

## Episode 119: Summary

**Episode name:** Regulating AI: Australia's Interim Response Unpacked

**Guest(s):** Raymond Sun

**What area(s) of law does this episode consider?**

Use of AI and options for legal regulation.

**Why is this topic relevant?**

In January of this year the Australian Government published its Interim Response to the Safe and responsible AI in Australia which is being run through the Department of Industry, Science, and Resources. The consultation received 510 online submissions, held 11 roundtable discussions, and one town hall event with 345 participants.

The Interim Response highlights the enthusiasm of Australians for AI, its potential transformative benefits when put to good use, and the potential benefits to the economy from the technology.

**What cases are considered in this episode?**

*Commissioner of Patents v Thaler* [2022] FCAFC 62

- The Federal Court ruled that an AI machine cannot be considered an inventor for the purposes of a patent under Australian law. The court unanimously overturned the decision of the primary judge, holding that a patent may only be granted to a natural person who is the inventor or who derives title from the inventor. The court emphasised the historical requirement of human ingenuity in patent law, concluding that the inventor must be a natural person.

**What are the main points?**

- The risks associated with AI are well-known, including bias leading to discrimination. Concerns involve intellectual property rights and data privacy, particularly in how AI is trained. These issues are crucial to address in the development and deployment of artificial intelligence technologies.
- In November last year, US President Biden issued an executive order on AI, marking a significant development in American AI regulation. This action has led to the introduction of new initiatives and frameworks in both the US and the EU, shaping the regulatory landscape for artificial intelligence technologies.
- A risk-based response involves regulating AI systems according to their risk level, with stricter regulations for higher-risk systems and more relaxed rules for lower-risk ones. This approach, popularised by the EU, is at the core of the EU Act, which utilises a risk tier system for regulation.
- The goal is not just regulatory, but broadly economic. It is important to consider the big picture, including the government budget and recent funding in technology, such as AI.
- There is currently significant debate revolving around the distinction between regulating artificial intelligence (AI) through specific laws tailored for AI technologies versus applying existing laws to govern AI. This debate is a significant aspect of the broader conversation on AI regulation.

- Another important concern to consider is whether AI developers should have a legal right to use copyrighted material for training AI systems if it benefits the public good.

### Show notes

Ray's Global AI Regulation Tracker ([link](#))

The Public Submissions Received by the Government to the Safe and Responsible Use of AI discussion paper ([link](#))

Interim Response to the Safe and Responsible Use of AI in Australia ([link](#))

NSW Artificial Intelligence Assurance Framework ([link](#))

United Nations General Assembly Resolution A/78/L. 49 "Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development ([link](#))