AI's promise and problem for law and learning

By John Bandler, Esq., Bandler Law Firm PLLC

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Artificial intelligence (AI) is the latest technological tool and the debates are ongoing about future legal and societal implications. Maybe AI will make everything better and improve our lives and solve the world's ills. Maybe it will cause the end of human existence. Or somewhere in between.

Like every tool, AI can be used for good or bad, either intentionally or unknowingly.

Consider the hammer — an essential tool that is millions of years old — helpful for driving nails into wood and shaping metal. An expert carpenter or metal worker swings it effortlessly and observes the result after each strike. Used improperly you can accidentally break a thumb or tooth. Carried by a criminal gang member it is a deadly and illegal weapon for an assault.

Similarly, AI has benefits but can be misused.

Also worrisome is that AI will be used as a crutch that short circuits learning. Some people look for shortcuts. What effect of AI on that learning process and the result, for students and when lawyers use AI to draft documents and research?

AI defined simply

AI is a large field of academic research and practical application, but time is valuable and space is short and so let's break it down.

Artificial intelligence is a term backed by much brainpower but also marketing hype. It means different things to different people but is simply the combination of two words. Let's look at each.

Intelligence is essentially the ability to think, learn, reason, and solve problems. Mostly in connection with human intelligence, it is the ability of us living, breathing *homo sapiens* to think and learn. We have an evolved brain with many abilities. Each generation benefits from ever larger libraries of knowledge to learn from. Each new human has an advanced start point from which to generate new thought and discovery.

Artificial means something made by humans, rather than occurring naturally.

Therefore, artificial intelligence can mean a type of intelligence created by humans. It uses computers with processing power and storage, software, and data. The data can be as vast as our accessible body of knowledge, including books, articles, the public internet and other human content and communication.

Today every person can use an AI tool to summarize or "write" text. ChatGPT from OpenAI is one example and there are many others.

AI is a milestone in human knowledge, communication, and creation, where prior milestones included cave drawings, stone writing, papyrus and paper, the printing press, typewriters, early computers, the internet, and more.

The promise and hope

The hope is this new tool allows us humans to do good work faster and better. Workloads and burdens are reduced, efficiency increases.

The problem

The problem is it also allows humans to work for bad faster.

There are students and lawyers who need to write and who may feel they lack time, skills, or knowledge to do the research and writing themselves. Until recently, their options were to ask a trusted colleague or do an internet search for hopefully helpful samples. Those methods always had risks of reliability or that the sample would not be quality, applicable, or adapted properly.

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Students learn by doing their own research and writing and by putting in effort. Students who copy, plagiarize, or take inappropriate shortcuts are not learning (and may be violating school rules or even copyright laws).

Copying without proper quoting and citing does occur on occasion. The internet and digital media made it easy for an unscrupulous student to instantly copy and paste. To combat this, plagiarism detection software was developed.

Then other software was created to help evade or defeat that plagiarism detection software. This software may be marketed as a tool to further student learning and protect them from false positives but other uses are clear. Then there are services for pre-written papers and custom papers.

Now we have AI tools to "generate" text and papers. No surprise that some schools now have software to try to detect the use of those tools.

Teachers and others may be split on the propriety of AI tools and their uses. But most reasonable teachers (and students) would agree that learning is in the effort. Effort needs to go into reading,

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thinking, writing, and editing. If student activity consists of 'copy and paste' then there is no learning. Handing in someone else's paper — whether generated by another person or an AI tool — goes against the spirit of learning and any assignment.

Put simply, learning and writing is not just a destination but a process and journey.

The concern for lawyers

Now it gets trickier.

Lawyers need to research and understand the law and the facts of their client's case. They also need to get paid and bill for services rendered, often by the hour.

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If there are tools that can help the lawyer do their job faster and better, that is good for the client. After all, the client is paying for legal services and not to fund the lawyer's learning.

Every lawyer has used shortcuts to avoid reinventing a legal wheel. Use a sample, a boilerplate, and then read, review, adapt and edit as needed until the words fit.

As a prosecutor, I responded to hundreds of motions where the defendant requested dismissal of the complaint or indictment, suppression of evidence, and all of the other claims defense attorneys make to protect their client's rights. My responses stood on the shoulders of some excellent writing by others.

First the template, but then review and customize and adapt. Imagine a prosecutor who clicked a box hundreds of times to autocomplete the language about a Mapp suppression motion, never reading it. Then they need to conduct their first Mapp hearing and their first question is "What's a Mapp hearing?" Not good. You need to read, understand, adapt, and adopt because it becomes your product.

Now imagine a lawyer who uses ChatGPT for legal research and to formulate their filing for the court. They assume the AI tool has generated valid arguments and legal references and submit the document. Even when reliability is questioned they still fail to verify.

Yes, there are instances where lawyers relied on AI tools which provided false information and even fabricated fictitious cases. (This fabrication is sometimes called an "AI hallucination.") Clearly, this is not good for either the client or the lawyer. Overreliance on a tool is bad, reliability matters, and verification is needed.

Lawyers need to write, and their writing needs to be reliable and credible, backed by law and facts. The duty to verify exists for any tool.

Further, AI tools are creating fertile ground for the law in areas of copyright, defamation, and privacy.

The takeaway

AI is here to stay and you will see continued use of it for good, bad, and everything in between.

AI is the current edge of technology and impacts learning and law.

Let's hope humans can exercise the primary control over our own creations and thoughts. We should work to make our own decisions (including about what we write) based upon facts and reason, after proper research and assessment of reliability.

John Bandler is a regular contributing columnist on cybercrime and cybersecurity for Reuters Legal News and Westlaw Today.

About the author

John Bandler is a lawyer, consultant, author, and adjunct professor at Elisabeth Haub School of Law at Pace University. He helps protect organizations from cybercrime, improve cybersecurity, and better manage information assets. His firm, based in New York, is **Bandler Law Firm PLLC**, and he can be reached at JohnBandler@JohnBandler.com.

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