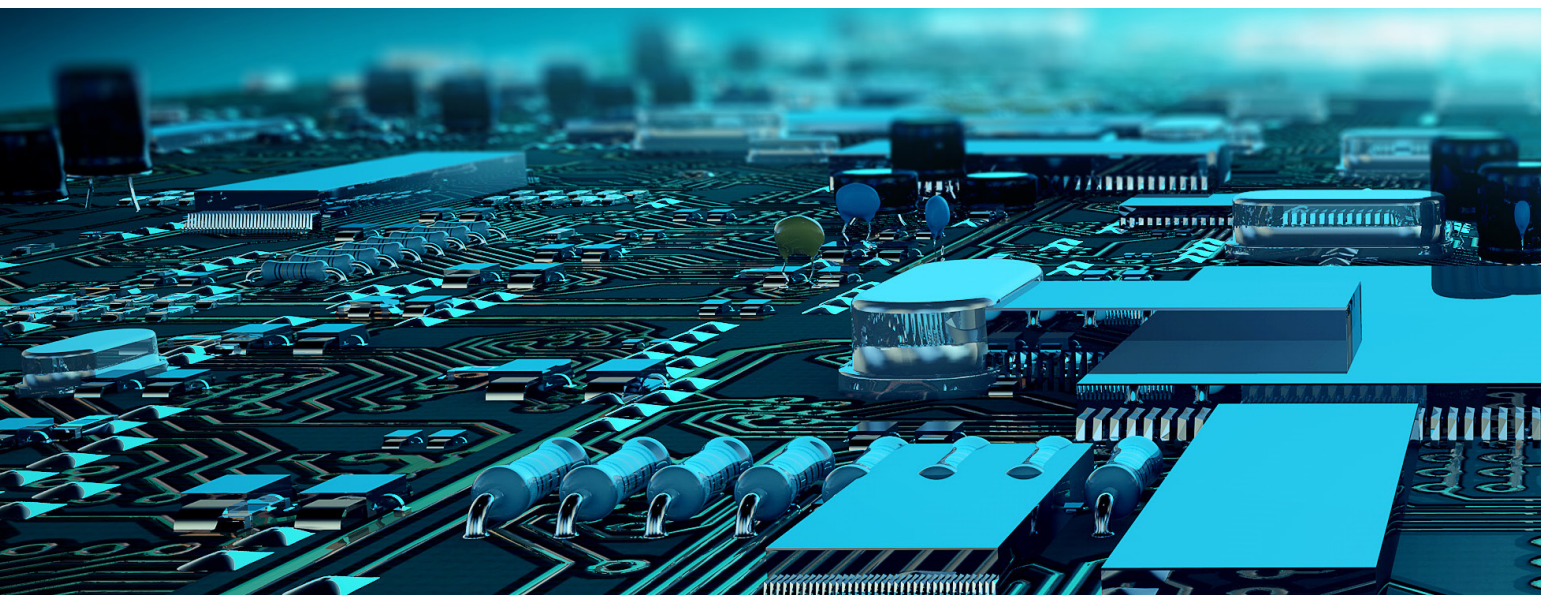


DO LAWYERS NEED TO RETHINK ETHICS IN AN INCREASINGLY DIGITAL WORLD?

Claire Bibby ponders the ethical implications of the ever-growing impact of digital technology.



Many moons ago, as a fresh-faced undergraduate embarking on my journey of the study of law, my first-year class of 1989 saw itself as modern and groundbreaking. We thought this of ourselves because we were one of the first cohorts of students to sit our final exams on a computer. But even in those early days, some were already pushing the boundaries of what technology could do, starting, no less, with the sound of a disk, containing a year's worth of course notes, being inserted into a Macintosh SE floppy disk drive as the examiner's clock began to tick.

Four years later, when I started to put my recently learned legal theory into practice, I soon discovered the power of the WP pool. Those in said pool wielded enormous power, for they were the ones who controlled the speed with which your work transformed from mere words on a dictaphone to the typed form.

By the mid-1990s, computers moved onto the desks of most lawyers. And in the blink of an eye, the World Wide Web moved into mainstream legal firms, no longer the exclusive domain of university-based scientific departments and physics laboratories.

Gone are those carefree days of learning and practicing law, for now we are living, interacting and working in a dramatically different environment. We associate, both at work and at play, within a world driven by smart technologies, the internet of things, intelligent automation, ever increasing avenues of connectivity and the idea (or threat, depending on how you look at it) that one day soon, robot lawyers will be replacing some, if not most, of us. In-house lawyers are now being viewed by commentators as one of the greatest forces for change in this increasingly digitised world. New models of providing legal services are popping up all around us, and Professor Susskind is writing of "Tomorrow's Lawyers", whom will be neither Grisham nor Rumpole-like.

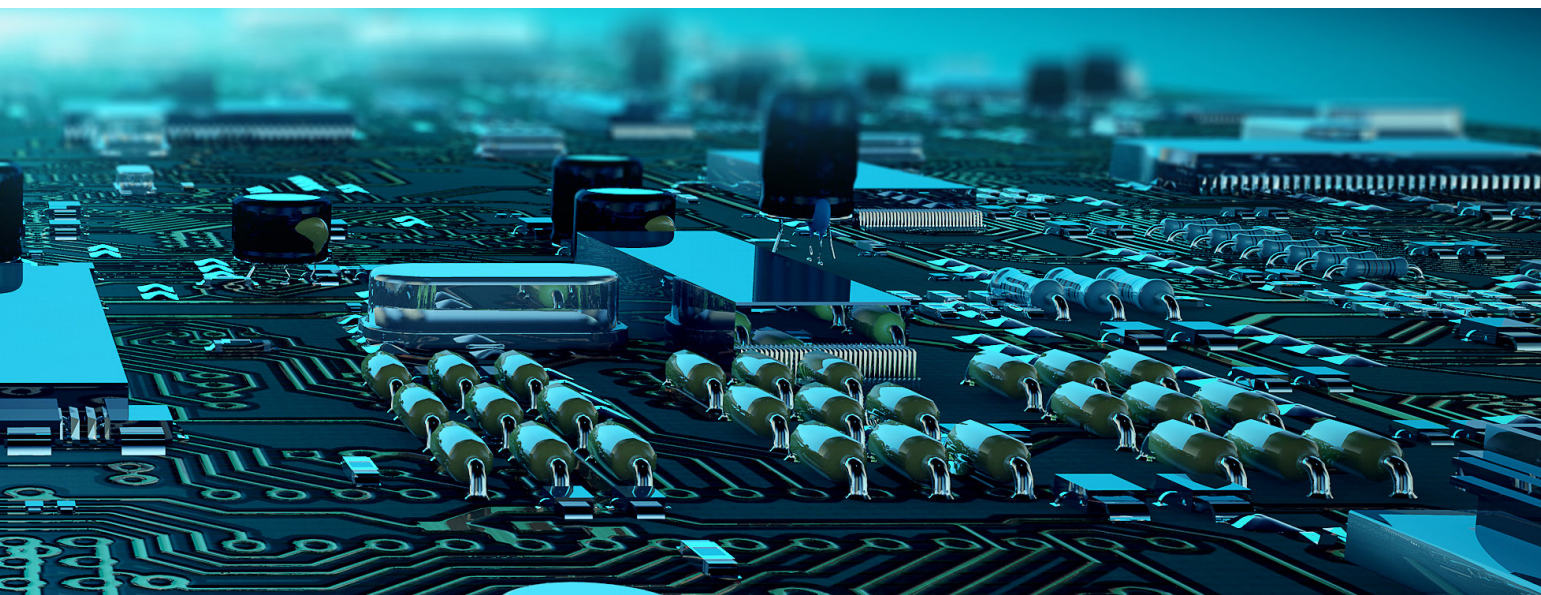
As more smart machines report to work, many commentators anticipate that technological change will increase rapidly, perhaps even at an

unprecedented rate, over the next couple of years. As a result, by 2020, many workforces will have changed as these technologies become even more widely used. So, let me ask you this, if I may: What will our moral, ethical and human dilemmas look like as AI interactions expand? Will our concept of right and wrong need rethinking? What will our system of values and principles look like for the conduct of digital communications between businesses, people and things? Are we now, as research firm Gartner says, at a stage where we sit at the nexus of what is legally required, what can be made possible by digital technology and what is ethically desirable? Do we need a new ethical framework for the practice of law in this grey area of the digital age?

Banks are already using our spending patterns to predict the likelihood that a transaction may be fraudulent and then taking proactive steps to alert us when a purchase doesn't pass the smell test. Websites use our online shopping habits to bring similar products to our digital awareness. And companies like Facebook, Pinterest and Google gather data every moment of every day to make advertising algorithms smarter and more tailored to our individual preferences.

Earlier this year, the University of New South Wales announced that it was "preparing law students for a digital world". UNSW Professor of Law, Michael Legg, reported that law is one of a growing list of industries being disrupted by technology. In his words, lawyers need to understand what that means both for the legal profession and for the administration of justice. Professor Legg is alive to the question of what ethical changes may be coming upon us and has suggested that new electives, such as "Start-up Law" (where students learn how to advise start-up entities or entrepreneurs) and "Legal Practice, Ethics, and Technology" be offered to the next generation of lawyers coming through the ranks.

The external legal community already uses the internet for client development, cloud-based outsourcing, new online methods of advertising and concepts of "virtual presence". Overseas, new university courses are beginning to focus on a lawyer's duties to prospective clients when



interacting online, how to determine issues of competency online, how to ethically handle billing and collections procedures with third-party practice management systems, how to work with clients through online branded networks, as well as how to handle UPL issues in delivering services online and if in a multijurisdictional law firm.

At a more practical everyday level, I invite you to consider:

- the growing use of “live chats” and free 15-minute online advice.
- whether your social media might ever be said to bring the profession into disrepute.
- whether an unintended lawyer/client relationship could develop through a social media exchange.
- if the risk of the disclosure of confidential information might be heightened through online communications.

This is not the first time in human history that laws have not kept pace with the many ethical implications of today’s rapid technological developments. However, should we by now be questioning the ethics of automatic systems designed to collect data on us on masse, algorithms developed to predict and profile us, technologies used to keep an eye on us and business models profiting from the most private details on individuals?

The digital world we now live in will continue to change the way that we work, live and play. In my view, it is incumbent upon us as lawyers to never forget our overarching duties and to never ignore the potential legal, ethical and moral issues raised by technological advances.

And while the leader of the free world has been referred to more than once as the “Tweeter in Chief”, he is neither faceless nor unaccountable (although I accept that some readers may be raising their eyebrows at this juncture), despite operating from behind a digital platform. He is also not a barometer of achieving results ethically in a digital world. In my view, in an increasingly digitised world, the question of ethics gets down not to whether machines are doing the thinking, but whether we still are. 

Technology is nothing. What's important is that you have faith in people, that they're basically good and smart, and if you give them tools, they'll do wonderful things with them.

Steve Jobs



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