



CourtGPT?

Nearly seventy years ago, John McCarthy, a pioneer in the field, coined the definition of Artificial Intelligence (AI) as “allowing a machine to behave in such a way that it would be called intelligent if a human being behaved in such a way.”

For the past decade, most of us have been carrying an artificially intelligent device in our pockets. It filters out junk emails, checks our spelling, or sends us restaurant suggestions – and is able to learn from our reaction, so it can do it all more accurately the next time around.

Yet the discussion of AI and its implications has never really become mainstream until six months ago, with the release of ChatGPT – OpenAI’s large language model turned chatbot.

The hype around ChatGPT brought to the fore how powerful a tool AI can be, and how it has the potential to revolutionise virtually every aspect of our lives. And while the debate is usually dominated by concerns about “The Singularity” – that is, the moment when artificial intelligence becomes smarter than humans and Skynet or the Matrix might take over –, one of the more intriguing issues raised by these new heights of technological development is certainly the application of AI to the administration of justice.

Information technology has been a part of the judiciary’s daily practice for decades, back since text processing started allowing for faster, more efficient – and dare I say more repetitive and less creative – production of legal content by parties and magistrates, or since the development of search tools and the availability of online legal databases supercharged the research capabilities of legal professionals.

Electronic filing and case management platforms have also been adopted in several jurisdictions, allowing for immediate, dematerialized interaction between courts and litigants. E-discovery software

applications, capable of digesting huge amounts of information and parsing out relevant facts, while training and learning in the process, have also been developed in the past twenty years, having had widespread adoption among more sophisticated operators. And even the COVID-19 pandemic played its part in pushing courts into the virtual world, with online hearings being held in several jurisdictions, to contain potentially hazardous person to person contacts and overcome restrictions of circulation between (or even within) jurisdictions.

The use of AI in the judiciary can no doubt offer several advantages. By quickly processing vast amounts of legal data, AI-powered tools can assist legal professionals in conducting research, identifying, and analysing relevant precedents, or even patterns and trends that may not be apparent to humans, saving time and improving the accuracy of legal analysis.

They can also aid in case assessment and management and assist judges in organising and prioritising cases based on relevant factors such as complexity, urgency, and precedent analysis, which can help optimise judicial resources and ensure more effective and timely case resolutions.

AI technologies can also help provide accessible and user-friendly platforms for legal services. Online dispute resolution systems powered by AI can enable individuals to resolve certain types of disputes efficiently and affordably without the need for traditional court proceedings.

China has been at the forefront of implementing AI in courts, with a number of programmes launched since 2016, aiming to assist judges in areas such as case analysis, automated document generation, assistance with sentencing, and early warning of deviations in judgement standards or criteria.

The so-called “Smart Court” system, which uses AI to assist judges in various tasks, such as analysing case documents, identifying relevant laws and regulations, and predicting case outcomes, has become so ubiquitous that, according to Xu Jianfeng,



director of the Supreme People's Court Information Centre, it "now connects to the desk of every working judge across the country". And praise could hardly be higher, with Xu claiming that the system has reduced judges' workload by one third, its wide application representing "a significant contribution to the judicial advancement of human civilization."

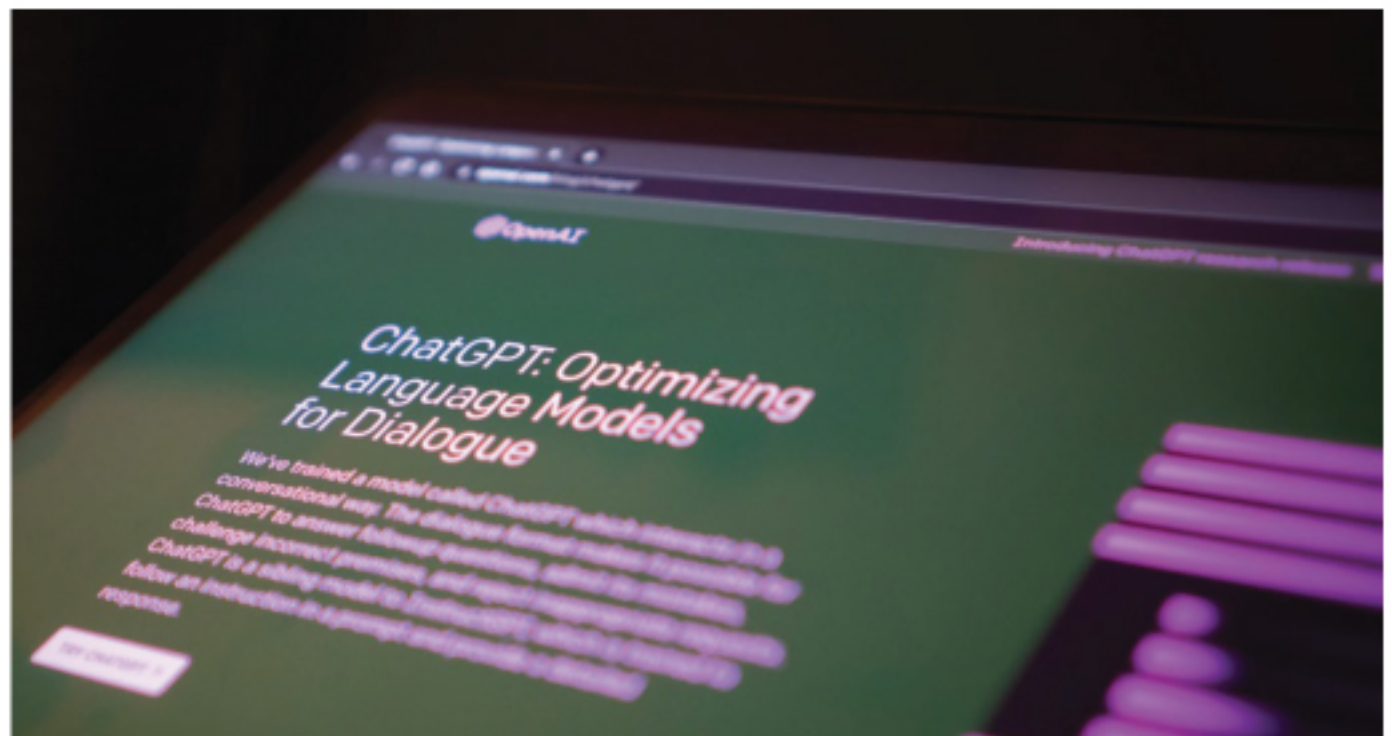
There is more to it than meets the eye, though. Seen by the Supreme People's Court as a way to unify national jurisprudence, the system has infused AI into the decision-making process of Chinese judges to such an extent that they are now required to consult AI before delivering every judgment. Even more – while the machine's recommendations are not binding, judges who reject them are required to provide written justification. Critics claim that, even when holding different views from the machine, judges may adhere to the recommendation simply to avoid the trouble of explaining their reasons. Or

worse – they could simply internalize the machine's perceived views and altogether cease to have diverging opinions.

Such forays into judicial AI prompt a serious discussion on the multifaceted risks and challenges of replacing human judges with AI tools.

AI lacks the human capacity for empathy, intuition, and subjective reasoning that judges possess. It may struggle to consider the unique circumstances and nuances of individual cases, leading to potentially unjust outcomes. The same goes for interpretation and application of law, which often involve complex and evolving legal principles. AI may struggle to interpret nuanced legal arguments, understand context or adapt to new legal precedents, leading to inaccurate or inconsistent judgments.

At the same time, replacing human judges with AI tools could certainly undermine public trust in



the judicial system. The perception of justice being delivered by an impersonal machine rather than a human judge might lead to a loss of confidence and legitimacy in the court's decisions. Moreover, AI algorithms can be complex and opaque, making it difficult to understand how artificial judges would arrive at their decisions. This lack of transparency raises concerns about parties' ability to challenge or scrutinise AI-generated judgements.

Data quality and integrity also pose risks in AI decision-making. AI algorithms rely heavily on the data they are trained on. If the input data is incomplete, biased, or inaccurate, the algorithm's output may be compromised.

Questions about privacy, data security, consent, and the potential for misuse of AI tools should also be top of mind and given careful examination and regulation to protect the rights and interests of individuals involved in legal proceedings.

And what to make of legal liability – who should be held accountable if an AI system makes an erroneous or biased decision?

Considering these risks, it is crucial to approach the use of AI in the judicial system cautiously, maintaining a balance between leveraging AI's potential benefits and preserving the essential role of human judges in upholding justice and ensuring the protection of individual rights. While the use of AI in courts can bring significant advantages, it should be used as a tool to support and augment human

judgement, not replace it. The ethical and responsible use of AI in courts requires careful consideration of potential limitations, transparency, fairness, and accountability, to ensure the technology serves the interests of justice and upholds fundamental legal principles.

This may not sound like a discussion for Macau, where the adoption of information technologies in local courts is still in its early infancy. In fact, it was not even one year ago that electronic submission of pleadings was enacted into law, there is still no online case access and management platform available to parties, and the admissibility of remote hearings was rejected outright by local courts, even during the heights of the pandemic.

Even so, with China's continued push for AI adoption, and the Greater Bay Area and the Guangdong-Macau In-Depth Cooperation Zone in Hengqin being sandboxes for ever-increasing economic – at, to some extent, even legal – integration between the SAR and the mainland, Macau should be prepared to look at these challenges carefully and take a very cautious approach as to the if and how to introduce AI tools into its own courts. And more so because of the risks specific to our autonomous but tiny jurisdiction, required to maintain the unique principles and features of its legal system while marching to the drum of walking alongside its behemoth continental sovereign. ■