

The Expertise world faced with the digital and artificial intelligence challenges.

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The digital world and artificial intelligence have a point in common in that they both use algorithms and databases, are technological revolutions that are transforming economic and social life and represent major issues for the legal world. Experts, as specialists assisting judges, are being encouraged to have at least a minimal level of digital and artificial intelligence in their specialisation and also welcome experts specialised in the digital area.

INTRODUCTION

Initially, we only wanted to talk about digital, but we soon realized that we should also speak about Artificial Intelligence (A.I.) as those two “technological revolutions” have a lot in common:

- Omnipresence of digital today and the one of A.I. tomorrow, in the economic, social...and legal world
- Common technologies between digital and A.I. : algorithms, databases, automatic learning, conversational programs... as well as the complementary specificities of each of these two worlds
- New challenges for the legal world, both in its uses of digital and A.I. and in helping companies or individuals with their litigation or provide them with advice in this new context.

The question we want to ask here is that of the evolution of the expertise world faced with the digital and artificial challenges and more specifically : what are the consequences on the official nomenclature of court-appointed experts ?

What do the digital, A.I. and expertise worlds have in common ? They all include every aspects of human activity, both professional and private.

What are the consequences for a court-appointed expert ? The latter must be able to address every technical needs of the judge and the lawyer, on both traditional professions and new ones. How can the nomenclature adapt to the permanent dynamic of digital and A.I.?

The nomenclature of the required specialities was defined by the Order of the 10th of June of 2005 regarding the planned nomenclature described in Article 1 of Decree No 2004-1463 of the 23rd of December of 2004 and specified by the Order of the 19th of November of 2013 regarding the planned nomenclature described in Article R.221-9 of the Code of Justice.

In view of these three dates, the nomenclature's definition and updating pace is not the one of digital and A.I., which are in constant movement at every level.

Therefore, it is interesting to look at this issue and find ways to solve it.

1. DIGITAL : ITS APPLICATIONS, ITS PROFESSIONS

We will not mention here the figures proving the omnipresence of digital in all human activities, but we will concentrate on taking in consideration its applications and its professions... which will lead us to elaborate on the skills – or specialities – expected of court-appointed experts.

Nowadays, we must talk about digital and not about Internet. The term "Internet" is now restrictive and outdated, since it evokes a technical network logic dated from the 1990s. The term "digital" includes the evolution of uses in a more relevant way, from web traffic to the dematerialisation of data and exchanges. "Digital" is now being used massively in the economical world and throughout the world.

Digital is not only a support technology (software, network...) but also and more importantly a flow of information, exchanges and transactions. It is not just a few professions, but tens or hundreds of professions. To clarify and simplify, we have tried to gather them by "skill family" (sources: specialized or general magazines and websites). We must accept the anglicisms that are being used in these professions.

Technical professions : webmaster (site creation and management), web designer (ergonomics and site design, mobile and tablet), Chief Digital Officer (network management, data), algorithms, software and apps designer, data scientist (database management and analysis)...

Web marketing and ecommerce professions : community manager (builds, grows and manages online communities), brand content manager (content creation and management), product manager (digital projects management), SEO, online advertising, social networks, mobile marketing, customer relationship and loyalty specialists, ecommerce specialist (online sales), point of sale digitalisation, e CRM, database (digital and database analysis and management).

Other professions: this is a non-exhaustive list, for example: digital transformation of companies, online recruitment (e.g. via social networks), digital learning (training , educational tools), online health, cybersecurity...

A list of professions was also given to us by the Internet professions portal and published by the Ministry of the Economy, Industry and Digital. It points out 7 big professions families : programming and development, content production and management, interfaces and digital creation, infrastructures and networks, training and assistance, project management, communication and marketing.

However, all the lists of the same type are quickly outdated but they have the merit of showing the specialisation, multiplication and dynamics that characterised these professions, in their technologies, traffic and uses. The expertise world must take advantage of this and update its speciality sections.

2. ARTIFICIAL INTELLIGENCE : ITS DEVELOPMENTS AND APPLICATIONS

Nowadays, A.I. is more in a development phase, but we can still highlight what is related to the technician and what is related to the practitioner. The A.I. professions will get more and more precise and numerous.

Technological developments : data management, algorithms, automatic learning, pattern recognition, connected objects, conversational software... Augmented human ?

A.I. applies in several fields : health (preventive and therapeutic monitoring of individuals, disease detection through imaging, genetic treatment instead of chemical treatment...), transportation (automated and secured mobility), industry (robotization, resources optimisations...), finance (predictive programs, risk management, resources optimisations), service (cognitive services...), public authorities (fraud detection, public security, intelligence service...), marketing (market, consumers and competitors analysis, personalised communication), media (real time automated content creation...). The legal world, which deals with a lot of data, must resort to A.I.

The expression “predictive justice” is now more relevant than ever, and the possibilities are quite impressive: research and data management (case law, judgements...), decision-making support (predictive software, contract analysis...), documents and procedures automation...It is the Legaltech era. The judge, lawyer and court-appointed expert must put it to good use with their work principles.

“Predictive justice” is subject to reflection, particularly during the conference organised on the occasion of the bicentenary of the Bar Association at the Council of State and the Court of Cassation on the 12th of February of 2018, and also during the 8th annual conference jointly organised by the National Council of Bars and the National Association for court-appointed experts on the 16th of March of 2018.

Please note that connected objects, even if they are linked to A.I., can also be seen as a distinct field.

Artificial intelligence is a world in the making. It is already in a highly topical subject and is moving fast. Let us remember that Internet and now digital, reached his “maturity” within 15 to 20 years ; it is likely that A.I. will follow the same path and the movement has already started. Here too, traditional professions will be transformed, and new professions will emerge. The expertise world must anticipate them and open itself up to new specialities.

3. LEGAL ISSUES

In view of a few sites of lawyers specialising in internet, digital and even artificial intelligence, we can see, on the one hand : the reality of a market where lawyers have already taken position ; and on the other hand : existing or potential litigation cases.

To the best of our knowledge there is not database indicating the number and the type of expertise related to digital or A.I (whereas it is on the legal side and also the court-appointed experts compagnies side). The following elements are therefore based on the few information we could find :

- Virtual currency, cryptocurrency
- Blockchain (information processing and transmission without a trusted third party)
- Private data protection, confidentiality
- Image reproduction rights, violation of privacy, online harassment and cyberbullying
- The liability of the host and publisher
- The liability of manufacturers of robots, automated vehicles and connected objects
- E reputation, defamation, personal or commercial disparagement
- Intellectual property
- Protection of the content of a site
- Counterfeiting
- Parasitism
- Illegal content
- Unfair competition
- Security
- Illegal downloading
- Search engine litigation, unfair competition via Google’s AdWords SEO strategies
- Cybersquatting (the fact of buying a domain name at the expense of a brand or an individual)
- Harassment, cyberstalking, cyberbullying...
- Labour law and the Internet
- Liability, ethics of chatbots (automatic conversation with customers)
- Etc.

Court-appointed experts, who are technicians at the service of the judge, need to become more properly qualified when it comes to digital and artificial intelligence in order to apply it in their

field of competence, and also be able to welcome court-appointed experts specialized in those fields.

The choice between additional fine specialities within the framework of the 8 already existing categories on the one hand; and court-appointed experts specialising in digital and artificial intelligence on the other (or opting for a combination of the two) remains to be debated.

4. THE COURT-APPOINTED EXPERT, DIGITAL AND ARTIFICIAL INTELLIGENCE

More specifically, and to address the judge and the lawyer requirements in these two fields, the answer will have to be given in the court-appointed experts directory, and therefore in the nomenclature of specialities. We would like to clarify the following point: we are making observations and proposals.

The official nomenclature must be updated.

It is organised around 8 categories, which are classified by letters :

- A. Agriculture – Agri-food industry – Animals – Forests
- B. Arts, Culture, Communication and media
- C. Building trade
- D. Economics and Finance
- F. Industries
- E. Health
- G. Forensics and Criminal Sciences
- H. Interpreting – Translation

In digital, the official nomenclature is currently restricted to the Internet and its technology.

They are currently gathered under the category “Industries”, and more precisely under E. 1.2. Internet and multimedia.

- E. Industries
- E.1 Electronics and Computers
- E.1.1 Automation
- E.1.2 Internet and multimedia
- E.1.3 Software and hardware
- E.1.4 Information systems (implementation)
- E.1.5 Telecommunications and large networks

It clearly appears that this nomenclature:

- Limits the internet and multimedia expertise to the technical skills of the electronics and computer industry professional, computer engineers, computer scientists...(category E.

Industries) meaning that software and networks are taken into account rather than the nature of the traffic

- Does not take into account the constant development dynamic of the digital professions (as well as artificial intelligence), which are also facing content challenges
- Does not consider that digital is now omnipresent in all categories of activity, in other terms in the 8 categories of the official nomenclature. For example, social networks fall under category B. Arts, Culture, Communication and Media, e commerce falls under the category D. Economics, Finance. However, litigations in the digital field can apply in every other category.

The application in E. 1.2 Internet and multimedia, of a digital practitioner (for example a digital marketing and communication specialist) has so far been rejected for lack of competence. This is logical from the point of view of the current nomenclature, but not logical from the point of view of the economic and social evolution.

Artificial intelligence is not yet present in the official nomenclature.

This is historically normal but is no longer normal.

There is also the question of its integration. What we just said about the sole consideration of the Internet and not digital, can help us understand how A.I could be included in the nomenclature: it can either have a restricted part (technique) or a more extensive part (traffic and uses). We highly recommend the latter.

Therefore, we can state that the official nomenclature must evolve by taking into account these 3 observations :

- The proximity of these two universes : digital and artificial intelligence
- The constant dynamic of these universes
- The complementarity of the “container” and “content” professions

Three options are possible for a new nomenclature that would include digital and I.A.:

- Create subcategories both for the “container” professions (E. Industries) and the “content” professions which can be included in all the other categories (more specifically: B. Arts, Culture, Communication and Media, D. Economics and Finances and others)
- Create a 9th category : “I. Digital, Connectics, Artificial Intelligence”. We have also mentioned the possibility of differentiating connectics in our point 3
- A cumulation of the two previous options, which would be the most pragmatic.

The creation of this new category “I. Digital, Connectics, Artificial Intelligence” is essential for three reasons :

- Provide the judge with a panel of court-appointed experts which specialities include every aspect of digital, connectics and A.I., both in “content” and “container”. The fact of combining a double competence with a more traditional activity is possible

- Create a "corps" of experts who can act as assessors with the quality of being court-appointed experts, which is the recommended option
- Renew the approach to the nomenclature by addressing the digital and A.I. constant dynamics as well as updating it on a regular basis

A new category “I. Digital, Connectics, Artificial Intelligence” that would be dynamic and evolving.

The challenge is to keep pace with the evolution of technology. In that matter, it would be relevant to update the subcategories one or twice a year (more than that seems contradictory with what we said earlier).

The technical and legal methods come under a monitoring of techniques, uses and professions and also the involvement of three parties : judges, lawyers and court-appointed experts, as well as its regular application through Orders from judicial authorities.

IN CONCLUSION

Dematerialisation is already underway in the legal, judges, lawyers and court-appointed experts world (cf. Opalex collaborative platform). This is the demonstration that digital already uses it, which raises the question about artificial intelligence, connected objects and services. Therefore, it is relevant to think about the concrete implications of this new situation for the court-appointed expert at the service of justice.

Beyond expertise, this reflection can help add value to law-related professions and modernize them, especially when it comes to consulting and when faced with national and international consulting and litigations.

This will have to be at the centre of discussion with every parties : judges, lawyers, court-appointed experts and their representatives.

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