

The People's Republic of China

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1. What is the understanding or definition of AI in your jurisdiction?

Artificial intelligence (AI) is a branch of computer science or intelligent science that involves researching, designing and applying intelligent machines. The main goal of AI is to study the use of machines to imitate and perform certain intellectual functions of the human brain, while the long-term goal is to use automatic machines to imitate human thinking and intellectual activities.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

First, some AI software has been widely used by lawyers in legal practice. For example, 'Fa Xiaotao' is AI software that can assist lawyers in the preliminary search and analysis of a case. Based on the description of the facts of the case, it can analyse and calculate the proportion of winning or losing for similar cases, the number of similar cases involved, the number of similar cases handled in different courts, and the number of similar cases that were successful or unsuccessful and their judgments. 'Fa Xiaotao' uses AI to identify the case, and uses Big Data to retrieve and feedback the above information. To a certain extent, it reduces the pressure of lawyers' analysis and retrieval at the early stage of the case, which helps lawyers to analyse the case more effectively and faster.

Second, some AI software is used in police activities. Typical applications, such as face recognition technology, are widely deployed in densely populated areas, such as airports, stations and squares. They can automatically capture dynamic face images, and compare and verify them with images in public security organ databases. They have played an important role in the investigation activities of public security organs, and have become useful assistants to public security organs pursuing fugitives.

Third, the legal question and answer (Q&A) robot used in court and arbitration commissions. In terms of practical applications, the so-called Q&As are mostly conducted in a fixed mode by clicking the corresponding question, or a relatively professional questioning mode. For some simple cases, the legal Q&A robot helps parties who have not yet commissioned a lawyer to have a simple preliminary understanding of the legal issues related to the case.

In addition, AI software is also used in court proceedings. For example, the ‘mobile micro court’ program, which was built using AI technology, currently used by courts in many provinces. All functions in this program, such as online filing, online court trial, online evidence cross-examination and online delivery, can be done in a web application. It can enable parties and judges to freely discuss and interact in real time with various message types, such as text, expressions, pictures, voice, geographic location and files in an online courtroom, and can also implement message reminder notification after the parties submit evidence and offline.

There is also AI-assisted legislation. At the stage of soliciting legislative opinions using Big Data technology, legislators actively solicit legislative suggestions through Big Data technology to broaden the ways for citizens to reflect. Citizens should also actively express their opinions through the internet and other means to make legislation truly reflect the democratic and scientific nature. The filing and review of established laws can strengthen the supervision of legislative work and improve the quality of legislation. In addition, AI is used to eliminate conflict between different legal norms and adapt to the needs of the socialist legal system.

3. If yes, are these AI tools different regarding
• independent law firms;
• international law firms; and
• in-house counsel
and what are these differences?

Based on the above, AI software has been widely used in Chinese legal practice. In addition to specific software or technology that is only used by judicial institutions (eg, face recognition technology used by public security agencies), other AI software related to law can be provided, including but not limited to independent law firms, international law firms and in-house counsel.

4. What is the current or planned regulatory approach on AI in general?

As far as the current regulatory approach to AI is concerned, China currently provides administrative guidance on AI from the perspective of industrial policy promotion, support and development. The New Generation Artificial Intelligence Development Plan released by the State Council in 2017 highlights this idea.

The Data Security Management Measures (drafting) regulation also regulated the algorithm accordingly. It stipulates that ‘network operators using technologies such as big data and artificial intelligence to automatically synthesize news information, blog posts, posts, comments, and so on through algorithms should indicate the word “synthesis” in a significant way’.

On 28 March 2018, the People’s Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission and Foreign Exchange Bureau jointly issued

the Guiding Opinions on Regulating the Asset Management Business of Financial Institutions (the 'Guiding Opinions'). The Guiding Opinions regulates the application of AI in the financial field, and carries out penetration supervision of the algorithms of intelligent investment advisers in terms of competency requirements, investor suitability and transparent disclosure.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

At present, the legal regulations for AI already have individual provisions in the legislation of e-commerce, data security and intelligent investment consulting.

The E-commerce Law stipulates that an e-commerce operator who sells search results of goods or services to consumers based on their interests, consumption habits and other characteristics should also provide the consumer with options that do not target their personal characteristics, and respect and equally protect the legitimate rights and interests of consumers. This is a legal response to Big Data algorithms.

In criminal law, since AI technology belongs to the high-level part of the application of internet technology, in a realistic situation in which AI criminal law legislation has not yet formed, the conceptual understanding of the pre-emptive method of AI criminal law legislation can be combined with the information network in which the current criminal regulations and computer information system crime are carried out. Taking computer information system crime as an example, computer information systems, as one of the main manifestations of AI infrastructure, are also a focus area of new AI crime.

The basic framework of the Personal Information Protection Law (drafting) takes the approach of empowering information subjects and imposing responsibilities on information controllers and processors. On the one hand, legislation must vigorously promote the development and application of AI technology. On the other hand, it must strengthen forward prevention and restraint guidance to ensure safety and controllability.

6. Is free data access an issue in relation with AI?

Since the Personal Information Protection Law of the People's Republic of China (PRC) and Data Security Law of the PRC are still in the process of being reviewed, China still has no clear legal standards for the definition of personal information and data, and how to protect personal information and data through legal provisions. According to current judicial practice in China, court trials of cases related to personal information and data are mainly based on the Tort Law, Consumer Protection Law, Criminal Law, Copyright Law, Anti-Unfair Competition Law and Information Network Transmission Protection Regulations.

For example, in the case of *Lipeng Pang v China Eastern Airlines and Qunar Company* on infringing personal privacy, the Beijing First Intermediate People's Court made it clear that airlines and online ticketing platforms should be held liable for the leakage of user personal information due to an online ticket purchase. In the case of infringing citizens' personal information by Li Jinbo, Pei Jiahao and Li Guole, that is, using a false loan website to illegally acquire and sell citizen's personal information, Dang Yang People's Court determined that it might affect property safety and it was a serious case that constituted the crime of infringing citizens' personal information. The Shenzhen Intermediate People's Court in the case of unfair competition disputes, such as *Gumi Technology v Yuanguang Technology*, determined that the operator's act of collecting, analysing, editing and integrating Big Data resources with commercial value was protected by the Anti-Unfair Competition Law of the PRC. The unauthorised use of web crawler technology to embezzle Big Data resources and use it to run similar applications constitutes unfair competition. In the case in which the Feilin law firm sued Baidu Wangxun for infringing information networks over communication rights, the Beijing Internet Court determined that the content of the article generated by AI software did not constitute a work, but meanwhile, the court pointed out that its related content could not be used freely. The unauthorised use of the content of the article by Baidu Wangxun constituted copyright infringement.

Therefore, in the context of the current era of Big Data and AI, there are increasing cases of infringement of personal information and data. China has formulated and promulgated the Personal Information Protection Law and Data Security Law, which are of urgent need and meet the needs of the development of the times.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

Throughout current practice, AI used by the court system in the construction of 'smart courts' mainly has the following forms.

The first is the digitisation and datafication of information, that is, the use of technical means to convert non-electronic information, such as voice and paper file text, into reproducible and convertible electronic data, thereby reducing the workload of the judiciary.

The second is the intelligentisation of the case auxiliary system, that is, the use of intelligent means to realise the one-key generation of fixed-format content, such as party information and litigation requests in a judgment document, thereby shortening the time for drafting the document and assisting the judge to improve the quality of the case.

The third is the prediction and supervision of entity referees. Forecasting refers to the AI system's automatic extraction of plot features and intelligent learning of judgment results for a large number of judgment documents, thereby establishing a specific case judgment model. According to the keywords selected by the judge or the facts and plots provided, the statistics of similar cases will be automatically displayed in real time to predict the actual judgment of the case, and more accurate, similar cases will be pushed for the judge's reference.

The fourth is to establish a unified and electronic evidence standard, that is, to summarise the experience through legal Big Data, and embed it in the digital case handling system of the public security, procuratorate and court to regulate judicial behaviour.

Based on the AI technology in the above courts, according to the data published in the 'White Paper on Internet Technology Judicial Application' (2019) issued by the Beijing Internet Court, the total number of legal documents generated by AI technology at the Beijing Internet Court is 117,729, including 4,199 copies of judgments, rulings, mediation and other documents. Therefore, in China's judicial practice, there are already cases where decisions are made through AI technology, and in the future, there will be more courts using AI to assist or automatically generate judgments.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Currently, there are no planned, discussed or implemented sectorial statutory regulations in China on the use of AI in the legal profession or services that are traditionally rendered by lawyers.

9. What is the role of the national bar organisations or other official professional institutions?

The Ministry of Justice of the PRC is a constituent department of the State Council in charge of judicial administration work within China. It mainly undertakes the following functions:

- formulates guidelines and policies for judicial administration, drafts relevant laws and regulations, formulates departmental regulations, formulates development plans for judicial administration and organises their implementation;
- formulates and organises the implementation of the general knowledge of the popularisation of laws for citizens, guides the legal publicity of various localities and industries, governs the work in accordance with the law and publicises the legal system abroad;

- supervises the work of lawyers and notarisation work, and takes corresponding responsibilities;
- supervises and manages legal aid work nationwide;
- organises the national judicial examination;
- controls the registration and management of judicial appraisers and judicial appraisal agencies nationwide; and
- undertakes other matters assigned by the State Council.

Combined with the New Generation Artificial Intelligence Development Plan released by the State Council mentioned above, the Ministry of Justice will formulate laws and regulations, and ethical standards to promote the development of AI, improve relevant policies to support the development of AI, and establish AI technology standards and intellectual property systems, which will play an important role in promoting the establishment and development of China's AI normative system.