AI-GENERATED CONTENT AS UNORTHODOX "SECONDARY SOURCES": TOWARDS THE RECOGNITION AND INTEGRATION OF ADVANCED LEGAL TECHNOLOGIES IN LEGAL RESEARCH INSTRUCTION

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GENERATIVE AI LEGAL TOOLS AND PLATFORMS ("GAILTs") AND THEIR FIXED TEXT OUTPUTS ("FTOs")

- Can FTOs be treated / evaluated like secondary sources?

    - Similarities and differences

- Using critical evaluation criteria to evaluate FTOs.

- Examination of issues relating to USER INPUT / INTERVENTION, AUTHORSHIP, ACCOUNTABILITY FOR ERRORS AND OMISSIONS, and SUPPORTING REFERENCES AND CITATION

SOME EXAMPLES OF GENERATIVE AI FIXED TEXT OUTPUTS ("FTOs")

- CASE SUMMARIES

- LEGAL MEMORANDA

- DOCUMENT SUMMARIES

- FULL-LENGTH ARTICLES

- BRIEF DISCUSSION PIECES

- STATEMENTS OR RESPONSES (CHAT-STYLE FORMAT; SENTENCE, PARAGRAPH, OR LIST FORM)

EXAMPLES OF USER PARTICIPATION (INPUTS / PROMPTS)

- Questions or Instructions (NL)

- Background information

- Facts for consideration

- Source documents

- Direction (length, tone, topic of focus, information presentation, etc.)

TAKING A STEP BACK:
DEFINITION OF SECONDARY SOURCES

- Assist with finding, evaluating, and understanding primary sources.

- Summaries, insights, and commentary on law

- Highlights laws applicable to certain subjects / issues

EXAMPLES OF CRITERIA FOR EVALUATING SECONDARY SOURCES

SCOPE

Depth and breadth of content coverage, temporal scope, jurisdictions of focus, depth of analysis provided.

ATTRIBUTION

Authors / creators, editorial involvement, publisher.

CURRENCY

Date of creation, date of publication, currency of bibliographic references.

SUPPORTING CITATIONS & REFERENCES

CAN GENERATIVE AI FIXED TEXT OUTPUTS (FTOs) SERVE SECONDARY SOURCE FUNCTIONS?

Review of similarities, differences, and attributes.

SCOPE:
GENERATIVE AI FIXED TEXT OUTPUTS (FTO$_S$)

DEPTH AND BREADTH OF CONTENT	TEMPORAL SCOPE	JURISDICTION	DEPTH OF ANALYSIS
May be dependent on, **training data set, data sources, and/or document corpus** accessible to GAILT + selective & computational capacity.	Dependent on the temporal scope / time periods covered by training data asset / document corpus.	Dependent on the jurisdiction covered by training data asset / document corpus.	If any, dependent on type of GAILT.
Details on depth and breadth of data sources (along with temporal and jurisdictional scope of resources available) may be unknown to users, along with how sources are evaluated to generate outputs. Users may ask providers for greater clarity.	May be known, if GAILT is used to extract information (ex. citation available for primary law serving as source(s)). User input/prompt may be used to indicate temporal scope of interest.	May be known, if GAILT is used to extract information (ex. citation available for primary law serving as source(s)). Users may have control over jurisdictions of interest.	Some GAILTs may be limited to extractive uses. New insights or analysis may not be generated. Some GAILTs may employ trend or predictive analytics capacities, where insights on trends are generated based on existing data sources

ATTRIBUTION:
GENERATIVE AI FIXED TEXT OUTPUTS (FTOS)

AUTHORS & CREATORS	EDITORIAL INVOLVEMENT	PUBLISHER	USER INPUTS / PROMPTS
Explorable issues relating to GAILT FTOs and authorship → Is there a proper, attributable author, or are these transactional products / outputs considered author-less?	Whether a FTO is edited or reviewed may depend on the GAILT and any additional services. Some GAILTs may be silent on any review or editorial component or service.	FTOs may be open access or delivered to users as transactional / purchased products.	User inputs / prompts are used to direct the generation of FTOs and serve as one element of attribution for the creation of FTOs.
Sometimes, the GAILT itself may be attributed as author / source.	Some GAILTs may have a human intervention / review stage before reaching the user.	Some FTOs are not published in the traditional sense.	The manner or degree to which user input data (prompts) may influence or affect GAILT FTOs varies and is often unknown to the users, unless disclosed or elaborated on by GAILT creators or providers.
Users sometimes assume authorship over FTOs, following revision, editing, and integration with their own original work / inputs.	Some GAILTs have no editorial or review stage and may provide FTOs directly to users.	Some GAILT FTOs are distributed as open-access materials (for example, case summaries).	Users maintain responsible and accountable for the quality of prompts and input data.
Copyright issues (authorship & ownership) may exist → in commercial (non-cited) use of copyright-protected material, with existing / attributable authors, as training data for generating FTOs.	Some GAILTs may be silent on any review or editorial component or service. Users need to actively engage in editorial and review, particularly with GAILTs where any editorial or review process is unknown.	Some GAILT FTOs have been incorporated in published materials (receiving IP protection) after some editing, review, and authorship have been incorporated / attributed to the work.	"Prompt engineering" → in part, the discovery or identification of inputs that yield desirable or useful FTOs.

CURRENCY:
GENERATIVE AI FIXED TEXT OUTPUTS (FTOs)

DATE OF PUBLICATION	DATE OF CREATION	CURRENCY OF RESOURCE
Some GAILT FTOs may not have a publication date. → Transactional outputs / products with date of generation / creation, sold to users, but no date of publication. Some GAILT FTOs may be published or distributed in a mailing list (for example, case summaries). Some GAILT FTOs, which have been incorporated in original, authored works, have publication dates.	Users must be cognizant of either date of creation (or publication). In some instances, FTOs are almost instantaneous, and are generated shortly after prompts or input data is entered. Some GAILTs may have a date stamp or date of creation, which is made known to the user. This may refer to the date the FTO is generated or (in some instances, such as a GAILT that involves human intervention / review before the FTO reaches the user) the date stamped or date of delivery by the GAILT.	The date of creation must not be conflated with the date of currency. → Currency depends largely on 1) the currency of the training data set, data sources, and/or document corpus accessible to GAILT; and 2) consideration of these materials in generative process. Users must be aware of any issues respecting currency. (For example, what may be required is the most current statement from the courts with respect to a certain issue of principle.) Despite incorporating a need for currency into the prompt, this may be limited by the data accessible to the GAILT.

SUPPORTING CITATIONS & REFERENCES: GENERATIVE AI FIXED TEXT OUTPUTS (FTOs)

CITED REFERENCES

In most instances, users / receivers of GAILT FTOs will be accountable for errors, omissions, and their implications.

Some GAILTS have access to and provide citations to both primary and secondary sources.

Citations provided for secondary sources referenced may allow users to discern the authority of the FTO and source works. → Will make edits and reviews easier to undertake.

Users may seek to inquire about the corpus or training and source data and materials utilized by GAILTs.

Users may lobby for greater transparency, in the form of accompanying citations.

CITATION FORMATS

Currently, there is no citation format in the *Canadian Guide to Uniform Legal Citation* ("McGill Guide") for FTOs of GAILTs.

The McGill Guide possesses citation formats for websites, forums, and other digital media and general rules related to online resources. **Whether this may be extended to web-based GAILTs and their FTOs may be explored**.

Although an FTO may not be replicated, the availability of a FTO citation format, coupled with the requirement to disclose the use of GAILTs (for example, in ALR courses) may assist with fostering user accountability and transparency for readers.

GENERATIVE AI FIXED TEXT OUTPUTS AS A *SUI GENERIS* TYPE OF SECONDARY SOURCE?

- Thematic analysis of GAILT FTO characteristics

- Critical evaluation criteria applicable to secondary sources →

  - May be used to evaluate FTOs.

- *Sui generis* → "of its own kind"

  - Unique considerations relating to USER INPUT / INTERVENTION, AUTHORSHIP, ACCOUNTABILITY FOR ERRORS AND OMISSIONS, and SUPPORTING REFERENCES AND CITATION

USER INPUT / INTERVENTION

- **Prompts**: Usually entered in natural language + treated as unvalidated text data (except perhaps by length).

- There is large amount of user discretion with respect to prompt "quality".

- The level of detail of prompts relative to the level of detail of the FTOs may be known or unknown to users.

- **Selection of prompts**: May affect scope (depth and breadth of content + depth of analysis depending on GAILT's ability to "understand" inputs.

- **Effectivity of prompts**: related to training data set, data sources, and/or document corpus accessible to GAILT and how these are related to one another.

THEME 2:
AUTHORSHIP

AUTHORSHIP OF THE FTO

Users may assume authorship over FTOs generated by GAILTs following editing, revision, and amalgamation of the FTO with their own original or other works.

This may raise issues if the GAILTs 1) utilize authored works in their training data set, data sources, and/or document corpus; and 2) generate FTOs without attribution (references or citation).

Do FTOs qualify as original "works"?

Do GAILTs "recycle" FTOs?

USER INPUTS / PROMPTS AS A FORM OF COLLABORATION?

Unlike traditional secondary sources, user inputs / prompts initiate the generation of the FTOs and provide direction on what to generate, alongside factual considerations.

Do prompts serve a collaborative purpose for generation of the "work"?

ACCOUNTABILITY FOR ERRORS AND OMISSIONS

- Users will likely be held primary accountability for any errors and omissions, unlike more traditional secondary sources where the author or publisher may hold or share accountability.

- With legal research being a type of research that requires a certain degree of exhaustiveness (in terms of locating, reviewing, and referencing relevant, current, and material sources), users may have to investigate the possibility of a GAILT's omission of sources and undertake any remediating research.

THEME 4:

SUPPORTING REFERENCES AND CITATIONS

- Users, just as they will likely hold primary accountability for any errors and omissions, will likely be called upon to:

  1) review all supporting references and citations in FTOs; and

  2) in the absence of such, ensure the credibility and soundness of any FTOs to be used in work product.

GENERATIVE AI
FIXED TEXT OUTPUTS

- Transactional (data inputs / data outputs)

- May serve similar purposes as secondary sources.

- May hold many similarities to secondary sources.

- Present key differences that warrant further critical evaluation and *sui generis* treatment, when integrated with legal research processes.

CONCLUSION

Try employing existing critical evaluation criteria / frameworks reserved for evaluating secondary sources to generative AI FTOs.

Systematically note unique attributes of FTOs, including those pertaining to USER INPUT / INTERVENTION, AUTHORSHIP, ACCOUNTABILITY FOR ERRORS AND OMISSIONS, and SUPPORTING REFERENCES AND CITATION.

As GAILTs and their outputs evolve, new attributes for analysis may surface.

Aim for micro, measured, and evaluated integrations of GAI into legal research processes and instruction.

THANK YOU

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