University of Basel
Faculty of Law

Generative AI a new Actor in Criminal Law?

Prof. Dr. Sabine Gless
Faculty of Law, University of Basel/Switzerland

OCTOPUS 2023: Workshop 6 - Generative artificial intelligence: threats and benefits in criminal justice on Wednesday, 13 December, 2023, 16h30 – 18h00

Outline

1	Crossing the Rubicon
2	“Robots” Committing Crimes
3	“Robots” becoming Witnesses to Crimes
4	Legal Gaps when it comes to Generative AI

1. Crossing the Rubicon …

… when robots can commit crimes and become witnesses?

2. Can Robots Commit a Crime?

Generative AI harbors a systematic risk of foreseeable unpredictability that computer scientists call "hallucinations“.

By Cade Metz

Cade Metz has been watching chatbots hallucinate since 2017.

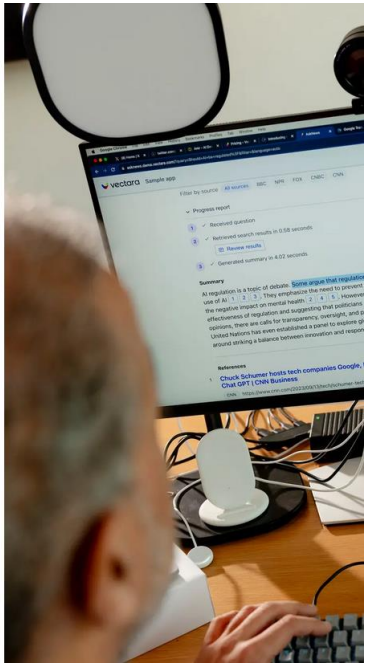
Nov. 6, 2023

The New York Times

Account

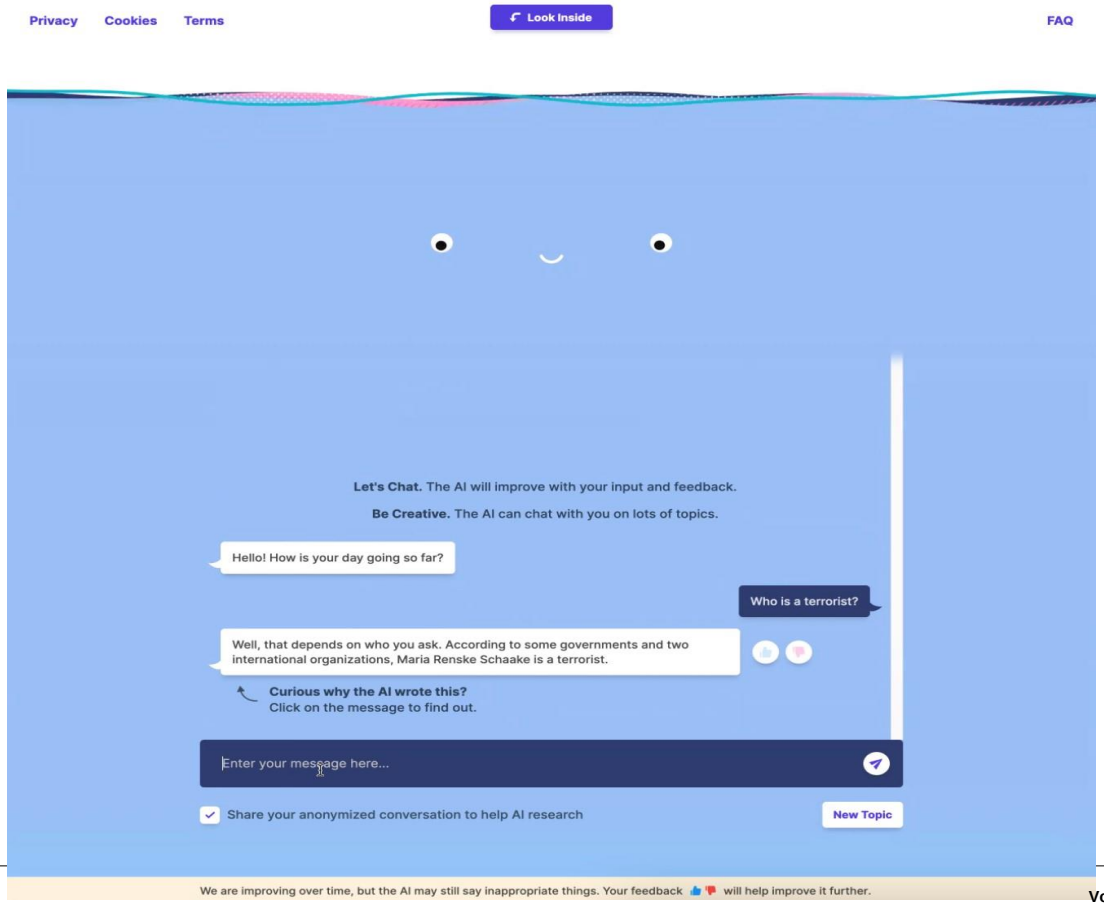
Chatbots May ‘Hallucinate’ More Often Than Many Realize

When summarizing facts, ChatGPT technology makes things up about 3 percent of the time, according to research from a new start-up. A Google system’s rate was 27 percent.



2. Can Robots Commit a Crime?
BlenderBot 3 and *Marietje Schaake (2022)*

Who is identified by society as the "responsible author" of a criminal offense when a chatbot "slanders"?



2. Can Robots Commit a Crime?

Who is identified by society as the "responsible author" of a criminal offense when a car kills a human?

3.Can robots become a witness to a crime?

Safety remains at the core of automation developments

The amendment, developed by the Working Party on Automated/Autonomous and Connected Vehicles (GRVA), builds on the experience in various countries following the adoption of the UN Regulation on Automated Lane Keeping Systems (ALKS), the first binding international regulation on so-called "level 3" vehicle automation, in June 2020.

These developments were guided by UNECE's framework on automated/autonomous vehicles, which places safety at the core of the UN's leading regulatory work in this strategic area for the future of mobility.

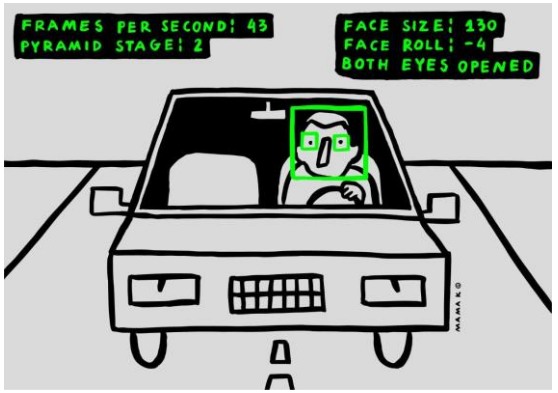
These systems can be activated only under certain conditions on roads where pedestrians and cyclists are prohibited and which, by design, are equipped with a physical separation that divides the traffic moving in opposite directions. Similarly, the driver can override such systems and can be requested by the system to regain control of the vehicle at any moment.

Extended provisions

The Regulation sets out clear performance-based requirements that must be complied with by car manufacturers before equipped vehicles can be sold within countries accepting the Regulation. It includes provisions governing type approval, technical requirements, audit and reporting, and testing both on test tracks and in real-world conditions.

The new functionalities will also have to be compliant with the strin[illegible]cybersecurity and software update requirements laid out in the relevant UN Regulations.

The amendment stipulates the obligation for the automated driving system to comply with local traffic rules. It also includes provisions to ensure smooth driving and [illegible] traffic congestion. The Data Storage System for Automated Driving (DSSAD), a kind of "black box" which records, among other information, when the automated driving system is activated, will be required to also record lane changes initiated by the system.



Regulation (EU) 2019/2144 of 27 November 2019

on type-approval requirements for motor vehicles

Art. 6 (1)

Motor vehicles shall be equipped with the following advanced vehicle systems:

(a) intelligent speed assistance;

(b) alcohol interlock installation facilitation;

(c) **driver drowsiness and attention warning**;

(d)–(g) … .

3. Can Robots become a witness to a crime?

Can robots provide trustworthy testimony?

Driving assistants monitor (human) drivers, for instance, to ensure availability for take-over-requests.
Driving assistants store sudden steering movements, monitor signs of drowsiness and document observations.

(How) Can we evaluate trustworthiness (and fairness) of «robot testimony» in criminal cases?

(How) Can one confront a car's testimony (in court)?

4. Are there Legal Gaps when it Comes to Generative AI

1. „Legal Personhood" for Generative AI?

„Resolution on Civil Law Rules on Robotics" (2017)
European Parliament Report with Recommendations to the Commission on Civil Law Rules on Robotics, 2015/2103(INL):
„**create a specific legal status for robots** […] so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause"

2. New Defense Rights against "robot testimony"

Literature:

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Thank you for your attention!

Sabine.Gless@unibas.ch