

Legal Services Community Principles and Guidelines for Due Process and Ethics in the Age of AI

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Version 1.0

Link to this document <https://goo.gl/o9UFZC>



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About this initiative

These principles and guidelines are being developed by the legal services community through a series of community discussions.

The objectives of this initiative are:

1. Engage our community and educate ourselves about new data-driven, algorithm-powered technology that is transforming our profession.
2. Discuss and identify the impact of new technology on due process and ethics.

3. Develop a set of community principles and guidelines to protect and promote our professional values.

We encourage legal services organizations and businesses to adopt or adapt these principles and guidelines.

Principles and Guidelines

Principle #1: Transparency

1. All people impacted by automated data-driven decision-making should be informed.
2. End-users should be informed of rights they are giving up by voluntarily engaging in a new system or when a mandatory system is put in place or changes.
3. Decisions influenced by automated processes and data sets should be explained in plain language, including what factors were a part of the decision.
4. All new innovations must be equally accessible to all who will be impacted by it.

Principle #2: Accountability

1. Automated data-driven decisions should be logged and auditable.
2. All automated processes should provide a neutral human review of reported problems and challenges to the results.
3. Systems utilizing automated decision making should include a clearly defined process for challenging outcomes.
4. Data/algorithm-driven systems/processes should have human oversight to the extent needed to ensure it meets project objectives.

Principle #3: Reliability

1. Innovations should promote consistency across a jurisdiction.
2. Innovations should include mechanisms for evaluation and improvement, testing validity, and should be required to demonstrate reliability based on feedback loops.

Principle #4: Due Process by Design

1. Algorithms must not codify human biases or structural racism and other biases.
2. A multidisciplinary team including representatives of all groups impacted by an innovation should be involved in planning new systems designed to adjudicate rights/benefits.
3. When considering improvements to legal processes, prioritize access to justice and due process at the same level as efficiency and profit-making.
4. People have a right to recourse and the ability to contest and correct information used to make an automated data driven decision.

Case Studies

Michigan Unemployment Fraud

In October 2013, MI's Unemployment agency began using a new \$47 million dollar computer system called MiDAS. The goals of this program were to improve customer service, eliminate manual, labor-intensive process, increase data accuracy, and reduce costs of operations, "specifically in removal of redundant operations, elimination of data errors, detection and elimination of fraud [where possible], and the introduction of streamlined processes." The system was really good at detecting fraud - reviewers found in

reviewing over 22,000 cases that it incorrectly alleged and prosecuted fraud in 93% of the cases it identified.

Advocates for claimants pointed out that the programmers aren't the bad guys here - the system worked exactly the way the department wanted it to - finding fraud in every nook and cranny. However, the system certainly trampled the rights of the claimants whose wages and tax returns were garnished improperly, and often without them getting any actual notice. There was no human oversight of the computers findings, and the huge number of new fraud cases flooded the appeals process so few cases were able to be adjudicated at all.

This is an example of why we need these principles - this was a program created to increase the efficiency of an agency's process without any safeguards for the rights of the claimants or even safeguards against the computer's own programming. It took years, litigation, legislation, and huge pain and suffering by thousands of claimants to get the problems addressed.

New York City Algorithmic Accountability Bill

Inspired by the [2016 ProPublica article](#) detailing the racial biases discovered in risk assessment algorithms, the New York City Council has voted to create a committee to address the potential for algorithmic discrimination. Currently awaiting a signature from Mayor de Blasio, the bill creates a task force that will examine how various municipal agencies are using algorithms to make determinations that could have a significant impact on the lives of NYC residents. As part of this assessment, the task force will attempt to evaluate whether the algorithms contain any biases related to age, race, religion, gender, sexual orientation or citizenship status.

The task force will be made up of experts in the areas of fairness, accountability and transparency relating to automated decisions systems and affiliates of organizations that represent folks that couple be impacted by agency automated decision systems.

The task force will draft a report including recommendations on:

- How to identify which agency automated decisions systems are subjected to the recommendations of the task force
- Development and implementation of a procedure through which a person affected by a decision made using an agency automated decision system may request an explanation of the decision
- Development and implementation of a procedure that can be used to determine whether an agency automated decision system disproportionately impacts individuals of a certain group
- How to address the situations where someone is harmed by an agency automated decision system
- Development and implementation of a process for making information publicly available that will allow for assessment of system function
- The feasibility of the development of a procedure for archiving agency automated decision systems, and the data used.

EU General Data Protection Regulation (GDPR)

The General Data Protection Regulation ([GDPR](#)) is an EU regulation to strengthen and unify data protection by giving individuals control over their personal data through a simplified regulatory scheme.

- Purpose:
 - unify privacy laws across Europe (uniformity)

- protect and empower EU citizens data privacy (protection), and
- reshape the way organizations treat data privacy (policy).
- **Timing:** Enacted in 2016 - allows two years for transition; companies must be in compliance by May 2018
- **Key Components (principles):**
 - **Uniformity:** applies to all companies processing personal data of EU residents regardless of the company's location
 - **Citizen Control:**
 - companies must request consent to use data. It must be as easy to withdraw consent as it is to give it.
 - right to be forgotten -an individual has the right to erase his/her personal data, cease further dissemination of the data, and potentially have third parties halt processing of the data.
 - **Clear Communication/Transparency:**
 - request for consent must be given in an intelligible and easily accessible form, with the purpose for data processing attached to that consent, using clear and plain language.
 - Individuals have the right to know whether or not personal data concerning them is being processed, where and for what purpose.
 - **Privacy by Design:** an entity is required to hold and process only the data absolutely necessary for the completion of its duties (data minimisation), as well as limiting the access to personal data to those needing to act out the processing.

Appendices

Case Studies

Community contributed case studies are at <https://goo.gl/5kSPUc>

Contributors

This initiative is led by co-founders Angela Tripp, Abhijeet Chavan, and Jonathan Pyle. Thanks to co-authors Anna Steele, Amanda Brown, and Zack DeMeola for their contributions. Also thanks to all those who attended community discussion sessions.

These guidelines were also influenced by the [Washington State Access to Justice Technology Principles](#) and the *State Bar of Michigan's 21st Century Practice Task Force's Justice Innovation Guidelines*.

Community Discussion Events

- Feb 23, 2017 - SRLN Conference
- Dec 8, 2017 - NLADA Conference
- Jan 9, 2018 - LSCITCon Hackathon
- Jan 10, 2018 - LSCITCon Affinity Group
- Feb, 2018 - SRLN Conference
- May, 2018 - EJC Conference
- Jun 6, 2018 - ATJ Tech Fellows

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