Volume 6, No. 5 | September–October 2023

RAIL

The Journal of Robotics, Artificial Intelligence & Law

Editor's Note: Rules, and More Rules (and More Rules)
Victoria Prussen Spears

Drones and Unmanned Aircraft Systems: Rules, Flight Restrictions, and Policies
Mike Senkowski, Mike Lewis, Emma Marion, and Raymond Navarro

Antitrust Enforcement Trends in the Digital Economy
Ryan K. Quillian and Lauren Willard

The AI Bill of Rights
Kristen Rovai, Zach Harned, and Stuart Meyer

The UK's New AI Proposals
Huw Beverley-Smith, Charlotte H.N. Perowne, and Jeanine E. Leahy

Virtual Currency Custody Practices: What's Happening in New York
Timothy Spangler, Magdalene Lam, Samuel Scarritt-Selman, Andrew J. Schaffer, and Cindy Wu

Handling the Risks from ChatGPT
Greg Hatcher

Freedom to Operate Analysis: Three Strategies to Efficiently Achieve Robust Results
Kira Gill

The Benefits of Digital Payments for Businesses
Daniele Servadei

fastcase FULL COURT PRESS

RAIL
The Journal of Robotics, Artificial Intelligence & Law
Volume 6, No. 5 | September–October 2023

307 **Editor's Note: Rules, and More Rules (and More Rules)**
Victoria Prussen Spears

311 **Drones and Unmanned Aircraft Systems: Rules, Flight Restrictions, and Policies**
Mike Senkowski, Mike Lewis, Emma Marion, and Raymond Navarro

339 **Antitrust Enforcement Trends in the Digital Economy**
Ryan K. Quillian and Lauren Willard

347 **The AI Bill of Rights**
Kristen Rovai, Zach Harned, and Stuart Meyer

355 **The UK's New AI Proposals**
Huw Beverley-Smith, Charlotte H.N. Perowne, and Jeanine E. Leahy

359 **Virtual Currency Custody Practices: What's Happening in New York**
Timothy Spangler, Magdalene Lam, Samuel Scarritt-Selman, Andrew J. Schaffer, and Cindy Wu

363 **Handling the Risks from ChatGPT**
Greg Hatcher

369 **Freedom to Operate Analysis: Three Strategies to Efficiently Achieve Robust Results**
Kira Gill

373 **The Benefits of Digital Payments for Businesses**
Daniele Servadei

EDITOR-IN-CHIEF

Steven A. Meyerowitz
President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears
Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Melody Drummond Hansen
Partner, Baker & Hostetler LLP

Jennifer A. Johnson
Partner, Covington & Burling LLP

Paul B. Keller
Partner, Allen & Overy LLP

Garry G. Mathiason
Shareholder, Littler Mendelson P.C.

Elaine D. Solomon
Partner, Blank Rome LLP

Linda J. Thayer
Partner, Finnegan, Henderson, Farabow, Garrett & Dunner LLP

Edward J. Walters
Chief Executive Officer, Fastcase Inc.

John Frank Weaver
Director, McLane Middleton, Professional Association

THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW (ISSN 2575-5633 (print) /ISSN 2575-5617 (online) at $495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2023 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

Publishing Staff
Publisher: Morgan Morrissette Wright
Production Editor: Sharon D. Ray
Cover Art Design: Juan Bustamante

Cite this publication as:

The Journal of Robotics, Artificial Intelligence & Law (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2023 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005
https://www.fastcase.com/

POSTMASTER: Send address changes to THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, scientists, engineers, and anyone interested in the law governing artificial intelligence and robotics. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

Morgan Morrissette Wright, Publisher, Full Court Press at mwright@fastcase.com or at 202.999.4878

For questions or Sales and Customer Service:

Customer Service
Available 8 a.m.–8 p.m. Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

ISSN 2575-5633 (print)
ISSN 2575-5617 (online)

The UK's New AI Proposals

Huw Beverley-Smith, Charlotte H.N. Perowne, and Jeanine E. Leahy*

In this article, the authors examine the British government's latest proposals on regulating artificial intelligence.

The government of the United Kingdom has published its latest proposals on regulating artificial intelligence (AI). The UK government's "White Paper" follows on from an initial policy paper published in July 2022 (the 2022 Policy Paper). The proposals set out in the White Paper have been informed by the feedback received as part of the UK government's consultation on the 2022 Policy Paper.

A central theme is that the regulatory framework in the UK must not stifle innovation, but rather harness AI's ability to drive growth and prosperity, and increase public trust in its use and application.

Definition of AI

As in the 2022 Policy Paper, rather than creating a detailed definition of AI, the White Paper sets out the core characteristics of AI to inform the scope of regulation: "adaptivity" and "autonomy" of AI systems. The UK government's intention is to future proof the regulatory framework against unanticipated new technologies that are autonomous and adaptive because rigid definitions can become outdated and restrictive with the rapid evolution of AI. The introduction to the White Paper explains that these defining characteristics were widely supported in responses received during consultation on the 2022 Policy Paper.

Core Principles

The framework envisioned in the White Paper is underpinned by the five principles outlined below to guide and inform the responsible development and use of AI in all sectors of the economy.

Robotics, Artificial Intelligence & Law / September–October 2023, Vol. 6, No. 5, pp. 355–358.
© 2023 Full Court Press. All rights reserved.
ISSN 2575-5633 (print) /ISSN 2575-5617 (online)

Although largely similar to the six principles outlined in the 2022 Policy Paper, the UK government has combined and/or refined each principle's definition and rationale. The introduction to the White Paper explains that it has reflected stakeholder feedback to the 2022 Policy Paper consultation by expanding on concepts such as "robustness" and "governance" and better reflecting the concepts of "accountability" and "responsibility."

- *Safety, security, and robustness*. AI systems should function in a robust, secure, and safe way throughout the AI life cycle, and risks should be continually identified, assessed, and managed. Regulators will need to consider issuing guidance and technical standards for implementing this principle.
- *Appropriate transparency and explainability*. An appropriate level of transparency and explainability will mean that regulators have sufficient information about AI systems and their associated inputs and outputs to give meaningful effect to the other principles. Appropriate means proportionate to the risks presented by an AI system.
- AI systems should not undermine the legal rights of individuals or organizations, discriminate unfairly against individuals, or create unfair market outcomes. The White Paper anticipates that regulators may need to publish descriptions and illustrations of fairness that apply to AI systems within their domain, and develop guidance that takes into account technical standards.
- *Accountability and governance*. Governance measures should be in place to ensure effective oversight of the supply and use of AI systems, with clear lines of accountability established across the AI life cycle.
- *Contestability and redress*. Where appropriate, users, impacted third parties, and actors in the AI life cycle should be able to contest an AI decision or outcome that is harmful or creates a material risk of harm. Regulators will be expected to clarify existing routes to contestability and redress.

In contrast with the 2022 Policy Paper, the White Paper merges the principle of safety with security and robustness, given the significant overlap between these concepts.

New Central Functions to Support the Framework

The White Paper proposes mechanisms to coordinate, monitor, and adapt the regulatory framework. Although the 2022 Policy Paper proposed a small coordination layer within the regulatory architecture, feedback during the consultation process strongly favored having a greater level of monitoring and central coordination to achieve coherence and improve clarity.

The proposed "central suite of functions" includes:

- A central monitoring and evaluation framework to assess cross-economy and sector-specific impacts of the new regime;
- Central regulatory guidance to support regulators' coherent implementation of the principles;
- A society-wide AI risk register to support regulators' internal risk assessments;
- Support for AI innovators (including testbeds and sandboxes) to assist in navigating regulatory complexity;
- Education and awareness for consumers and guidance for businesses seeking to navigate the AI regulatory landscape;
- Horizon scanning for emerging trends and opportunities in AI development; and
- Ensuring interoperability with international regulatory frameworks.

What Next?

After publishing its latest proposals, the UK government continued consulting on the overall approach set out in the White Paper, including any missed opportunities, flaws, and gaps in the regulatory framework.

In addition to allowing for responses to this consultation, the UK government has staggered its next steps into three phases. Within the six months following publication of the White Paper, the UK government will publish its response, issue the cross-sectoral principles to regulators, and design and publish an AI Regulation Roadmap. In the six to 12 months after publication, it will agree partnership arrangements with leading organizations to deliver the first central functions. In the longer term, the UK government will

deliver a first iteration of the central function, encourage remaining regulators to publish guidance, and publish a draft central, cross-economy risk register for consultation.

Overall, as no concrete details have been provided in this White Paper, the true strictness of the UK government's approach to AI regulation will not become apparent until the first iteration of the guidance emerges in the upcoming months.

Note

* Huw Beverley-Smith (huw.beverley-smith@faegredrinker.com) is a partner in the London office of Faegre Drinker Biddle & Reath LLP. Charlotte H.N. Perowne (charlotte.perowne@faegredrinker.com) is an associate and Jeanine E. Leahy (jeanine.leahy@faegredrinker.com) is a trainee solicitor at the firm.