



FACULDADE DE DIREITO
Universidade de Lisboa

INTENSIVE POSTGRADUATE PROGRAM
AI IN LEGAL PRACTICE AND ITS REGULATION

Curricular unit

AI and Liability

Responsible Academic staff and respective workload in the curricular unit

Paul De Hert with a guest lecture by Georgios Bouchagiar

Syllabus

- Liability and criminal law
- AI applied to law:
 - AI used by institutions (eg, Anti-Money Laundering financial institutions)
 - AI in courtroom (to determine guilt or predict risk of future crime)
- Law applied to AI:
 - Evidence: relevance and reliability; can we explain it? Can we meaningfully challenge it in court? Can it be excluded?
 - Criminal liability of a person and/or an AI-agent
 - Liability of law enforcement for damage (eg, seizure after using AI)

Teaching methodologies

By seminars and tutorials

Georgios Bouchagiar (Luxembourg University) will give a 2-hour guest lecture reflecting on Gless, Nutter and Wexler and discussing AI as expert evidence (admissibility, relevance, reliability and weighing), as well as the issue of trade secrecy in criminal proceedings.

Main Bibliography

Mandatory readings

-Council of Europe, 'European Committee on Crime Problems (CDPC) - Feasibility Study on a Future Council of Europe Instrument on Artificial Intelligence and Criminal Law' (CDPC(2020)3Rev, September 2020)

<https://rm.coe.int/cdpc-2020-3-feasibility-study-of-a-future-instrument-on-ai-and-crimina/16809f9b60>

- United Nations High Commissioner for Human Rights *The Right to Privacy in the Digital Age* Report, UN, September 2021, 16p

-Xavier Tracol, '[Electronic Evidence in Criminal Trials: The Use of PowerPoint Presentations by Prosecutors and Attorneys in the Courtroom](#)', in Biasiotti M A, Bonnici J P M, Cannataci J and Turchi F (eds), *Handling and Exchanging Electronic Evidence Across Europe* (Springer 2018) Chapters 9, pp. 149-162

Expert Group on Liability and New Technologies – New Technologies Formation, *Liability for Artificial Intelligence and other emerging digital technologies*, Report, 2019, 70p.

- Raffaella Brighi & Michele Ferrazzano, '[Digital Forensics: Best Practices And Perspective](#)' in Caianiello M & Camon A (eds), *Digital Forensic Evidence: Towards Common European Standards in Antifraud Administrative and Criminal Investigations* (Wolters Kluwer 2021) pp. 1-48



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Guest Lecture Reading Materials

-Nutter P, 'Machine Learning Evidence: Admissibility and Weight' (2019) 21 Journal of Constitutional Law 919
<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1691&context=jcl> accessed 29 May 2022

-Wexler R, 'Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System' (2018) 70 Stanford Law Review 1343 <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/06/70-Stan.-L.-Rev.-1343.pdf> accessed 29 May 2022

-Gless S, '[Ai in the Courtroom: A Comparative Analysis of Machine Evidence in Criminal Trials](#)' (2020) 51 Georgetown Journal of International Law 195

Optional readings

- Jan De Bruyne, Elias Van Gooland & Thomas Gils, 'Tort Law and Damage Caused by AI Systems' in Bruyne J and Vanleenhove C (eds), *Artificial Intelligence and the Law* (Intersentia 2021) Chapter 14, pp. 359-403

-Ferguson A G, '[Big Data and Predictive Reasonable Suspicion](#)' (2015) 163 University of Pennsylvania Law Review 327

-Souza S P, 'The Spread of Legal Tech Solutionism and the Need for Legal Design' (2022) European Journal of Risk Regulation 1

-Tavarez K.Q., Vogiatzoglou P & Royer S, '[Legal Challenges in Bringing AI Evidence to the Criminal Courtroom](#)' (2021) 12(4) New Journal of European Criminal Law 531

-Schermer B., Georgieva I., van der Hof S. & Koops Bert-Jaap, '[Legal Aspects of Sweetie 2.0](#)', in Simone van der Hof, Ilina Georgieva, Bart Schermer & Bert-Jaap Koops (eds.), *Sweetie 2.0 Using Artificial Intelligence to Fight Webcam Child Sex Tourism*, (2019), Springer, pp. 1-94

-Royer S., Conings Ch. & Marlier, '[Substantive and Procedural Legislation in Belgium to Combat Webcam-Related Sexual Child Abuse](#)', in Simone van der Hof, Ilina Georgieva, Bart Schermer & Bert-Jaap Koops (eds.), *Sweetie 2.0 Using Artificial Intelligence to Fight Webcam Child Sex Tourism*, (2019), Springer, pp. 183-242

-Sveva Avveduto, Sara Conti, Daniela Luzi, and Lucio Pisacane, '[The Conceptual Representation of the "Electronic Evidence" Domain](#)', in Biasiotti M A, Bonnici J P M, Cannataci J and Turchi F (eds), *Handling and Exchanging Electronic Evidence Across Europe* (Springer 2018) Chapters 10, pp. 163-234