Evolving Legal Standards and Ethical Dilemmas

As a law firm with over a half century of experience in shaping how laws are written and regulations are interpreted, we can help you minimize legal risks and exploit business opportunities. Legislators and regulators in some countries are only now beginning to think about how to address new technology. As in the past, they are moving at a speed slower than the technology itself is evolving. By getting involved, you have an opportunity to shape the debate.

In the US, for example, the US Congress and individual states are coming to grips with a world in which passenger vehicles and transport lorries will no longer have steering wheels and brake pedals, two basic components at the heart of the safety laws and regulations written over a half century ago. The US House of Representatives has already passed legislation and the US Senate is considering a similar bill. For insurance and other purposes, policymakers must come to grips with who or what is "driving" the vehicle. Companies hoping to take advantage of the opportunities associated with connected and autonomous vehicles must consider a wide range of legal issues, regulatory challenges, data protection and security, technology standards, intellectual property ownership and liability concerns. (For more on this subject, please see our Autonomous Driving page.)

Businesses investing in and deploying emerging AI technologies will be entering a world of extraordinary social and ethical innovation, one in which existing law alone will not be a reliable guide to acceptability and sustainability. The law usually develops through legislation, regulations and court precedent to reflect the established ethical framework that underpins a society. However, the speed of evolution of AI within the economy of today means that legislators, regulators and jurists must confront highly complex questions before there is any settled view in society about the ethical framework that should underpin the role of advanced technologies. Therefore, businesses need to move from a compliance framework to one of understanding their role as social and ethical innovators.

The question of who benefits from the value that data creates is also starting to be debated, with some (for example, the European Parliament) arguing that the individual whose action created the data should derive some benefit (such as the value of a connected car). Others (including Sir Tim Berners-Lee and Sir Nigel Shadbolt, who co-founded the Open Data Institute) argue that the public good and economic value of public data (as opposed to personal data) is so great that it should be available for use as a public benefit. All of these issues will have a substantial effect on the framework within which AI is developed and deployed.

The relationship between personal data and innovation is a particularly important one. The ability to associate certain actions to certain types of individuals is a very rich seam for innovators, for both commercial and public benefit.

We see this already, from online advertising to genetic profiling. At the same time, public concern about the exploitation of personal data has grown. If people do not feel comfortable about how their data is used, that discomfort could become a substantial barrier to innovation and the adoption of innovative products, so it will be important to strike a balance. We have seen regulators in a number of jurisdictions (including the EU, China and India) adopting regulations that seek to give enhanced protection to the individual's personal data. The purpose of these new regulations is not to stifle innovation, but to protect the individual. Some are, however, concerned that they will constitute an unintended barrier to innovation. It is, therefore, worth considering how an innovator can both gain maximum benefit from the application of data analysis and respect the public concern that has led to data protection regulation. Understanding both the law and the context in which the law has been developed, we would be well qualified to advise on how to strike this balance in a specific circumstance.

For example, the EU's General Data Protection Regulation (GDPR) will require more privacy and security by design than has sometimes been the case hitherto. Even where data sets have been anonymized or pseudonymized, associating them can lead to the unintentional identification of individuals, which would bring the exercise within the scope of the GDPR. To deal with this contingency, such association of data sets would require a data protection impact assessment to evaluate the risk that the combination of data sets might enable the identification of individuals. If the risk is high, remedial safeguards would need to be put in place and the measures might need to be discussed with data protection regulators. The GDPR does contain important provisions allowing for regulatory forbearance in relation to processing for scientific, historical research or statistical purposes, but the scope of the provisions has not yet been tested. While regulations such as the GDPR may appear to be a hindrance to innovation through data, it is important to remember why it is there. If people feel their identities are at risk in cyberspace, they will be less likely to adopt the fruits of innovation.

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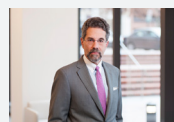
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