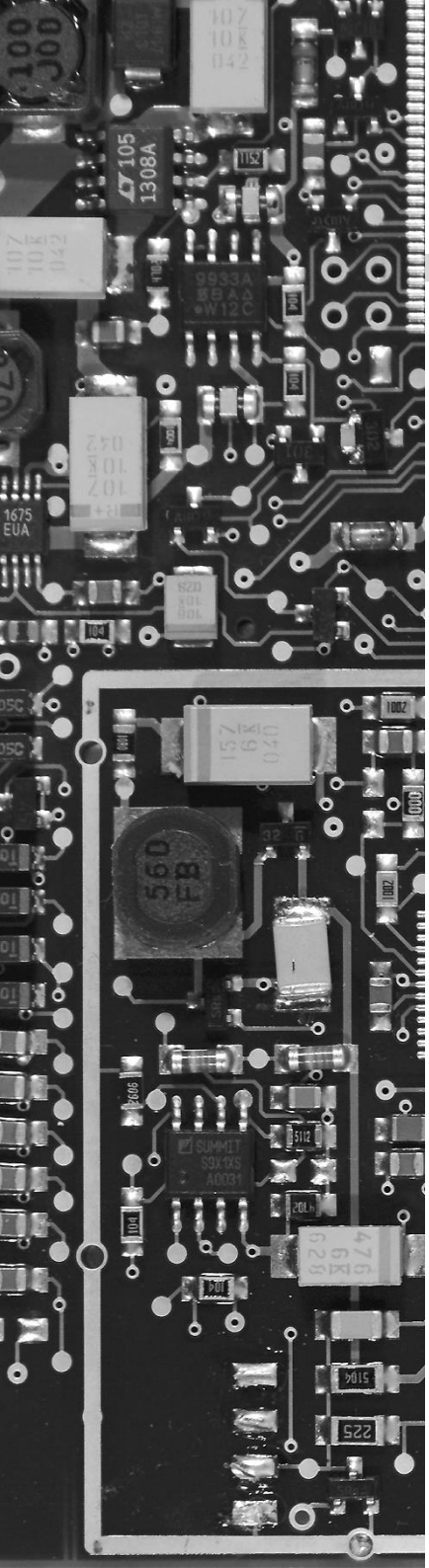

CH Open
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CH Open - Open Source AI

Legal Issues with Open Source AI

by Prof. Dr. Simon Schlauri, Ronzani Schlauri Attorneys

30 October 2024

Agenda

- What is «Open Source AI»?
- Should AI Technology be Open Source at all?
- The EU Regulation on AI and its Exceptions for Open Source

OSI on OS AI

Open Source Initiative (OSI): The Open Source AI Definition 1.0

Open Source AI is an AI system made available under terms and in a way that grant the freedoms to:

- **Use** the system for any purpose and without having to ask for permission.
- **Study** how the system works and inspect its components.
- **Modify** the system for any purpose, including to change its output.
- **Share** the system for others to use with or without modifications, for any purpose.

These freedoms apply both to a fully functional system **and to discrete elements** of a system.

Discrete Elements

What discrete elements need to be open according to the OSI definition?

- **The complete source code**
- **Sufficiently detailed information about the data** used to train the system
- **The model parameters**, such as weights or other configuration settings.

Training Data

What about Training Data?

OSI position:

Only sufficiently detailed **information about training data** needs to be open. Training data itself need **not** to be open.

Reasons:

- AI training needs **more data than is publicly available**
- **Legal boundaries** will prevent Open Source AI
- We can work with **different levels of openness, depending how accessible data is**.
- You can **fine tuning** an existing system to achieve the results you look for.

Training Data

What about Training Data?

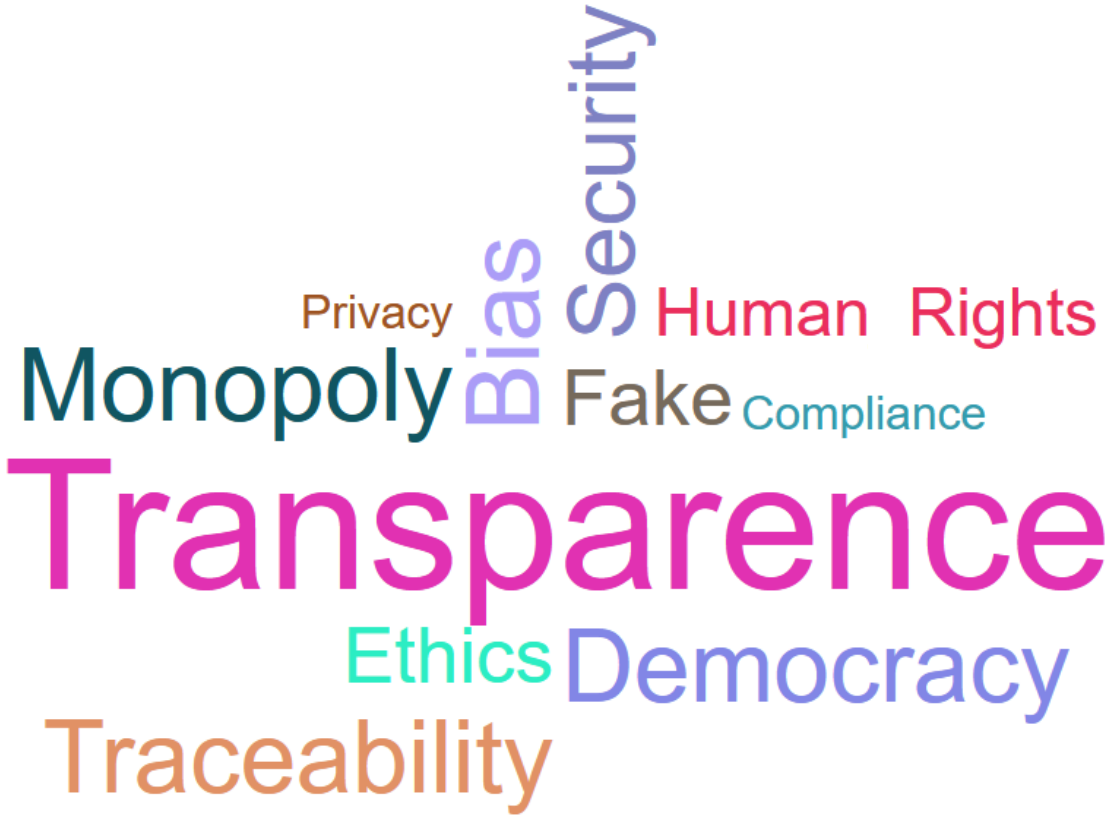
Alternative position:

Training data itself need to be open.

Reasons:

- In software open source means the **right to inspect the code**.
- The same must apply to the training data in an AI model, as **a right to inspect is the only way to**
  - **understand** hallucination or bias;
  - find illegal sources;
  - accelerate AI safety research;
  - identify copyright violations;
  - (…)
- **Fine tuning will not give the same results** as full access to training data.

AI Risks


Security
Privacy
Bias
Human Rights
Monopoly
Fake
Compliance
Transparence
Ethics
Democracy
Traceability

Should AI be Open?

Many think, that AI should not be Open Source at all.

Lawrence Lessig:

"Open AI systems can be widely scrutinised, but when? If the danger is discovered after the code is in the wild, the assurance that all can see the problem equally is not much consolation."

"For low-capability models, we should encourage the Hugging Face ethic. The risks are low and the contribution to understanding is vast. For high-capability models, we need regulation that ensures both closed and open models are safe before they are released—and that they are not released in ways that could create catastrophic risk."

(The Economist)

Should AI be Open?

Others think that only Open Source AI will thrive.

Martin Casado and Ion Stoica

"The argument that we should move away from open-source models because they cannot compete with proprietary models on performance or cost is plain wrong."

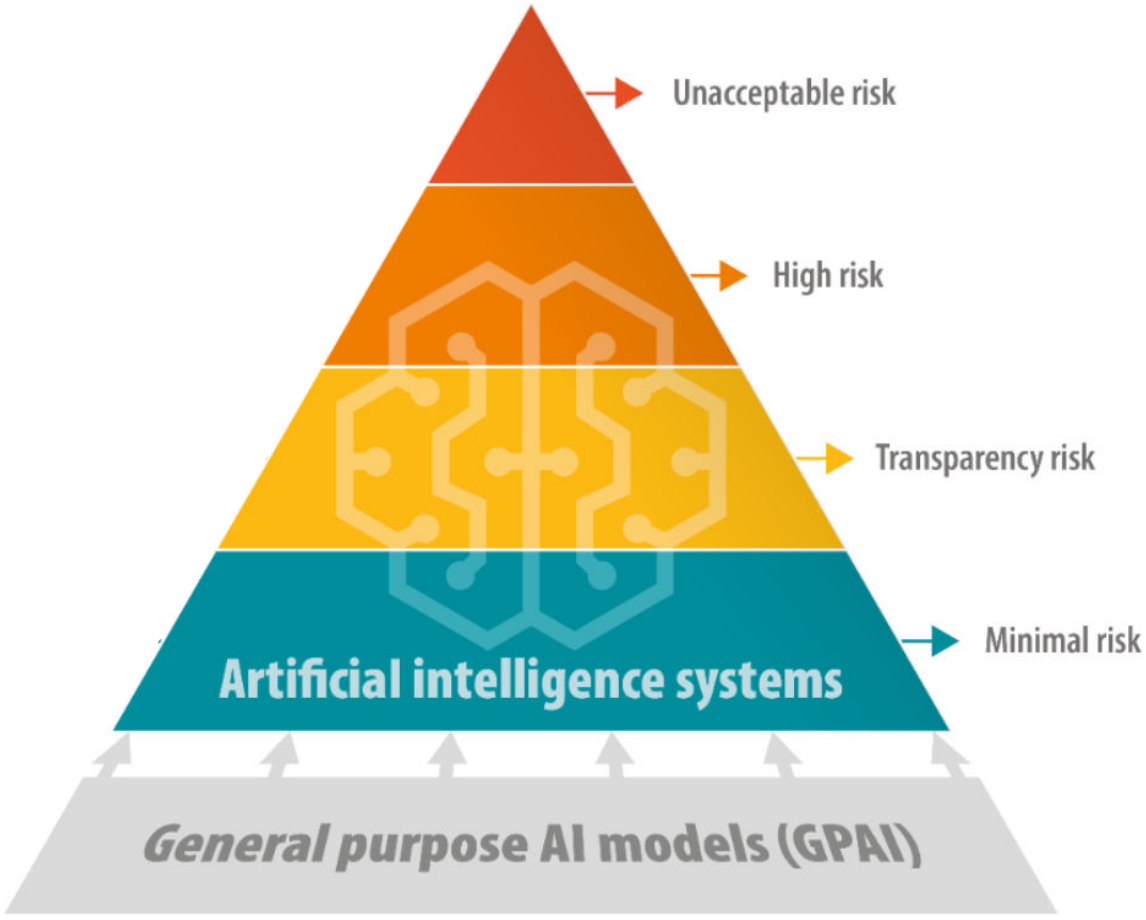
"Open-source makes systems safer. More users—from government, industry and academia, as well as hobbyists—means more people analysing code, stress-testing it in production and fixing any problems they identify."

"China is already at the cutting edge of AI."

(The Economist)

EU Regulation 2024/1689

Risk Based Approach



GPAI models - *Transparency requirements*
GPAI with systemic risks - *Transparency requirements, risk assessment and mitigation*

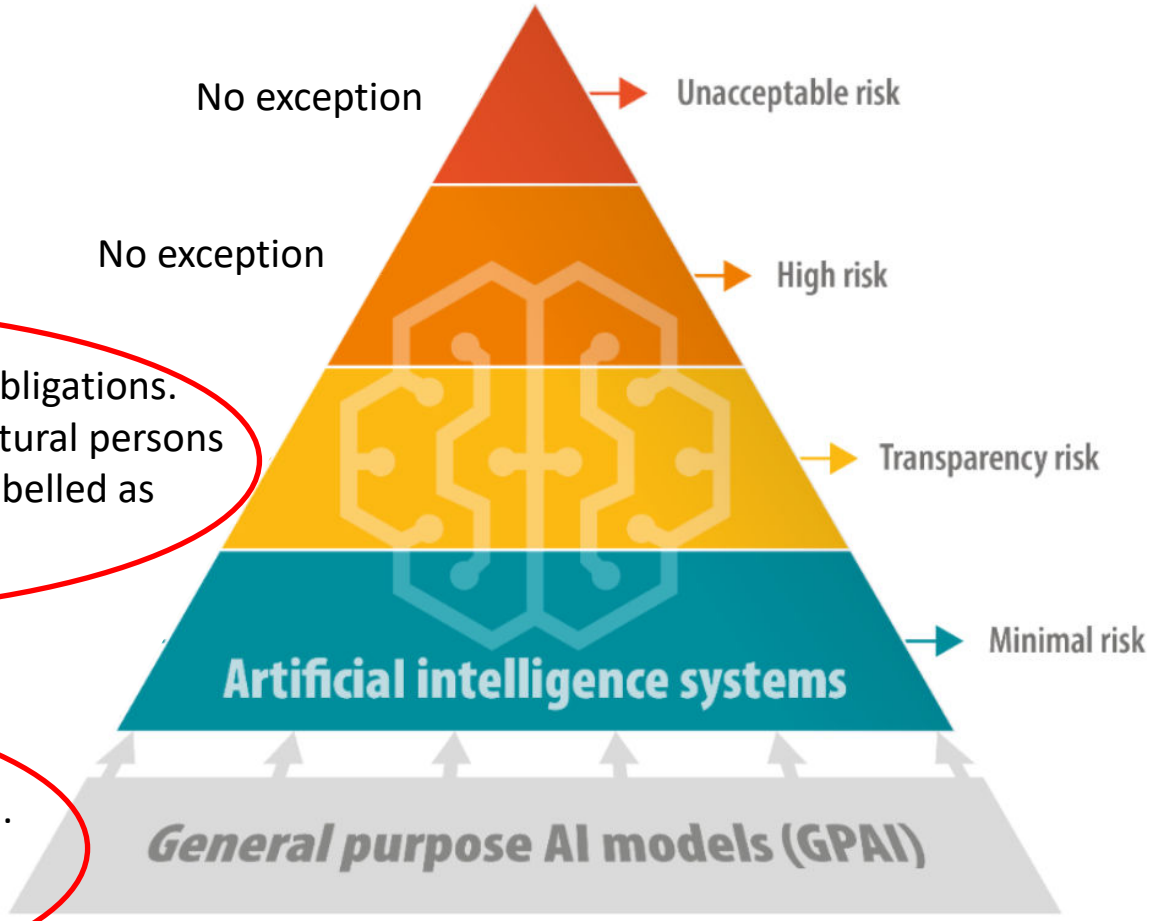
Data source: European Commission.

EU Regulation 2024/1689

Some Exceptions for OS AI; Art. 2 (12), 53 (2), 54 (6)

Exception from most transparency obligations.
But: AI systems that interact with natural persons and AI generated content must be labelled as AI / AI generated.

No technical documentation needed.
No representative in the EU needed.



Data source: European Commission.

EU Regulation 2024/1689

OS AI according to the EU Regulation

Exceptions for OS AI apply to AI models whose **parameters**, including the **weights**, the **information on the model architecture**, and the information on **model usage**, are made publicly available.

- The EU regulation does not require open training data for the AI system to benefit from the regulation's exceptions.

Thank you.

Schlauri@ronzani-schlauri.com