

# Electronic Personhood

## The Law and Artificial Intelligence

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This policy brief examines the potential of considering Artificial Intelligences (AIs) as legal agents in their own right, what legislation might apply to them, and the difficulties that will arise trying to police them.

### Background

Artificial Intelligence is a rapidly growing, high impact area of research. AI software trades stock, helps with surveillance, and determines targeted adverts. Robots (AIs with physical form) work in factories, assist with surgery, and are starting to drive on our roads. AIs interact with human beings in a multitude of ways and make decisions with real world consequences.

In March 2016, the European Parliament's Committee on Legal Affairs(JURI) produced a draft report on legal issues arising from Artificial Intelligence (AI) and Robotics<sup>[1]</sup>. Noting the increasingly diverse interactions between humans and AIs, the report advises that "the risks posed by these new interactions should be tackled urgently".

The JURI report suggests treating AIs as "persons", and this aspect of it has been the main focus of the media. Current state of the art AIs are able to perform complex and extensive reasoning and decision making, but they are limited to very specific domains and tasks. No AI is close to approaching the "general intelligence" that humans or mammals display, able to adapt and learn in a wide range of situations. As such, while the idea of personhood for AIs helps to frame discussion of what rights and responsibilities fall to them (in a form of "partial personhood"), full personhood equivalent to human beings is not feasible at this time.

### Current Legislation

There is no existing UK or EU legislation specifically pertaining to AI agents, but some laws do already apply to them. Data stored by an AI is covered by Data Protection law, limiting

### Overview

- AI is not yet approaching human intelligence.
- There is no legislation specific to AI in UK or EU law.
- AIs have the potential to break many existing laws if not properly regulated.
- Key in these cases will be determining what responsibility should be devolved to AIs as legal "partial persons" separate to their manufacturers or operators.
- Enforcement will rely on careful definitions.

its use and lifespan. Contract Law allows for contracts to be formed via agents, so AIs could act as intermediaries, though not form their own contracts. Liability for an AI's actions ultimately falls on the owner or the manufacturer, depending whether courts believed they resulted from design or misuse.

The domain of Animal Rights is a good parallel when considering the idea of non-human persons, but legislation is often focused on the prevention of cruelty rather than establishing what subset of human rights apply. Given that in their current form AIs are not capable of suffering, it is rights and responsibilities, not cruelty, that should form the focus of discussion. Switzerland(1992) and Germany(2002) were the first countries in Europe to assign animals rights as "beings" rather than as objects. New Zealand(1999) and the Balearic Islands(2007) guarantee basic legal rights to great apes. India(2013) has banned the capture or import of cetaceans, citing their intelligence and right to agency. In 2015, a US court granted two chimpanzees legal personhood for the first time. Public and political trends certainly appear to be towards accepting other kinds of intelligence than our own, and equating that intelligence with legal rights.

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## Implications

Most of the issues arising from increased prevalence of AIs correspond to either their use of data or their ability to take actions with meaningful consequences.

AIs which gather and hold information on people are at risk of using it inappropriately. Privacy and security concerns could arise if an AI decides to share certain data with the wrong parties, or to gather data without the right permissions. An AI could infringe upon a person's right to dignity by publicly exposing information about them, or by conversing with them in an inappropriate or offensive manner. Less easily detectable, but equally severe, an AI making decisions about a person (for example whether to grant them a mortgage) could use information that the law would consider discriminatory, such as their race. When performing creative tasks such as design or writing, an AI would be at risk of violating intellectual property law if they use ideas belonging to others without appropriate permission or citation. In many limited interactions, it is difficult for an individual to tell whether they are dealing with a person or an AI and it could be considered deceptive if this information was not clearly stated or at least requestable. An AI could even feasibly lie about its nature, but unless it was impersonating a specific person this would not currently be illegal.

In cases where the law is broken in any way by an AI, the question of liability will arise. To what extent an AI is responsible for its actions is a complicated question. It will partly be constrained by its design, and partly by the data or instructions it has been given since, but the possibility will always be present that the combination of these two things will result in behaviour that neither the owner, operator or manufacturer could have reasonably predicted. In this sense, parallels could be drawn with dog ownership, where cases are judged to determine whether the fault lies with the handler or the dog. Individuals could conceivably have their right to handle AIs removed if they are judged irresponsible.

## Enforcement

A major factor in the ability to enforce any AI focused legislation would be the classification of where an AI starts and ends. What might appear to be a single artificially intelligent system is often the result of a number of collaborating subsystems. It is very possible that one or more of these subsystems could be considered to be a simpler AI. Likewise, one or more collaborating AIs may share data or processing so fluidly that they act indistinguishably from a single, unified system. In the absence of the clear demarcation afforded to human beings by physical bodies, the notion of what constitutes an AI "individual" requires very careful deliberation. Classification of what constitutes an individual aside, any effective legal enforcement would need to be able to identify those individuals. For autonomous road vehicles, the existing number plate system would fulfil this purpose. If a delivery drone starts flying dangerously or a bank's lending AI starts using data inappropriately then the actions must be traceable back to the system that took them in a similar way.

When legislating it is important to bear in mind the impact cautious, heavily-restrictive, early regulations can have on the ability of researchers in the field to remain globally competitive. The UK government has been praised by Robotics and Autonomous Systems researchers for its permissive regulation; allowing autonomous motor vehicle and delivery drone research and development to thrive.

Finally, as a substantial portion of the human interactions with AIs will be over the internet or as decisions made by remote AI agents of organisations, it will be critical that the legislative strategy addressing them be undertaken as part of an international effort, to avoid illegal AI usage simply being moved to less restrictive countries.

## Endnotes

1. European Parliament Committee on Legal Affairs, DRAFT REPORT with recommendations to the Commission on Civil Law Rules on Robotics, 2016
2. Günther, J. et al., Issues of privacy and electronic personhood in robotics, 2012, IEEE