Introduction

New and emerging technologies, including Artificial Intelligence (AI), have the potential to transform the way and manner we transact and conduct daily activities. However, they pose potential legal risks and issues that necessitate the need for laws to address the issues and risks raised by emerging and new technologies. Countries around the world are putting mechanisms in place to regulate the use of these technologies. In the United Kingdom, the Artificial Intelligence (Regulation) Bill has passed the first reading in the House of Lords. In today's edition of TMT Thursday, we will be discussing the liabilities for damages caused by AI.

Views on the Liability of Artificial Intelligence

Generally, liabilities can only be assigned to natural persons and artificial persons i.e., companies and other legally recognized entities. AI does not belong either, and on this basis, it has been argued that AI cannot bear liabilities and that damages suffered from the use of AI cannot be compensated or remedied through the court system.[1]

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[1] Samson Dada The Legal Status Of Artificial Intelligence In Nigeria https://simplylaw.com.ng/the-legal-status-of-artificial-intelligence-in-nigeria/ accessed November 23, 2023

Alternatively, and based on the legal principle of *ubi jus ibi remedium*, (where there is a wrong, there is a remedy), it has been argued that the victim should be compensated by the manufacturers, owners, or users of the infringing AI.

In practice, the liability of AI can be assessed in the following ways:

1. Product Liability

Manufacturers and developers of AI products may be liable for defects in the AI product. In the UK, the AI Bill proposes to impose obligations on entities that develop, deploy, or use AI to test it thoroughly and transparently and comply with applicable laws including without limit to equality laws. Similarly, the Nigerian constitution provides for the right against discrimination – therefore, any entity that develops, deploys, or uses AI must ensure that the AI program is inclusive by design and complies with all other applicable laws. Failure to comply with these laws exposes the developer to liabilities.

Additionally, consumer rights to information, safety, and redress are critical areas guaranteed by the Federal Competition and Consumer Protection Act, 2018 (FCCPA). The FCCPA provides that consumers shall receive quality, defect-free goods and imposes liability on suppliers for damage caused by defective goods or services.[2] However, the FCCPA's definition of "goods" does not consider AI, making it difficult to determine the supplier in the context of AI. Also, the absence of a definition of "defect" further complicates the placement of AI liability within the realms of product liability.

2. Vicarious Liability

Vicarious liability refers to holding one party (usually an employer) responsible for the actions of another (usually an employee). In the context of AI in Nigeria or other jurisdictions, this concept becomes complex and depends on the specific legal framework. Since AI is a tool operated by humans, it raises questions of liability when its usage occasions harm. Vicarious liability in AI may be applied when an AI system is used by an individual or corporation, attributing the AI's actions to the entity that owns or controls it.

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[2] Section 167 FCCPA

In Nigeria, the regulatory landscape of AI and its liabilities is fledgling. The ability to impose vicarious liability for AI actions will depend on factors such as control and ownership of the AI system. If an individual or company has control and ownership, they could be held responsible for the AI's actions. Negligence in deploying AI or failure to implement proper safeguards may also lead to liability. Additionally, contractual agreements among parties involved in AI creation, deployment, or use can determine liability.

AIs can be treated as agents of their owners or manufacturers, with the human principal being held vicariously liable for damages caused by AI. This is because AI is designed to accomplish goals and receive tasks from humans. However, identifying the principal is a practical challenge, especially when multiple parties are involved in the development or usage.

3. Strict Liability

Strict liability is the imposition of liability without fault on an individual or company. It is appropriate for situations where it is difficult for the victim to prove negligence on the part of the developer or user. However, this may not be appropriate where the person or entity behind the AI is unidentifiable or the cause of the damage is unclear.

Conclusion

The rise in the use of AI is accompanied by benefits and risks. There is a need to balance the risks vis-a-vis the benefits and provide adequate compensation mechanisms for damages caused by AI. Due to the absence of comprehensive regulations on the deployment of AI, compensation may be provided by means of pre-existing legal frameworks such as the law of torts which is insufficient for apportioning liability that arises from the use of AI. Looking forward, there is a need for a legal framework that specifically caters to issues arising from the use of AI in Nigeria.

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[3] European Parliament resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014(INL)).