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Artificial Intelligence: Between Technological Innovation and the Construction of a Regulatory Framework

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The rapid development of artificial intelligence (AI) has not only challenged the capacity of traditional legal systems to respond, but it has also exposed their structural limitations. While technology advances at exponential rates, the law faces a structural lag that places fundamental principles such as privacy, accountability, transparency, and the protection of human rights under increasing strain.

Unlike previous technological revolutions, AI not only transforms economic sectors but also directly influences decision-making processes, knowledge production, and social interaction. This raises a central question: how can technology be regulated when its scope and evolution remain uncertain?

In this context, the governance of artificial intelligence has shifted from ethical and declarative approaches toward increasingly binding regulatory frameworks. However, this transition has not been uniformed across jurisdictions. Some regions have moved toward comprehensive regulatory models, others, such as Mexico, remain in an early stage marked by fragmentation and legal uncertainty¹.

1. From Ethics to Regulation: The Evolution of the Global Paradigm

Initial efforts to govern artificial intelligence materialized through soft law instruments, characterized by their non-binding nature and principle-based approach.

At this stage, key instruments include the UNESCO Recommendation on the Ethics of Artificial Intelligence² and the OECD Principles on Artificial Intelligence³, which established guiding values such as transparency, fairness, and accountability. While these instruments helped establish a common set of principles, their practical impact has been limited. They do not create binding obligations, nor do they resolve disputes when risks materialize.

From the 2020s onward, a significant shift has emerged, the transition toward binding regulatory frameworks, hard law. This shift reflects the need to provide legal certainty to both public and private actors, as well as to establish effective mechanisms for oversight and enforcement.

In this context, two key instruments stand out, the EU AI Act and the Council of Europe Framework Convention on Artificial Intelligence. Both represent a turning point in AI governance by translating ethical principles into legally enforceable obligations.

The EU AI Act not only constitutes the first comprehensive regulatory framework for artificial intelligence but also introduces a sophisticated legal architecture that combines elements of product regulation, fundamental rights protection, and digital market oversight⁴.

2. Comparative Regulatory Models

The regulation of artificial intelligence at the global level does not follow a uniform model but rather reflects different legal traditions, policy priorities, and economic strategies. Broadly speaking, three main approaches can be identified: the preventive, rights-based model of the European Union; the reactive, sectoral model of the United States; and the emerging, still undefined framework in Mexico.

1.- <https://digitallibrary.un.org/record/4062495?v=pdf>

2.- <https://unesdoc.unesco.org/ark:/48223/pf0000381137>

3.- <https://www.oecd.org/en/topics/ai-principles.html>

4.- <https://www.boe.es/buscar/doc.php?id=DOUE-L-2024-81079>

Beyond their structural differences, these models reveal a fundamental tension between three key objectives: the protection of rights, the promotion of innovation, and the need for legal certainty.

2.1 European Union

The European Union's model, embodied in the EU AI Act, represents the first attempt to establish a comprehensive and binding legal framework for artificial intelligence.

Its defining feature is a risk-based approach that classifies AI systems into categories (unacceptable, high, limited, and minimal risk), assigning differentiated obligations to each. This design allows regulatory intervention to be proportionate to the potential impact on fundamental rights, particularly in areas such as privacy, non-discrimination, and due process.

From a legal perspective, the EU model adopts a preventive logic, imposing requirements before AI systems are deployed. These include conformity assessments, transparency obligations, human oversight, and risk management.

This approach is consistent with the EU's broader regulatory tradition, in which the protection of fundamental rights serves as the guiding principle of technological governance⁵.

2.2 United States

In contrast, the United States has developed a decentralized approach, characterized by the absence of a comprehensive federal AI law. Regulation is instead articulated through sector specific agencies, administrative guidelines, and state level legislation.

A key component of this framework is the use of non-binding technical standards, such as the AI Risk Management Framework developed by the National Institute of Standards and Technology (NIST), which promotes risk identification and mitigation without imposing strict legal obligations⁶.

Unlike the EU, the U.S. approach is predominantly reactive, intervening only after risks or harms have materialized. It is grounded in a strong reliance on market mechanisms and institutional capacity to address failures on a case by case basis. However, this model has begun to reveal its limitations in the context of rapidly evolving AI technologies.

A particularly illustrative example is the emerging tension between the use of AI tools and the preservation of attorney-client privilege. In *United States v. Heppner* (2026), a federal court held that documents generated through a public AI system were not protected by attorney-client privilege, emphasizing that communications with such tools lack the confidentiality required for privilege to attach. The court further clarified that materials created outside the attorney-client relationship do not become privileged merely because they are later shared with counsel.

This example underscores a broader structural issue: reactive regulatory frameworks may struggle to anticipate and mitigate risks in contexts where harm can occur before legal intervention is triggered. As AI becomes more deeply embedded in professional decision-making processes, the limitations of an exclusively reactive approach become increasingly evident⁷.

5.- https://commission.europa.eu/topics/artificial-intelligence_en

6.- <https://www.nist.gov/itl/ai-risk-management-framework>

7.- <https://www.saiber.com/insights/publications/2026-02-24-federal-court-rules-clients-ai-generated-documents-not-privileged>

2.3 Mexico: Between Normative Reception, Fragmentation, and Structural Uncertainty

Mexico's case is defined by the absence of a comprehensive regulatory model for artificial intelligence, placing it in a transitional phase marked by significant legal uncertainty.

In practice, AI governance relies on pre-existing legal frameworks, particularly in data protection, intellectual property, and labor law. While this indirect approach addresses certain risks, it remains insufficient to tackle complex issues such as automated decision-making, algorithmic bias, and liability in autonomous systems⁸.

In recent years, legislative activity has increased, with various initiatives addressing key aspects of artificial intelligence, including the protection of artists rights in the context of generative AI, and proposals aimed at recognizing artificial intelligence as a matter of federal regulation at the constitutional level. These efforts are relevant but disconnected without a coherent framework⁹.

3. The Mexican Case: Between Regulatory Vacuum and Reactive Overregulation

Mexico lacks a specific legal framework governing AI. Moreover, there is no specialized authority responsible for overseeing its development and deployment, leading to fragmented institutional competencies. This absence creates a legal environment in which both public and private actors operate without clear standards or obligations.

Ultimately, the central issue is not the lack of regulation, but the absence of a defined regulatory model capable of guiding future legal development.

Mexico has yet to determine whether its regulatory approach should align with a preventive, risk-based model similar to that of the European Union, a flexible, market-driven framework as seen in the United States, or a hybrid model specifically tailored to its own institutional and economic context. This lack of a defined approach complicates coherent policymaking and restricts the country's ability to position itself strategically within the global AI landscape¹⁰.

The regulation of artificial intelligence is no longer a theoretical debate but an urgent necessity. The shift from ethical principles to binding rules reflects a broader transformation: AI can no longer rely solely on self-regulation but requires legal frameworks capable of anticipating risks and assigning responsibility.

The contrast between the European Union and the United States demonstrates that there is no single model, but different ways of balancing innovation and control. What is clear, however, is that delaying regulatory action is no longer a viable option.

In this context, Mexico faces a critical challenge. Normative fragmentation and isolated legislative efforts reveal not only a legal gap but also the absence of a coherent strategy. The risk is not just falling behind but building an ineffective and inconsistent regulatory framework.

Regulating artificial intelligence is not simply about governing technology, it is about defining the role of the State in shaping innovation and, ultimately, the kind of digital society that will emerge in the years ahead.

8.- <https://estrategia.la/2023/08/27/indice-latinoamericano-de-inteligencia-artificial-ia-presentado-por-la-cepal/>

9.- <https://www.jornada.com.mx/noticia/2026/04/07/politica/diputados-avalan-reforma-sobre-derechos-de-artistas-ante-inteligencia-artificial>

10.- <https://ricardomonrealavila.com/wp-content/uploads/2026/02/LeyIA.pdf>

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