

Navigating Ethical Challenges in AI

Regulatory and Deontological Perspectives

from Europe:

Giorgio Checcacci

European Patent Attorney

President of the Italian group of union-ip

Why considering AI from the point of view of professional deontology?

AI is a tool, however a very special tool

we decide what we give as an input

we see what we get as an output

we don't know what has happened from the input to the output:

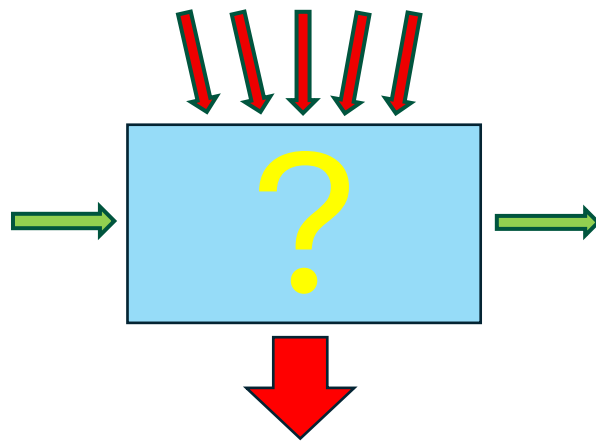
- what other inputs have arrived?

- from where?

- has our input been used for anything other than our output?

Why considering AI from the point of view of professional deontology?

AI is a tool, however a very special tool



we decide what we give as an input

we see what we get as an output

we don't know what has happened from the input to the output:

what other inputs have arrived?

from where?

has our input been used for anything other than our output?

Basic deontological provisions for European Patent Attorneys

 Code of Conduct, art. 1(c):

(c) The **basic task** of a Member is to serve as a **reliable adviser** to persons interested in patent matters. The Member must act as an independent counsellor by **serving the interests of their Clients** in an unbiased manner without regard to the Member's personal feelings or interests. Each Member is responsible for keeping their professional knowledge up to date.

Basic deontological provisions for European Patent Attorneys

Regulation on Discipline, art. 2:

A professional representative shall be bound **not to disclose** information accepted by him in confidence in the exercise of his duties, unless he is released from this obligation.

Basic deontological provisions for European Patent Attorneys

epi Guidelines for the use of AI in the work of
patent attorneys

- overarching principles
- several guidelines

(see

[https://patentepi.org/assets/uploads/documents/
miscellaneous/241120_epi-Guidelines_Use-of-
AI.pdf](https://patentepi.org/assets/uploads/documents/miscellaneous/241120_epi-Guidelines_Use-of-AI.pdf))

The overarching principles

When using AI of any kind in professional work, a Member must adopt the **highest possible standards of probity**; must take all reasonable steps to maintain **confidentiality** when this is required; and at all times must put the **interests of clients first** as required by Article 1 of the epi Code of Conduct.

The guidelines

- 1 inform themselves thoroughly
- 2 be sure about actual confidentiality
- 3 retain full responsibility for the work product
- 4 get explicit approval by client before using AI
- 5 if wished, communicate use of AI to the public in a correct manner
- 6 ensure that training for the work for a client is not transferred to the work of another client
- 7 be aware of any applicable legislation/rules
- 8 apply fair fees

The guidelines

Guideline 1:

Members should **inform** themselves about both the **general characteristics** of generative AI models and the **specific attributes** of any model(s) employed in their professional work, in terms of (at least) the key aspects of prompt **confidentiality** and (to the extent this can be known) the likelihood of **hallucinations**.

The guidelines

Guideline 2a:

Members when using generative AI must, to the extent called for by the circumstances, **ensure adequate confidentiality** of training datasets, instruction prompts and other content transmitted to AI models. **If** there is **doubt** that confidentiality will be maintained to a level that is appropriate to the prevailing context **the AI model in question should not be used.**

The guidelines

Guideline 2b:

In ensuring adequate confidentiality, Members must **inform** themselves about the **likelihoods and modes of non-confidential disclosures** deriving from use of specific AI models.

The guidelines

Guideline 3a:

Members remain at all times **responsible** for their professional work, and cannot cite the use of generative AI as any excuse for errors or omissions.

Guideline 3b:

Members **must check any work product** produced using generative AI for errors and omissions. The checking process must ensure that the work product is at least of the **same standard** as if it had been produced by a competent human practitioner.

The guidelines

Guideline 4:

Members must in all instances establish, **in advance** of using generative AI in their cases, the **wishes of their clients** with regard to the use of generative AI.

The guidelines

Guideline 5a:

Members are **free** to state, e.g. in websites and similar **publications**, that their work is produced using AI tools. Any such statement should be **accurate, fair and dignified**; and should not give rise to or promote discrimination between members.

The guidelines

Guideline 5b:

Members are **not required** to state, in communications with the European Patent Office and Unified Patent Court, that generative AI has been used in the production of work, unless they are obliged to do so by any binding statute, rule, order or client instruction. Any statement given in relation to the use of generative AI should be **accurate, fair and dignified**; should not disparage any party to proceedings; and should not give rise to or promote discrimination between members.

The guidelines

Guideline 6:

In view of the **risk** of training prompts pertaining to one client employed in some AI models being **transferred to the work of another client**, Members must, if this is warranted by the nature of confidentiality in the model employed, establish mutually **independent user accounts** for the work of respective clients.

The guidelines

Guideline 7a:

Members must be **aware of relevant legislation** impacting the use of generative AI models, and ensure that they comply with the relevant provisions.

Guideline 7b:

Members should in addition have regard to any restrictions, obligations or reporting requirements, imposed by external organisations, that may impact the extent to which or the ways in which generative AI models may be used.

The guidelines

Guideline 8:

When determining **fees** to be charged for work products generated using AI tools, Members must at most charge fees that **fairly** reflect the amount of time and effort and/or the degree of difficulty and/or the degree of risk involved. Members may charge, at levels fairly reflecting the difficulty or extent of the task, for setting up or training of AI tools, AI tool subscription fees and for checking AI-generated work.

first doubts: information to clients (GL 4)

Is it enough to include a clause in the general terms of engagement?

For example: “The member and their staff may use AI tools unless the client explicitly objects in writing for a specific case.”

Good but probably not enough:

information to client must be specific

unfair to reverse the burden to act

cannot consider rapid evolution of AI tools

Thank you for your attention!

www.union-ip.org