

# Technology and Regulatory Disconnect

## Editorial

It has always been the case that technological advancements will pose newer challenges for the law. Whilst past innovations in the early-mid twentieth century still allowed some breathing space for the law to catch up, the pace at which technology keeps evolving in the digital age renders this even more challenging. This is reflected in the papers in this issue, covering topics ranging from the use of AI - in self-sovereign identity technologies and asylum decision making – to personal data protection, the use of technology in legal education, and legal tech. The papers highlight the immense potential of technology as a force for good, but at the same time they also demonstrate how the limits of the law are stretched and challenged due to the rapid advances in technology and innovation in all areas of life. Some of this has resulted in a regulatory disconnect, pointing to a gap in understanding of the law by technologists and a lack of appreciation of the precise technologies by lawmakers. One of the main functions of law journals ought to be, in addition to the obvious advancement of scholarship and enrichment of literature, to inform policy making and legal reform. The EJLT makes a conscious effort to achieve this by not only making our work available to all without paywall barriers, but also by ensuring that the works we publish are original and of high quality in terms of significance and rigour.

In our first article of this issue ‘Putting the Right P in PIMS: Normative Challenges for Protecting Vulnerable People’s Data through Personal Information Management Systems’, Stanislaw Piasecki, Jiahong Chen and Derek McAuley critically examine the potential of personal information management systems (PIMS) for enhancing the privacy protection of vulnerable data subjects. Choosing smart home technologies as a case study, they point out the difficulties in applying traditional privacy and data protection theories (that were developed prior to the advent of such technologies) in the smart home context. The authors are particularly concerned about the impact on vulnerable people who tend to use such technology, and make several pertinent points that highlight the potential as well as challenges posed by PIMS, before proposing solutions to achieve better compliance with the law and individual rights.

Paul Maharg and Angela Yenssen in their article ‘Transitioning Simulated Client Interviews from Face-to-Face to Online: Still and Entrustable Professional Activity?’ address a still relatively new method of education in law schools, i.e. the use of simulated clients (SC) for learning and assessment. In their thought-provoking article, the authors examine the relevance and benefits of SC in the context of the changed Higher Education landscape due to the pandemic. The article serves as a timely reminder of the power of the digital as a tool for learning and assessment of skills, and calls for the development of better platforms in which innovative learning and assessment activities can be created.

Much has already been written about the challenges that artificial intelligence (AI) poses to the law. In her article 'Technology-related Risks to the Right to Asylum: Epistemic Vulnerability Production in Automated Credibility Assessment', Frida Alizadeh Westerling looks at a relatively underexplored area, namely the impact of artificial intelligence on the right to asylum. Westerling acknowledges the complexities of assessing asylum claims and the potential of automation to render the process more efficient and transparent, but at the same time warns against the inherent risks that the use of technology will result during asylum decision making processes. The analysis leads to some pertinent proposals for developing effective legal safeguards to mitigate these risks.

The disconnect between technology/developers and law/lawmakers is not new. It is sometimes the case that developers genuinely believe that the product they created is fully compliant with the law, whereas it may not necessarily be the case. Law makers often assume that the state of the art is always advanced enough to comply with any new laws that they create, which is also not always true. Sterre den Breeijen, Gijs van Dijk, Tobias Jonkers, Rieks Joosten & Katja Zimmermann in their article 'Self Sovereign Identity and Guardianship in Practice' approach the issue from the perspective of self-sovereign identity (SSI) technologies, for e.g. electronic wallets that collect individual credentials in the context of financial guardianship. Pointing out the existing gaps between 'legal and technical reality', the authors offer valuable insights into advancing the application of SSI in financial guardianship and make a pleasing contribution to scholarship in this area and beyond.

Finally, Kees van Noortwijk and Richard De Mulder offer an insightful commentary on another aspect of artificial intelligence, i.e. legal tech. As technology has advanced over the past decades, so have the opportunities for jurimetrics research in analysing and predicting legal decisions. The authors point out existing limitations of technology, as well as other problematic areas that limit the ability to replicate human decision making in automated judicial decisions. They call for a 'new phase of technological development' to overcome these limitations, and argue that it would not be desirable to hand over legal decision making to computers until this happens.

2022 has been an exciting year for the EJLT – we found a new home at the University of Exeter, published a guest edition with a collection of papers from the BILETA Conference, in addition to publishing several significant papers across two general issues. I would like to take this opportunity to gratefully acknowledge the time and generosity of our peer reviewers and colleagues on the editorial board. Special thanks are also due to Chris Allinson for his meticulous desk editing services. The EJLT also acknowledges and thanks the British and Irish Law, Education and Technology Association (BILETA) for their continuing support to the journal. Needless to say, we thank all our contributors, readers and well-wishers for all their support.

**Abhilash Nair**  
Editor-in-Chief