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Artificial Stupidity

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Abstract

Artificial intelligence is everywhere. And yet, the experts tell us, it is not yet actually anywhere. This is so because we are yet to achieve true artificial intelligence, or artificially intelligent systems that are capable of thinking for themselves and adapting to their circumstances. Instead, all the AI hype — and it is constant — concerns rather mundane forms of artificial intelligence, which are confined to performing specific, narrow tasks, and nothing more. The promise of true artificial intelligence thus remains elusive. Artificial stupidity reigns supreme.

What are the best set of policies to achieve true artificial intelligence? Surprisingly, scholars have paid little attention to this question. Scholars have spent considerable time assessing a number of important legal questions relating to artificial intelligence, including privacy, bias, tort, and intellectual property issues. But little effort has been devoted to exploring what set of policies are best suited to helping artificial intelligence developers achieve greater levels of innovation. And examining such issues is not some niche exercise, since artificial intelligence has already or soon will affect every sector of society. Hence, the question goes to the heart of future technological innovation policy more broadly.

This Article examines this question by exploring how well intellectual property rights promote innovation in artificial intelligence. I focus on intellectual property rights because these are often viewed as the most important piece of United States innovation policy. Overall, I find that intellectual property rights, particularly patents, are ill-suited to promote radical forms of artificial intelligence innovation. And even the intellectual property forms that are a better fit for artificial intelligence innovators, such as trade secrecy, come with problems of their own. In fact, the poor fit of patents in particular is likely to contribute to heavy industry consolidation in the AI field, and heavy consolidation in an industry is typically associated with lower levels of innovation than ideal.

I conclude by arguing, however, that neither strengthening AI patents rights nor looking to other forms of law, such as antitrust, holds much promise in achieving true artificial intelligence. Instead, as with many earlier radical innovations, significant government backing, coupled with an engaged entrepreneurial sector, is at least one key to avoiding enduring artificial stupidity.

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