

Short Notes on:

## **LEGAL ASPECTS OF ARTIFICIAL INTELLIGENCE**

### *Introduction*

Artificial intelligence<sup>1</sup>(AI) (the development of computer systems to perform tasks usually requiring human intelligence<sup>2</sup>) is progressing rapidly. Its application across contexts contributes to the development and the employment issue within the global economy.

AI is beneficial as it can be used to improve our general quality of life, safety and help solve everyday human problems. Still, it also raises human anxiety and concern. The last three decades of the internet revolution have overhauled our day-to-day lives, how businesses are run daily, and the regulatory framework that reflects these. The law needed to catch up to an unexpectedly rapid change in technology. AI presents an even more rapid change in technology and similarly complex legal challenges.

AI is a computer system or software that imitates human thought processes and behaviour to assist and, in some instances, replaces humans in specific tasks. Ideally, AI is used to improve work for humans by making simple, repetitive tasks easier and more efficient.

AI is already widely used in our everyday lives, particularly when browsing the internet and social media. We as individuals use AI software designed to interpret data and learn from previous experience. A perfect example would be Google advertising which uses your search data, location data and articles you've read to predict your interests and show you advertising for goods and services you're most likely to be interested in. This is referred to as Machine Learning.

### *POPIA*

In South Africa, there is currently no legislation dealing specifically with AI and its possible legal issues. The Protection of Personal Information Act<sup>3</sup> (POPIA) regulates the automatic processing of data, as in the example above. This may change in the near future as AI software becomes more autonomous through machine learning. Countries like Kenya and Canada have adopted AI strategies already. The change in South Africa could be facilitated by extending the principle laid out by Corbett CJ in *Financial Mail v Sage Holdings, 1993*.<sup>4</sup> Courts tend to view natural and artificial (legal) persons as enjoying the same personality rights in circumstances where it is appropriate. This particular case dealt with the extension of privacy rights to a company<sup>5</sup>. If personality rights (analogous to those conferred on companies) can be extended to "artificial" persons, creating a separate form of legal status for AI may be possible in certain specified circumstances.

Today business can be conducted entirely online via email and video-conferencing. Agreements concluded via electronic transactions have become widespread as a result. In addition, contracts concluded autonomously by an electronic agent are already recognised and regulated in South

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<sup>1</sup> *Financial Mail (Pty) Ltd. and Others v Sage Holdings Ltd. and Another (612 of 1990) [1993] ZASCA 3 (18 February 1993)*

<sup>2</sup> Oxford Dictionary

<sup>3</sup> Protection of Personal Information Act 4 of 2013

<sup>5</sup> *Financial Mail v Sage Holdings, 1993*.at 18

African law in terms of the Information and Communications Technology Act<sup>6</sup>. An example of this would be where one of the parties to the agreement uses an AI electronic agent to autonomously fulfil one of the functions of the conclusion of an agreement. Another example would be automated transactions that occur on a website.

In conclusion, the law will likely continue to be two steps behind AI's rapid progress. Our current regulatory regime in South Africa does not yet adequately cater for the legal issues raised by AI. There needs to be a balance struck between the regulation of AI and its growth in South Africa. A lot of research needs to be performed, and the existing laws in place will need to be examined by experts in the field to draw up an action plan to assist the South African Government in dealing with the uncertainty of AI. Should we follow the global trend and do this, AI's future looks bright for all it can help us do. It's clearly essential to understand the legal implications of the technology in your own life and business. Contact an attorney at SchoemanLaw to help you better understand the link between technology and law in your life.



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<sup>6</sup> Information and Communications Technology Act 25 of 2002