OLIVIA WHITCROFT

"An AI may be technically responsible for causing harm, such as financial loss or injury"

Have you considered how the use of AI affects your contracts and legal obligations? Probably not, but fortunately Olivia is here to help

I haven't written an article focused on AI since issue 353, when naturally I talked mostly about the television series *Quantum Leap* and its AI Ziggy. Sadly, *Quantum Leap* is now no more – the reboot leapt away after season 2, taking with it my hopes of seeing Sam Beckett again. AI, on the other hand, continues to leap into all our lives.

In fact, there's so much to update you on that I'm writing not just one, but two successive articles on legal AI developments.

Since issue 353, the EU AI Act has come into force, and its provisions have started to apply in phases – a topic for the second article next month. In the UK, there isn't much AI-specific legislation as yet, but there is a lot of talk about the law and AI, and the topic has been popping up in court judgments, too. Actually, "popping up" isn't strong enough, as we've just had a huge decision (205 pages) in the *Getty Images vs Stability AI* intellectual property case. I need some more time to read that, so that's for the next article, too.

In my work, even where AI isn't the focus of the matter I'm advising on, it manages to flitter in there anyway. I'm advising on a subject access request: AI has been used to draft the request. I'm reviewing an agreement for a software platform: the platform has a shiny AI add-on. I'm advising a company on licensing its software: AI was used to assist with the coding. A question I ask when taking on a new matter: "Are you going to be using AI?" The answer is usually: "Well, I'll probably use AI a bit."

This article considers legal and contractual liabilities in the AI supply chain, and the use of AI to create products and deliverables. In the next article, as well as the EU AI Act and the Getty Images judgment, I'll look at some data protection developments.

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Who is responsible for the actions of AI?

The UK Law Commission published a discussion paper, "AI and the law", in July 2025. This discusses legal liabilities and issues that arise in the AI supply chain, and the challenges in determining who is responsible. AI systems increasingly have autonomy to make decisions and complete objectives without human oversight, and the ability to adapt themselves over time. An AI may be technically responsible for causing harm, such as financial loss, damage to property or personal injury. Examples provided include AI agents colluding on price (damaging a competitive market) and AI robots causing injury to a child while cleaning. Laws governing anti-competitive practices, faulty products, negligence and criminal acts (to name a few) provide remedies where an individual or organisation has committed a legal wrong, so which person is liable if the AI did it?

The complex supply chain may include many different parties, including those who prepare data to train the model; develop the model; design a software package including the model; test the product; make the product available to end users; and monitor it to detect errors. Using an example of a medical diagnostics system, the paper discusses who may be responsible for a negligent output. The healthcare professional is closest to the patient and has a duty of care, but it may have acted reasonably in its use of the AI. Others in the supply chain may hold more responsibility for harm, but are far removed from the patient. There is therefore lack of clarity on who is accountable, and the worrying risk of a "liability gap", where no-one is responsible.

I recently had an enquiry about legal risks in a similar scenario, in which data uploaded by a user to a company's platform was to be analysed by AI to detect any health issues. From a practical point of view, as it is may be unclear where legal liability lies for any errors, the company may need to err on side of caution, on the assumption that it *could* be held responsible, and factor this risk into its operating model.

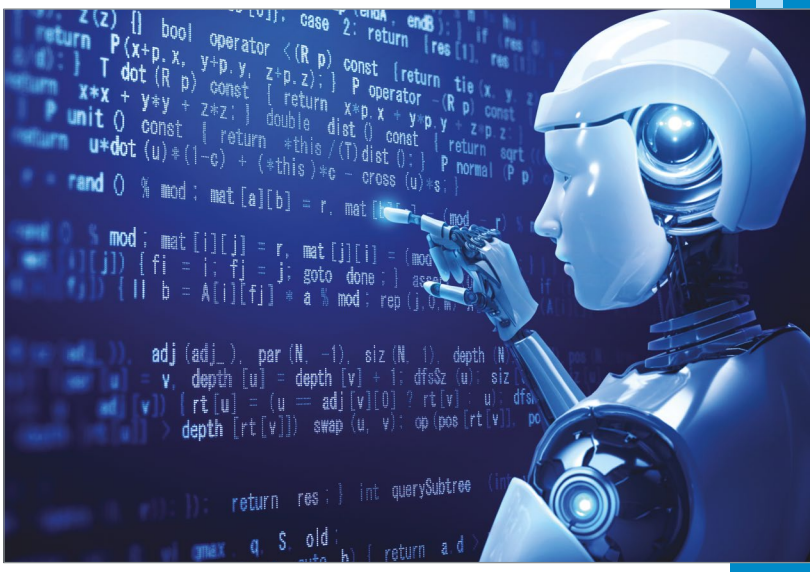
Contracts in the supply chain

I'm now thinking about the added layer of contractual liabilities for the agreements I draft. Contracts can introduce responsibilities that go beyond those within legislation or under common law negligence. For example, to address the risk of AI producing inaccurate results or causing damage, rather than relying on a duty of care under common law, a contract can include obligations to ensure the AI is accurate, secure and safe. A party relying on that provision may seek damages for breach of contract if those obligations aren't met.

Contracts can also assist to allocate risks and liabilities between parties in the supply chain. If, for example, a supplier is integrating an AI element into a product, which its customer will then provide to end users, the contract could require the supplier to indemnify the customer for any liability if there's a problem. If there's a party even higher up the supply chain, the supplier could seek an equivalent indemnity from them. The extent of contractual responsibilities will be a point for negotiation, as with other technology contracts and supply chains.

Contracts can also give rights and remedies to people who are not a party to them.

BELOW The use of AI has important legal ramifications for businesses of all sizes



Where an end user or other person in the supply chain isn't a direct party to a relevant contract, this could potentially assist with some concerns over liability gaps.

A separate point to ponder is whether AI should be included at all in the supply chain. As I raised above for my clients, it's a question to ask at the start of a relationship. What are the expectations for AI being used in the provision of a product or service? Companies I've spoken with are raising concerns that their suppliers are bundling in AI features without any consultation on whether they, the customers, actually want it. Using AI leads to additional legal and operational risks for a company, which they may not want to or be able to assess and address.

So we come back to the contract. What does it say about the functionality of a system, and what freedom does the supplier have to introduce an AI element? When negotiating the terms, the parties should consider change control procedures, and any rights of the customer to reject or opt not to use new features.

Using AI to create products

Other concerns may arise from suppliers using AI to create their products. In a software development scenario, it feels similar to the wariness for many years over the use of open-source software within deliverables, and the legal implications of this, such as ownership of copyright and restrictions on commercialisation. While the risks of using AI-generated code could be more far-reaching than this, a similar mindset may be helpful to assess risk and draft terms for the supply contract. These could either prohibit the use of AI, or require controls to address the concerns, such as transparency on what is used and how, requirements for human review, and assurances on confidentiality and intellectual property.

I recently had a query from a company about who owned the copyright in software code that it had created using GenAI. The first question is whether any (new) copyright subsists at all. To qualify for copyright protection, the work must be sufficiently original, which involves the author's own intellectual creation. If the code (and its output) have been generated based on pre-existing material, the first hurdle is whether there is sufficient originality, or (even worse) whether the code or its output may infringe someone else's copyright.

Secondly, as the law currently stands, the AI itself can't own any copyright in code or materials it generates, so who does? The Copyright, Designs and Patents Act 1988 has the concept of a "computer-generated work", where a work is generated by a computer in circumstances where there is no human author. The person who made the arrangements for the creation of the work is instead deemed to be the author. In the context of GenAI, who made these arrangements? There's a strong argument that it's the person who inputted the prompt, but there's another strong argument that it's the party that developed and trained the AI. It may also be important to look at the terms of use of the AI system, in case contractual provisions impact the ownership and use of copyright.

Using AI for legal advice

The risks of using AI to generate deliverables and outputs is of course not limited to software development. Broader intellectual property concerns have been coming under a lot of scrutiny, including in the *Getty Images vs Stability AI* case.

Another area of interest in my industry is the use of AI to provide legal services. The Law Commission paper refers to the recent case of *Hamad Al-Haroun vs Qatar National Bank QPSC & Anor* [2025] EWHC 1383 (Admin). This involved false case citations being put before a court, having been generated by AI. An amusing factor was that a fake judgment was cited to the judge who allegedly gave such judgment! As the court said, if it was deliberate, it was always going to fail. The judgment is here if you don't believe me: **tinyurl.com/377ailaw**!

ABOVE Who is responsible if an AI causes harm to a person or property?

"Another area of interest is the use of AI to provide legal services"

The Law Commission paper highlights that AI models can't check their answers based on an understanding of the world, and hallucinations are common. For lawyers using AI to assist with legal advice, expert human review and sense-checking may be wise measures to address risks of negligent advice, regulatory action, or even contempt of court if they are deemed to be deliberately misleading a court. As raised above, contracts for providing services (including legal services) in the supply chain may also benefit from clear terms on how AI may be used and the controls surrounding this.

On the other hand, earlier this year the Solicitors Regulation Authority announced that it had approved the first AI-driven law firm, Garfield AI, which offers small businesses an AI-powered litigation assistant to help them recover unpaid debts. In terms of accountability, as the firm is SRA-regulated, this will give some protections for the client if there are any flaws in the AI outputs.

Legal personality for AI

The Law Commission paper discusses the possibility of recognising a legal personality at law for some AI systems. This could enable AI to own property (including intellectual property), enter into contracts, and have legal rights and obligations, which could assist with liability gaps and clarify IP ownership issues. Reasons against the proposal include that developers may use AI as liability shields, so that they are not themselves accountable for errors. It will be exciting to see if this idea develops more.

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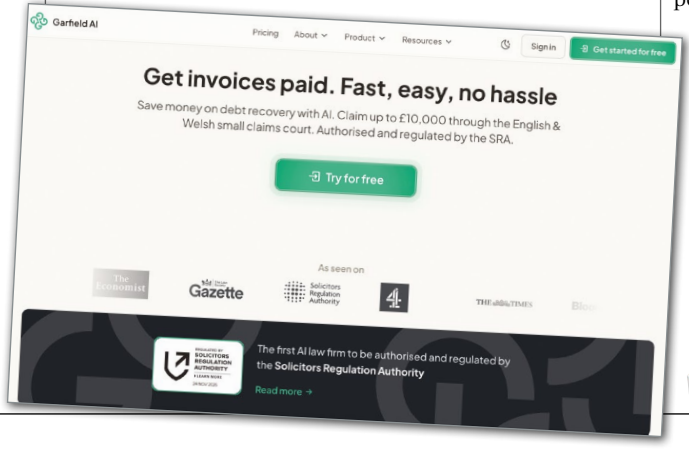

BELOW The first AI-driven law firm, Garfield AI, is now officially regulated