



APSI Day n° 2 – The Legal Challenges of Robotics and AI: selected tech law topics

Luxembourg, 31 May 2017

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**Intellectual Property protection
for robot & AI generated results**

2

AI and personal data protection

1. Intellectual Property rights for robot & AI generated results

❑ Classic limitations :

- no computer programme protection for algorithms
- restrictive case law denying copyright protection to code for lack of “originality”
- limited options for patent protection of software
 - EPO : *further technical effect* "going beyond the "normal" physical interactions between the computer program and the computer hardware on which it is run

❑ Limitations to the use of a robot & AI : “about” a person

- copyright / computer programme : author's **own** intellectual creation
- patent: right of the inventor to be mentioned

❑ Alternative ? Trade secret protection

- Art. 309 Code pénal
- Directive 2016/943/EU
 - trade secret (a) is not generally known among or readily accessible, (b) has commercial value and (c) has been subject to reasonable steps to keep it secret
 - trade secret holder : person lawfully **controlling** the secret



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2. AI and personal data protection

Big data, AI & machine learning

- ❑ If consent is required, it must be:
 - free (employees?)
 - specific
 - separate consent per question
 - no one-fits-all consent language via GTCs
 - informed; and
 - unambiguous (positive action !)
 - positive action required
 - silence does not constitute consent (no pre-ticked boxes)
 - difference with explicit consent?
- ❑ Explicit consent for specific categories of data:
 - sensitive data (health, genetic, revealing racial or ethnic origin)
 - profiling on the basis of consent

Personal data protection

- ❑ Review in which situations consent is currently obtained and how
- ❑ List situations in which consent is/will be required (as from 25.5.18)
- ❑ Review consent forms and interaction with general terms and conditions
- ❑ Transparent information (see previous slides)

Questions? At your disposal!



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 - 388 lawyers including 72 partners, including 14 female partners.
 - 10 of our lawyers are also university professors.
- Spread across 6 offices and 5 country desks: Offices in Amsterdam, Brussels, London, Luxembourg, New York and Rotterdam.
- Our country desks focus on: Germany, France, India, China and Japan. We also monitor growth markets such as Brazil, Mexico, Indonesia, South Korea and Turkey.
- An independent firm with non-exclusive relations with the top law firms in more than 80 countries.

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