategic Plan in terms of safeguarding the core values of the profession, improving member offerings and educating on developments affecting legal practice; and (4) engage with members of the Association.

Scope of the initiative

The AI Task Force formed as described below, was assigned the responsibility of examining and generating a written outcome focusing on three key areas relating to: (1) regulating AI; (2) assessing its impact on the legal profession; and (3) advocating for best practices among bar associations.

These three work strands were led by Working Groups from one of three areas of the IBA – the Legal Practice Division (LPD), the Section on Public and Professional Interest (SPPI) and the Bar Issues Commission (BIC) – with the aim of presenting the outcome in a final report at the IBA 2024 Annual Conference in Mexico City. In addition, the project also encompasses: (1) education; and (2) a review of the AI impact on human rights.

Project leadership, management and Task Force

BA President Almudena Arpón de Mendivil Aldama, as project originator, and IBA Vice-President Claudio Visco have been leading this project.

The Project Director has been Marc Rotenberg, founder and executive director of the Center for Artificial Intelligence and Digital Policy, with the support of Natalia Alarcón Rueda.

The Task Force in charge of driving this initiative has been formed by IBA President, the IBA Vice-President Claudio Visco; Project Director; Myra Garrett, Chair of the IBA Section on Public and Professional Interest; Lawrence Teh and Steven Cohen the Chair and Vice Chair of Working Group 1 respectively; Sönke Lund, Chair of Working Group 2; Steven Richman, Chair of Working Group 3; Shirley Magniez-Pouget and Wahija Ahmed, Co-Chairs of the IBA Human Rights Law Committee; and Sara Carnegie, Director of the IBA Legal Projects Research Unit (LPRU), who has supported the endeavours of Working Group 2.

The three Working Groups

The three areas of work were allocated to three Working Groups, in addition to broader awareness-raising and education for the profession:

Working Group 1: Regulating AI

Led by the Legal Practice Division (LPD). This group was tasked with recommending high-level principles on AI for regulators and lawmakers, engaging with all IBA committees and regional fora.

i. Composition

Chair: Lawrence Teh, immediate past LPD representative, IBA Management Board

Vice Chair: Steven Cohen, LPD Co-Chair, IBA Corporate and M&A Committee

Members:

- Harvey Cohen, LPD Council Liaison Officer
- Patricia Hoet Limbourg, Advisory Board Member, Intellectual Property and Entertainment Law Committee
- Andrew Nunes, Chair, Outsourcing and Managed Services Subcommittee
- Johan Hübner, Membership Officer, Technology Law Committee

ii. Methodology and deliverables

The WG conducted a survey launched in early April of 2024. Each committee was instructed to appoint a representative to ensure adequate representation in the survey. All responses were required to be submitted by 8 May to allow enough time for preparing the position paper, which was discussed at the IBA Mid-Year Leadership meetings in Bucharest.

The survey comprised ten substantial questions and was designed to be completed in approximately eight minutes to enhance engagement and increase the number of responses. Upon completion, the Working Group (WG) received 61 responses, representing about 79 per cent of the expected participation. The survey focused on the following:

1. Lawmakers should consult with others before regulating ('Agree strongly'/'Agree'/'Neutral'/'Disagree'/'Disagree Strongly')
2. Lawmakers should consult with ('Academics'/'Industry'/'Tech Experts'/'Others')
3. Concerning regulation for AI, do you favour ('Exhaustive regulation'/'Comprehensive regulation'/'Moderate regulation'/'Light-touch regulation'/'No regulation')
4. Which regulatory characteristics are most important for AI? ('Coherence'/'Consistency'/'Stability'/'Extremely important'/'Very important'/'Important'/'Somewhat important'/'Not important')

5. Which regulatory goals are most important for AI? ('Transparency and accountability'/'Data privacy and security'/'Ethical Guidelines'/'Bias and fairness'/'Safety and reliability'/'Explainability and interpretability'/'International collaboration'/'Continuous monitoring and evaluation'/'Public engagement'/'Education and workforce development'/'Extremely important'/'Very important'/'Important'/'Somewhat important'/'Not important')
6. Which aspect of AI regulation is most important for your area of law? ('Transparency and accountability'/'Data privacy and security'/'Ethical Guidelines'/'Bias and fairness'/'Safety and reliability'/'Explainability and interpretability'/'International collaboration'/'Continuous monitoring and evaluation'/'Public engagement'/'Education and workforce development'/'Extremely important'/'Very important'/'Important'/'Somewhat important'/'Not important')
7. Should local language be a priority for AI regulation? ('Agree strongly'/'Agree'/'Neutral'/'Disagree'/'Disagree strongly'/'Other (please specify)')
8. Are you aware of AI regulations currently impacting your practice ('Yes'/'No')
If yes, briefly describe the impact.

Working Group 2: AI and the legal profession

The Working Group to assess AI's impact on the legal profession was led by the Section on Public and Professional Interest (SPPI). This group was entrusted with evaluating the impact of AI on the legal profession. The scope of work for this presidential project was limited to the analysis of the impact on law firms. SPPI will likely thereafter assess the impact on in-house, general counsel, academics, universities, judges, young lawyers and the legal industry as whole, both within the IBA and outside the IBA, outside the scope of this presidential project as a standalone SPPI project.

The SPPI Working Group launched its work on AI's impact on law firms with a survey across the IBA membership in April 2024.

Composition

Chair: Sönke Lund, Member, SPPI Council; Immediate past Co-Chair, IBA Alternative and New Law Business Structures Committee; Member, IBA Alternative and New Law Business Structures Committee Advisory Board

Vice Chair: Derya Durlu Gürzumar, Chair, AI Working Group, IBA Alternative and New Law Business Structures Committee; Member, Alternative and New Law Business Structures Committee Advisory Board

Division Liaison Members: LPD: Martin Schirnbacher, Advisory Board Member, IBA Technology Law Committee; and BIC: Riccardo Cajola, Officer, IBA Bar Issues Commission

Members:

- Myra Garrett, Chair, IBA Section on Public and Professional Interest
- Martijn Lesterhuis, Member, IBA Law Firm Management Committee
- Itzik Amiel, immediate past Chair, Business Development & Marketing Subcommittee, IBA Law Firm Management Committee

- Soledad Atienza Becerril, Co-Chair, IBA Future of Legal Services Commission; Advisory Board Member, IBA Academic and Professional Development Committee
- James Harper, Committee Liaison Officer, IBA Corporate Council Forum
- Adriana Castro, Co-Chair, IBA Young Lawyers' Committee
- Christopher Howard, immediate past Co-Chair, IBA Academic and Professional Development Committee
- Justice David Barniville, Chair, IBA Judges' Forum
- Anurag Bana, Senior Project Lawyer, IBA Legal Policy and Research Unit
- Sara Carnegie, Director, IBA Legal Policy and Research Unit
- Stuart Fuller, Member, AI Working Group, IBA Alternative and New Law Business Structures Committee
- Alex Birsan, Chair, Law Firm Management – AI & Technology Subcommittee, IBA Law Firm Management Committee

i. Methodology and deliverables

The WG conducted an investigation combining three main components: (1) a questionnaire; (2) focused interviews; and (3) a literature review.

The questionnaire was distributed to all IBA members to enhance diversity and ensure comprehensive representation within the legal profession for the review's outcomes. Additionally, they directly contacted a significant number of member firms, particularly those recognised as leaders in AI, to further explore their responses and gather additional insights. Said questionnaire was launched in early April. All responses were required to be submitted by 8 May to allow enough time for preparing the position paper, which was discussed at the IBA Mid-Year Leadership meeting in Bucharest. The focused interviews with up to 15 larger law firm AI leads were set up in April and May, seeking information about how their firm is using generative AI and its impact on the law firm's members, structure, processes and business development. Lastly, the literature review exercise conducted to understand wider legal challenges, including information published by international stakeholders, academic institutions and legal publications.

Overall, WG 2 focused on examining the complex effects of AI on law firms. The review covered key issues, such as the transition from the traditional billable hour business model to a value-based approach. In addition, WG 2 inquired about the reassessment of the roles and functions of various categories of lawyers, including young associates, associates, senior associates, partners, managing partners and senior partners, to determine how AI can be effectively integrated into their daily operations.

Furthermore, the review explored the structure of law firms, particularly in terms of hiring practices, such as whether to include professionals with technical backgrounds alongside traditional lawyers. Training and education, both internal and external, was also examined, especially in relation to how law schools are integrating generative AI training for new junior lawyers. Other focal points include the changing relationship with clients, billing methods and fee levels, and strategies for ensuring or improving law firms' profitability through the adoption of generative AI. The impact of AI on enhancing work-life balance and its role in business development and marketing, particularly in data gathering, was also analysed to provide a comprehensive understanding of AI's influence on modern legal practice.

Working Group 3: AI and best practices

The guidelines on best practice for bars Working Group was led by the Bar Issues Commission (BIC). As reflected on the IBA website, the BIC mission was to establish guidelines on best practice for bars. More specifically, the Working Group was to report on ontological and other aspects of relevance for the regulation of the legal profession. In this regard, the Working Group would consider whether the current rules of professional conduct are sufficient or need fine-tuning and provide a resource for member bars to understand the implications and the available tools. It intended to identify key issues that bar associations need or want to know, and to provide best practice and guidance for how they should address them.

i. Composition

Chair: Steven Richman, Chair, IBA BIC Policy Committee, US

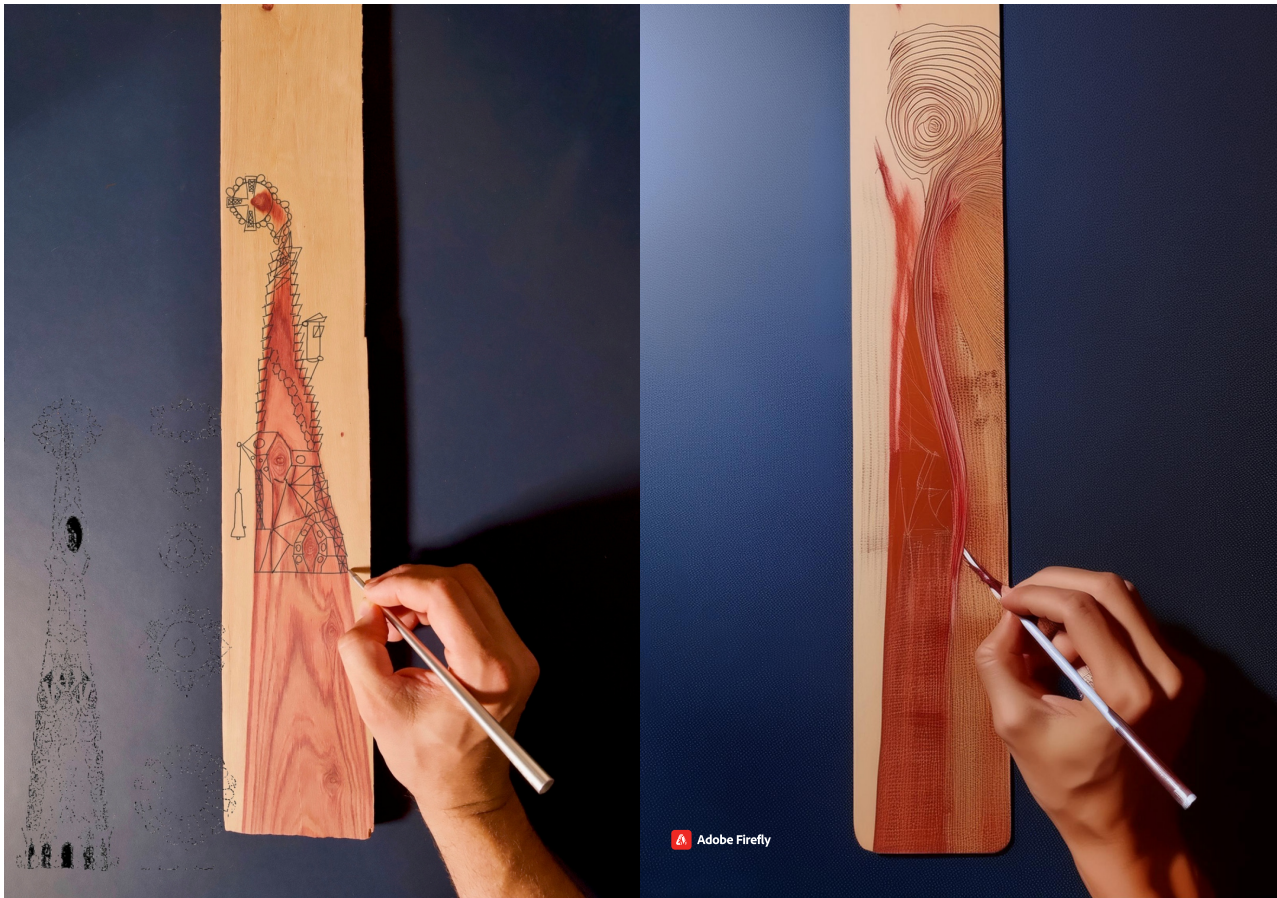
Members:

- Riccardo Cajola, Officer, BIC, Italy
- Claudia Amore, Officer, BIC, Colombia
- Jonathan Herman, Officer, BIC, Canada
- John Guerin, Chair, BIC Regulation Committee, Northern Ireland
- Dominique Hogan-Doran, Vice Chair, BIC Regulation Committee, Australia
- Carlos Valls, Giró Martínez, Spain
- Anurag Bana, Senior Project Lawyer, IBA Legal Policy & Research Unit, UK
- Hanim Hamzah, KPMG, Singapore
- Sherry Levin Wallach, former NYSBA president, US
- Ian Jeffery, Chief Executive, Law Society of England and Wales, UK
- Gregory Vijayendran, past president, Singapore Law Society, Singapore
- Richard Naidu, BIC Policy Committee, Fiji
- Banke Olagbegi-Oloba, past treasurer, Nigerian Bar Association, Nigeria
- Simone Cuomo, Secretary-General of the Council of Bars and Law Societies of Europe (CCBE)
- Paul Mollerup, Managing Director, Danske Advokater, Denmark

i. Methodology and deliverables

The WG conducted an investigation and assembled a diverse group and aggregated work done by other bars in terms of guidance. A programme on AI and ontological questions was held at the Bar Leader Conference in Bucharest, Romania in May 2024.

Cover story: front page explanation and its author



A diptych. Two artworks, intimately connected, make up the cover of this report. On one side, an original work by Francesco Arecco, created according to the artist's signature process and choice of materials: wood, drawing and computer graphics. The style is also typical, but with the addition of heterogeneous elements, such as Gaudi's architecture (the spires of the Sagrada Familia), Escher's graphics and the chromatic note, a Spanish *bois de rose red* recalling the vital force of thought. The image was then provided to the web app Adobe Firefly, one of the most powerful graphics machines around, with the request to produce its own version of the concept. The result is the second image of the diptych. One idea, two authors, one would be tempted to say. However, is that how it really works? How much authorship is at work in the second part of the diptych and does it really belong to artificial intelligence (AI)?

Let's analyse the 'AI-generated' panel. The main elements are the most often recurring of AI-based visual products: the glossy surface, a drift towards sheer pleasantness, the insertion of graphic details, as well as the inability to generate elements of innovation, a break in the pattern. A pleasant image – in some ways more than the one elaborated by humans – but somehow devoid of meaning. The lesson that Arecco seems to draw from the AI process is one of reassurance. And here is the most dramatic difference between actual artistry and AI production of shapes: artists act against the paradigm of given forms, they challenge the statistically recurring elements of collective imagery, they perform their craft by altering (subtly or bluntly) its rules and conventions. And in doing so, they often challenge their audience by showing them something unexpected, often problematic, sometimes even disturbing. The AI, on the other hand, works within the paradigm; it provides infinite possible variants of it, based on given combinations and reliable feedback.

It produces versions of what we are used to seeing and are comfortable with. Even if we instruct the AI to provide something unpleasant, its unpleasantness is conceived through the re-elaboration of a codified taste. Throughout history, critics and philosopher have often used the category of kitsch – meant as the deliberate production of expected and controllable emotional reactions. In the era of emojis and ‘likes’, it comes as no surprise that we may assign the status of ‘artist’ or ‘author’ to a device perfectly able to read and elaborate data about our recurrent collective emotions.

Which brings us back to our original question, and to the title chosen by Arecco. After the poetic quotation of a song by Jaco Pastorius, in fact, Arecco polemically clarifies in the artwork title that the generation of forms and thoughts is – fortunately – the prerogative of intelligence, natural or human, while what we often call artificial intelligence is nothing else, for now, than machine learning. A machine learns from data, behaviours and reactions, as well as from its own errors, and then produces complacent, simplifying, aesthetically charged works.

Having said that, is AI still describable as an ‘author’? In the traditional description of an artwork, it would be more correct to identify it with the ‘medium’. This term (another keyword of art criticism) does not merely indicate the materials and physical devices used in the artwork, but also a set of rules deduced from such materials, and more or less codified in specific experiences such as painting, sculpture, photography, etc. In this sense, AI is definitely a medium, as it retains a specific kind of agency although within a framework created by man (a proper ‘author’). With the usual, well-known difficulty of representing the fingers...

While this reading might seem to undermine the importance of AI, it actually reveals its potential as an instrument for human creation (or, more properly, for the understanding of it). At the same time, we have to position ourselves continuously, with respect to our own technological innovations, in order to realise we are not only in charge, but we are also, importantly, the interesting part of the story.

Kevin McManus

*Department for Contemporary Art,
Università Cattolica del Sacro Cuore, Milan*



Photo: Courtesy of YAGA Gallery, Cluj Napoca.

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About the International Bar Association

The International Bar Association is the world's foremost organisation for international legal practitioners, bar associations and law societies. Established in 1947, shortly after the creation of the United Nations, with the aim of protecting and advancing the rule of law globally, the IBA was born out of the conviction that an organisation made up of the world's bar associations could contribute to global stability and peace. In the years since its creation, the organisation has evolved, from an association comprised exclusively of bar associations and law societies, to one that incorporates individual international lawyers and entire law firms. The present membership is comprised of more than 80,000 individual international lawyers from most of the world's leading law firms and some 190 bar associations and law societies spanning more than 170 countries.

About the Center for Artificial Intelligence and Digital Policy

The Center for AI and Digital Policy is a global network of AI policy experts and human rights advocates. With a presence in more than 100 countries and offices in Washington, DC and Brussels, CAIDP trains future AI Policy leaders, advises national governments and international organisations, and publishes annually the *AI and Democratic Values Index*, a comprehensive review of AI policies and practices around the world. CAIDP has served as expert adviser on AI policy to the Council of Europe, the Global Partnership on AI, the G7/G20, the OECD, UNESCO and others.



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