

FREEDOM OF EXPRESSION IN THE LIGHT OF ARTIFICIAL INTELLIGENCE

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SUMMARY

Artificial Intelligence (hereinafter referred to as "the AI") becomes widely present in numerous spheres of society including law. It affects human rights and freedoms, especially where their exercise and respect belong to public sphere, controllable more or less by the public authorities, such as social media. Freedom of expression in the light of AI can be either supported or limited. Risks such as manipulation, unrecognized hate speech, deepfakes should be minimized using the AI. AI regulation has recently been the priority of the European Union and the Council of Europe. It has resulted, inter alia, in AI Act of the European Union and the Framework Convention on Artificial Intelligence of the Council of Europe. This paper analyses the impact of artificial intelligence to freedom of expression, its benefits and dangers, possible solutions in supervising the AI practices, and legislative framework of the AI.

KEYWORDS: artificial intelligence, freedom of expression, public, manipulation, legislative regulation

SLOBODA IZRAŽAVANJA U SVJETLU UMJETNE INTELIGENCIJE

SAŽETAK

Umjetna inteligencija (u daljnjem tekstu "AI") postaje široko prisutna u brojnim sferama društva uključujući pravo. Utječe na ljudska prava i slobode, posebice tamo gdje njihovo ostvarivanje i poštivanje pripada javnoj sferi koju više ili manje kontroliraju javna tijela, poput društvenih medija. Sloboda izražavanja u svjetlu umjetne inteligencije može biti podržana ili ograničena. Rizike kao što su manipulacija, neprepoznati govor mržnje, deepfake treba svesti na minimum korištenjem AI-ja. Regulacija umjetne inteligencije nedavno je prioritet Europske unije i Vijeća Europe. To je, između ostalog, rezultiralo Zakonom o umjetnoj inteligenciji Europske unije i Okvirnom konvencijom o umjetnoj inteligenciji Vijeća Europe. U radu se analizira utjecaj umjetne inteligencije na slobodu izražavanja, njezine prednosti i opasnosti, moguća rješenja u nadzoru AI praksi te zakonodavni okvir AI.

KLJUČNE RIJEČI: umjetna inteligencija, sloboda izražavanja, javnost, manipulacija, zakonska regulativa

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INTRODUCTION

What is artificial intelligence and what does its relationship with the freedom of expression entail?

Artificial intelligence is in AI Act interpreted on one hand as 'evolving family of technologies that contributes to a wide array of economic, environmental and societal benefits across the entire spectrum of industries and social activities'². We may recognize the purpose of Artificial intelligence as to serve to society and to provide benefits from which the subjects may prosper in various areas of society. This entails, according to AI Act among others, healthcare, agriculture, food safety, education and training, media, sports, culture, infrastructure management, energy, transport and logistics, public services, security, justice, resource and energy efficiency, environmental monitoring, ...

On the other hand, it entails risks and dangers and cause harm to public interests and fundamental rights. The harm, as defined in the Preamble of the AI Act may entail 'material or immaterial, including physical, psychological, societal or economic harm'³.

There have been various approaches towards defining the artificial intelligence in literature. Maybe the simplest one would be that through AI the computers or machines are enabled to learn and thus to provide the output, which is different from input given to them, and are thus given the features normally inherent to humans. The computers are thus able to engage in human-like thought processes⁴. Accordingly, the machines can develop their own way of acting and thus influence the various processes themselves. Control of such acts is therefore of great importance and to that extent the legislation plays a very important role.

Specific features of artificial intelligence, as recognized in the Proposal of the AI Act may directly affect some of the fundamental freedoms and human rights among which is freedom of expression. These features include opacity, complexity, dependency on data, and autonomous behavior.⁵ Autonomous behavior is what puts artificial intelligence systems at risk.

AI AND LAW, THE NECESSITY OF A REGULATION

Artificial intelligence is increasingly becoming a part of interactions in society, some of which may have legal consequences. Processes guided under artificial intelligence may be unpredicted, manipulative and may limit certain rights of other persons. That is the reason legislative regulation is of utmost importance. It is well accepted that the regulation is also much slower than the technology changes. The mere process of enacting a certain regulation is time consuming, especially when we are talking about adopting a regulative act at the level of, such in case of the AI Act, the European Union. The role of the legislation in limiting the AI⁶ and at the same time protecting the data of private subjects is indispensable.

2 Rec. 4 of the AI Act of the EU (Proposal for a Regulation of the European Parliament and of the Council Laying Down harmonised Rules on Artificial Intelligence (Artificial Intelligence Act))

3 Rec. 5 of the AI Act

4 Joost Nico Kok, *Artificial Intelligence*, Eolss Publishers Co. Ltd., Oxford, United Kingdom, P. 2

5 See 3.5 AI Act

6 Marsch N., *Artificial Intelligence and the Fundamental Right to Data Protection: Opening the Door for Technological Innovation, Regulating Artificial Intelligence* edited by Thomas Wischmeyer, Timo Rademacher, Springer Nature Switzerland 2020, P. 48,

One of the possible ways of regulation is a soft law, which is normally implemented by digital entities themselves, which guide the behavior of the subjects within their area of activity. However, the rapid increase of the possible uses of the AI warrants for legislative regulation. The first comprehensive AI Act, the EU regulation that will enter into force on 2 August 2026.

FREEDOM OF EXPRESSION IN THE LIGHT OF THE AI, SOME POSSIBLE LIMITATIONS

According to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ’ - *Article 10*

The freedom of expression has been regarded in three aspects:

1. Freedom to hold opinions
2. Freedom to receive information
3. Freedom to impart information.

The freedom of expression is narrowly related to democracy and one of the preconditions thereof. In the absence of guarantee of the right to freedom of expression that is also protected by judiciary which is independent and impartial there is no democracy.⁷

The freedom to hold opinions

Respect of the right to hold opinions is the prerequisite for freedom of expression. Any restrictions to this right shall undermine the very nature of a democratic society.⁸

One of the ways to promote the freedom of expression in a democratic society and with a view of profound influence of digital technologies to modern society is transparency and independent research.

According to the Council of Europe, the legal subjects or intermediaries, should publish the necessary information in ‘machine-readable format to ensure transparency of their policies’⁹. Such policies should also contain information regarding content removal especially when it concerns the freedom of expression. That should allow the individuals who consider that the data published may be detrimental of false, to know the proceedings for removal of such a data before eventual recourse to judicial or administrative proceedings.

Another aspect of ensuring the freedom of expression in the time of digitalization is the support of independent research. It is recommended that national authorities ‘create secure environments that facilitate research into the societal and individual implications of the use of digital technology for... freedom of expression. ’¹⁰

⁷ Bychawska-Siniarska Dominika, Protecting the right to freedom of expression under the European Convention on Human Rights, A handbook for legal practitioners, Council of Europe, P.11

⁸ P.Van Dijk, G.Van Hoof, Theory and Practice of the European Convention on Human Rights, 1990, p. 413

⁹ Article 3 of the Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression (Adopted by the Committee of Ministers on 6 April 2022 at the 1431st meeting of the Ministers’ Deputies)

¹⁰ supra 6, Article 6, para. 6.3

The freedom to receive information

The freedom to receive information may be inherent to legal subjects, both natural and legal, but also to media which, based on received information further impart that information. For that reason, free and not limited access to information is a precondition for further imparting and disseminating information. On the other hand, the freedom to receive information is directly connected with the freedom to impart information and is applicable both on the side of media and legal subjects, natural or legal persons. The free flow of information on both sides is necessary.

The reliable and accessible sources of information lead to free media. In the time of digital technologies and especially with an outburst of artificial intelligence, media may rely also to AI to prepare itself for dissemination of information.

The scope of influence of artificial intelligence to media can be seen in the following table:

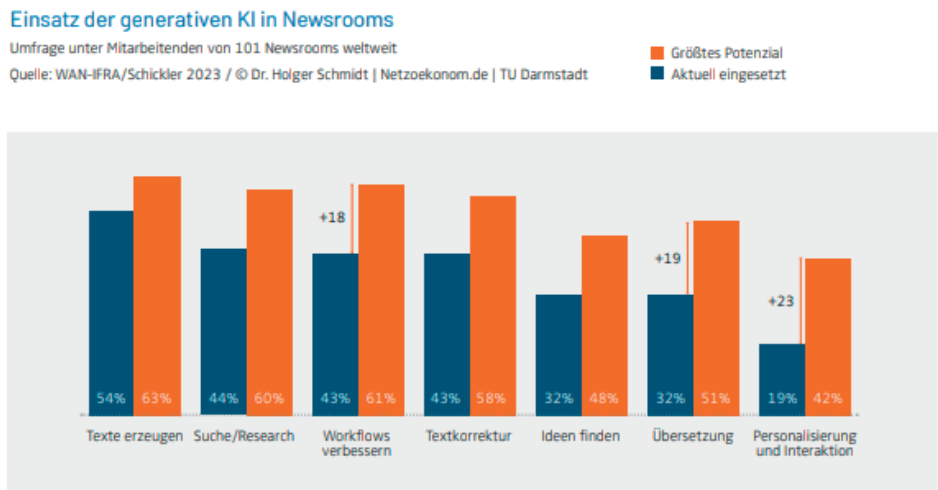


Table 1. Einsatz künstlicher Intelligenz im Mediensektor¹¹ (The Use of artificial intelligence in the sector of media)

Technical University in Darmstadt has performed a study, as presented above, on the basis of information collected from 101 Newsrooms worldwide and has come up with interesting data on the scope of the use of generative artificial intelligence. The use of the artificial intelligence in Newsrooms has been presented as the quantity of artificial intelligence that is currently being used and the one having a great potential. We can note that there has been a great influence of AI in producing texts, 54%, with a potential of 63%. The use of AI for research purposes has currently been 44% with a potential of 60%. The use of AI for improvement of workflow is from currently 43% seen to increase at 61%. Correction of texts has currently been entrusted to AI at the same scale as improvement of workflow,

11 Studienreihe zu Künstlicher Intelligenz Sonderbericht zur Veranstaltung am 15. Juni 2023 , Einsatz künstlicher Intelligenz im Mediensektor, Rundfunk und Telekom Regulierungs-GmbH Mariahilfer Straße 77-79 | 1060 Wien | Österreich
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while the potential has been predicted to rise to 58%. The creativity of media subjects, *inter alia* journalists, has currently been influenced by AI, that being currently responsible for 32% of ideas, and in the future rising to 48%. For translation purposes the AI has been currently used as well to the extent of 32% with the possible potential of up to 51%. AI has also its place in personalization and interaction of 19% with a potential of 42%.

Texts, graphs, pictures are only some of the examples that may be created through the artificial intelligence. ChatGPT has been widely accessible and used. From the above study we can see, however, that artificial intelligence has been used not only for technical purposes, such as correction of texts or to certain extent translation, but has also been used for producing texts, getting ideas and moreover for personalization. It has exceeded the pure technical area and has come into the area normally entrusted to humans, such as creativity.

The freedom to impart information

The freedom to impart information is the logical sequence of the freedom to receive the information when speaking of media. However, it addresses also other spheres of expression including the creative, artistic work which can also have more or less direct impact on society.¹²

Artificial intelligence is seen as beneficial as it concerns receiving information and producing output, as seen in the above Table. Benefits of artificial intelligence are also seen by the legislators when preparing the AI Act of the EU.

In that regard, the AI Act is, *inter alia*, based on Ethics guidelines for trustworthy AI¹³. Guidelines have established seven non-binding ethical principles for AI, that go in line with safeguarding and protecting ethical principles in the light of AI. Those principles are as follows: 1. human agency and oversight; 2. technical robustness and safety; 3. privacy and data governance; 4. transparency; 5. diversity, 6. non-discrimination and fairness; 7. societal and environmental well-being and accountability.

Human agency and oversight provides that users should be able to make informed decisions with the respect of fundamental rights and human autonomy. By imparting information, media should rely at the outset to human control of the information output safeguarding thus this part of the freedom of expression and preventing the eventual artificial intelligence system from making itself decisions that would or should not normally be taken. All seven principles should be taken into account when performing the important segment of democracy, such as the freedom of expression.

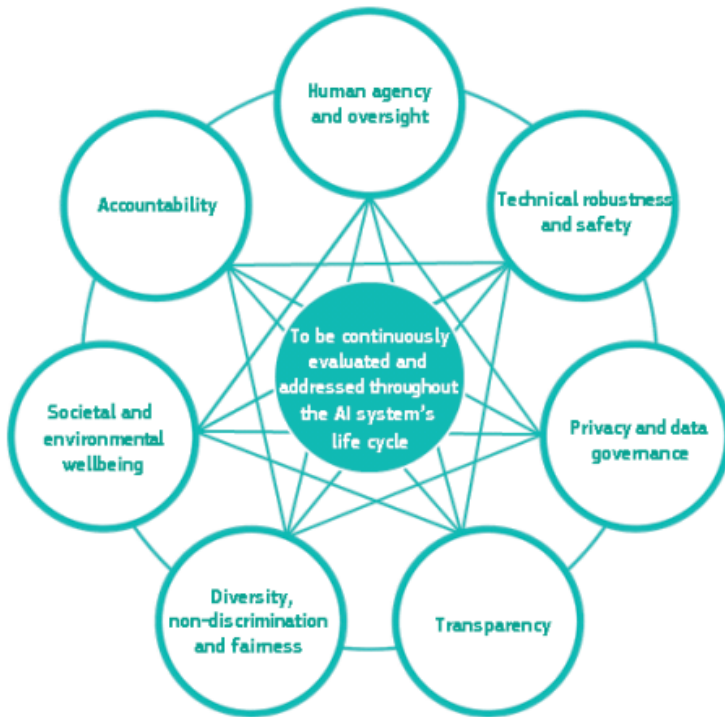
Transparency obligations are especially stressed out in the light of the freedom of expression. According to AI Act, if an AI system is used to generate or manipulate image, audio or video content that resembles authentic content subjects or users should be informed that this content is generated through automated means.¹⁴

The interrelation of the seven principles is demonstrated at the Graph below:

¹² see for example the case of Vereinigung Bildender Künstler v. Austria, judgment of the European Court of Human Rights of 25.01.2007.

¹³ Ethics Guidelines for Trustworthy AI, adopted by High-Level Expert Group on Artificial Intelligence on 8 April 2019, European Commission

¹⁴ 5.2.4 of the AI Act.



Graph 2. Interrelationship of seven principles¹⁵

BENEFITS OF AI IN THE LIGHT OF THE FREEDOM OF EXPRESSION

One of the possible benefits of AI is the content moderation and removal of harmful content. The freedom of expression and the freedom to impart information is not the absolute one. It may be limited by freedom of other persons not to be exposed to harmful content which may infringe their rights, such as right to respect of their privacy for example.

Uses of AI for the enhancing and supporting the freedom of expression by preventing hate speech or for the prevention of manipulation in the light of the freedom of expression should be noted. According to OSCE Report¹⁶ the prevalence of certain content, such as violent extremism, hatred or deceptive messages, impairs the quality of public discourse. AI may use to evaluate content, it may upload filters and to analyze content once it is online or after users have reported it. According to the said Report AI take independent action or it may be used in such a way that final assessments remain subject to human review. Thus, the above principles would be followed, and the information would be imparted in a beneficial way using the AI.

¹⁵ Ethics Guidelines for Trustworthy AI, p. 15

¹⁶ Global Conference for Media Freedom, November 16 2020 Office of the OSCE Representative on Freedom of the Media p. 3

DANGERS OF AI IN THE FIELD OF FREEDOM OF EXPRESSION

Manipulation

One of the prohibited AI practices according to AI Act of the EU is manipulation. It includes purposefully manipulative or deceptive techniques with the aim of effecting the behavior of persons in such a manner that they make a decision they would not have otherwise taken.¹⁷

Unwanted behavior, or impairment of the autonomy of making decision and having free choices is the result of such manipulative techniques. Having in mind that the media is a powerful tool in society, with a primary task of informing, or imparting information, and having in mind the increasing impact of artificial intelligence, media are also facing a new responsibility such as ensuring that the use of artificial intelligence does not affect the freedom of expression of legal subjects, and especially that the AI used does not imply manipulative techniques.

Misinformation

Misinformation is the other side of manipulation and includes deceptive techniques which are performed with the same aim as manipulation and imply prohibited practices according to the AI Act.

PROMOTION OF DIGITAL AND AI LITERACY AS A WAY OF MITIGATING NEGATIVE IMPACT OF AI

As explained above, technology and especially the artificial intelligence is developing so quickly that legislators are always a step behind. That means that a society cannot rely only on legislature in order to protect its subjects from negative impacts of such technological growth. One great example for that is the Framework Convention of the Council of Europe, which has been just adopted on 5 September 2024 and which promotes, as a standard of protection, digital literacy among the population.

‘Each Party shall encourage and promote adequate digital literacy and digital skills for all segments of the population, including specific expert skills for those responsible for the identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems’.¹⁸

AI Act of the EU supports the promoting AI literacy, which should accordingly provide all the subjects in the process of AI interactions with knowledge and ‘notions to make informed decisions regarding AI systems.’

‘AI literacy’ would according to AI act mean ‘‘skills, knowledge and understanding that allow providers, deployers and affected persons, taking into account their respective rights and obligations..., to make an informed deployment of AI systems, as well as to gain awareness about the opportunities and risks of AI and possible harm it can cause’’¹⁹

¹⁷ see Article 5 para 1 of the AI Act

¹⁸ Article 20 of the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Council of Europe

¹⁹ Article 3 para 56 of the AI Act

CONCLUSION

We are already deep into technological and internet era with all its technical but also legal consequences that have changed the way how legal system is apprehended. At the same time we are entering the era of artificial intelligence where some important decisions, including legal one, and ones affecting fundamental freedoms such as the freedom of expression may be issued without a human intervention. Legislation has made a big step in the EU and in the Council of Europe. However apart from legislative provisions that go in line of protection the fundamental freedoms, additional efforts are needed on the side of all subjects of interactions affected by AI to decrease risks and prevent eventual harm from the AI systems. Both above acts recognize digital and AI literacy as one important segment of doing that and in safeguarding, inter alia, the freedom of expression.

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