

Argentina

Lisandro Frene, Richards, Cardinal, Tützer, Zabala & Zaefferer,
Buenos Aires

Sofía Grassi, Richards, Cardinal, Tützer, Zabala & Zaefferer,
Buenos Aires

Juan Aberg Cobo, Richards, Cardinal, Tützer, Zabala & Zaefferer,
Buenos Aires

Oriana Elizabeth Rojo, Richards, Cardinal, Tützer, Zabala & Zaefferer,
Buenos Aires

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

Although the concept of artificial intelligence (AI) does not have a uniform definition under Argentine law, it is addressed and mentioned throughout several ‘soft law’ regulations, most of them issued during 2023. There is currently no clear-cut or generally agreed upon definition of the term ‘AI’ – just as for other modern technological concepts such as ‘Big Data’ and ‘machine learning’. However, we can find a first definition outline in Order No 2/2023 issued by the Argentine Chief of the Ministerial Cabinet’s IT Subsecretariat,³⁸ which states that:

‘artificial intelligence currently groups together a set of technologies and is called an ability that was long considered unique to people: intelligence. At the time when this set of technologies was baptized with that name, the concept of intelligence was quite different from the ideas and theories that are currently discussed about what we now understand by human intelligence.’

On the other hand, 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 collects large amounts of data and, on the grounds of such data, draws conclusions or makes 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.

As in many other jurisdictions, the legal definition of ‘AI’ and its precise scope will be a key factor in determining the application of any future regulation about it.

38 Order No 2/2023. This Order approves the ‘Recommendations for a Reliable AI’. These recommendations contain a series of non-mandatory ethical principles, general and board guidelines about AI. For more information, the Order is available in Spanish at <https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384656/norma.htm>.

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?

Yes, there are many. The following are just a few examples of AI tools specifically designed for legal purposes:

Prometea³⁹

The public sector and the Public Prosecutor's Office of the Autonomous City of Buenos Aires (the 'Prosecutor's Office'), along with the Laboratory of Innovation and Artificial Intelligence at the Faculty of Law of the University of Buenos Aires, created a system named 'Prometea'. Prometea is aimed at providing a predictive tool to the judiciary and public administration for the resolution of cases and administrative documents. Prometea is able to create reports, segment documentation according to its content, download files where relevant information is found, create indicators with comparative graphics and automatically provide answers from a given input, among many other tasks. Nowadays, Prometea is fully operational in the Prosecutor's Office for cases involving low amounts and similar characteristics, such as traffic accidents, to determine tort liability.

Retrieval-augmented language model⁴⁰

The Argentine researcher's team of the Applied Artificial Intelligence Laboratory (AAIL) – part of the Department of the Departamento de Computación (Computer Department) at the University of Buenos Aires and the Instituto de Investigación en Ciencias de la Computación – together with law professors at Torcuato Di Tella University are developing an AI assistant expert in legal issues. The intention is for the application to be able to answer complex legal questions and do it rigorously from a real database of Argentine case law. To this extent, the team of researchers implemented a new technique called retrieval-augmented language modeling to use GPT-4 as a service. The added value of this technique is to include real information from a database for the answers generated, since GPT-4 cannot provide references for the sources from which it seeks information to generate its answers.

39 Related information from the Ministerio Público Fiscal (MPF) is available at <https://mpfciudad.gob.ar/institucional/2020-03-09-21-42-38-innovacion-e-inteligencia-artificial#:~:text=En%20la%20actualidad%2C%20Prometea%20se,%2C%20Corrientes%20y%20Santa%20Fe>.

40 See "Un asistente de inteligencia artificial para el derecho argentino" "An artificial intelligence assistant for Argentine law"* (*Publisher's translation) (Universidad Torcuato di Tella, 29 August 2023), www.utdt.edu/ver_nota_prensa.php?id_nota_prensa=21515&id_item_menu=6.

Legal One⁴¹

Thomson Reuters Argentina, supported by Thomson Reuters Canada, developed a management software for lawyers: 'Legal One'. Legal One uses AI to provide tools for the efficient management of law firms of different sizes. It intuitively responds to the information needed by lawyers by providing suggestions and integrating doctrine, legislation, jurisprudence and digital books related to the content of the files with which professionals work. It also automates the firm's operational tasks such as the drafting of pleadings, procuration and presentations.

Velox⁴²

Velox is a prototype that arises from a proof of concept developed in the period 2020–2021 in the scope of the Prosecutor's Office, as a result of exploring AI techniques that assist attorneys in the preparation of tax reviews issued by the prosecutor in administrative proceedings, prior to deciding on the files in which the payment of interest for late payment in the cancellation of invoices is claimed. This prototype, developed by AAIL, applies two AI techniques: (1) automation with reduced human intervention for the generation of tax hearings, court documents and communications; and (2) intelligent prediction of the content of documents.

Rulings rendered with AI tools⁴³

Local courts in the Río Negro Province implement AI-based tools issue rulings in tax foreclosure cases. The system is used for standardised and repetitive processes, in which AI makes it possible to replace a formal control previously performed by an employee with a higher degree of accuracy.

In addition, there are other cases where AI-based services and/or AI based tools are being used by local courts when issuing a ruling, but in all cases, they are used only to issue the latter in an easy-to-read format, so as to allow readers to understand the ruling in a clearer way.⁴⁴ These local courts do not use such AI-based services/tools in order to solve cases and have not issued any sentence deciding whether it is legal to provide legal services using AI.

41 "Legal One" (Thomson Reuters), www.thomsonreuters.com.ar/content/dam/ewp-m/documents/argentina/es/pdf/white-papers/brochure-legal-one.pdf.

42 Cervellini et al, "VELOX: Inteligencia artificial aplicada a las vistas" (2023) 22(2) EJS 221–242, <https://drive.google.com/file/d/1L1745gcQRTAo8GFrnZ7cmt7LUBXoepmp/view>.

43 "El Poder Judicial incorpora inteligencia artificial para el dictado de sentencias monitorias" "The Judiciary incorporates artificial intelligence for the issuance of monitoring sentences" * (*Publisher's translation) *Comunicación Judicial*, 23 February 2023, <https://servicios.jusrionegro.gov.ar/inicio/comunicacionjudicial/index.php/noticias/item/4580-el-poder-judicial-incorpora-inteligencia-artificial-para-el-dictado-de-sentencias-monitorias>.

44 The judgment is available in Spanish, "Dictan sentencia en lenguaje claro tras utilizar Inteligencia Artificial" "They pass sentence in clear language after using Artificial Intelligence" * (*Publisher's translation) (21 July 2023), <https://documento.errepar.com/actualidad/dictan-sentencia-en-lenguaje-claro-tras-utilizar-inteligencia-artificial>.

DoctIA⁴⁵

This is a widely used application for legal professionals, which uses AI to search for case law of the Supreme Court of Justice of the Argentine Nation (CSJN), allegedly without inventing material – as some generative AIs tend to do. DoctIA works by copying the legal text you are working on and recommending relevant CSJN case law to cite, providing a direct link to the original sentence.

3. If yes, are these AI tools different regarding

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

The use of these tools varies depending on whether they are aimed at the judiciary or private lawyers. In broad terms, a differentiation could be made between AI tools for the public sector and AI tools for the private sector.

Regarding the latter, and always focusing on AI tools for legal purposes, no clear distinctions could be made between in-house counsels and law firms. However, it may be worth mentioning that, as in most jurisdictions, international law firms tend to use more AI tools than local, independent firms.

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

With a new, recently elected government (December 2023), the current regulatory approach related to AI is still not clearly defined in Argentina. Since 2017, many ‘soft laws’ have established guidelines and generic principles that are not currently reflected in binding regulations (this is the case of the National Big Data Observatory created by Executive Order 11/2017 or the Argentine Digital Agenda created by Executive Order 996/2018).

Since 2022, several AI-related resolutions have been enacted in Argentina by different official entities. Moreover, a newly approved Provincial Constitution in the Province of Jujuy expressly addresses AI.⁴⁶ Even though this constitutes an improvement in Argentina’s AI regulatory landscape, the aforementioned laws are merely declarative, as they do not contain concrete and binding actions towards establishing a proper regulatory landscape regarding the use of the AI in Argentina, its development and its effects. Examples of these regulations are the following:

45 See “Jurisprudencia” *Diario Judicial*, 23 November 2023, www.diariojudicial.com/news-96493-jurisprudencia.

46 Constitución de la Provincia de Jujuy s.76, www.convencionconstituyente.jujuy.gob.ar/files/documents/34623500-2a9b-4d40-ac8f-8690a0173517_constitucion_jujuy_2023_10-07-2023_103501.pdf.

- (i) Order No 268/2022 issued by the Argentine Ministry of Economy's Knowledge Economy Secretariat;⁴⁷
- (ii) Order No 2/2023 issued by the Argentine Chief of the Ministerial Cabinet's IT Subsecretariat;⁴⁸
- (iii) Order No.44/2023 issued by the Chief of the Ministerial Cabinet's Public Innovation Secretariat;⁴⁹
- (iv) Order No 94/2023 issued by the Argentine Data Protection Authority (DPA);⁵⁰ and
- (v) Order No 161/2023 issued by the Argentine DPA.⁵¹

In addition, the Executive Order No 70/2023⁵² issued by Argentina's Executive Branch in December 2023, modifies the Argentine Aeronautical Code by means of which AI-driven aircrafts become expressly allowed in the country. However, the Executive Order states that these aircrafts shall be subject to specific regulations, which, at the time of writing, have not been defined.

Although Argentina has not enacted a general comprehensive AI act, some proposed bills⁵³ were introduced to the national congress, which, at the time of writing, have not been analysed by the latter. These proposed bills aim to set regulations on the investigation, development and use of the AI in Argentina to protect Argentine citizens' human rights, privacy and security.

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

On a legislative level, and with a recently elected President, there does not seem to be an organised regulatory plan on the general use of AI or machine learning systems, at least

47 Order No 268/2022. This Order states that software development for AI Systems, is an activity to be included that falls within the scope of the Argentine Promotion of Knowledge Economy Regime, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/375000-379999/376758/norma.htm>.

48 Order No 44/2023. This Order approves the 'Recommendations for a Trustable AI'. These recommendations contain a series of non-mandatory ethical principles, general and board guidelines about AI, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384656/norma.htm>.

49 Order No 44/2023. This Order approves Argentina's Second National Strategy on Cybersecurity, stating that it is necessary due to the development of new AI Systems, cybersecurity shall be a priority for all levels of government, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/385000-389999/389245/norma.htm>.

50 Order No 94/2023. Argentine DPA's 2022–2026 Strategic Plan. One of the strategic aims considered by the Argentine DPA is to develop and implement an AI and Data Governance Program <https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/384189/norma.htm>.

51 Order No 161/2023. Argentine DPA's Data Protection and Transparency use of the AI Program, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/385000-389999/389231/norma.htm>.

52 Executive Order No 70/2023, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/395000-399999/395521/norma.htm>.

53 eg, Bill No 2505-D-2023 introduced on 8 June 2023, which aims to create a legal framework to regulate the development and use of AI in Argentina. For more details about this Bill see, www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2023/PDF2023/TP2023/2505-D-2023.pdf.

so far. Most of the recently enacted regulations (such as the ones referred to in Question 4) set forth declarative generic guidelines, principles and/or recommendations, without concrete binding implications or effects in real practice.

Considering the lack of specific legislation on this matter, legal principles of generic legislation (such as the Civil and Commercial Code, Personal Data Protection Law, Trademark, Intellectual Property and Consumer Defence Regimes) are applicable to analyse and/or decide any AI related controversies.

Data protection and privacy

The primary legislation governing data protection in Argentina is the Argentine Personal Data Protection Act No 25.326 (PDPA),⁵⁴ its Regulatory Executive Order No 1558/2001⁵⁵ and complementary regulations from the Agency of Access to Personal Information (AAIP), the enforcement authority of the PDPA. During 2023, the Personal Data Authority issued Regulation 161/2023 creating the Program of Data Protection and Transparency in the use of the AI.⁵⁶ However, the program was not further regulated and to date it has no practical implications. Nevertheless, Argentine data protection regulations are one of the key areas of law to be analysed when considering using AI tools in Argentina.

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 Order No 4/2019,⁵⁷ 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 automatized 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 considered when processing personal data in Argentina, including AI systems. Also, in 2019, Argentina executed Convention 108⁵⁸ of the Council of Europe, which is a binding multilateral instrument on data protection related to

54 Argentine Personal Data Protection Act No 25.326, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm>.

55 Regulatory Executive Order No 1558/2001, http://ceic.org.ar/integrated_chart_Act_25326.pdf.

56 Regulation 161/2023, www.boletinoficial.gob.ar/detalleAviso/primera/293363/20230904.

57 Order No 4/2019, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/318874/norma.htm>.

58 Convention 108 of the Council of Europe, Strasbourg, 28 January 1981. For the full text see, <https://rm.coe.int/16806c1abd>.

the automatised processing of personal data for members of the Convention. Moreover, in November 2022, Argentina's Federal Congress enacted Act No 27,699 by means of which Argentina executed the modernised version of the latter, the Convention 108+⁵⁹ of the Council of Europe. The latter updates principles related to the automatised processing of personal data.

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.

Intellectual property rights

In Argentina: (1) Intellectual Property Act No 11,723,⁶⁰ as amended by Software Act No 25,036, applies to computer programs, and rules the rights of intellectual property and the use of software products, and Executive Order No 165/94 rules the use of software and its reproduction and databases; (2) Act No 22,326 rules Trademarks; and (3) Act No 24,481, Invention Patents and Utility Models,⁶¹ is applicable to AI technology, even though it makes no express reference to it and its implementation. In March 2024, a draft bill was introduced to the Federal Congress.⁶² This bill expressly addresses intellectual property rights related to AI. Nevertheless, this bill has not yet been analysed by the Federal Congress.

So far, Argentine case law has not faced controversy cases involving AI and Intellectual property rights, as it is currently happening in other jurisdictions (ie, the US and EU).

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 24,240⁶³ state the responsibility of the entire chain of commercialisation for damages resulting from the provision of their products and/

59 Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, Elsinøe, Denmark, 17–18 May 2018. For the full text see, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf.

60 Intellectual Property Act No.11,723 www.wipo.int/wipolex/en/text/584401.

61 Act No.24,481, www.argentina.gob.ar/normativa/nacional/ley-24481-27289/texto.

62 Bill 1013-D-2024. For full the text see, www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2024/PDF2024/TP2024/1013-D-2024.pdf.

63 Consumer Defense Act No.24,240, <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/638/texact.htm>.

or services and the defects or risks and warranties derived from them. Therefore, at least in theory, any individual who is part of such chain of commercialisation may be deemed responsible for the provision of the AI System, defects, risks and warranties even if such individual did not develop the AI System but participated in its commercialisation.

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

Yes, as in most countries with data privacy law in force, access to data by AI tools (typically to use them as 'training data') is a crucial legal issue taken into account when using such tools; and one of the most carefully considered clauses when discussing contracts which involve acquiring AI products and/or the provision of services involving AI technology. Currently, the local data protection agency has an ongoing investigation against Worldcoin (quite well known because similar proceedings against the company are taking place in other jurisdictions) precisely because of an alleged illegal access and processing of users' data.

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 our knowledge, as of April 2024, there are not yet any legal cases in Argentina regarding the provision of legal services specifically related to the use of AI or judicial decisions concerning legal services provisions through the use of AI.

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 provided by lawyers?

Although there are no formal rules about it – neither legal rules nor rules from the local bar associations – in practice, many lawyers and law firms use AI tools in their daily practice (some generic AI tools, like ChatGPT or Copilot; and some specifically designed for the legal industry, such as the ones mentioned in response to Question 2).

In recent months in the public sector, there seems to be an intention to promote and regulate the use of AI. On 9 April 2024, the Argentine Justice Ministerium issued Order No 111/2024⁶⁴ by means of which the Comprehensive National AI in Justice Program was created. Some of the key aims foreseen in the Program are to promote any necessary AI-use related actions in order to improve the administrative and court proceedings and to efficiently implement AI-related

64 Order No 111/2024, www.boletinoficial.gob.ar/detalleAviso/primera/305645/20240411.

tools in order to optimise the work carried out by everyone that is involved in administrative and court proceedings.

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 conducts training and periodic courses on the use of AI technology and the use of different tools in the exercise of the legal profession. However, it is a topic that has been addressed in many meetings and conferences considering the increasing importance it has in our profession. In addition, within the services available to the enrollee, bonuses and discounts are offered for the 'LegalRun' tool, a robotic and AI solution for tracking and managing judicial processes in Latin America.

There are also other professional associations that offer their lawyers training and congresses related to the subject, such as the Bar Association of Lomas de Zamora, the Bar Association of La Plata and the Bar Association of the Judicial Department of Azul. In addition, the Corrientes Bar Association developed the first postgraduate degree in Medical Law and Artificial Intelligence.