

Argentina

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

The concept of artificial intelligence (AI) has scarcely been mentioned in recent Argentine legislation, and has not been regulated as such. There is currently no statutory definition of the term AI in Argentina, or a clear-cut or generally agreed upon definition of the term – the same as other modern technological concepts such as ‘Big Data’ and ‘machine learning’. Notwithstanding this, scholars’ legal doctrine has generally stated that AI may be defined as a device that can function in a similar manner to human intelligence, with the ability to learn, reason and outdo itself. To this end, it uses algorithms, machine learning or deep learning and neural networks to develop solutions. In general terms, it is agreed that AI implies that a system may collect large amounts of data, and on the grounds of such data, draw conclusions or make autonomous decisions replicating human intelligence, or at least developing rational thought in search of the best possible results. It is generally agreed that AI has certain degrees of autonomy in decision-making as opposed to machine learning, for example. Bear in mind that, in the future, all of this may be widened or narrowed depending on the legal evolution of the concept in Argentina, and in legislation that may be enacted accordingly. In Argentina, AI is expected to have an impact mainly on the health sector, financial and banking sector, manufacturing and retail commerce.

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?

Nowadays, there are no locally developed AI tools used in Argentina in practice for legal services. However, the public sector and the Public Prosecutor’s Office of the City of Buenos Aires (the ‘Prosecutor’s Office’), along with AI Lab within the University of Buenos Aires, created a system named ‘Prometea’, aimed at providing a predictive tool to the judiciary and public administration for the resolution of cases and administrative documents. While it has been presented by the Prosecutor’s Office as an AI system, it should be noted that it operates as a machine learning system with no self-autonomy for decision-making. It currently

operates for cases involving low amounts and similar characteristics, such as traffic accidents, to determine tort liability.

3. If yes, are these AI tools different regarding

- **independent law firms;**
 - **international law firms; and**
 - **in-house counsel;**
- and what are these differences?**

Not applicable.

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

The current/planned regulatory approach related to AI is still not very clearly defined in Argentina. Although certain initiatives have taken place with regard to technology in recent years.

With regard to Big Data, in 2017, Regulation No 11/2017 created the 'Big Data Observatory', an entity within the IT and Communications Bureau. Although its specific tasks were to be defined by further regulation, it aims to 'study the regulatory framework of personal data use', 'foster and create Big Data technological platforms', 'promote good Big Data practices' and 'propose new regulations'. To date, Regulation No 11/2017 remains without further regulations, and none of these regulatory frameworks have been passed.

Also, in November 2018, Decree No 996/2018 was issued, by which the Argentine federal government set forth the basis for an 'Argentine Digital Agenda' ('Agenda Digital Argentina') aiming to establish guidelines for a technological legal framework and digital institutional strategy to be implemented within the public sector throughout the country for 2030. These guidelines mention AI, as well as other technological concepts. Given the terms of the decree, its broad guidelines and potential scope, further specific regulations may be issued in the future.

In March 2018, experts in the technological industry were invited to visit the Chamber of Deputies to debate the challenges of the 4^o Industrial Revolution for Production, Labour and Social Security.³⁶ On this occasion, one of the topics was related to the use of AI in different types of productive processes, and experts agreed on the need to join forces to welcome new technologies.

Later in May 2019, Argentina, along with other 41 countries, adopted the Organisation for Economic Co-operation and Development (OECD) Principles on

36 For a description, see www.hcdn.gob.ar/prensa/noticias/2018/noticias_0423.html accessed 24 July 2020.

Artificial Intelligence³⁷ that aim to lead governments, organisations and individuals in the drafting of the design and management of AI systems, to prioritise persons' interests, as well as warrant that those that design and manage AI systems respond to its correct functioning. Therefore, on this path, Argentina started to take actions towards the drafting of a National AI Plan.³⁸ However, this path was put on hold because of the change of government that took place in December 2019, and later with the sanitary emergency caused by Covid-19.

Furthermore, internet service providers (ISPs) are key actors in the processing of Big Data, and their liability is still unregulated to date, in spite of several bills on the matter.

Without specific legislation currently in place, ISPs' duties and liabilities with regard to processing Big Data is judged based on tort principles (Civil and Commercial Code) and privacy law, including matters such as database ownership, purpose and final usage (ie, misuse) of analytics made with Big Data and treatment of sensitive data.

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

On a legislative level, there are no planned regulations to be issued on the general use of AI or machine learning systems. However, there is a bill project under examination in the Chamber of Deputies identified as No 0509-D-2019.³⁹ This project seeks the creation of a Federal Council of AI with the main mission of promoting the study, awareness, investigation and dissemination of topics related to AI and the like. This council would also be in charge of the following tasks: associating related actors involved in AI, providing an agreement space and promoting dialogue among them; acting as an observer of AI; preparing awareness campaigns regarding technology risks; drafting best practice guides, and promoting the transparency and use of open code in new technologies; among others.

Considering the lack of specific legislation on this matter, in AI-related matters, we will have to apply general legislation (such as the Civil and Commercial Code, Personal Data Protection Law, Trademark, Intellectual Property and Consumer Defense Regimes) trying to frame its provisions to the specific case, whether subsidiary or analogically. In a broad manner, below we state the most relevant provisions that may be applicable to an AI case.

37 This was notified by the OECD website, see www.oecd.org/centrodemexico/medios/cuarentaydospaisesadoptanlosprincipiosdelaoacdesobreinteligenciaartificial.htm. For the full text of the Recommendation of the Council on AI, see <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449> accessed 24 July 2020.

38 Eg, on July 2019 meetings were held. For more information, see www.argentina.gob.ar/ciencia/desconferencia-sobre-inteligencia-artificial accessed 24 July 2020.

39 For the full text, see www.hcdn.gob.ar/proyectos/textoCompleto.jsp?exp=0509-D-2019&tipo=LEY accessed 24 July 2020.

Data protection and privacy

The primary legislation governing data protection in Argentina is the Argentine Data Protection Act No 25,326 (the 'PDPA'), its Regulatory Decree No 1558/2001 and complementary regulations from the Agency of Access to Personal Information (AAIP), the enforcement authority of the PDPA. Using AI involves the processing of large amounts of data, including personal data, as defined under the PDPA, and compliance with this legislation must be strictly observed. The PDPA is grounded on consent and purpose principles, and rules on data controllers and processors, as well as on the collection and processing of sensitive data (personal data; racial and ethnic origin; political opinions; religious, philosophical or moral convictions; health data, among others) that may only be processed with the data subject's consent and if legally authorised to do so. This general provision must be duly considered when using AI technology.

Automatised processing of personal data

Moreover, another issue to be considered under Argentine law and the PDPA, is the processing of personal data through electronic or automatised means; the processing of 'informatised data' as the term is defined on the PDPA, and automatised decision-making, as when using AI technology. In these regards, the AAIP issued certain criteria for the better interpretation of the PDPA, and through Regulation No 4/2019, and with regard to automatised processing of personal data, determined that the data subject shall have the right to obtain from any data controller an 'explanation about the logic applied to an automatised decision', when the data controller makes decisions based only on the automatised processing of personal data, and such a decision produces the data subject's 'pernicious legal effects' or affects them negatively in a significant way. This shall be taken into account when processing personal data in Argentina, including with AI systems. Also, Argentina in 2019 executed 'Convention 108'⁴⁰ of the Council of Europe, which is a binding multilateral instrument on data protection related to the automatised treatment of personal data for members of the convention.

Torts and liability

In the case of AI, IT systems' capacity to make autonomous decisions seems to pose the greatest potential impact in terms of liability. The application of causation principles and determining who shall be considered liable for the fault that causes damages seems a crucial legal challenge, particularly if a negligence regime (as opposed to strict liability) is applicable. It is important to note that AI does not have legal capacity in Argentina, meaning that the

40 For the full text, see <https://rm.coe.int/16806c1abd> accessed 24 July 2020.

natural and legal persons behind the AI would carry all relevant rights and responsibilities related to the AI and its application.

Intellectual property rights

In Argentina: (1) Intellectual Property Act No 11,723, amended by Software Law No 25.036, applies to computer programs, and rules the rights of intellectual property and the use of software products, and Decree No 165/94 rules the use of software and its reproduction and databases; (2) Law No 22.326 rules Trademarks; and (3) Law No 24.481, Invention Patents and Utility Models, is applicable to AI technology, even though it makes no express reference to it and its implementation.

Consumer rights

In general, and with regard to AI, it should be noted that in Argentina's legal order and in the framework of consumer relations, sections 2 and 40 of the Consumer Defense Act No 24,240 state the responsibility of the entire chain of commercialisation for damages resulting from the provision of their products and/ or services, and the defects or risks and warranties derived from them.

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

Yes, free data access is an issue in relation with AI in Argentina, as AI requires the use of large amounts of data, which may encompass personal data as defined by the PDPA and therefore protected by it. The PDPA defines personal data as 'information of any type referred to physical individuals, or legal entities, either determined or determinable', and provides that data subjects have not only the right to access their personal data, but the right to rectify, suppress and update their personal data for periods of time no less than six months and free of charge.

With regards to the security and confidentiality of the personal data, the PDPA provides the general duties of security and confidentiality of information in sections 9 and 10. AAIP Resolution No 47/2018, on the other hand, provides the Recommended Security Measures for the Processing and Conservation of Personal Data, and notwithstanding they are soft law and therefore not mandatory, they serve as a parameter or ideal standard to be respected when processing personal data, including through AI means.

Finally, it should be noted that in May 2020 – and in the context of Covid-19 – the Ministry of Security issued Regulation No 144/2020 that approves the general protocol to prevent crimes by using digital open sources. In this regard, it should be noted that this regulation is very wide, does not differentiate among open

source intelligence/social media intelligence and will be in force, in principle, only as long as the events caused by the Covid-19 pandemic scenario last.

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?

To the best of the authors' knowledge, there are not yet any legal cases in Argentina regarding the provision of legal services or other sectors of relevance related to the use of AI or decisions concerning sectors that might be applicable to the use of AI in the provision of legal services.

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?

Lawyers are able to provide professional services and advise with the help of technology, and there are generally few regulatory limitations in Argentina with regard to the provision of legal services. What is generally regulated is the procedures before courts and the way lawyers should conduct themselves and practise law under the supervision of the bar association of the corresponding jurisdiction (membership of which is compulsory for the provision of legal services in the location where the lawyer is supposed to act).

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

The Bar Association of the Autonomous City of Buenos Aires has yet to give recommendations specifically on the use of AI technology, but it is a topic that has been addressed in several meetings and conferences considering the increasing importance it has in our profession.