D4.3

Legal challenge landscape

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FORSEE
Forging Successful AI Applications for European Economy and Society

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1. Executive Summary

This report maps the emerging legal challenge landscape surrounding artificial intelligence (AI) in the European Union through a comparative analysis of 20 landmark cases decided between 2022 and 2025 across France, Germany, Italy, Spain, Ireland, and the Court of Justice of the European Union. Rather than treating AI as a wholly novel regulatory object, the report examines how courts and regulatory authorities adapt existing legal doctrines to address new forms of algorithmic mediation. By analysing litigation as a site of social contestation, the report identifies where AI deployment generates friction with established legal norms and where courts intervene to resolve or stabilise these tensions. In this regard, the main findings of this report is as follows:

First of all, this report identifies that courts are not treating AI as a new domain that requires the invention of entirely novel causes of action. They have reinterpreted existing rights to regulate AI before the AI Act took full effect. This continuity-based approach is also visible in UK jurisprudence, for example, in the Bridges case, the court of appeal turned to public-law and general equality principles to regulate AI facial recognition technologies. In this regard, the report moved beyond the specific fields of law (contract law, tort law,etc) and situated case law within a broader model of contestation encompassing seven areas: (i) profiling, (ii) copyright, (iii) data collection (Training), (iv) transparency, (v) governance, (vi) manipulation and (vii) labour/employment.

Moreover, the in depth analysis led to the development of a typology of contestation based on two axis, the approach of the courts and issues at stake. In regards to the former, two main approaches were identified, a laissez faire stance and a vocal approach. The latter revealed the key pressure points as (i) transparency/opacity, (ii) boundary, (iii) surveillance, (iv) fundamental rights, (v) personal rights (distinct from fundamental rights as explained below), and (vi) workplace power dynamics.

Secondly, our research reveals a lack of litigation grounded in AI-related bias or discrimination. On the other hand, copyright/IP disputes form one of the two largest clusters (together with data-collection litigation).

Thirdly, we found that courts have a tendency to adopt a *laissez-faire* posture at the *upstream* phases of the AI value chain (i.e. the early-stage development or organisational integration of AI systems), while adopting a more strict, rights-centered approach once AI systems move from the development/innovation stage to the *downstream* contexts where there is direct harm (or risk of harm) to individual or fundamental rights. That being said, looking at the cases from a bird's eye view and especially the weight of the cases where a more vocal approach is adopted, we can say that the European courts have a generally more strict approach when it comes to AI use and deployment.

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There is currently no concrete data related to the newly enforced AI Act and it is also yet to be seen whether the newer "deregulation" centered approach of the EU and the digital omnibus will change the current trend of the EU Courts.

2. Introduction

WP4 focuses on societal acceptance of AI applications and research in controversies and points of tension. As AI technologies continue to permeate various aspects of society, understanding how they are received and perceived by different stakeholders becomes crucial. Firstly, research concentrates on the public sphere; news organisations and social media play a pivotal role in shaping societal perceptions of AI by disseminating information, influencing public discourse and framing narratives around AI applications. Then, points of tension are further explored through litigation analysis; court cases involving AI applications serve as a critical barometer, revealing societal tensions and concerns, providing a legal lens through which ethical, accountability and transparency issues are scrutinised and addressed. Finally, through scenario building, these divergences are addressed and examined as present and future challenges. This report (Deliverable 4.3) provides a general understanding of the legal landscape surrounding AI in the EU by analysing 20 cases from France, Germany, Italy, Spain and Ireland, as well as cases from the Court of Justice of the European Union (CJEU). This report aims to (i) identify the legal tensions and areas of social contestation on AI, (ii) understand how courts address specific issues including but not limited to privacy, bias, accountability, copyright, labour, automated decision-making; and (iii) develop a typology of legal challenges that reflects emerging and historical forms of contestation concerning AI in the EU.

3. Methods and Corpora

The research used a structured legal-empirical methodology to identify, collect and analyse 20 litigation cases across Europe involving AI systems between January 2022 and January 2025. The objective was to construct a coherent, cross-jurisdictional corpus of cases that reveals how European courts currently address controversies surrounding AI. The selection and analysis process proceeded in three stages: scoping, case identification, and corpus refinement. For the analysis of the cases, a legal doctrinal research approach was predominantly taken.

3.1. Scope and initial framework

The approach of scoping and defining AI was socio-legal research. This approach understands AI not as a fixed technological object but as a shifting socio-technical field that is continuously contested. More concretely, the research started with an assumption derived from existing scholarship that controversies surrounding AI coalesce around both recurring legal tensions and new types of controversies. The goal, therefore, was twofold: (i) to map out the existing fields of contestation and understand how these areas are affected

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by the improvement/development of the relevant AI technologies; and (ii) to find out any new fields of contestation given rise by the advent of new AI technologies (e.g. GenAI). The final typology of contestation covers findings from both of these areas. As demonstrated in the figure below, the typology is organised along six principal domains of contestation: Profiling, Data collection, Training practices, Employment, Manipulation and Copyright.

3.2. Data sources and case identification

The research focuses on France, Germany, Italy, Ireland and Spain, alongside EU-level decisions from the CJEU. The inclusion of France, Germany, Italy, Ireland and Spain is justified by the fact that these jurisdictions currently represent the most active and diverse landscape of European AI-related litigation, offering a uniquely rich comparative basis for analysing emerging patterns of contestation. Collectively, these jurisdictions provide legal diversity across civil, administrative, criminal and constitutional law, while also representing major EU economies where AI deployment is commercially and institutionally advanced. Their jurisprudence forms the core of the emerging European case law that will shape how the AI Act and existing legal frameworks interact in practice.

In our research, we have identified 6 cases from Germany, 5 cases from France (1 pending), 3 cases from Italy, 3 cases from Spain (1 pending), 3 cases from the EU courts and 1 case from Ireland. We have also identified inquiries by Data Protection Authorities in Ireland and This is illustrated in the map below.

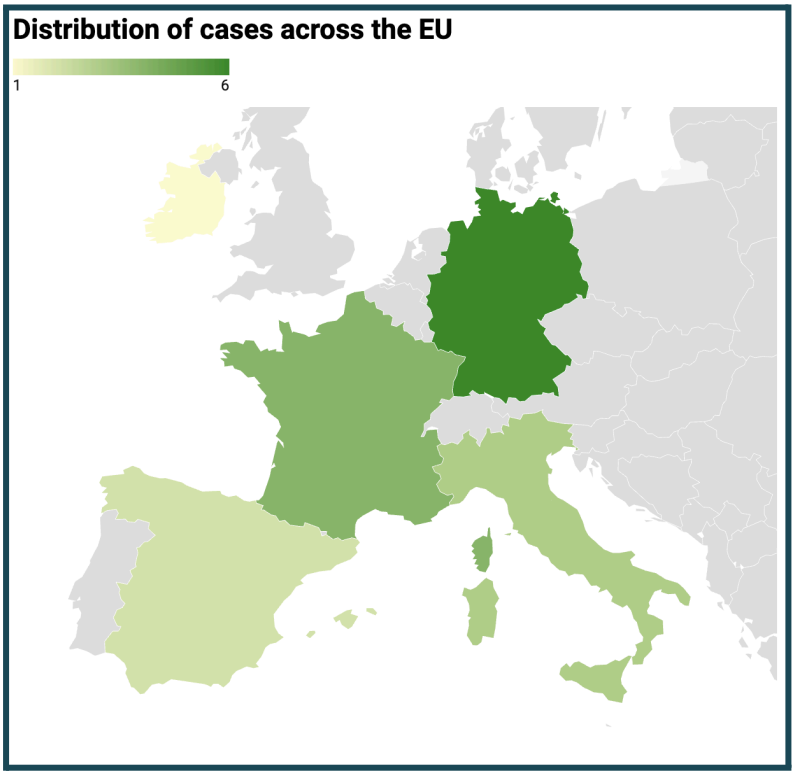

Figure 1 - Map of the Analysed Case Law

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While the study is limited to EU jurisdictions within the post-2020 time window, it is important to acknowledge the jurisprudential significance of key UK cases on AI and surveillance. Cases such as (Bridges) v Chief Constable of South Wales Police and the Big Brother Watch complaint were significant in challenging biometric and discriminatory technologies. Although these cases are not incorporated into the formal corpus, they serve as examples of the patterns of contestation discussed in this report. Therefore, they will be used as illustrative reference points in the comparative analysis where helpful.

Case identification proceeded through a structured, multi-source search strategy. First, national court databases (BGH, Cour de cassation, Consiglio di Stato/TAR, and the Spanish CGPJ) were used to collect authoritative judgments. EU-level disputes were retrieved from the CJEU Curia database. Second, media sources (law firm blogs, news articles, student blogs, etc) were regularly consulted to identify potential cases. Because media sources rarely supplied formal case titles or docket numbers, the study relied on reconstructing cases by querying party names and factual elements across the aforementioned databases. Additionally, AI-related decisions were also sourced from registers of national data-protection authorities such as CNIL, Garante, AEPD, and the BfDI. Lastly, to ensure coverage of emerging controversies that have not yet reached national courts, the research incorporated civil-society repositories such as NOYB's strategic litigation database and AlgorithmWatch's blogs.

General Category	Specific Portals
EU Level Databases	1. CJEU (Curia) - EU case law on automated decision-making, data protection, and AI-related disputes. 2. EUIPO - IP decisions relevant to AI-generated content and data-driven creativity. 3. IFRRO - Copyright and reproduction-rights cases relevant to AI training datasets.
National Courts	1. BGH (Germany) 2. Cour de cassation (France) 3. Consiglio di Stato / TAR (Italy) 4. Poder Judicial / CGPJ (Spain)
DPAs	1. CNIL (French DPA) 2. Garante Privacy (Italian DPA) 3. AEPD (Spanish DPA) 4. BfDI (German DPA) 5. DPC (Irish DPA)
Civil Society Actors	1. NOYB - Strategic litigation database challenging AI-driven data practices 2. Algorithm watch - Case tracking on algorithmic harms, transparency, and automated decision-making.

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Media Discourse	Large national daily newspapers from France, Germany, Ireland, Spain (e.g. La Monde, Le Figaro, Suddeutsche Zeitung, El Pais) (See D. 4.2. - Media Discourse Analysis for the full list)

Table 1 - The Databases and Sources Subject to Research

3.3. Search terms

The research used a multilingual search-term strategy designed to capture the wide range through which AI and ADM concepts appear in judgments. More specifically, the search process relied on the following set of terms:

Technological terms	**Data protection-related terms**
a. Artificial intelligence b. AI system c. Generative AI/GenAI d. algorithmic decision / algorithmic decision-making e. automated decision / automated decision-making f. machine learning g. automated system h. automated process i. decision-support system	a. automated processing b. automated profiling c. data protection impact assessment / DPIA d. algorithmic transparency e. explainability / XAI
Administrative and governance terms	**Discriminatory or risk-based uses of AI**
a. automated administrative decision b. automated triage c. computer-generated decision d. algorithmic governance e. digital government f. predictive analytics g. automated profiling/profiling	a. algorithmic bias b. AI bias c. automated hiring d. automated screening e. predictive policing f. risk assessment tool g. biometrics h. surveillance i. facial recognition

Table 2 - Keywords Used for Research

Although the terms were collected in English, they were translated into French, German, Italian and Spanish to align with the linguistic conventions of national datasets. We have also used 2 key language experts for the cases in French and Spanish to make sure we have exhausted the databases thoroughly.

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3.4. Filtering initial cases and choosing final cases

The initial pool of cases was filtered through three inclusion criteria: (1) the dispute had to centre substantively on AI or algorithmic decision making; (2) the decision had to establish, clarify, or apply legal doctrine in a way that contributes to the governance of AI; and (3) the case had to mark a conceptual inflection point in the sense that it added to discourse on how AI is conceived legally. Cases were excluded where AI played only a marginal role in the dispute, where the decision did not develop relevant doctrine, or where sufficiently reliable documentation (e.g. full judgment text, operative part, or docket information) was not publicly accessible.

4. Literature Review

4.1. Research Landscape on AI Litigation

The research landscape on AI and litigation has various focus points. The most important aspect of it is that, instead of focusing on the litigation with AI as its *subject matter*, the literature body mostly looks at AI's use in legal proceedings. This creates a noticeable gap between what scholars write about and the actual point of controversy regarding AI, i.e. disputes involving AI systems. The scholars identify the controversies of including AI in the judicial system, but not the actual AI controversies that have already been litigated in the judicial system.

The largest and most developed body of literature deals with the use of AI within legal and administrative decision-making (Hildebrandt, 2018; Liebesman & Young, n.d.; Nowotko, 2021; Selçuk et al., 2025). This includes research on predictive tools for sentencing (Fazel et al., 2022; Portela et al., 2025), risk-assessment algorithms (Kehl and Kessler) and expert systems (Susskind, 1986). The core concerns raised across this scholarship are relatively consistent: the issue of fairness (the right to a fair trial), a lack of transparency, bias embedded in training data, the difficulty of review of validation studies contesting algorithmic decisions, and the possibility of keeping humans in the loop. Although the specific case studies vary, this literature tends to treat AI as something the legal system uses, not as something being litigated in its own right.

Another area with recognisable literature is AI and liability (Frattone, 2023). This work typically addresses questions such as: who is responsible when an autonomous system causes harm; whether existing tort and product-liability doctrines (Hacker et al., 2020) can be applied to cover learning systems; and how to allocate responsibility when outcomes are the result of complex, adaptive models rather than clear design choices.

Although limited, another strand of literature focuses on AI and IP rights. Interestingly, instead of focusing on copyright-related claims, "patent" (Teli et al., 2024) is a prominent point where research has taken place concerning AI-related litigation.

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In contrast, writing that focuses on litigation *about* AI (i.e. cases where an AI system itself is the alleged cause of harm, the subject of a rights claim, or central to a contractual or regulatory dispute) is limited. Based on our understanding, although such cases are starting to reach courts more frequently, scholars have not yet developed a consolidated account of them. Most publications in this area are policy reports, high-level commentary, or speculative frameworks for assigning responsibility. Empirical studies of case law across jurisdictions are rare, and there is no widely accepted taxonomy of AI-related disputes.

In this regard, this report will contribute to the existing literature by situating AI in the center of legal contestation, understanding the shifting narrative surrounding it in EU case law and drawing its findings on controversies and tension points based on the main themes, patterns and areas of contestation.

4.2. The Societal Shaping of AI and Its Reflections on Litigation

As explained in Section 1, this report takes AI not as a fixed technological object but as a shifting socio-technical field that is continuously contested. This is based on the understanding that AI technologies are not deployed in a vacuum for merely the sake of technological innovation but are rather designed, shaped, implemented and, of course, contested based on the social dynamics surrounding them.

In this regard, the sociology of expectations (SoE) literature provides a useful framework for analysing how artificial intelligence becomes legally and socially contested in the European Union. To give a bit of an introduction into this, SoE is commonly situated within the broader Social Construction of Technology (SCOT) tradition, which challenges linear and technologically deterministic accounts of innovation. Rather than viewing technological development as the product of autonomous technical progress or individual ingenuity, SCOT emphasises that technologies are shaped through social interaction and institutional context (Pinch and Bijker, 1984). From this perspective, technological artefacts acquire meaning and legitimacy through ongoing negotiations among multiple actors, including developers, users, regulators, and policymakers. The trajectories of technological development are therefore influenced by competing interests, normative assumptions, and power relations, rather than being dictated by purely technical considerations (Kitzinger, 2008).

Brown & Michael (2003) discuss "*how the future is mobilized in real time to marshal resources, coordinate activities and manage uncertainty*". Based on this, the legal contestation surrounding AI can be understood as a present-day site in which courts, regulators, and civil society actors negotiate anticipated risks and institutional futures rather than responding solely to established harms.

Moreover, according to Kerr at al. (2020) there is a change in expectations around AI when the society is concerned as a whole. In this regard, there is a public demand for the authorities (or in our case, the courts) to govern/regulate the use of AI. The case law can

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respond to this request in two ways: (i) first by taking AI under the umbrella of existing legal frameworks to be able to govern it (e.g. GDPR, copyright, labour law) and (ii) second, by rendering decisions on the emerging areas of contestation (e.g. AI training, algorithmic bias-discrimination).

Fitzgerald (2014:252) indicates that, SoE "*acknowledges both that 'expectations' are not always positive, and also that even positive imagined futures will generally coexist with some sense of failure, or simply frustration*". In accordance with this, expectations about AI's potential to enhance efficiency, enable surveillance, or undermine fundamental rights are also performative: they influence regulatory priorities, mobilise actors, and structure enforcement and litigation even in the absence of AI-specific judicial review. As a result, legal contestation around AI often reflects disputes over imagined futures rather than over settled technological realities.

This perspective is particularly relevant for understanding AI-related litigation and enforcement emerging under existing legal framework*s,* notably the GDPR, administrative law, and human rights law. Van Lende states that *"Expectations… play a central role in mobilizing resources both at the macro level, for example in national policy through regulation and research patronage…*" indeed, technological governance frequently develops through anticipatory interventions, where regulators and courts act to prevent projected harms under conditions of uncertainty

In accordance with the explanation above, in the EU context, controversies around, for instance, automated decision-making, profiling, and large-scale data processing have been channelled through existing legal frameworks such as copyright or data protection law before any AI-specific regulation entered into force. Moreover, data protection authorities played a central role in translating societal visions or negative expectations about opacity, discrimination, and power asymmetries into legal claims, thereby shaping how AI is governed in practice.

Finally, the sociology of expectations helps explain the persistent fluidity of "AI" as a legal category across the cases examined in this report. Strategic litigation and advocacy initiatives documented by actors such as NOYB and AlgorithmWatch can be understood as efforts to contest dominant techno-administrative narratives and reframe automated systems as sites of social and legal risk. By foregrounding expectations rather than essentialising AI, this approach provides a conceptual foundation for tracing how legal meaning, contestation, and partial convergence emerge across different institutional and national contexts.

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5. Analysis of the Case Law

5.1. Case-by-case Analysis

In order to have a general understanding concerning the legal discourse surrounding AI in the EU, below we provide a detailed case-by-case analysis of our review.

5.1.1. Schufa (C-634/21, 07/12/2023), CJEU (Supranational court)- Automated Decision-Making

The SCHUFA Judgement represents a central point of contestation around automated decision-making in EU Law. The decision clarified the stage at which an automated process becomes a legally challengeable 'decision' within the meaning of Article 22 GDPR. The claimant, OQ, challenged a credit score generated by SCHUFA after a bank relied on it to refuse a loan. The core issue was whether SCHUFA's generation of the score was a "*decision based solely on automated processing*" that "*produces legal effects… or similarly significantly affects*" the data subject under Article 22(1) GDPR. The CJEU found that the automated production of a credit score does constitute a decision under Article 22 (1) GDPR if a third party draws 'strongly' on that value to render a decision. The court explained that if the credit score was not considered a "decision", a major lacuna in protection would emerge. Specifically, the claimant could not exercise her right of access against SCHUFA because it would not be considered the decision-making entity. Conversely, asserting that right against the bank would also be ineffective, as the bank does not have access to the underlying data or logic used to generate the score.

Overall, the SCHUFA case reveals that the CJEU is willing to extend the notion of a 'decision' to an earlier stage of the automated-decision-making process to avoid gaps in GDPR protection. Traditionally, credit scoring was understood as an informational step that preceded a lender's actual decision. However, with the increased adoption of AI-driven and algorithmic techniques in credit scoring, this intermediate step exerts a decisive influence on the outcome. The litigation in SCHUFA illustrates a broader trend in EU law towards recognising that AI-driven systems are beginning to form integral components of decision-making chains and therefore must be subject to the same safeguards to prevent protection gaps.

5.1.2. Dun & Bradstreet, (C-203/22, 27/02/2025), CJEU, (Supranational court)- *Transparency*

The Dun and Bradstreet judgment addresses the scope of transparency and access rights in automated decision-making scenarios. The case arose when CK, the claimant, was refused a mobile telephone contract based on a negative automated credit assessment generated by Dun and Bradstreet (D&B). The claimant challenged D&B's failure to provide "meaningful information about the logic involved" in the profiling, as mandated by Article 15(1)(h) GDPR. The CJEU held that Article 15 (1) (h) GDPR should be understood as affording the data

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subject a genuine right to an explanation. The court held that the explanation ought to detail the procedure and principles actually applied to obtain a specific result. In essence, the Dun and Bradstreet judgment connected the concepts of transparency and contestability. The court understood that formal transparency is insufficient. Namely, it held that communicating a complex formula, such as an algorithm, is insufficient to satisfy Article 15 (1) (h). Instead, it advocated for a substantive notion of transparency that enables the data subject to understand the basis of the profiling result well enough to exercise the right to contest the decision under Article 22 (3) GDPR.

The judgment recognises, in the era of AI-driven credit scoring, that transparency cannot remain confined to the technical disclosure and must centre around the lay credit-seeker. What was implicit in SCHUFA is explicitly pronounced in Dun and Bradstreet: transparency obligations must evolve with AI to ensure that individuals subject to automated decision-making are able to exercise their fundamental rights.

5.1.3. Argea Sardegna (n. 4929, 06/06/2025), Italy (Regional administrative court) - *Transparency & Right to Access*

The Italian case Argea Sardegna dealt with a challenge to an automated system used by a public body - ARGEA (Agenzia Regionale per la Gestione ed Erogazione degli Aiuti in Agricoltura). The dispute arose when the claimants required agricultural aid documentation to qualify for potential damages for an impending civil lawsuit against the co-owner for illegal fund management. The public body managing this documentation, ARGEA, refused access by claiming 'impossibility of obtaining the data'. ARGEA argued that aid funds were managed via the application of algorithms that were automated at the central IT level, and extracting information would require hiring a third-party consortium. The defence rested on the algorithm's opacity as a shield for accessing information. The Italian Council of State rejected the defence and held that difficulties resulting from the use of algorithms in administrative activity cannot be cited to override a fundamental right like the right of access.

The court extended existing jurisprudence to articulate three principles that govern the use of AI in public administration. First, it held that the administrative bodies have primary competence for managing aid contributions and thus cannot "hide behind" the unknowability of their algorithms. Second, the implementation of AI to achieve greater efficiency does not relieve the public body of its duty to be transparent and to guarantee the right of access. Lastly, the judgment clarifies that public administration remains accountable for its use of automated-decision making software and must comply with transparency requirements accordingly.

5.1.4. Kneschke v. LAION (310 O.22723, 27/09/2024), Germany, (District court) - *Copyright*

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The German case, Kneschke v. LAION, concerned a copyright claim brought by the claimant, a photographer, whose images were included in a dataset of 5.85 billion image-text pairs assembled by the defendant, a 'large-scale AI open network', for training its generative AI systems. The defendant had downloaded the claimant's watermarked image from a publicly accessible stock-photo website as part of an automated pipeline for verifying and filtering image-caption correlations. The main question was whether this reproduction fell within the text-and-data-mining (TDM) exceptions transposed from the DSM directive into German law. The Hamburg court dismissed the claim, holding that LAION's activities were covered under the scientific-research TDM exception of Article 3 DSM Directive. It found that LAION acted as a non-profit research organisation and created the dataset for non-commercial research purposes. The claimant argued that web-scraping his images ultimately contributed to commercial models capable of generating content; however, the court refused to treat dataset creation, model training and downstream commercial uses as part of a single chain. Instead, it strictly delineated the stages, arguing that LAION's activities should be assessed solely at the point of dataset compilation without regard to potential future applications.

This delineation signals a reluctance to extend copyright protection in ways that would constrain non-profit or research-driven components of AI development. The approach reflects a broader pattern in these early cases of AI litigation that courts seek to avoid "overregulating" the foundational process of AI development.

5.1.5. Meta (15 UKl 2/25, 23/05/2025), Germany (Regional court) - *Data Collection (Training)*

The OLG Cologne's decision of 23 May 2025 on Meta's use of publicly accessible Facebook and Instagram content for AI training. The claimant, a German consumer protection association, sought an injunction to prohibit Meta from using personal data by citing violations of the GDPR and DMA. The primary GDPR issue was whether the processing of mass user data could be justified by the controller's legitimate interests under Article 6 (1) (f) GDPR and whether it violated the strict prohibition on processing of special categories of personal data under Article 9 GDPR. The court rejected the claimant's application in full. It held a summary assessment that Meta could rely on Article 6 (1) (f) GDPR. It did so, inter alia, by reasoning that the development of LLM models was a legitimate interest in the context of Recital 8 of the AI Act, which states the goal of achieving a leading role in the development of safe, trustworthy and ethical AI. The court also considered the de-identification measures and the right to object deployed by the controller to be sufficient in terms of mitigation measures. In regard to Article 9 GDPR, the court affirmed that sensitive data was likely collected, but argued for a "purpose-related reduction" of the prohibition. It cited search engine-related precedents to argue that the prohibition should only be triggered upon a specific request from a data subject to remove their data. The court also rejected the claimant's argument that Meta's collection of data from Facebook and Instagram consisted of 'combining' personal data under Article 5 (2) DMA. It argued

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that the process lacked the "targeted linkage" of data specific to the same person across the two platforms.

The Meta ruling seems to enforce the impression that courts are reluctant to intervene too strongly in the foundational stages of AI development.

5.1.6. LG Berlin II, Urteil (2 O 202/24, 20/08/2025), Germany (Regional court) - *Copyright*

The Berlin Regional Court II ruled on a dispute concerning the unauthorised use of AI-generated voice clones based on a distinctive human voice. The claimant was a German actor, voice actor and audiobook narrator, known for dubbing a specific actor in films. The defendant had used an AI voice clone that closely resembled the claimant's distinctive dubbing voice in two YouTube videos promoting political satire content and an online shop. The central legal issue was whether the respondent's use of the AI voice clone was an infringement of the claimant's general personality rights, specifically the right to one's own voice. The court rejected the respondent's arguments based on artistic freedom, satirical intent and alleged licensing from an online AI-voice provider. The court found the AI-generated voice was sufficiently similar to the claimant's voice and thus created a likelihood of association among the defendant's viewers. It affirmed that the general personality right encompasses the right to one's own voice. Therefore, it held that the use of an AI voice clone interfered with the claimant's right to decide whether and under what circumstances his voice may be commercially exploited. The Berlin court calculated damages based on the license fee the claimant would have commanded for the unauthorised use and assessed it at EUR 4000 plus legal costs.

At its core, this case demonstrated that core individual rights are protected against algorithmic misappropriation.

5.1.7. GEMA v Open AI (42 O 14139/24, 29/09/2025), Germany (Regional court) - *Copyright*

The Munich I Regional Court held in *GEMA v Open AI* that the reproduction of song lyrics within OpenAI's LLM models - specifically ChatGPT infringed German copyright law. The claimant, *GEMA,* acting on behalf of several German lyricists, argued that OpenAI's models had 'memorised' protected lyrics during training and later reproduced them almost verbatim in chatbot outputs. OpenAI argued that its systems did not store work directly, but only encoded statistical patterns, and any overlap was a result of user prompts rather than internal copying. 'Memorisation' was an important concept as it triggered copyright protections twice. First, it was established that during the training stage, models had internally remained protected works. Second, during the output stage, it was found that OpenAI models output these protected lyrics in response to user prompts. Therefore, the court rejected OpenAI's arguments and found that the model's internal retention of

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protected content amounted to a form of reproduction and that subsequent outputs constituted additional acts of unauthorised reproduction. Furthermore, it rejected the respondent's argument that the responsibility lay with individual users by citing the fact that memorisation resulted from OpenAI's training practices and not user prompts.

From a broader perspective, the judgment illustrates how courts are beginning to apply established copyright principles to the behaviour of generative AI systems. It signals that internal retention and later reproduction of copyrighted material will not be treated as a technical inevitability of machine learning, but rather as a legally significant act subject to traditional copyright protections.

5.1.8. ArbG Munich (13 Ca 4781/23, 29/02/2024), Germany (Labour court) - *Employee Monitoring*

The Hamburg Labour Court held in its 2024 decision that an employer's introduction of ChatGPT in the workplace did not trigger the works council's co-determination rights under the Works Constitution Act. The claimant, the works council, argued that ChatGPT constituted 'technical monitoring equipment' as AI systems typically record user inputs and could therefore allow the respondent, the employer, to monitor employees' behaviour and performance. The second argument raised by the claimant was that the employer's guidelines on how ChatGPT should be used amounted to regulatory rules requiring co-determination. The respondent argued that monitoring was not possible through ChatGPT, as the chatbot is accessed through public web browsers on external servers. It argued that since employees created their own accounts and the system was not 'installed' on the employer's infrastructure, no activity logs could be transmitted. The court accepted the respondent's position and held that co-determination rights in German law required a concrete possibility of employer monitoring. It found that in this case, there was no clear evidence to suggest that the employer has or can monitor its employees through their interactions with ChatGPT. It also found that the employer's instructions on using ChatGPT were general guidelines on how work should be performed and, therefore, not subject to co-determination protections.

The judgment shows judicial reluctance to treat all AI systems as monitoring tools. Instead, it adopts a cautious approach and suggests that co-determination rights are only triggered when AI is sufficiently integrated into employer-controlled systems and possesses clear monitoring capabilities.

5.1.9. DABUS Case (X ZB 5/22, 11/06/2024), Germany (Federal court) - *Patent*

The German Federal Court of Justice ruled in *DABUS* that an AI system cannot be named as an inventor under German patent law. The claimant, a patent applicant, sought to designate an AI system *"DABUS"* as the inventor of the claimed technology. It argued that the

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invention had been autonomously generated by the AI and that existing law should be interpreted to allow AI inventorship. The respondent, the German Patent and Trademark Office, maintained that only natural persons can hold inventor status and that the patent application was defective without such a designation. The BGH upheld the respondent's position and found that inventorship presupposes a human as the inventor through three arguments. First, it found that the patent law embeds inventorship within a system of personal rights. For example, the right to claim a patent is a right that only natural persons can hold. Second, it explained that the statutory framework assumes an invention to be a human act. It reasoned that the 'intellectual contribution' that defines invention is fundamentally tied to human creativity and can not be attributed to a machine. Lastly, it invoked accountability and the coherence of the patent system to point to why a human inventor was necessary.

The judgment is significant as it confirms that under the current legal framework, AI can not disrupt the human-centred architecture of patent rights. It offers an acknowledgement of the increasingly prevalent role AI systems play in the inventive process, but holds firm on the definition of inventorship as a uniquely human characteristic.

5.1.10. Garante Privacy v. Luka Inc. (Replika) (10130115, 10/04/2025), Italy (Supervisory authority) - *Data Collection*

The Italian Data Protection Authority (Garante) found that Luka Inc., the provider of the Replika AI chatbot, violated the GDPR when offering its generative AI services to Italian users. The Garante opened proceedings against Luka Inc. after reports indicated that the app interacted with minors and generated sexually explicit or emotionally manipulative responses. The service required only a name and email address for registration. It did not verify age and used user conversations to train and refine its large language model. The DPA advanced three arguments against Luka Inc. First, the respondent's processing of personal data violated the GDPR as it had no legal basis. Second, the privacy information presented was unclear and inaccessible. Lastly, the respondent did not use effective age-verification mechanisms and thus exposed minors to inappropriate AI-generated interactions. Luka Inc. counterargued that its processing was covered by contractual necessity or legitimate interest and only used de-identified snippets for its model training. The authority rejected these claims and held that Luka Inc had not identified any legal basis for key processing operations, especially for using user interaction to train and improve the LLM. It also found Luka Inc.'s privacy policy to be incomplete as it was not provided in Italian.

The decision is important in confirming that the training and refinement of generative AI models constitutes personal-data processing and is subject to the GDPR's core requirements. It also demonstrates the proactive enforcement of DPA against downstream AI harms.

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5.1.11. Juzgado de Menores de Badajoz (Sentencia 86/2024, 20/06/2024), (Juvenile court) Spain - *Manipulation*

The juvenile court of Badajoz convicted fifteen minors for creating and distributing AI-generated sexualised images of their female classmates. The case arose from events in Almendralejo in August–September 2023, where the respondents, all aged between 12 and 14, used an AI image-generation tool to superimpose the faces of girls aged 11 to 15 onto the bodies of nude adult women and produced realistic deepfake images depicting explicit sexual content. These manipulated images were shared across two WhatsApp groups, causing severe distress, humiliation and anxiety among the victims. After the minors were identified, the matter was referred by the police to the claimant, the juvenile prosecutor, who initiated proceedings under the juvenile criminal regime. The case was resolved by an agreement between the minors' defence team and the prosecution. The court adopted the prosecution's characterisation and held that the conduct of the respondents constituted twenty offences of child pornography and twenty offences against the moral integrity of the victims. In doing so, the Juvaline court held that AI-generated deepfakes showing minors in sexualised situations fall squarely within the statutory definition of child sexual abuse material.

The decision demonstrates how traditional child-protection mechanisms apply to AI-generated content. The court essentially set the precedent that sexually explicit deepfakes depicting minors are equivalent to the creation and distribution of real child sexual abuse material.

5.1.12. CNIL v ClearView AI (19/10/2022), France - *Data collection*

CNIL, the data protection authority of France, opened enforcement proceedings against Clearview AI, a US-based facial recognition company. The proceedings came in the wake of complaints by French residents that their images had been captured and used by Clearview AI without their consent. Reports confirmed that Clearview scraped billions of photographs from publicly accessible websites, such as social media platforms and personal websites. It was found that these images were used to build a biometric database capable of identifying individuals through facial recognition. The central issue was that the images were converted into biometric templates and made available to Clearview's clients, many of whom operated in the security and law-enforcement sectors. CNIL alleged that Clearview violated the core GDPR requirements, namely that it had no lawful basis for collecting biometric data and that it did not provide notice to data subjects. The respondent argued that its web-scraping process was conducted outside EU territory and therefore fell outside the jurisdiction of the GDPR. The DPA rejected these arguments as it found that Clearview's facial recognition database targeted individuals in France and thus satisfied the scope under Article 3 (2) GDPR. Furthermore, it held that biometric extraction from publicly available images still required explicit consent or a specific legal basis.

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The broader controversy illustrated by this case concerns the boundary between 'public data' and invasive AI practices. Clearview's defence heavily relied on the idea that images posted online could be freely collected and processed to create biometric intelligence. The CNIL's response clearly articulates that AI systems cannot repurpose public data for high-risk uses such as identity recognition without explicit legal authorisation and meaningful individual control.

5.1.13. Cour de cassation (n° 25-10.118, 09/10/2025), France - (Second civil chamber) *AI designation*

The French Cour de cassation ruled in case n° 25-10.118 that an AI translation company could not be listed as a judicial expert where it lacked demonstrated human expertise in the specialities for which it applied. The claimant, [E] Translations, tried to register on the official list of judicial experts in several languages and interpreting categories. It argued that its AI-supported translation management platform, combined with blockchain-based security, enabled it to handle complex, large-scale linguistic tasks. [E] Translations only had one individual within the company who held expert status in one language, while applying for the accreditation of 5 languages. It sought to annul the decision rendered by the Paris Court of Appeal. The previous decision rejected the application because expert accreditation requires proof of human professional competence in each language. The Cour de cassation upheld the Appeal court's decision and articulated similar reasons as the previously examined *DABUS* case. It argued that expert accreditation is legally tied to demonstrable human qualifications and can not be substituted for the technical capabilities of an AI system. It went further and found that the company could not rely on automated tools to fill the gap in its human expertise.

The case reveals a central line of contestation in AI governance emerging across Europe: whether AI systems can be recognised as functionally equivalent to expert human knowledge. The judgment responds by showcasing institutional resistance to allowing AI to stand in for human expertise and highlights a protective stance towards maintaining human responsibility in high-stakes domains.

5.1.14. Nanterre Court of Justice, (N° RG 24/01457, 14/02/2025), (National court of first instance) France - *Employee consultation*

The Tribunal Judiciaire de Nanterre ruled in February 2025 that MetLife Europe DAC unlawfully deployed several artificial-intelligence tools without completing the mandatory consultation process with its Works Council (CSE). The claimant, the CSE, requested the suspension of five AI tools (Finovox, Synthesia, Notify, Semji and MetIQ), arguing that the respondent had begun to implement them while the consultation was still ongoing. The respondent, MetLife Europe DAC, maintained that the applications were only in a "pilot phase" and were not yet fully deployed. The court rejected this narrative and found that the

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"pilot phase" had already entailed real use by employees and thus amounted to early implementation. It reaffirmed the claimant's position and held that the company's action constituted a manifestly unlawful disturbance of the CSE's prerogatives. The court was firm in holding that consultation was incomplete and MetLife was prohibited from deploying the tools until the CSE had given its informed opinion. Crucially, the judgment stressed that consultation was a substantive safeguard to protect workers.
The case exposes a critical conflict in EU labour law, the tension between rapid AI development and democratic worker oversight. Companies increasingly seek to introduce new AI tools incrementally in ways that effectively reshape managerial control through 'test' or 'pilot' programs to evade mandatory implementation guidelines. The MetLife ruling signals judicial unwillingness to accept this strategy; it recognises that AI tools can meaningfully reconfigure power asymmetries and should therefore be subject to all mandatory implementation procedures.

5.1.15. Like Company v Google Ireland (C-250/25, Preliminary reference), CJEU (Supranational court) - *Copyright*

The preliminary reference, *Like Company v Google Ireland,* marks the first time the CJEU is requested to assess whether generative AI systems breach EU copyright law. The claimant, Like Company, a Hungarian press publisher, alleged that Gemini reproduced substantial parts of its news articles when prompted by users. It argued that these outputs contained verbatim or similar passages as its protected content. The claimant pointed out two core infringements. First, that Gemini's training data contained its protected content and thus constituted an unauthorised reproduction of its works. Second, the outputs communicated their content to a new public without a license and hence undermined its advertising-based business model. The respondent, Google Ireland, denied both allegations and maintained that Gemini does not store or restrict copyrighted works. Google submitted that any overlap was incidental, "hallucinatory," or the result of lawful text-and-data mining (TDM). It also argued that chatbot users do not constitute a "new public" because Like Company's articles were freely accessible online. The referring Budapest court has presented the CJEU with four questions: whether (1) chatbot summaries are a "communication to the public," (2) LLM training constitutes reproduction, (3) training falls within the TDM exceptions, and (4) output reproduction can be attributed to the provider. The underlying issue is whether LLM memorisation and regurgitation should trigger EU copyright protections.

This pending case is important as it forefronts a simmering tension between generative AI and copyright law. It directly asks whether and to what extent LLMs fall within the scope of existing copyright directives.

5.1.16. Deliveroo Case (2949/2019, 27/11/2020), Italy (Labour court) - *Profiling of employees*

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The Bologna Labour Court held that Deliveroo's algorithmic scheduling system amounted to indirect discrimination against its employees. The claimants, three trade unions, challenged Deliveroo Italy's "Self-Service Booking" (SSB) system. SSB allocated access to desirable work slots through an automated ranking based on two metrics, 'reliability' and 'peak participation'. Riders who failed to attend a booked session or logged in more than 15 minutes late were automatically dealt a lower reliability score. The ranking determined when each rider could access weekly booking windows and thus significantly influenced their earning opportunities. The claimants argued that the algorithm was discriminatory as it was blind to context, as it penalised riders regardless of their legitimate reasons, such as illness, children or participation in lawful strikes. The respondent argued that the SSB system was optional and riders retained full autonomy on when to work. It added further that the algorithm was fair and relied on valid statistics. The court rejected Deliveroo's defence; it held that algorithmic neutrality does not excuse discriminatory effects. The court reasoned that because the algorithm dictated access to time slots and, by extension, income, it produced a material disadvantage that amounted to unlawful indirect discrimination.

This case reveals the tendency of algorithms to treat all inputs as equal and ignore structurally unequal outcomes. The judgment underscores the responsibility of companies deploying these systems to ensure that automated systems incorporate space for human context.

5.1.17. BOSCO case (1119/2025, 30/04/2024), (Supreme court) Spain - *Algorithmic transparency*

The Spanish Supreme Court's verdict in *Fundación Ciudadana Civio v. Administración del Estado (STS 1119/2025)* held that the Ministry for Ecological Transition must disclose the source code of its automated decision-making system "BOSCO," which determines eligibility for Spain's "bono social" electricity subsidy. The system automatically cross-checks applicants' data against multiple administrative databases and applies a series of legal criteria to produce binding eligibility decisions. The claimant, Civio, a public interest NGO, sought access to the BOSCO algorithm's code to verify whether the automated system correctly implemented the statutory rules. The respondent, the Spanish State, refused disclosure on several grounds, namely, risks to cybersecurity, harm to administrative oversight functions, and the protection of intellectual property. Civio challenged the refusal and argued that meaningful transparency over automated welfare decision-making required access to the code itself. The Supreme Court agreed and held that access to the BOSCO code was necessary to safeguard the constitutional right to public information. The court found that since BOSCO operationalised the law itself by assessing legal criteria and determining access to welfare benefits, its inner workings had to be open to public scrutiny. It also added that applicants affected by a negative automated decision could not meaningfully exercise their rights without understanding how the system reached its conclusions.

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The judgment demonstrates judicial entrepreneurship in filling the regulatory vacuum that persists before the EU AI Act enters into force. Courts are increasingly willing to articulate constitutional standards such as transparency, proportionality and human oversight to constrain algorithmic administration even in the absence of legislative directive.

5.1.18. Briefcam AI case (N° 2105328, 24/01/ 2025), (Administrative court) France - *AI facial recognition*

The Administrative Tribunal of Grenoble annulled the municipality of Morians' decision to deploy an AI-based video analysis system, *Briefcam*, across the municipality's CCTV network. The claimants, a resident and the digital rights NGO, La Quadrature du Net, challenged the measure on the basis that Briefcam possessed automated analytical capabilities, such as classification, behavioural filtering and similarity matching. The claimants argued that the system had no lawful basis, prior safeguards or the mandatory data-protection impact assessment necessary to be deployed. The respondent, the municipality, advanced two counterarguments. First, that Briefcam was a software extension to the already authorised CCTV network, and the new 'Review" function did not include facial recognition. Second, the processing did not fall within the personal-data rules because no biometric identification was being carried out. The tribunal rejected both arguments and held that the "Review" module itself automated extraction and analysis of visual data relating to identifiable people and therefore satisfied the threshold for the application of personal data rules. Furthermore, it concluded that the respondent had neither defined a lawful purpose nor provided evidence of proportional safeguards. It held that the deployment was an unlawful and disproportionate interference with Article 8 ECHR rights and violated national data-protection requirements.

The decision is emblematic of disputes about AI in public spaces, which are, in practice, disputes about surveillance. In computer-vision settings, the relevant controversy is not merely that existing privacy and proportionality doctrines are being extended to a new technical context. Rather, technology itself is being organised around continuous observation, classification, and inference of people's rights in public spaces. Read in this context, the Briefcam litigation confirms that the legal controversy surrounding AI in public spaces is not the presence of such tools, but the surveillance capacity they instantiate. The decisive issue is that computer-vision systems make public behaviour continuously legible and thus amplify the state's ability to monitor and intervene in public life. A closely analogous logic is visible in the Bridges case, where the core controversy was not specifically the 'novelty' of facial recognition as a technology, but the way it restructured public spaces into a field of surveillance.

5.1.19. Dave Fanning v. BNN & Microsoft, (14/10/2024 Pending), (High court) Ireland - *Personal rights*

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The High Court of Ireland is currently examining a defamation action brought by RTÉ broadcaster Dave Fanning after his photograph appeared in an online news article concerning the sexual misconduct trial of an entirely different broadcaster. The claimant, Mr Fanning, argues that an article published on the MSN news aggregator (operated by Microsoft) falsely associated him with a criminal trial in which he has no involvement. The headline "Prominent Irish broadcaster faces trial over alleged sexual misconduct" was accompanied by a photograph of Mr Fanning, despite the defendant in that criminal case having been acquitted and being a different person. The proceedings have been initiated against multiple respondents, namely, BNN, a Hong Kong-based media company believed to have supplied the article to MSN, Microsoft Corporation. The claimant's legal team suspects that automated aggregation or AI-driven content matching may have produced the erroneous association. Since the case is pending, information is scarce. However, the pending case is significant because it raises foundational questions about defamation liability in the context of AI. It challenges the very notions of defamation and questions whether automated systems can generate defamatory content without human intent, and if so, which legal entity is accountable. As the case continues to be litigated, it may be an important early test of how courts adapt tort law principles to the AI era.[1]

5.1.20. DPA Cases on AI training data - Twitter International Unlimited Company (C087-03 / C087-04), Meta Platforms Ireland Limited (C081-02), The Data Protection Commission (DPC) v Google Ireland Limited (Supervisory authorities) and The Data Protection Commission (DPC) v X,- *Training*

A final group of cases concern ongoing or settled investigations by the Spanish, French and Irish Data Protection Authorities into the data-collection and training practices of major platforms such as Twitter International Unlimited Company, Meta Platforms Ireland Limited and Google Ireland Limited. The section is best divided into two parts - pending proceedings and settled proceedings.

The first three cases by the Spanish, French and Irish Data Protection Authorities respectively remain pending. The cases were included to demonstrate the continuing and unresolved contestation surrounding the lawful basis for large-scale data collection used in AI model training. The Spanish and French cases challenge the collection and repurposing of user data for algorithmic profiling and model development. They argue that such practices lack a valid GDPR basis and violate transparency rights. The Irish case, on the other hand, focussed on the lack of safeguards undertaken by Google with respect to the training of its PaLM 2 AI model. Even without final decisions, these cases form an important subset of the corpus as they demonstrate that the disputes around training data have not yet stabilised across the Union. Their inclusion highlights that European DPAs continue to treat data-collection practices for AI systems as a central regulatory concern, and that the legality of such practices remains an open and heavily contested question.

[1] https://www.irishtimes.com/crime-law/courts/2024/01/15/rtes-dave-fanning-initiates-defamation-case-after-his-photo-appeared-in-article-about-sexual-misconduct-trial-of-different-broadcaster/

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The last case, DPC v X, was settled and is best understood as a precedent-setting intervention. It marked the first time a Lead Supervisory Authority (LSA) initiated an urgent High Court application under Section 134 of the Irish Data Protection Act 2018. Claims under this section seek to suspend processing in order to protect data subjects' rights and freedoms. The initiation of the proceedings resulted in X agreeing to suspend the processing of EU/EEA users' public posts for the purpose of training its AI tool "Grok". The case was significant as it demonstrated the Irish DPA's willingness to use urgent court-backed measures to constrain AI training-data disputes. Therefore, this case provides a potential blueprint for successful enforcement against blatant violations of the GDPR in regards to AI-training data.

The two cases related to GDPR in Ireland demonstrate an interesting pattern concerning the country. There is a relative scarcity of AI-related case law, despite being the European headquarters for most major technology firms, however, the DPC (as an administrative regulator) seems adamant on initiating inquiries and investigations on AI systems under GDPR some of which are resolved through settlement.

6. Findings

6.1. Cross-Cutting Sites of Contestation

Litigation is one of the clearest empirical sites in which controversies around AI governance become visible. Contestation often moves beyond the application of pre-existing legal categories to a new technology and functions as a site in which the meaning, legitimacy and limits of AI governance are actively contested. To capture this dynamic, this section develops a model of contestation derived from the comparative case corpus and informed by broader literature. The model proceeds from the premise that classifying cases by legal area alone (public law, civil law, etc.) risks treating disputes as doctrinally isolated incidents. Accordingly, the analysis below identifies the principal domains in which contestation clusters. On this basis, seven main areas of controversy emerge from the corpus: (i) profiling, (ii) copyright, (iii) data collection and training practices, (iv) transparency, (v) governance, (vi) manipulation, and (vii) employment and labour.

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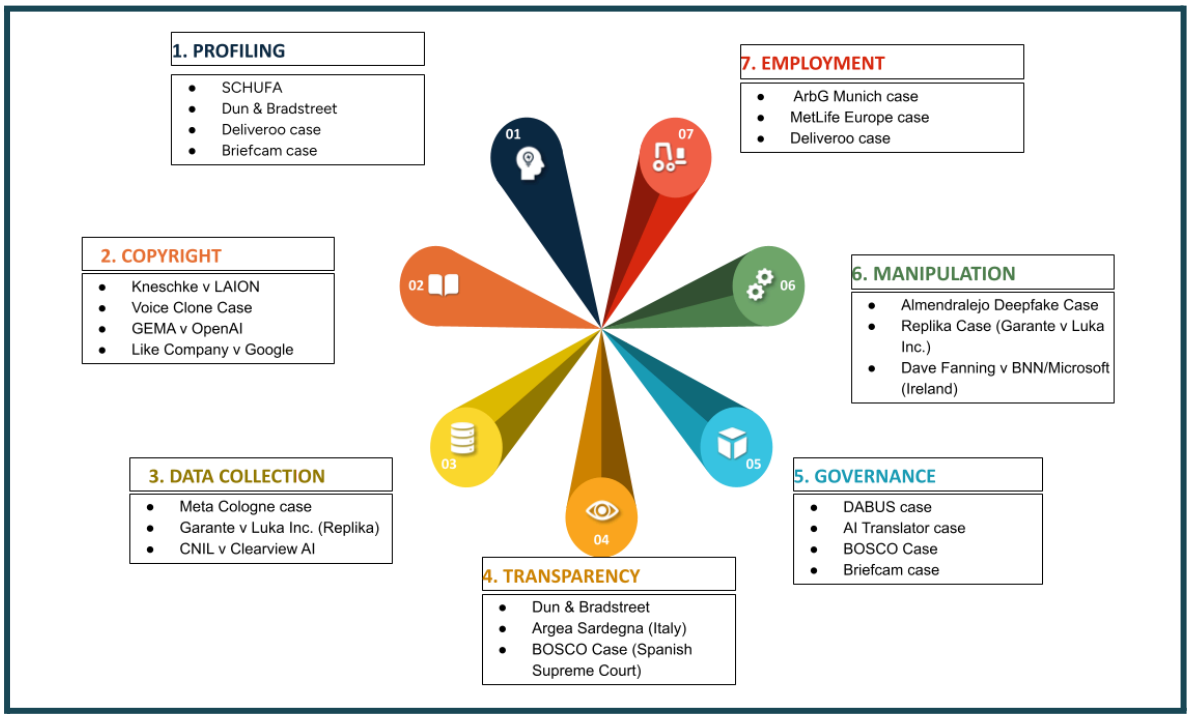

Figure 2 - Model of Main Areas of Contestation

Figure 2 synthesises the principal domains in which legal contestation around AI clusters across the case corpus. Rather than organising disputes by formal legal categories (such as public, private, or criminal law), the model identifies recurring *sites of friction* where the deployment of AI systems interacts with established legal norms and institutional practices. These domains (profiling, copyright, data collection and training practices, transparency, governance, manipulation, and employment) emerge inductively from the cases analysed and capture the substantive points at which AI systems provoke controversies, tensions or resistance. The model reflects the finding that AI-related litigation in Europe is not driven by the novelty of AI as a technology per se, but by how algorithmic systems reconfigure decision-making, power, and accountability within existing legal frameworks. In other words, our analysis demonstrates that courts are not treating AI as a new domain that requires the invention of entirely novel causes of action. They have reinterpreted existing rights (access, explanation, proportionality, non-discrimination) to regulate AI before the AI Act took full effect. In other words, they are adapting *existing* legal doctrines to confront new forms of algorithmic mediation.

Importantly, the model also illustrates that these areas of contestation are not isolated or mutually exclusive, but frequently overlap within individual disputes. For example, challenges concerning automated profiling often implicate transparency and governance obligations under data protection law, while disputes over generative AI training practices intersect with both data-collection rules and copyright doctrines. Similarly, employment-related cases reveal how algorithmic management tools can activate concerns about profiling, workplace power, and fundamental rights simultaneously. By mapping these intersecting domains, Figure 1 provides an analytical structure for comparing cases across

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jurisdictions and legal traditions, while avoiding a fixed or essentialised definition of AI. Instead, it highlights how AI becomes legally salient through specific practices and contexts, setting the foundation for the typology of contestation and judicial postures developed in the subsequent sections.

Drawing on this model, the analysis below identifies the least contested and most contested areas of AI-related litigation, revealing uneven patterns of judicial engagement across the identified domains.

6.1.1. The Lack of Contestation: Bias/discrimination

Although algorithmic discrimination is widely framed as one of the most acute societal risks posed by AI systems, our research reveals a striking lack of litigation grounded in AI -related bias or discrimination. Notably, misidentification and race-related harms have been more visible in UK contestation around facial recognition, including civil-society litigation and complaints raised by organisations such as Big Brother Watch. The Italian case of Deliveroo also had an element of discriminatory use of AI; however, there were no other notable cases spotted within the scope of the research window. We attribute the lack of contestation to (i) the difficulty in identifying collective harms or establishing patterns of discrimination and (ii) the difficulty in finding a pathway of addressing bias/discrimination-related harms as a class action in the EU.

The evidentiary architecture of EU anti-discrimination law requires an identifiable comparator or demonstrable group-level harm. For example, Article 2 of the Racial Equality Directive defines direct discrimination as occurring where *"one person is treated less favourably than another… in a comparable situation"* (Art. 2(2)(a)), and indirect discrimination as arising where an apparently neutral provision *"would put persons of a racial or ethnic origin at a particular disadvantage"* (Art. 2(2)(b)). Both articles presuppose a degree of visibility that algorithmic systems, particularly black box AI models, do not permit. Claimants must either identify another individual who has been treated more favourably or present statistical evidence of group-level disparate impact. AI-driven harms occur through opaque processes such as automated scoring or profiling, and therefore, it is not likely for these systems to demonstrate clear indications to meet the thresholds for prima facie discrimination.

The second constraint arises from EU procedural law, particularly the underdevelopment of collective redress mechanisms suited to systemic AI harms. While the Representative Actions Directive (RAD) establishes a harmonised model for consumer collective actions, we did not find it as an avenue for litigation in either national or EU-level case law. The European Class Action Report of 2025 reinforces this point by showing how unevenly the RAD is implemented across the union. There are several factors that explain this issue. Firstly, many jurisdictions still lack a functioning RAD complaint mechanism, and Member States' "same interest" or similarity requirements hinder claim aggregation, as algorithmic

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discrimination produces heterogeneous, often invisible and probabilistic harms. This was illustrated in *Citizens' Voice v Meta* (even though this is not a discrimination case), where the Portuguese Supreme Court rejected a class action due to the heterogeneity of alleged harms. Moreover, another factor could be the absence of a dedicated liability regime for AI-driven bias, leaving claimants to rely on the GDPR or limited national discrimination laws.

6.1.2. Most contested area: Copyright/IP

Prima facie, one might expect the advent of generative AI to forefront copyright and broader intellectual property-related claims. However, this assumption is only partially supported by the emerging case law. Numerically, copyright/IP disputes form one of the two largest clusters (together with data-collection litigation), but they stand out for their conceptual density and doctrinal breadth. Three patterns illustrate these notions from case law.

First, challenges relating to training data collection and dataset construction have become central. Cases such as Kneschke v LAION reveal judicial reluctance to extend copyright restrictions into early, research-oriented phases of AI development. The Hamburg court's strict separation between dataset creation and downstream commercial use illustrates a judicial strategy of limiting the scope of copyright intervention so as not to stifle scientific inquiry. As discussed above, this represents a laissez-faire approach in which courts have partially created an insulated legal space for foundational AI development.

Second, the jurisprudence increasingly recognises that model 'memorisation' and output reproduction can trigger traditional copyright protections. GEMA v OpenAI and the pending CJEU preliminary reference show that courts are beginning to treat internal retention of protected material as a violation of copyright principles. This signals a doctrinal shift - LLM responses were once treated as products of statistical learning; however, now they enter the sphere of copyright protection.

Third, copyright-adjacent claims rooted in personality rights and misappropriation are expanding the boundaries of IP litigation into new terrain. The LG Berlin II voice-cloning case exemplifies how judges adapt existing personality-rights doctrine to protect voice, likeness and performance identity against algorithmic simulation. These developments indicate an incremental extension of longstanding legal principles and reveal a judicial willingness to analogise AI-mediated uses to traditional misappropriation harm.

6.2. The Main Judicial Approaches Towards AI

The emerging body of European case law reveals generally differing approaches to the controversies surrounding AI training, design, deployment and implementation. That said, these different approaches can be grouped under two main themes as explained below.

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6.2.1. The Laissez Faire Approach

The review of the corpus sets forth a subtle judicial reluctance to apply restrictions on the early-stage development or organisational integration of AI systems in some EU member states (e.g. Germany), particularly in areas connected to training data collection and workplace AI deployment. This approach seems to fit in with the EU's more recent approach, following the Draghi Report, to be included in the AI race; yet, it may appear paradoxical when contrasted with the EU's strong regulatory agenda on artificial intelligence, data protection, and digital rights. Yet from a bird's-eye view perspective, the case law analysis demonstrates that, in practice, a laissez-faire approach to AI deployment is more visible at the upstream phases of the AI value chain, which could possibly be motivated by concerns about hindering economic competitiveness, technological sovereignty, and innovation, especially in the formative period preceding full AI Act implementation.

This dynamic is particularly visible in disputes around training data, where courts are hesitant to disrupt foundational activities of model development. The LAION case is archetypal: despite clear copyright-intrusion concerns, the Hamburg court framed dataset creation as a protected research activity, insulating it from downstream commercialisation concerns. The court's insistence on segmenting the AI lifecycle (treating dataset construction as autonomous from model deployment) operates as a doctrinal safety valve that shields upstream innovation from the burdens of copyright enforcement. A similar trend is visible in the OLG Cologne Meta decision, where the court allowed large-scale data-scraping and repurposing of personal data for LLM training under the umbrella of legitimate interests, even stretching Recital 8 of the AI Act to characterise AI innovation as a public-interest objective. Sensitive data concerns were reframed as manageable through ex-post objections rather than ex-ante consent, marking a notable departure from the more protective logic usually animating Article 9 GDPR.

A similar laissez-faire approach also appears in labour-law cases involving workplace automation. Hamburg Labour Court in the ArbG Munich case on ChatGPT's introduction displays a cautious scepticism towards expanding co-determination rights merely because AI tools are present in the workplace. Judges explicitly refused to treat AI systems as inherently monitoring or inherently transformative of managerial power. This narrow conception of "monitoring equipment" and "regulatory rules" has the effect of offering employers wide latitude to experiment with AI in pilot phases without triggering the procedural obligations that would ordinarily apply to changes in organisational control structures. This approach similarly reflects an expectation that early experimentation with AI will not immediately destabilise workplace power dynamics. That said, the approach of Germany does not go as far as "permissionless innovation", yet can be classified under "innovation principle". (Hemphill, 2020) Together, these decisions reveal a jurisprudential balancing act: courts acknowledge rights intrusions but resist allowing them to impede the infrastructural steps required to build AI systems.

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In this regard, in Germany, Courts display a forward-looking belief that AI innovation is strategically necessary for economic competitiveness, technological sovereignty, and research leadership. This expectation is based on "future economic benefit through present permissiveness", and it supports doctrinal segmentation between "research" and "deployment," separating upstream model-building from rights-based scrutiny.

Doctrinally, these innovation-oriented expectations could result in the following: courts protect future economic potential by allowing broad data processing and experimental use, yet pivot sharply to rights-based protection when downstream harms materialise. In this regard, the courts take a "reactive" approach when harms occur instead of a "preventative" approach.

6.2.2. The Vocal Approach

Contrary to the more laissez-faire approach we encounter in certain cases, courts intervene robustly when AI threatens institutional prerogatives or democratic safeguards (e.g. the French MetLife case, where the tools substantially affected employees' work organisation). Drawing from SoE, expectations about AI's likely future harms may lead the courts to act on the "precautionary principle" (Hemphill, 2020) where courts assume that early permissiveness would entrench technological systems that later become resistant to accountability.

Indeed, in the majority of the decisions analyzed European courts seem to adopt a more strict, rights-centred approach once AI systems move from the development/innovation stage to the downstream contexts where there is direct harm (or risk of harm) to individual or fundamental rights. This is an interesting contrast compared to the courts' permissive (laissez-faire) attitude towards cases dealing with training data or workplace deployment. The clearest manifestation of this stricter approach is in the line of cases dealing with algorithmic decision-making, where courts consistently insist that the moment an AI output becomes consequential for an actual person (e.g. through credit scoring, welfare adjudication, or administrative processes), traditional guarantees of due process, explanation, and human oversight must apply in full. The number of cases where a vocal approach is adopted compared to the cases with *laissez faire* approach also demonstrates that the controversies regarding AI are contested more in the downstream contexts.

A further cluster of downstream harms arises when AI technologies mediate harms against minors. Here, the litigation goes beyond the legality of a particular system design choice and questions the institutional capacity of the existing rights framework to respond to AI-enabled harm against minors. In the Spanish Badajoz case, the use of generative tools to produce explicit imagery of minors was subsumed within established child-protection norms and dignity-based safeguards. Drawing from the SoE literature, Spanish courts operate with expectations shaped by the centrality of public administration to social welfare and the dangers of opaque bureaucratic automation. The expectation here is that automated welfare tools, if left inscrutable, will evolve into entrenched systems that

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structurally disadvantage citizens, especially vulnerable groups. Just like Kerr said, these expectations produce doctrinal commitments that prioritise future transparency and contestability over short-term efficiency (Kerr et al., 2020).

A similar logic underpins the Italian Garante's enforcement action against Luka Inc. (Replika), where the combination of ineffective age verification and the reuse of conversational data for model refinement was framed as a serious rights violation rather than a mere compliance deficit. These cases suggest that children's rights function as a distinct downstream "trigger point" for judicial and regulatory intervention, paralleling the role played by institutional prerogatives in labour disputes: once AI deployment creates acute vulnerabilities or concrete harm, courts are markedly less willing to defer to innovation arguments or infrastructural permissiveness.

The SCHUFA case is another clear example of the EU's strict approach to downstream harms. The CJEU expanded the definition of an automated "decision" to include credit scores when they exert decisive influence, thereby bringing them under Article 22 GDPR's protective umbrella. Moreover, the Dun & Bradstreet judgment takes this further by requiring that controllers provide data subjects with information precise enough to enable a meaningful contestation, thereby turning transparency into a functional safeguard rather than a procedural formality. Similar reasoning is visible in cases involving public-sector algorithms, such as Spain's BOSCO decision, where courts have required the disclosure of decision logic and system operation, rejecting attempts to shield algorithms behind trade-secret claims.

When it comes to labour-related issues, the Courts are also protective when AI systems cause direct harm related to fundamental rights (e.g. discrimination) or create vulnerabilities. Italian cases are particularly interesting in this regard. One of the most prominent cases demonstrating this trend is the Deliveroo case, where the Italian court showcased a higher sensitivity to structural harms caused by automated labour management systems. The tribunal viewed the scheduling algorithm not as a neutral sorter but as a generator of systemic exclusion. In this regard, the court addressed both the individual infringements in this case and the collective and systematic implications of algorithmic discrimination. Similarly, in Argea, Italian courts seem to expect that algorithmic systems reproduce and amplify existing structural inequalities. Looking at this from a SoE point of view, the expectations surrounding AI lead Italy to treat AI as a socio-technical system where risks emerge gradually through patterns of use rather than single and immediate episodes of harm. Therefore, courts emphasise transparency, stand against opaqueness, and restrict anti-discrimination even in the absence of strong evidence concerning large-scale harm. The expectation here could be laid down as "failing to impose transparency today will normalise a future in which individuals cannot contest unfavourable algorithmic sorting". Italy, therefore, can be positioned as a jurisdiction seeking to prevent the consolidation of opaque algorithmic governance structures that would erode both labour protections and administrative equality

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Likewise, Italian administrative jurisprudence refuses opacity-related defences, anticipating that undisclosed algorithmic logics would solidify unequal distributions of benefits, opportunities, or burdens. This anticipation of entrenched digital inequalities shapes Italy's early, interventionist posture.

6.3. Typology of Contestation

Under this section, the model of contestation developed under Section 6.1 is operationalised through a typology presented in Table 3 below based on the analysis under Section 6.2. While the model established the primary sites in which AI-related disputes concentrate, the typology converts these clustered controversies into a comparative coding framework. More specifically, Table 3 organises the corpus along two analytical axes: (i) the dominant pattern of contestation (ie, the legal tension activated by the dispute), and (ii) the judicial posture adopted in response. The first axis captures the recurring sites at which AI deployment generates friction with established legal norms:

- **Transparency/opacity:** Claims raised and/or decisions rendered regarding the transparency or opacity of AI systems
- **Boundary:** Decisions setting a standard concerning the boundaries of AI, whether certain claims, rights or responsibilities can be extended to the AI systems or whether they are inherently "human"
- **Surveillance:** Decisions including the surveillance aspect of AI systems
- **Fundamental rights:** Decisions setting a precedent concerning a more collective aspect of fundamental rights
- **Personal rights:** Decisions focused on the downstream individual interests/rights (E.g. copyright)
- **Workplace power:** Decisions concerning (i) AI's relevance in workplace power dynamics, (ii) contestations concerning AI's deployment at the workplace

The second axis distinguishes between three recurring judicial postures discussed in 6.2. More specifically, it distinguishes between a **Laissez-faire approach**, which reflects judicial reluctance to restrict upstream innovation or organisational experimentation and a **vocal approach, which** refers to decisions where the courts held a strong stance concerning the AI-related controversies/tensions.

Importantly, the following typology provides a structure for analysing how courts translate expectations about AI into doctrinal outcomes: whether AI is treated as an innovation infrastructure to be protected, a surveillance capability to be constrained, or a decision-making apparatus requiring heightened accountability. In a way, this typology is the bridge between the doctrinal analysis in Section 5, the main areas and themes of contestation in Section 6.1 and the socio-legal analysis in Section 6.2.

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Case	Patterns of contestation						Court's approach	
	Transparency/ Opacity	Boundary	Surveillance	Fundamental Rights	Personal rights	Workplace power	Vocal approach	Laissez faire approach
SCHUFA	✔			✔			✔ expanded the definition of an automated "decision" to include credit scores when they exert decisive influence	
Dun & Bradstreet	✔			✔			✔ strong pro-transparency stance	
Argea (Italy)	✔	✔		✔			✔ stance favouring transparent algorithms in public administration	
LAION		✔						✔ allowed webscraping for non-profit AI development
Meta (OLG Cologne)	✔			✔				✔ broad legitimate-interest interpretation; low scrutiny
LG Berlin (voice clone)				✔	✔		✔ strong proactive stance against personality rights infringement	
GEMA v OpenAI		✔			✔		✔strong stance against copyright infringement	
ArbG Munich (ChatGPT)			✔	✔		✔		✔ rejected Work-council's claims that employer's introduction of ChatGPT triggers co-determination rights
DABUS (BGH)		✔			✔		✔ firm stance that AI cannot be an inventor	

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Garante v Luka	✔		✔	✔			✔ strong proactive stance concerning the fundamental rights/manipulation of minors	
Badajoz deepfakes		✔		✔			✔ strong proactive stance concerning the fundamental rights of minors and deepfake	
Clearview (CNIL)	✔	✔	✔		✔		✔ strong proactive stance against personality rights infringement	
Cour de cassation (AI expert list		✔					✔ strong proactive stance against allowing AI to stand equivalent to human expertise	
MetLife – Works Council	✔			✔		✔	✔ Strong stance against tools substantially affected employees' work organisation	
Like Co v Google (CJEU pending)		✔			✔		Pending	Pending
Deliveroo (Italy)	✔		✔	✔		✔	✔ strong stance on algorithmic discrimination of workers	
BOSCO (Spain)	✔	✔			✔		✔ rejected attempts to shield algorithms behind trade-secret claims.	
Briefcam (Grenoble)			✔	✔			✔ Strong stance against a municipality to deploy an AI-based video analysis system	
Dave Fanning (Ireland)		✔			✔		Pending	Pending

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(Meta) Germany labour			✔		✔			✔ Rejected the claim for prohibiting Meta from using personal data for AI training

Figure 3 - Typology of Contestation

7. Conclusion

This report demonstrates that European courts were actively shaping the governance of artificial intelligence well before the full implementation of the AI Act, primarily by repurposing existing legal doctrines to address new algorithmic realities. Rather than creating AI-specific causes of action, the courts rely on familiar concepts such as transparency, fundamental rights, workplace power dynamics to resolve disputes involving the AI systems. In doing so, courts are not merely rendering decisions to individual cases but are also setting boundaries and clarifications concerning what constitutes acceptable AI development and deployment within European jurisdictions.

A central conclusion of the analysis is the emergence of a stage-based judicial logic. Upstream activities (e.g. data collection, training, early stage workplace deployment) are generally afforded *laissez faire* approach, reflecting judicial sensitivity to innovation, competitiveness, and the EU's technological sovereignty. By contrast, downstream applications that directly affect individuals' rights or institutional power relations provoke significantly stronger intervention.

The report also highlights important blind spots within the current litigation landscape. Despite widespread concern about algorithmic bias and discrimination, these issues remain under-represented in case law, largely due to evidentiary opacity and weak collective redress mechanisms. As a result, some of the most systemic AI-related harms may remain legally invisible unless procedural and institutional reforms lower the barriers to contestation. Similarly, the uneven distribution of cases across Member States reflects differing legal cultures, regulatory expectations, and pathways for dispute resolution, underscoring that "European AI law" has been developing through heterogeneous national trajectories rather than a single unified model.

Looking forward, the findings suggest that litigation will remain a critical site for negotiating the controversies and tensions regarding AI development, deployment and use in Europe. As generative AI systems mature and as the AI Act begins to interact with existing frameworks such as the GDPR, copyright law, and labour law, courts are expected to increasingly be asked to resolve tensions between innovation and rights protection. The emerging jurisprudence analysed in this report indicates that European courts are willing to play this role, but largely on a reactive basis. Whether this approach will be sufficient to

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address the tensions and controversies posed by AI and whether the newer (more libertarian) approaches to AI in the EU will allow the EU courts to continue this course of action remain an open question.

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