

AI regulation in key industries

AI regulation will impact several key industries including employment, education, healthcare, intellectual property (IP), privacy, data protection and insurance. These industries may be impacted in several ways.

Employment

In the employment sector, concerns arise in the areas of, displacement of employees due to use of AI tools in the workplace; confidentiality, privacy and IP concerns; and human rights considerations.

The displacement of employees by AI

Challenges

- Occurrence of partial and complete displacement.
- Complete displacement by regulated employers via notice or paying severance.

Potential Solutions

- Ensure displacement is not arbitrary or discriminatory.
- Ensure restrictions are considered (i.e., government employees have completed 12 months of employment).
- Be cautious and aware of group termination requirements.
- Take into consideration the language and applicable collective agreement.

Use of AI tools in the workplace

Advantage

- Improve business process and outcomes.

Challenges and solution

- Consider how the use of AI tools will impact the duty of current employees.
- Non-unionised employees will be impacted.

Confidentiality, privacy, and IP

Challenges

- Ensure confidential information belonging to the company or received from third parties is not entered into an AI tool.
- Understanding how an AI tool's terms relating to treatment of data might impact company's use of the tool (including contractual obligations owed to third parties).
- Copyright issues will arise (especially if it is a generative AI tool).

Potential Solutions

- Ensure that the company and its employees are allowed/entitled to input content into AI tool.
- Ensure content generated by AI tool does not infringe third party copyright.
- Consider copyright ownership of the content generated by the AI tool, with or without the assistance of an employee.

Human Rights Considerations

Advantages

- Assist employment-related decision-making processes, such as recruitment, hiring, pay equity and performance management.
- Ability to streamline and improve processes,

Challenges

- Information/decision generated is based on data that differentiates on grounds protected by human rights legislation, including age, sex, gender, and race.
- Traditional method requires explanation as to why a decision was made. Decision based on AI-generated information does not come with explanation.

Education

Advantages

- Promises efficiency gains.
- Facilitate the admissions process, grade papers and exams, design curricula and prepare course materials, correct grammar, and assist students with learning disabilities or language fluency issues.
- Free up time for educators to provide more individualised instructions to student.

Challenge

- Using AI for assignments may limit critical thinking skills or the ability to understand the subject matter.

Potential Solution

- Institutions should develop policies and procedures governing the use of AI programs by teachers and students.

Healthcare

Advantage

- Useful tool in assisting with multiple aspects in the healthcare industry.

Challenge

- Users need to be aware of how they use sensitive patient information within AI programs.

Potential Solutions

- Regulate how AI is used within the healthcare system, including when it is allowed to be used.
- Regulate how AI can be used within each healthcare product sector.
- Canada is currently developing a [new regulatory pathway](#) for the approval of medical devices with adaptive machine learning.

Intellectual Property

Challenges

- Does not consider whether copyright subsists in AI-generated content, or whether an AI system can be named as an inventor of a patent application, and AI cannot obtain copyright if it is deemed to be the author of a work (even if copyright would otherwise subsist in that work).

This raises the following questions:

1. Whether the use of works (in which copyright subsists) for training an AI system is, or should be, an infringement of copyright in those works?
2. If there is an “author” of AI-generated work?
3. Who owns the copyright, if any, in an AI-generated work?
4. Who, if anyone, is liable if an AI-generated work infringes copyright in an existing work (e.g. the developer(s) of the AI system, the end users, or others)?

These are considered in the current Copyright Policy framework.

Potential Solutions

- Identifying the individual that used the AI system to create the work as the author and owner of the work;
- Clarifying that copyright (and authorship of the copyright) would only apply to works generated by humans; and
- Creating new rights to apply to AI-generated works.

Privacy and Data Protection

Challenges

- Using personal information in the development, use, and commercialisation of AI systems.
- Obtaining valid consent may not be feasible or possible, particularly when the output of the applicable AI system is not clear and is subject to change.
- Significant harm may be caused when AI system makes an unfair, biased, discriminatory, or incorrect decision of the individual.
- Individual may lose control over the collection, use, and disclosure of their personal information.
- It is unclear how individuals may be able to exercise withdrawal in an effective manner.
- AI makes an unfair, biased, or discriminatory decision about an individual, the use of the personal information of an individual will be considered unlawful.

Potential Solutions

- Organisations involved must be aware of the data privacy obligations that apply to the personal information that is used to train, develop, and otherwise exploit AI systems.
- Provide individuals with the right to withdraw their consent to the processing of their personal information.
- Conduct a thorough review of and/or prepare, as applicable, the privacy policies and data practices.
- Undertake privacy impact assessments prior to implementing any AI systems.

Insurance

Advantages

- Study individuals' behaviour and predict their future claims.

Challenges and potential solution

- May need to work with insurance providers to help them navigate what they are allowed to do within the upcoming AIDA.
- Possibility that insurance companies using AI to predict individual behaviour may require additional review under forthcoming policies.