

Law Reform Report – Quick Guide

Criminal Liability, Robotics and AI Systems

SAL Law Reform Committee



What's the issue?

The ever-increasing presence of Robotic and Artificial Intelligence (RAI) systems in our daily lives promises huge benefits. But there is also the risk that the operation of those systems may cause – intentionally or otherwise – serious harm or even loss of life. Trying to apply criminal law in such instances can raise difficult questions, including:

Is it right to impose criminal liability and penalties at all? Or are regulatory sanctions preferable?

What role did the human user in charge of the system play? What if there is no human user at all?

If the human user didn't cause the harm, why did the RAI system act as it did?

*Should the manufacturer of the RAI system be held responsible in such cases?
Or the programmer of its software code? Or even the RAI system itself?*

How do criminal 'fault' concepts such as 'intention' or 'negligence' operate in such cases?

What can be done?

Where harm is intentionally caused by the user of an RAI system or another person – a hacker, for example – identifying the 'guilty mind' and attributing criminal liability should not be very different from the approach under existing laws. Subject to ensuring that the relevant laws are wide enough to cover the type of intentional conduct in question, there appears little need for wholesale reform to deal with those situations.

However, where no person can be said to have intended the harm – and criminal liability is deemed appropriate – existing legal concepts such as criminal negligence may not always be effective in holding someone to account.

Alternative, or additional, approaches to imposing criminal liability in appropriate cases may therefore be needed. While there is no 'one size fits all solution', the report explores some of the possibilities, including:

Legal Personality for RAI systems: Non-human entities like corporations have long been accorded the status of 'legal persons', meaning they can be held criminally liable. Should we do the same for RAI systems?

Targeting negligence in a system's creation: In 2018, the Penal Code Review Committee outlined two possible new criminal offences targeted at the creation of risk by developers or operators of computer programs. Could these provide useful models?

Duties to take measures to avoid harm: Drawing from the approach in workplace safety legislation and elsewhere, could specific duties be imposed on designated entities to, for example, take all reasonable measures necessary to ensure safety in the deployment of the RAI system?

To find out more and read the full report and recommendations, click [here](#).