

Lawyers face court sanction for relying on “bogus” cases produced by ChatGPT

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Artificial intelligence has been defined as “the simulation of human intelligence in machines that are programmed to think and act like humans.” In the practice of law, the use of electronic products to, among other things, conduct legal research, gather information, to establish an appropriate quantum of child and spousal support in family law or the length of notice of a wrongful dismissal case has become normal. The traditional library filled with thousands of old-fashioned books, neatly organized on towering shelves and catalogued for easy location and retrieval has been replaced by virtual law libraries.

Although most of these electronic sources are commercial products and restricted to use by lawyers, more and more electronic databases offering access to case law and statutes are publicly available to everyone around the world. Some of these products, like ChatGPT, are marketed as being able to help users answer questions and assist with tasks, such as writing essays.

However as lawyers in a recent U.S. case discovered, the chatbot is capable of producing false results and citing non-existent cases.

In *Mata v. Avianca, Inc.*, United States District Court, Southern District of New York, Court File No. 22-cv-1461, Justice Castel ordered lawyers for the plaintiff to show cause why they should not be sanctioned for filing a 10-page court brief that contained non-existent cases that were retrieved through ChatGPT.

The case stems from an incident where the plaintiff was struck on the knee during a flight on an airplane operated by the defendant. When the defendant moved to have the action dismissed because it was statute-barred, the plaintiff’s lawyers responded with the brief. The plaintiff argued that the applicable statute of limitation had been tolled by reason of a bankruptcy stay.

Lawyers for the defendant, who had specialized expertise in aviation law, did not recognize some of the cases cited by the plaintiff’s lawyers to support their argument and questioned the legitimacy and existence of the cases that were being relied upon. The defendant’s lawyers were unable to retrieve or locate cases that the plaintiff was relying upon.

The mystery about the cases cited in the plaintiff’s brief prompted the court to order the plaintiff’s lawyers to provide copies of the cases. Copies of cases were provided, which listed the court and judges who issued the decision, the docket number and the dates. However, the decisions and the information were fake.

One of the cases produced was six pages long. This case, apparently issued by the United States Court of Appeals for the Eleventh Circuit, contained internal citations and quotes to other decisions. In response to an inquiry from Justice Castel about the legitimacy of the decision, the Clerk of the 11th Circuit appeals court confirmed that there was no such case.

As well, the internal citations referenced non-existent cases. A check of the internal citations referenced in the “bogus” six page decision showed that the cases found at those citations were completely different.

In affidavits filed with the court, the plaintiff’s lawyers admitted to using ChatGPT for their legal research.

One of the lawyers explained that he had located and cited decisions from ChatGPT and that he believed that the cases were legitimate and real. The lawyer swore that he had never used ChatGPT before for his legal research and that he was “unaware of the possibility that its content could be false.”

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This lawyer further swore that he relied on the legal opinions provided to him by ChatGPT, “...a source that had revealed itself to be unreliable.”

In the result, Justice Castel ordered that the plaintiff's lawyer with carriage of the file to show cause why he should not be sanctioned in accordance with the governing court rules and the inherent power of the court for:

- citing non-existent cases to the Court; and
- submitting to the Court copies of non-existent judicial opinions.

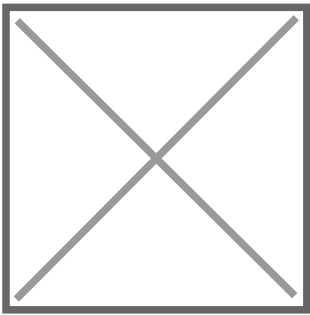
A hearing is scheduled for 8 June 2023.

As a research lawyer for over 30 years, this author has heard about ChatGPT. However, I learned shortly after being exposed to it that it was a source that should not be used to conduct legal research. Legal research is an important skill for all lawyers to possess, particularly those who practice civil litigation or criminal law. However, the only sources that should be relied upon when conducting legal research are those created by commercial legal publishers, law societies or government agencies. There are no shortcuts in legal research. Lawyers would be extremely wise to only rely upon these sources for their legal research needs. A PDF version is available to download [here](#).

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