Civil liability that arises from the harms of the artificial intelligence applications in the visual and audio contents

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Abstract

Artificial intelligence technologies participate in the processes of displaying the visual and audio contents through the platforms designated for that. Within the framework of this work, these technologies undertake the presentation process according to certain inferences through their database about the beneficiary, his region, age group or ideological inclinations, according to previously collected data about him, and in this case harm may be a result to the beneficiary due to the presentation of this content in a way that is not commensurate with his desire, that may cause different and varying harms for him, causing major problems in terms of determining the responsible person, the compensation mechanism, and how the technologies that used in displaying audio-visual contents are basking with the legal personality and hence do their responsibility.

Introduction

Artificial intelligence applications are now carrying out various activities that humans do, which in the past required a decision from those in charge of them, and with the continuous technical development, these applications have the ability to make decisions, create and arrange content, and sort the beneficiaries of the services according to their various data, and its free electronic indexing without the intervention of any human factor in these choices. With this freedom that artificial intelligence applications enjoy, their decisions are associated with harm they cause to others, Here, the rules of traditional liability based on proving error and harm and the causal relationship among them, or even the general obligation after harming others, are not correct. Artificial intelligence applications raise a number of problems for their legal entity and the extent to which they enjoy a non-legal personality, and its link with the application designer, then the applications enjoy

complete freedom to make decisions away from their origin, and that lead to the difficulty to control them, and these are the reasons that make it a source of risks in general, especially with the fact that these technologies are able to understand, think, perceive, solve problems and develop themselves. Perhaps this reality is what prompted some researchers to recognize the legal personality of the artificial intelligence applications because the purpose of recognizing a legal personality is not for artificial intelligence to enjoy full human rights, but it is to identify the person responsible for the harm. Visual and audio content addresses a large segment of people in light of the opening digital societies to all, and this is the matter that affects the general thought and general direction in a particular society by publishing contents that serves certain ideas.

What are the applications of artificial intelligence in the visual and audio contents?

Although there are multiple definitions of the artificial intelligence, most of them differ in the building and unite in meaning. Artificial intelligence is one of the branches of computer science that is concerned with finding modern methods of programming in a way that gives conclusions similar to human conclusions if he uses his natural intelligence and acquired skills, even within narrow limits[1]; this is according to inferences previously entered through its programming. It is similar to human thinking according to its prior inputs when he makes a specific decision or sorting out content from among several specific contents and that according to specific and evolving data at the same time. Artificial intelligence is giving computers the ability to understand, infer, perceive and learn according to development programming through computers, it can be said that computer programs will possess the ability of human's intelligence and act the same actions that need his intelligence[2] to do what is logical according to this programming.

1-2- Components of the artificial intelligence

The components here do not mean those technical components of the nature of the work of the artificial intelligence applications such as tangible components and intangible components, but the components in this regard are meant to enable us to understand the mechanism of action of these technologies in order to establish liability for harms of the visual and audio contents. From this standpoint, it can be said that the artificial intelligence consists of two main components:

- Data: The data and information entered by the beneficiary or collected through the artificial intelligence techniques.

- Results or outputs: It is the result presented to the beneficiary after examining and analyzing the requirements of the beneficiary, where applications filter and evaluate options and provide the best results according to logical

inferences.

Within the framework of these elements, there are stages and requirements through which technical activity for artificial intelligence applications is practiced as follows:

• The facts available in the applications of artificial intelligence.

• Development gains as a result of the repeated operations that take place through these applications.

• Matching mechanisms and sorting the visual and audio content of the beneficiary.

• Linking the facts obtained through the programmed sources in the artificial intelligence technology, or through the recorded or collected data, or even through an age, regional, or temporal criterion...etc. from the various criteria that can be relied upon as a working mechanism for sorting and displaying the content.

• The method of presenting the visual content to the beneficiary and the options available to him.

2- Objectives of the artificial intelligence and its applications in the visual and audio contents in light of the rules of civil responsibility

2-1-The artificial intelligence objectives in light of presenting the visual and audio content

The idea of the artificial intelligence lies in achieving a simulation of the human intelligence through computers, so that the computer has capabilities, even limited ones, of the capabilities of the human mind in terms of understanding, awareness and decision-making in what it was found for, so the

1- Dr\ Salah Al-Fadali, The Mechanism of the Work of the Mind in the Human, First edition, Aseer Alkitab for Publishing and Distribution, 2018 AD, p. 10

2- Dr\ Sheikh Majbara, The Role of Artificial Intelligence in Managing the Electronic Customer Relation for the Algerian People's Loan, The Academy Journal for Social and Human Studies, Volume 10, Issue 2, Hisbeta Ben Bu Ali University, 2018 AD, p. 82

platforms for displaying visual contents through a series of visual clips are not done in a random way, but are made according to certain inferences provided by artificial intelligence technology according to the closest to what the beneficiary requests, as if he is a sports lover, a youth or a science lover by knowing the most requested content and then presenting it to him or being within a specific geographical area, the presentation is done according to what is popular in his area, and so on.

-The programming of the artificial intelligence through multiple inferential processes, and according to its programming and algorithms, it can follow certain methods and specific ways and reach the right result and take the right decision according to its data[3], without a real momentary determination to the beneficiary's desire this moment that he presents the content in it.

-The artificial intelligence technology aims to make the method of human understanding and perception used by computer programs in the same way as human thinking, but it lacks feelings, psychological influences, and all the circumstances that are unique to the human as a living being.

- Access to technology that can analyze data and solve issues and problems in less time and with greater accuracy and in the same way that a human deals according to his human intelligence[4].

- The artificial intelligence technology achieves the modernity in machines and software according to the principle of continuous development in a way that achieves continuous contemporary for the technological development, the idea of artificial intelligence is the integration of rapid and accurate technology in what the human do of operations to be computerized according to its programming and inferences, and this the matter which gives the same results according to the normal logic in less time and more quickly.

3- The artificial intelligence applications enter in displaying the visual and audio contents through digital content display platforms

The artificial intelligence applications intervene in filtering the contents presented for the beneficiary of the service through accurate analysis and matching systems, for example, watching a violent sports match, the platform system displays an introduction to the content by suggesting similar visual contents, Which may lead to suggesting content that includes inappropriate violence and in many cases, children watch the contents of games, and then contents are suggested that do not suitable with the viewer or his desires, which may cause harm.

And the matter is not limited to these cases, but extends to include cases in which artificial intelligence techniques are unable to filter content, since the contents are subject to counterfeiting so that it displays the contents that are not intended that with what they contain of changing the truth or knowledge required to be obtained from the service provider.

These technologies are also used to publish false or misleading contents to meet what the beneficiary requests from the digital platform and that by inter this content with other contents. The mere request of certain content, the beneficiary is provided with other contents that are not related to his real request, but rather it has been filtered according to certain requirements and programming.

In addition to that, what is filtered and presented as suggested content on the basis of an age or regional criterion under the item "Popular in your region." Sometimes these contents fuel public opinion and lead to demonstrations and disturb public security as soon as they are popular in a particular region, which leads to public harm.

In such assumptions, the traditional liability rules are unable to address the idea of reparation for what the harmful contents present.

4- Scope of responsibility in the artificial intelligence applications used in the visual and audio contents display platforms

Despite the ability of artificial intelligence technology to complete services at a tremendous speed that exceeds human's ability, it may cause damages that are difficult to adapt, prove and compensate for, as it is difficult to determine who is responsible for the harm they cause, and the extent of responsibility if the responsible is determined, especially if the work of the artificial intelligence technology is not centralized as is the case for the visual and audio contents platforms, which allow the provision of contents to their patrons in an unlimited or conditional manner. In some cases, contents proposals are presented according to the general trend of a particular region, for example, and in cases of existence of a certain popular trend, the similar contents is presented within a particular region according to the analyzes of these technologies, and without specifying the target person, based on the number of views in a particular area, and these and other things, and this is what prompts us to look into the scope of the responsibility of the artificial intelligence applications through the following axes:

4-1- The extent of the availability of the legal personality of the visual and audio contents display platforms through the artificial intelligence techniques

Some doctrinal trends give the artificial intelligence applications the legal personality, despite the dispute over granting this technology a legal personality, there is a doctrinal side that tends to grant these legal personal applications according to several points of view as follows:

• The theory of legal assumption that only recognizes the legal personality of the human being.

• The theory of actual existence, which recognizes the reality of the actual existence of the legal person.

•The theory of legal truth that put a legal person in the status of a natural person.

According to these views, legal personality is granted based on the legal entity's ability to assume obligations and acquire rights, this is the realistic justification for the existence of a legal personality in addition to taking into account the achievement of the public interest, despite it being just a financial entity or a group of people brought together by a certain bond, such as money companies, people, associations and others, this means that the legal personality may be granted to any entity whenever circumstances require it, and in light of the tremendous technical development in the era of digitization, various forms and types of entities have been found that are qualified to assume obligations and gain rights, and this perhaps justifies the granting of the artificial intelligence applications that have the legal personal conditions and become responsible for the harm caused to others as a result of the harm they suffer.

3- Dr\ Asmaa Azmi Abd Elmajid, The Impact of Administrative Applications of Artificial Intelligence on the Competitive Advantage of Business Organizations, by Applying on the Commercial Banks Branches in Mansoura City, Scientific Journal of Financial and Commercial Studies and Research, Damietta University, January, 2020 AD, pg. 97.

4 - In the same meaning, see: Dr\ Jihad Amed Afifi, Artificial Intelligence and Expert Systems, first edition, Arab Studies Center for Research and Publishing, Cairo, 2014 AD, p. 24

In light of this, we believe that the continuous development of the rules of civil liability and the development of the idea of harmful act in general, and their content and the responsible for them, and the source of the harmful act that has been evident in the texts governing the civil liability. In France, the texts defining the legal responsibility for the harmful act came explicit in their text that every act that causes harm binds its owner to be responsibl[6] for the resulting harm. Perhaps limiting the action without the person expands the circle of responsibility to include non-humans, depending on the source of the act, and this saying expands to include the responsibility of the artificial intelligence technology.

The Kuwaiti Civil Law also specified the legal responsibility for the harmful act, stipulating that whoever caused by his wrongful act harm to another is obligated to compensate him, whether the harm was caused directly or causally, and the person is obligated to compensate the harms arising from his wrong action, even if it is not distinguished. The Egyptian Civil Code also defined legal liability, stipulating that "every mistake that causes harm to others obliges the one who committed it to compensate." In general, we find that the texts focus on the idea that whoever committed a mistake is obligated to compensate[7].

The Kuwaiti legislator did well when he mentioned the term person, as well as the French legislator by launching the generality of the text without mentioning the term (person) indicating the necessity of an expanded interpretation of the concept of responsible for the harm[8], and this extension in the concept of the source of harm finds its basis in recent developments in the world of technology and the overlap of the artificial intelligence techniques in various areas of life proves the adoption of this idea because it finds what justify it in the reality.

Therefore, we believe that the idea of liability is extended to include harms that resulting from the artificial intelligence technology.

4-2- The purpose of granting the legal personality to the artificial intelligence technology in light of responsibility for harms of the visual and audio contents

The publication of the visual and audio contents according to the categorization of the formation of the artificial intelligence techniques results in various harms, whether the harm occurred as a result of a specific categorization based on geographical scope, age group, number of views or data that have collected about the user ...etc, the burden of responsibility can be transferred to

the person in charge of the technology first.

Also, the application of artificial intelligence technology goes beyond the normal human possibilities from starting its work according to what has been done of previous programming and then begins its work away from the control of its creator. Thus, a person should not be asked about what does not fall within his conscious, rational awareness[9], and this dilemma is inconsistent with the rules of the traditional responsibility in terms of proving its false elements, harm and the causation relation, especially if we take into account the freedom and independence with which some artificial intelligence techniques work.

5-The legislator in various countries grants the legal personality of funds, and not only for donations, but also for movable funds such as planes and ships.

6- Dr\Hamza Khader, A reading in the most important developments of the radical reform of the French Civil Law of 2016, Legal and Political Studies, Eleventh Issue, September 2018 AD, pg. 419

7- for more see: Dr\ Soleiman Morcos, Al-Wafi in Explanation of Civil Law, Cairo, 1992 AD, p. 136, 137

8- Dr\ Hamza Khader, the previous reference, p. 423.

9- Dr\ Mohammed Irfan Alkhatib, The Legal Center for Implementation, read it in the European Rules of Civil Law for Implementation 2017 AD, Kuwait International Law Journal, December 2018 AD, p. 109 and beyond.

In this regard, aspect of the jurisprudence and the judiciary tends to adopt the idea of responsibility for the indiscriminate in light of the rules of the civil responsibility that with the permissive nature for the judge, and by looking to the technology of the artificial intelligence, it can be questioned in light of the fact that the legal personality of it as an exceptional case, especially with the development of that technology with capabilities that exceed the ordinary human mind.

We do not support this opinion because the claim that there is a responsibility of the non-distinction person that can be dropped on artificial intelligence technology is a saying that has consideration. The idea of non-distinction, its lack or complete capacity is linked to the natural person and the granting of legal personality, and then the emergence of responsibility for the legal person other than the natural person is a metaphor said according to justifications for that, and as for the artificial intelligence technologies, either they give legal personality and then their responsibility arises, or it is not granted and then a liability is established against these technologies or their owner according to the mechanisms of establishing responsibility for doing things or against them if they enjoy freedom and an independent entity.

The platforms for displaying the visual and audio contents may be on two types, either belonging to a natural person responsible for them, or they have freedom and ingredients that justify granting them legal personality, hence, it assumes its responsibility, even if it is a legal person, for what is displayed, indexed, tabulated, filtered… etc. of the contents displayed to the public.

5- The extent of the compatibility of the idea of objective responsibility for harms of displaying the visual and audio contents through the artificial intelligence techniques

The application of the rules of the objective civil responsibility on the harms of use the artificial intelligence techniques is supposed to consider that the applications of the artificial intelligence responsible as soon as the harm occurs, and that according to the basics of the idea of the objective responsibility, as for artificial intelligence technologies, they can be considered a product, and then the producer or the creator of the technology is asked according to the rules of objective responsibility, because these technologies are consider a material thing that causes harm. The application of the rules of the objective responsibility should be properly applied to the harms of using this technology considered as something to which the rules of liability for doing things apply, or a product to which the rules of liability for defective products apply, despite this technology enjoys understanding and awareness, the person who gives it the ability to understand and make decisions is the human , so the objective responsibility for the harms that result from platforms that displaying the visual and audio contents is based on mechanisms that have been programmed in advance by an official, whether the official is a natural or legal person..

For our part, we believe that the beneficiary of the digital display platforms of the visual and audio contents is a weak party that is not comparable to the other party in his expertise, his economic and technical strength, and his professionalism in this regard, so it is necessary to protect him in accordance with the rules of the objective responsibility that existed basely in order to achieve a balance between two parties, one of them is strong and the other is weak.

Also, looking at the fact that artificial intelligence is a product requires that its meaning be dispensed with not all transferred things without defining their nature in their material and immaterial dimension, and the material dimension is available in the components through which the artificial intelligence technology works (tangible components or hardware). However, the immaterial dimension is related to the digital intellectual property rights, and this intelligence works according to its software and its own ability to choose within a set of expected options, which is often difficult to describe it as just a product or something that requires asking its owner or maker about the mistakes he commits that cause harm to others.

In France, Article 1368/1 of the French Civil Law stipulates that "the producer must be asked about the harms that resulting from his defective products, whether he is associated with the injured party by a contract or not."

Here the French legislator adopts the objective responsibility based on the idea of risks; the most modern legislation adopts this idea with regard to the producer's responsibility for his products[10].

In the case of multiple producers in the production of the commodity from

which the harm arises, the established principle in French law, as well as the European orientation, is to oblige producers in the event of their multiplicity to jointly confront the injured, but the search for the official is a complicated matter when the person responsible for operating and adding the content is not specified. The artificial intelligence techniques classify it according to its programming, as if the content was titled as an educational program and contained a scarified display of the values of society within the framework of education or teaching an illegal matter. And all of this falls under the contents of education, and the content was provided by unspecified people from the beginning. Here, it is difficult to determine who is responsible whenever the artificial intelligence technology is open source[11].

In Egypt, Article 67/1 of the Commercial Law No. 17 of 1999 AD states that "the producer and distributor of the commodity should be asked before anyone who suffers physical or material harm caused by the product, if this person proves that the harm arose because of the product's defect. The text is consistent with the emerging risk theory that evaluates Compensation based on the idea of objective liability associated with the harm[12].

It is worth noting that the application of the idea the responsibility on the products to electronic intelligence systems requires that these technologies be considered defective products, when the truth is not so, all that there is that these technologies work according to inferences, equations, and programming of understanding and cognition that may not fit with the future of the content according to data and inferences that are originally correct and appropriate for other people. The issue of a defect in the product, if we consider the artificial intelligence technology, is a defective product.

We believe that the responsibility for displaying the visual and audio contents that are displayed with the intervention of the artificial intelligence techniques cannot be considered the harm resulting from it due to a defect in the product, because the artificial intelligence technologies exceed in their current and expected future concept the idea of being just a defective product, especially if the goal is to serve the general interests of society and they have the ability to develop themselves.

Results

- The Kuwaiti legislator should add the necessary legal texts to control the issue of harms those resulting from displaying the visual and audio contents on various digital platforms.

- Artificial intelligence techniques may not, by their nature, fit with the rules of the traditional responsibility, and therefore the rules of the civil responsibility must be developed in Kuwaiti law in order to keep pace with the developments of the times.

10-The provisions of the European directive to establish producer responsibility on an objective basis , see: Qadah Shaheda, The Civil Responsibility For The Product, a comparative study, Ph.D. thesis, Faculty of Law, University of

Abu Bakr Belkaid, Tlemcen, 2015 AD, p. 195

11- Dr\ Nadia Moawad, Responsibility of the Airplane Factory, Dar Al-Nahda Al-Arabiya, Cairo, 2000 AD, p. 12

12- Dr\ Fathi Abdullah, System of Compensation for Damage to Consumer Security and Safety in the Egyptian Civil and Comparative Law, Journal of Legal and Economic Research, Issue No. 25, Cairo, Mansoura University, Faculty of Law, 1999 AD, p. 67

- The artificial intelligence technology is in constantly evolving and enters in all fields, so it was necessary to develop all traditional legal rules to suit the developments.

- The visual and audio contents those presented through the digital display platforms that work with the artificial intelligence technology must be codified in accordance with the values, traditions and laws of the local community.

- Exceeding the scope of platforms for displaying the visual and audio contents over the Internet is a matter that crosses the national scope, and therefore legal rules of international character must be established to protect against their harms.

- Artificial intelligence technology can be granted the legal personality on the grounds of protecting the public interest and because of the components available to these technologies that enable them to acquire rights and bear obligations.

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