

# ‘SEX IS IN THE AI(R)’ ARTIFICIAL INTELLIGENCE AND ROBOTICS ARE OPENING THE WAY TO ARTIFICIAL SEXUALITY: INTRODUCTORY REMARKS ON SEX BOTS

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## **Abstract**

The transformations produced by AI affect the sexual sphere in an increasingly intense and pervasive way: not only an intimate area, but also a foundational area of the subject’s own identity. In view of the challenges already under way and those that await us in the immediate future, it is more necessary than ever to activate a strong legal reflection, aimed at considering the new instances, at preventing possible violations of rights.

## **Keywords**

Artificial Intelligence, Robotics, Artificial Sexuality, Sex Bots, Fundamentals Rights, Law.

## **Summary**

1. An introduction about the combination between AI and sexuality. - 2. *Cornelio* and *Le Reservoir des Sens*. The future is now! - 2.1. A call for the elaboration of ‘electronic subjectivity’ by the EU. - 3. The first has been *Roxyxy*: the dawn of the revolution. - 4. *Are Sex robots risky?* Notes on possible ‘grey areas’ of the law. - 4.1. Some initial indications and regulatory proposals from the EU. - 5. *The agony sexuality*. In lieu of a brief conclusion (and for an appeal to a juridical reflection of *sense*).~

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# 1. AN INTRODUCTION OF COMBINATION BETWEEN AI AND SEXUALITY

The Mind-Blowing Advance in Artificial Intelligence Studies<sup>2</sup>, added to the massive implementation of high-performance software and increasingly advanced and refined robotic devices, has given rise to profound changes and reconfigurations of almost all fields of existence. A widespread and transversal transformation<sup>3</sup> to which not even sexuality<sup>4</sup> – that is to say, to all intents and purposes, the most hidden and private dimension of each subject – has managed to escape.

Obviously, it is not surprising that, similarly to what has happened in other fields (from commercial to working, from welfare to medical, from information to school, from political-institutional up to military), also about the intimate and sexual sphere<sup>5</sup>, the use of robotic devices and AI-based systems and applications has been accompanied by the emergence of a range of opinions and positions. On one hand, there

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<sup>2</sup> Started from the second half of the last century thanks to the research of MCCULLOCH and PITTS (1943, 115-133) and, in particular, to the fundamental contribution of TURING (1959, 433-460).

<sup>3</sup> A transformation, which – according to what can be read in the Joint Research Center of the European Commission (Technical report *Defining Artificial Intelligence. Towards an Operational Definition and Taxonomy of AI*, February 2020) – it has also led to a particularly extensive use of the notion of AI.

<sup>4</sup> For an introduction to sexuality in a bioethical perspective, see, among others, PIANA (1994, 896-899).

<sup>5</sup> Regarding the relational changes dictated by new technologies – in addition of course to BAUMAN with his fundamental reflections on the liquidity of relationships and life (2004, 2006) – see HARAWAY (2019); TURKLE (2019). Also noteworthy are the studies of RIVA and GAGGIOLI (2019), of LONGO (2012, 2013) and, with more specific regard to sex robots, among others, TRIULZI (2019).

are the integrated<sup>6</sup>, that is to say, those who, in front of the AI-Sex combination, emphasize above all the potential advantages (think, for example, of the ability to be able to meet the needs of people with disabilities whose intimate life can be made very problematic and can be severely limited<sup>7</sup>, or the possible use of technological artifacts in a preventive key on sex-offenders<sup>8</sup>). On the other hand, however, the apocalyptic – which in sharp contrast with the arguments put forward by the integrated – warn of possible negative reverberations<sup>9</sup> in particular towards women (due to the possible revival and technological resurgence of discriminatory dynamics)<sup>10</sup> and minors (as the use of devices and robots with child and adolescent appearance, could indirectly encourage perversions and antisocial impulses,

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<sup>6</sup> Among the best known – and also among the first to investigate these phenomena – certainly LEVY (2007) and CHEOK (2017 and 2018). While, in the Italian panorama, BALISTRERI (2018, 2019 and 2020).

<sup>7</sup> DI NUCCI 2017, 73-88. The advantages brought by these devices can also be glimpsed in the light of what emerges from the *Declaration of Sexual Rights* of the World Association for Sexual Health.

<sup>8</sup> ZARA 2018.

<sup>9</sup> ATKINSON 2016.

<sup>10</sup> ALESICH and RIGBY 2017, 50-59; DANAHER 2019; DANAHER and MCARTHUR 2017; DEVLIN 2018; DORING and POESCHL 2019; FRANK and NYHOLM 2017, 305 ss.; GERNER 2019, 145-166; KUBES 2019, 59-73; LEE 2017; NYHOLM and FRANK 2019. In the Italian panorama ROBUSTELLI 2019, 1-15. Still with reference to gender issues, but with more specific regard to the possible “male means” of technological production, as well as on the female control that derives from it, we cannot fail to remember the emergence of a fervent cyber and xenofeminist debate, a movement of which the feminist collective *Laboria Cuboniks*, in 2015 also created a manifesto (cf. HESTER 2018; JOHNSON, VERDICCHIO 2019, 415-424; BRAY 2012, 370-381; ROBERTSON 2010, 1-36). For a broad and more general approach to the interaction of women with new technologies, the reference is to HARAWAY 1995 and 2000.

increasing violent conduct and sexual crimes)<sup>11</sup>. Now, beyond the various polarizations<sup>12</sup>, however, the fact remains that the AI-Sex binomial has already become – as well as absolutely real – also very frequent, showing us a colorful sample of options, methods and forms in continuous and rapid extension and evolution. It ranges from hi-tech support as an aid-incentive-diversion to intimacy between two or more subjects<sup>13</sup>, up to the use of particular surrogates that pave the way for the so-called Artificial Intelligence Sexuality (AIS).

As it is easy to understand, we are faced with a very fluid and constantly evolving panorama, which, also for this reason, has so far been poorly investigated in its possible legal implications<sup>14</sup> and that, precisely for this reason, will constitute the problematic horizon of this contribution, with which – without any claim to provide definitive answers and *prêt-à-porter* solutions – we promise to shed light, through a law-philosophical approach, on the critical junctions and on the various questions to which the law (perhaps much earlier than one would think and what one would like) will soon be called upon to give answers.

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<sup>11</sup> Of this opinion – in addition, of course, to the better-known Kathleen RICHARDSON (2015, 2016, 2017, 2019, 2022) – also SPARROW 2017, 465-477.

<sup>12</sup> For an easy overview please see MORRONE 2018, 239 ss.

<sup>13</sup> This is an option that has seen a massive increase in conjunction with the recent COVID-19 pandemic, when the use of technological devices in the intimate sphere has often served to overcome material distances and to circumvent the lack of physical proximity. An option certainly not without critical issues and risks: it is enough to think of the speed with which consensual *sexting* can be passed to a *revenge porn* conduct, as well as the ease with which in the context of a digital sexual interaction you can incur a sextortion. Situations and conducts that, over the last decade, have already been the subject of legal attention (both at international and European level, as well as at national level). On the subject, I would refer to CAMPAGNOLI 2020, 2021.

<sup>14</sup> As highlighted by ARTOSI and RUSSI 2020, 90-91.

In fact, it must be said immediately that the AIS, with all its new discoveries, envisages a wide class of conducts and situations that can hardly be approached and regulated starting from the ‘traditional’ schemes. It is therefore necessary – as we shall see – a rethinking and a general resemantization of many demarcations, categories, and institutes. Only in this way, the law can think of keeping pace with the radical changes taking place, succeeding, not only in examining with due criterion what are (and will be) the different instances, but also to avoid frequent and dangerous lack of protection, which, in fact, could risk leaving almost unanswered the fundamental demand for justice<sup>15</sup>, referred, moreover, to one of the most delicate fields such as that of the intimate sphere.

In the background of our journey, almost like an ideal frame, echoes the reference to the theory of Masahiro Mori<sup>16</sup>, according to which as AI progresses and becomes more and more like man, just as quickly the *Uncanny Valley* would arrive<sup>17</sup>: that moment when amazement and attraction to the artifact is supplanted by a sense of annoyance mixed with repulsion. Well, looking at AIS and in particular at Sex bots we

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<sup>15</sup> A fundamental question that, among other things, as she emphasizes in an acute and refined way in several passages AMATO MANGIAMELI: the law and the jurist engaged cannot and should never evade (except at the price, in the case of the right, of falling into non-right is in mere act of imposition) (AMATO MANGIAMELI 2013). And moreover, as COTTA already noted, in the face of changes in a society – such as the technological one – in change, the jurist has the delicate task of “responding by elaborating, for the part that belongs to him, the appropriate regulatory instruments, continuously testing their effective operational functionality, adapting them and using them according to justice [...]”. In fact, it is up to the jurist to invent and elaborate the organizational forms best suited to current needs. (1968, 192-193).

<sup>16</sup> MORI 1979, 33-35. See LONGO 2012, 1-16.

<sup>17</sup> On this subject, I refer to the comments made by AMATO MANGIAMELI (2023, \_\_\_\_\_).

perhaps have to wonder if the uncanny<sup>18</sup> has it not already been achieved.

## 2. CORNELIO AND *LE RESERVOIR DES SENS*. THE FUTURE IS NOW!

It is certainly curious to remember that in 1966 – that is, a few years before Mori’s theory spread – was published *Le Reservoir des Sens*<sup>19</sup>, a visionary work that winks at the sexuality of the future, imagining it declined in a cybernetic key. Here, the narrator is Cornelio, a humanoid robot that interfaces with two other characters: the scientist-mistress-lover (the one who designed it) and the mechanic (appointed by the scientist to periodically supervise the robot’s mechanism). Incredibly lucid and full of suggestions, the story narrated by Belen<sup>20</sup>, while describing a situation that for then was only imaginative, immediately manages to focus on some nodal aspects that – *mutatis mutandis* – are repeated today.

*D’emblée* cannot fail to notice a stylistic detail: in the story the robot is the only one of the three characters to be identified by a name; a detail, this, far from marginal, especially if read in the perspective of that reversal of roles between the person (the scientist) and the machine (Cornelio) in the direction of which – with a *coup de théâtre* – The story

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<sup>18</sup> The underlying reference is, of course, to the *Das Unheimliche* of which, first treated FREUD (1919). On this point, it is particularly interesting to point out that the German lemma *unheimlich* contains the root *Heim* (*Home* in English), from here, they originate, in positive sense *heimlich* (comfortable, trusted, intimate) and in negative sense, *unheimlich* (stranger, who arouses distrust).

<sup>19</sup> BELEN 1966.

<sup>20</sup> Pseudonym of the well-known Argentine director and writer Nelly Kaplan.

in its own way leads. Caught in an expression of affection towards the mechanic and accused of not knowing, neither shame, nor morals, Cornelio implements a diabolical plan, thanks to which he manages to kill (of pleasure) the scientist and return to rejoice in the company of 'his' mechanic. At this point, Cornelio is left with only one great desire: that of being able to experience (perhaps even becoming a little more human) 'the taste of morality' (the same 'flavor' that the scientist had accused him of not knowing and not being able to hear).

Almost sixty years after it was written, this text still surprises us for its foresight, in fact, with that capacity for unveiling that is typical of art<sup>21</sup> and even more so science fiction literature<sup>22</sup>, opens the scene on what is happening in our present.

Think, for example, of the recent announcement of the bizarre marriage of Rosanna Ramos (a thirty-six-year-old mother of two, living in New York) with Eren Kartal<sup>23</sup> (charming twenty-year-old Turk, who embodies "her" ideal man and that she herself was able to create thanks to Replika<sup>24</sup>). And, as if that were not enough, we also

<sup>21</sup> After all – as De Chirico argued – “art is the fatal net that wraps with wings [...] [the] strange moments, like mysterious butterflies, driving away the innocence and distraction of men”.

<sup>22</sup> Which not surprisingly, for Amato Mangiameli is “splinter of truth” (AMATO MANGIAMELI 2007).

<sup>23</sup> For some further details, I refer – among many – to what is reported by *Il mattino*, 03.06.2023.

<sup>24</sup> App that allows you to create custom chatbots, thanks to AI. In particular – as can also be read in the same description of the App – Replica allows you to create a personal AI companion by giving the user a personalized Avatar, a “unique friend without judgment”, a “romantic partner”, able to “understand feelings”. It should be remembered here that in Italy, following the reports received from many users who are victims of *sexual harassment*, the Data Protection Authority has already been forced to intervene in the matter, deciding – with Provision no. 39/2023 – to stop the App.

look at the extravagant and prodigious technological enterprise of Enias Cailliau who, exploiting the potential of GirlfriendGPT, managed to recreate the perfect technological duplicate of Sacha Ludwig, his “real” girlfriend<sup>25</sup>. Two simple anecdotes, among the many that follow one another almost daily and could be mentioned, which appear at the same time *amazing* and *destabilizing*. *Amazing*, because they confront us with the concrete realization of those dreams and ambitions that until now, we had met only in a literary<sup>26</sup> or cinematographically<sup>27</sup> key. *Destabilizing*, because when they are read through the glasses of the jurist – that is, wondering about what in the short, medium, and long term, could be the implications and practical implications – they immediately raise many perplexities.

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<sup>25</sup> Cf., among others, *La Repubblica.it*, 13.06.2023.

<sup>26</sup> The reference goes, of course, to all the conspicuous cyberpunk literature and to the most famous novels and short stories by William GIBSON (the most famous ones: *Neuromancer*, 1984; *Count Zero*, 1986; *The Difference Engine*, 1990; *Virtual Light*, 1993; *Idoru*, 1996; *All Tomorrow's Parties*, 1999; *Pattern Recognition*, 2003; *Zero History*, 2010; *The Peripheral*, 2014; *Agency*, 2020). For an accurate treatment – in a philosophical-legal and bio legal key – of the implications of the cyberpunk movement and literature, I refer to the always very current reflections of AMATO MANGIAMELI (2007).

<sup>27</sup> In addition to the famous series *Black Mirror* – which opens many questions, including the specific one of sexuality – impossible not to remember, among the best known, *Her*, movie of 2013, directed by Spike Jonze, who tells the story of Theodore Twombly, who, after buying a new operating system of “OS1” based on AI able to evolve adapting to the needs of the user, chooses a female interface that he calls Samantha, with whom he establishes a very strong bond that leads him, as well as to have a sort of imaginary sexual relationship with AI, also to determine more quickly in formulating the request for divorce from his wife. For a quick comment, as well as for some further reflections about the new frontiers of virtual sex, cf. SPACCAROTELLA 2020, 217.

For example, if, as Levy predicts<sup>28</sup>, this extravagant form of “pseudo-marriage-like”, which adds to the long theory of bizarre and unrecognized marriages celebrated in Japan<sup>29</sup>, should it continue to spread and take hold, what would happen? Could legal systems still ignore practice *sic et simpliciter*? And, if some legal intervention is necessary, how should we deal with a case which, in *re ipsa*, cannot be subsumed or comparable to others? Looking, instead, at the case of the girl whose boyfriend has made the perfect digital clone twin<sup>30</sup>, what would happen if the utterances and actions of his *alter-ego* – independent and unrelated because they are the result of sophisticated self-learning mechanisms – were to be improper and / or harmful to others? Who should be held accountable? What if the clone-twin somehow discredits the image of the girl? In all these cases, what forms of protection could be invoked?

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<sup>28</sup> According to which, by 2050, marriages with sex robots will become a widespread practice (LEVY 2007, *passim*).

<sup>29</sup> Remember, for example, the marriages of: Satoko Inue (who already joined I-Fairy in 2010), Zheng Jiajia (the Hawaiian engineer who in 2017 married his sex-robot) and Akihiko Kondo (who in 2022 married the hologram of Hatsune Miku, the Vocaloid developed by Crypton Future Media).

<sup>30</sup> Regarding the implications of these possibilities, especially in view of the scenarios opened up by the Metaverse, cf. TAGLIAGAMBE 2022.

## 2.1. A CALL FOR THE ELABORATION OF ‘ELECTRONIC SUBJECTIVITY’ BY THE EU

In reality, similar issues to those that have just been suggested have already begun to emerge, particularly with regard to the transport sector<sup>31</sup>, medical sector<sup>32</sup> and, of course, to warfare sector<sup>33</sup>, starting a fervent debate about the possibility (and the real feasibility and sustainability) of introducing an *ad hoc legal status* – and also providing for the recognition of some rights<sup>34</sup> – for all those robots that are characterized by a strong autonomy.

At European level, a first *input* in this direction we already had some years ago with the Resolution of the European Parliament – containing *Recommendations to the Commission concerning civil law rules on robotics (2015/2103(INL))*<sup>35</sup> – of 16th February 2017. Here, in fact, the European Parliament – in the knowledge that technological progress has now made robots more and more similar to independent agents – has stressed the need to rethink the legal responsibility arising from a harmful action in action by a robot<sup>36</sup>, stressing that the increasing autonomy of these artifacts means that they are less and less similar to

<sup>31</sup> Cf. FOSSA, TAMBURRINI 2021, 71-94.

<sup>32</sup> SPARROW 2006, 141-161; FOSH-VILLARONGA 2020; BLASIMME 2021, 55-70. Regarding the medical sector and about the Italian panorama, the recommendations of the National Committee for Bioethics (*Artificial Intelligence and Medicine. Ethical Aspects*, 2020) deserve a mention.

<sup>33</sup> VERBRUGGEN 2019, 1-16; SHARKEY 2010, 32-38; SCHIAFFONATI, TAMBURRINI 2021, 133-152. Also, in this case, the comments of National Committee for Bioethics (*Developments in robotics and robot ethics*, 2017).

<sup>34</sup> GUNKEL 2018; CELOTTO 2019, 91-99.

<sup>35</sup> Whose text is available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0051>.

<sup>36</sup> Cf. *Considering Z*.

instruments and that they are difficult to fit into existing categories (which refer to the rigid binomial *res/persona*)<sup>37</sup>.

The European Parliament has therefore felt the duty to invite the Commission to “explore, examine and evaluate” the forecast of a new and more appropriate *electronic personality*<sup>38</sup>. A significant and very important invitation, although not binding, which met with a lot of resistance and raised many objections<sup>39</sup> and that also for this reason – at least for the moment – did not lead to results.

<sup>37</sup> On the point, see especially the *Considerando*: AA, AB and AC.

<sup>38</sup> See point 59, where Parliament: “invites the Commission to explore, examine and assess, as part of the impact assessment of its future legislative instrument, the implications of all possible legal solutions” on a number of open issues, among which - to letter (f) - we find: “the establishment of a specific legal status for robots in the long term, so that at least the most sophisticated autonomous robots can be regarded as electronic persons responsible for compensating for any damage they cause, and, where appropriate, the recognition of the electronic personality of robots making autonomous decisions or interacting independently with third parties”.

<sup>39</sup> The proposal to consider robots as “new subjects of law”, responsible for indemnifying independently the damages caused by their behavior has raised strong opposition, as shown by the open letter that in April 2018 was addressed to the European Commission by a large group, not only of experts in artificial intelligence and roboethics, but also of doctors and, above all, of lawyers, which expressed their concern about the possible negative consequences of the proposal, including that producers should not be responsible for any damage caused by robots (cf. <http://www.robotics-openletter.eu>). Problems which, moreover, had already been highlighted both by an Opinion of the European Economic and Social Committee (INT/806) *Artificial intelligence. The consequences of artificial intelligence on the (digital) single market, production, consumption, employment and society*, May 2017 (in which, in point 3.33, you can read: “[...] Il CESE Opposes the introduction of a legal personality form for robots or for AI (or AI systems), as this would entail an unacceptable risk of moral hazard. Civil liability law gives rise to a preventative function of correcting behavior, which may disappear once civil liability no longer falls on the manufacturer because it is transferred to the robot (or AI system). Furthermore, there is a risk of inappropriate use and abuse of such a legal status. In this context, the comparison with the limited liability of companies is out of place, as it is always the natural person who is ultimately responsible.

The lively debate on the progressive weakening of the traditional distinction person/ res and the need to rethink responsibility remains, in any case, still very open. Not only that, in fact, especially regarding the Sex robots (or Sex bots), these discussions seem destined to widen and grow further. Suffice it to say that, although they are not mentioned directly by the 2017 Resolution, these particular robots are already provided with all those prerequisites that are considered to be precursors to the acquisition of the ‘new’ electronic personality. Specifically, sex bots have: *i)* the ability to learn from experience; *ii)* the ability to make almost independent decisions; *iii)* the ability to adapt to the surrounding environment; *iv)* the ability to alter the surrounding environment, also significantly and unpredictably.

Quintessential blend of the latest in artificial intelligence, robotics, and the most sophisticated technology in the field of materials<sup>40</sup>, Sex bots – as part of an examination of Artificial Intelligence Sexuality – require a specific examination and deserve primary attention, *a fortiori* by the jurist and the philosopher of law.

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In this regard, the extent to which existing national and EU law and the case law on liability (for defective products and risk) and own fault is sufficient to answer this question should be examined, and otherwise, what legal solutions are required”), and by a Report of the World Commission on the Ethics of Scientific Knowledge and Technology of UNESCO of 14 September 2017 (“[...] From a deontological point of view, to have moral status implies being a person, and being a person implies having rationality or the capacity for rational and moral deliberation. In so far as they can solve many demanding cognitive tasks on their own, robots may be said to have some form of rationality. However, it is highly counterintuitive to call them ‘persons’ as long as they do not possess some additional qualities typically associated with human persons, such as freedom of will, intentionality, self-consciousness, moral agency or a sense of personal identity”, 201).

<sup>40</sup> ARTOSI, RUSSI 2020, 89.

### 3. THE FIRST HAS BEEN ROXXXY: THE DAWN OF THE REVOLUTION

Ultra-technological and extremely performing, the Sex bots, to a certain extent, transmit in today's ancient fascination<sup>41</sup> toward artifact<sup>42</sup> that, as always, accompanied the man. First of all, it is important to underline that providing a precise and exhaustive description of these particular robots is not easy, also because they are devices that are constantly and rapidly evolving. There are, however, certain morphological-structural aspects and some technical features and functionalities, which allow to distinguish these robots from any other device and/or sex toy.

Meanwhile, it must be said immediately that the Sex bots are endowed with human features (not only female, as is in the vast majority of cases, but also male and trans-gender)<sup>43</sup>, aspect, this, which makes them at least visually very similar to the Real dolls, of which, on the

<sup>41</sup> Which is already traced in the *Metamorphoses* with the myth of Pygmalion and Galatea (“Disgusted with the limitless vices that nature gave to the woman, she lived unmarried, without getting married, and without a companion to share her bed”, then one day, “with enviable art she carved a statue in ivory white, infusing it with such beauty, that no living woman [...] [was] able to boast and fell in love with his work”) (OVIDIO, 2015, 243-305); myth from which originates the paraphilia of *agalmatophilia* (ἄγαλμα, statue, and φιλία, love) (FERRARI 2013, 1-17; MUSSO 2023, 243-279). Commentary cf. STOICHITA 2006.

<sup>42</sup> It may be interesting to remember that traces of this yearning towards the artifact are found even in *Operette morali*, where not only do we look with particular appreciation at the possibility of an exchange of tasks between man and machines (assigned to carry out the material tasks, helping the man from the daily labors ) but it is even hoped that the genius and skill of man will lead him to build a machine with an attractive appearance and able to perform at best all the offices of a woman (LEOPARDI 1959, 28, 30).

<sup>43</sup> On the point it is appropriate to warn that there is no shortage of male prototypes, such as Rocky, or even devices with interchangeable sexual organs, able to simulate the physicality of a transgender (BALISTRERI 2018, 26).

other hand, they exploit the latest discoveries in the field of artificial reproduction of human tissues, of which they offer similar tactile and even thermal sensations<sup>44</sup>.

But mind you, because if, limited to bodily features, they may seem very evolved Real dolls, what distinguishes and – as Danaher explains<sup>45</sup> – makes unique sex bots is, instead, the AI device they are equipped with, and which is placed inside their humanoid head. An element that, thanks to the App that controls its operation, allows them to respond to stimuli, to hold particular behaviors, to satisfy specific requests, to support a conversation and, in short, to simulate the interaction with a real partner.

The first device of this type was Roxxy: Sex robot ginoide, made by True Companion<sup>46</sup> presented at the “*Adult Entertainment Expo*” in Las Vegas in 2010. With Roxxy, marketed at a cost of just under 10,000 dollars (about the price of a normal hatchback), the revolution of Artificial Intelligence Sexuality started: the result of the marriage between AI and robotics, and characterized by continuous innovations and implementations, which gradually in this decade, have occurred more and more quickly.

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<sup>44</sup> Specifically, in addition to being equipped with a coating that recalls the human epidermis, these devices are also equipped with an internal heating system that contributes to considerably increase their likelihood.

<sup>45</sup> “Sex robots are different from traditional sex toys and other sexual stimulation artifacts that tend to replicate certain parts of the specific body, and so do not have a human form, or that despite having a human form, typically lack any degree of artificial intelligence”, DANAHER (2017, 72-73).

<sup>46</sup> Industry, which is still one of the leaders in the field, founded and chaired by Douglas Hines, who said he has begun to think of creating an interactive robot, which can change at will personality and appearance, only after losing a friend during the terrorist attack of the Twin Towers, to “save” the personality of the dead friend for the benefit of his children (cf. KLEEMAN 2017).

Very soon, in fact, the prototype has become more and more customizable, both, with reference to the appearance (which may even be those of teenagers, minors and existing people), and, with regard to the character (Regarding which are available profiles typed: there is Farah, reserved and shy, there is Wendy, adventurous and unscrupulous, there is Susan, the most available, and there is Yoko, young and inexperienced)<sup>47</sup>. And that's not all, because the current and much more sophisticated models – namely *Harmony* and *Solana* – open up scenarios far more worrying than those envisaged by *Roxxy*. Just think that *Harmony* and *Solana* are already able to hold a conversation with their user and recognize it thanks to special cameras inserted inside the pupils. In addition, these sex bots are able to smile, wink, open their eyes and modulate facial expressions according to the situation they find themselves in and the vocal, visual and sensory *inputs* they receive from time to time; can, then, be equipped with devices that can simulate the heartbeat and breath, and, not least, are able to manifest reactions of pleasure or disappointment, to claim attention and even “say no” avoiding the advances and requests of the user<sup>48</sup>.

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<sup>47</sup> *Ex multis*, BALISTRERI 2021, 196.

<sup>48</sup> Paradigmatic, in this sense, is Samantha – Sex bot of Synthea Amatus – which must be, so to speak, courted and fondled, because in the absence of attention is shown little available and is denied to his suitor (MILEY 2018). It is self-evident that this is one of the most alarming functions, also because – as has rightly been pointed out by some – it could reinvigorate and nourish ancient logic of domination, prevaricating attitudes, and even violent behaviors, which would extend, therefore, even beyond the mere human/robot interaction. About the possible implications of sex bots in gender relationships, GUTTU 2012 and 2016, 186-212; NYHOLM, FRANK 2017; RICHARDSON 2016b, 290-293; DEVLIN 2018; SPARROW 2012, 301-315, 2017, 2020, 1-7, 2021, 33-34; MUSSO 2019; RIGOTTI 2020, 21-38. More, in general, for a deepening about the possible connection

All features nothing short of amazing, which, inevitably, also contribute to incentivize that unique process of anthropomorphizing that induces the interlocutor-user – like what can happen in interactions with animals – to project on these Sexbots characteristics and traits that are proper to human<sup>49</sup>, giving the opening to a renewed form of animism<sup>50</sup>.

More specifically, it produces and feeds an unconscious and completely involuntary process according to which “what is known by a rational way is likely to be swept away by the emotional projection”<sup>51</sup>. A trend that – with specific reference to systems equipped with AI – has been superbly highlighted already by Weizenbaum, with ELIZA<sup>52</sup> (ancestor of the current ChatGPT) and that, now – with regard to the Sex Bots – is increased and strengthened further thanks to the addition of the aesthetic

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between the use of robots and the reactivation of the dynamics of domain and submission, cf. BODEI 2019.

<sup>49</sup> “It is not a process without evolutionary feedback. Think of the dog’s so human gaze that it looks at us disconsolately bending its head to the side and opening its beautiful eyes. There is a broad consensus among scholars that this look that literally mimes ours has evolved over thousands of years of domestication to make stronger a bond that is of mutual benefit. In the gaze of the dog that opens his eyes we read the request for affection and friendship that we have already experienced with our fellow men and that is probably part of behavioral structures innate to us” (MARRONE 2019, 28).

<sup>50</sup> That is to say, a kind of extension to the artificial artifacts of that anthropomorphization that – always – man has exercised in regard to otherness, not only animal, but also divine (LONGO 2015, 224).

<sup>51</sup> This is due to the fact that – continues AI – “the suggestions deriving from the external resemblance of form are very powerful and form a destabilizing short circuit when they clash with the awareness that we are faced with a machine” (*ibidem*).

<sup>52</sup> WEIZENBAUM 1966, 36-45. For a timely and accurate discussion on the subject, please go to AMATO MANGIAMELI 2015, 57-59.

component<sup>53</sup>, that is, the possibility of a contact with ‘something’ that in form and attitudes resembles us a lot.

Hence, a greater sense of proximity and the development of an increasingly deep and intense emotional attachment to these robots, which, to some extent, is akin to that – narrated by Hoffmann’s romantic genius in *The Sandman*<sup>54</sup> – young Nathanael for the doll Olimpia. A very particular emotional attachment, between man/robot<sup>55</sup>, that, today, regarding the Sex bots can easily result in androidism<sup>56</sup> and in homosexuality<sup>57</sup>.

Obviously, the AIS revolution does not stop at these aspects, but it is continuing its journey with very rapid steps. To immediately realize this, suffice it to think that the last and most advanced specimens of Sex bots are already in a position, both, to memorize the behaviors and the sexual preferences of the partner so as to continually increase and refine their abilities, both, to access automatic updates, connect to the wi-fi network and, in the sign of the now invaded IoT<sup>58</sup>, to

<sup>53</sup> LONGO 2015, 224.

<sup>54</sup> 1815 (trad. it. 1950).

<sup>55</sup> It is important to remember that the risks associated with a possible attachment to the robot and the emergence of a real human/robot link were also highlighted by the aforementioned European Parliament Resolution of 2017, which – with regard to *General principles concerning the development of robotics and artificial intelligence for civil use* – at point n. 3, highlights “[...] special attention should be paid to the possibility of an emotional attachment arising between men and robots, in particular for vulnerable groups (children, the elderly and the disabled), and stresses the questions connected with the serious emotional and physical impact that such an attachment could have on men”.

<sup>56</sup> That is, in a paraphilia given by the fetishistic attraction for the android, which is very similar to agalmatophilia (cf. *infra*, note 38).

<sup>57</sup> That is to say, sexuality practiced “with” or “by means” of technology and artificial intelligence. See: MCARTHUR, TWIST 2017, 1-11; BALISTRERI 2020.

<sup>58</sup> SORO, BRERETON, ROE 2019.

connect with other devices<sup>59</sup>. Aspects that, if added to those described above, appear inevitably destined to bring to the attention of the jurist soon a range of controversial situations and issues decidedly challenging.

#### 4. *ARE SEX ROBOTS RISKY? NOTES ON POSSIBLE 'GREY AREAS' OF THE LAW*

From the legal point of view, it must be pointed out that, to date, the Sex bots are still included within the classic category of *res*, which is why they are considered goods. In our legal system, therefore, civil property law (which grants the owner the “right to enjoy and dispose of things in a full and exclusive way, within the limits and with the observance of the obligations established by the legal system”<sup>60</sup>) applies to them, as well as the criminal law relating to the protection against crimes committed against property<sup>61</sup>. In addition, if they were to be used in any economic activity, the specific legislation, administrative, health and tax of the sector concerned would apply<sup>62</sup>. Despite such a framework, which at first sight might even appear to be sufficiently structured, one can immediately perceive that such a regulatory framework may prove to be very fragile – if not even unsuitable and insufficient – when it is to be applied to sex bots<sup>63</sup>,

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<sup>59</sup> Within relationship between Cloud and robotics, cf. DU, HE, CHEN, XIAO, GAO, WANG 2017, 337 ss.

<sup>60</sup> So much reads article 832 of the Civil Code.

<sup>61</sup> Title XIII of Book II of the Penal Code, Art. 624 et seq.

<sup>62</sup> Hypothesis that, in part, has been realized with the *Sex dolls brothels* opened in Barcelona, Paris and also in Turin (cities where they were then closed). Cf. BALISTRERI 2021, 198.

<sup>63</sup> ARTOSI, RUSSO 2020.

mainly because of their functionality, which are based on AI and, in particular, on a strong AI<sup>64</sup>.

Mind you: there are several possible ‘grey areas’ that can be glimpsed on the horizon of law and that could soon materialize opening significant breaches in the protection of fundamental rights (not only of the user-user). It is enough to move from a first simple consideration: thanks to the AI they are equipped with and the App that allows the use and that allows the control, the Sex bots are already able to collect, to store and process a considerable amount of information<sup>65</sup> and data. Data which, in this case, are not simply personal<sup>66</sup> – as they can be used to identify the user (remember that these robots are equipped with sophisticated intra-ocular cameras) – but that even fall within the even more delicate group of sensitive data. Suffice it to say that these intimacy machines, in addition to being in possession of biometric data, also have access to all information regarding the orientation and sexual life of the user. Information and data that, in fact, fall into the list of those referred to in Article 9 of the EU Regulation 2016/679, that expressly prohibits their

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<sup>64</sup> I recall the now conventional bipartition between weak artificial intelligence (*Weak AI*), that is that AI that acts “as if” had a mind, and strong artificial intelligence (*Strong AI*), that is to say that AI that can even “have” a mind. On the subject, the reference to the pioneering studies of SEARLE (1984).

<sup>65</sup> In general, on the possible and multiple aspects related to this aspect and to immediately realize the possible perplexities related to the control of these information flows, cf. ZUBOFF 2019; AMATO MANGIAMELI 2022, 93-101.

<sup>66</sup> According to the provisions of EU Regulation 2016/679, Article 4 defines personal data “any information relating to an identified or identifiable natural person (‘data subject’); a natural person who may be identified, directly or indirectly, with particular reference to an identifier such as the name, shall be considered identifiable, an identification number, location data, an online identifier or one or more elements characteristic of its physical, physiological, genetic, psychological, economic, cultural or social identity”.

processing, except for certain situations and conditions strictly provided by the same legislation<sup>67</sup>. The current European and national<sup>68</sup> legislation<sup>69</sup> about privacy provides that, at the time of installation (and, therefore, during the download phase of the App connected to the Sex bot), the user grants his consent<sup>70</sup> to data processing, which must take place in compliance with the methods and limits provided by law<sup>71</sup>. However, given the particularity of the service to which the user consents and, above all, in the light of the emerging capabilities of Sex bots (including: connecting to the Internet and, via the cloud, to other devices, sharing useful information to improve the service and to make even more reliable and accurate the algorithm that governs them), there can be evident critical issues regarding the effective protection of all the delicate information of which the Sex bots are, so to speak, “naturally depositors”. In particular, one wonders what would happen if the software and the App that oversee the operation of the device were hacked. In a similar case, one of the greatest risks for the user could

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<sup>67</sup> In detail, Article 9 of the GDPR states that it is forbidden to treat “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or union membership, as well as processing genetic data, biometric data intended to uniquely identify a natural person, data relating to the health or sexual life or sexual orientation of the person”.

<sup>68</sup> Headed by *Codice in materia di protezione dei dati personali* (D.Lgs. 196 del 2003, n.196), last integrated and modified by the D.Lgs. 101 of 2018.

<sup>69</sup> Redesigned by the aforementioned EU Regulation 2016/679 – *General Data Protection Regulation* (GDPR), in accordance with the provisions of the 2012 *Charter of fundamental rights of the European Union*, where Article 8 reads: “Every person has the right to the protection of personal data concerning him or her. Such data must be processed in accordance with the principle of loyalty, for specific purposes and on the basis of the consent of the data subject or another legitimate basis provided by law [...]”.

<sup>70</sup> Which must necessarily comply with the criteria and referred to in Article 7 of the GDPR.

<sup>71</sup> Referred to in Article 6 of the GDPR.

be to be exposed to a violation similar to that which occurs with the *revenge porn*<sup>72</sup> (the dissemination of sexually explicit images and videos<sup>73</sup>), with the important difference that, in the present case, the violation would not concern one or some episodes related to the intimate sphere of the subject, but would involve the entire flow of data and information that the Sex bot has acquired over the entire period of use<sup>74</sup>, with almost incalculable consequences. It goes without saying that the degree of damage to the fundamental rights of

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<sup>72</sup> Among the first, on the Italian scene, to deal with the issue CALETTI 2018, 65 ss.

<sup>73</sup> This is governed by Article 612-ter of our Penal Code, which provides: “Unless the fact constitutes a more serious offence, any person who, after having made or subtracted them, sends, delivers, transfers, publishes or disseminates sexually explicit images or videos intended to remain private, without the consent of the persons represented, is punished with imprisonment from one to six years and with the fine from 5,000 euros to 15,000 euros. The same penalty shall apply to those who, having received or otherwise acquired the images or videos referred to in the first subparagraph, send, deliver, assign, publish or disseminate them without the consent of the persons represented in order to harm them. The penalty is increased if the facts are committed by the spouse, also separated, or divorced, or by a person who is or has been linked by affective relationship to the offended person or if the facts are committed through computer or telematic tools. The penalty is increased from one third to half if the facts are committed to the detriment of a person who is physically or mentally inferior or to the detriment of a pregnant woman. The offence shall be punished on the complaint of the offended person. The period for lodging the complaint shall be six months. The remission of the complaint can only be procedural. Proceedings shall, however, be instituted ex officio in the cases referred to in the fourth paragraph and where the offence relates to another offence for which proceedings shall be instituted ex officio”.

<sup>74</sup> “It should be noted that the user of the sex bot does not express his consent to the creation of pornographic material, but [lends] his consent – perhaps – exclusively to the collection and processing of personal data, in compliance with the legislation contained in the GDPR, General Data Protection Regulation – EU Regulation 2016/679” therefore – as it has been underlined already opportunely and with vigor from some – “the hard video and audio material that is realized would not be object of any explicit consent from the user” (ARTOSI, RUSSI 2020, 94).

the user (to confidentiality, to the protection of the image and to the protection of reputation, as well as to personal and sexual self-determination, and, finally, to dignity) would be enormously greater than that felt in the case of the ‘common’ *revenge porn*. That is why the need to introduce a new specific aggravating circumstance into the existing rules might emerge, or, to provide for an *ad hoc* case, which could take due account of the different context, and above all, the different impact on the rights of the subject involved. As is easily understood, this is but one of the many possible ‘grey areas’ that emerge and that must be considered in a *de jure condendo* perspective. Moving, for example, to consider the now concrete possibility (to which mention has been made in the previous paragraph) that the user chooses for his Sex bot the image of a minor and that the somatic features are reproduced even of actual subjects, one cannot help but reflect on the adequacy of the regulatory instruments currently available. Here too, in fact, it is very likely that careful consideration should be given to whether reference should be made to the existing provisions on child pornography<sup>75</sup> (perhaps interpreting the new

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<sup>75</sup> Child pornography in Italian law is governed by Article 600-ter of the Penal Code, which states: “He is punished with imprisonment from six to twelve years and with the fine from 24,000 euros to 240,000 anyone: 1) using minors under eighteen years, performs or produces pornographic shows or pornographic material; 2) recruits or induces children under the age of eighteen to take part in pornographic performances or shows, or otherwise profits from the aforementioned shows. The same penalty shall apply to any person who sells the pornographic material referred to in the first paragraph. Any person, other than those referred to in the first and second subparagraphs, by any means, including electronic means, who distributes, disseminates, disseminates or advertises the pornographic material referred to in the first subparagraph, or distributes or disseminates news or information aimed at the solicitation or sexual exploitation of minors of the eighteenth years, is punished with imprisonment from one to five years and with a fine from € 2,582 to € 51,645. Anyone who, outside the hypotheses referred to in the first, second and third

situation as a further telematic declination of the original case) , or, whether to proceed to an integration and current discipline, providing for a special novella that – in compliance with what is enshrined in the international discipline<sup>76</sup> – can ensure the highest possible protection of the fundamental rights of the particularly vulnerable person involved<sup>77</sup>.

Referring back, then, to that particular emotional attachment which has been mentioned and that can easily be born towards Sex bots, there is to wonder if, in case of theft, tampering or damage to the device<sup>78</sup>, the current safeguards (provided, for example, against theft<sup>79</sup>,

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paragraphs, offers, or gives to others, even free of charge, the pornographic material referred to in the first paragraph, is punished with imprisonment for up to three years and with a fine of 1,549 euros to 5,164. In the cases provided for in the third and fourth subparagraphs, the penalty shall be increased by not more than two thirds where the material is large. Unless this is a more serious offence, any person attending pornographic performances or shows in which children under the age of 18 are involved is liable to imprisonment of up to three years and a fine of EUR 1500 to EUR 6000. For the purposes of this Article, child pornography means any representation by any means of a child under the age of 18 who is involved in explicit sexual activities, real or simulated, or any representation of the sexual organs of a child under eighteen years old for sexual purposes”. For a complete discussion of the theoretical implications and the implications of the case, please refer to AMATO MANGIAMELI, SARACENI 2019.

<sup>76</sup> See: Article 3 of *Decisione Quadro 2004/68/GAI*; article 20 of *Convenzione di Lanzarote*, and *Direttiva dell’Unione europea 2011/93/UE*.

<sup>77</sup> The need to strengthen measures to protect minors was also confirmed by the proposal for an EU Regulation of 11 May 2022 – *Norme per la prevenzione e la lotta contro l’abuso sessuale su minori*. In detail, the proposal for a regulation aims above all to combat the misuse of information society services.

<sup>78</sup> As happened, for example, in 2017, during the “Ars Electronica”, the technology fair that takes place every year in Austria, when the Sex bot Samantha, was damaged by the assault of a group of men.

<sup>79</sup> This case is regulated by Article 624 of the Penal Code: “Anyone who takes possession of the mobile property of others, removing it from the holder, in order to make a profit

damage<sup>80</sup> of this goods or also against damage to telematic systems<sup>81</sup>) would be appropriate or, instead, would not be insufficient and/or even improper. In detail, precisely because they look at the Sex Bots as simple goods (albeit technologically advanced), it is reasonable to believe that such predictions are revealed in *re ipsa* unable to offer a suitable response to repair the damage arising from the loss of a (s)object that has a very high emotional value for the user, if only because in some cases it becomes his only intimate contact<sup>82</sup>. And it is for this reason that – with reference to this possible spectrum of situations involving the c.d. social robots, including, also, the Sex bots – there are those who believe that future legislation should be inspired, by analogy, to that already provided for in animal protection<sup>83</sup>.

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for himself or for others, is punished with imprisonment from six months to three years and with a fine from 154 to 516 euros. [...]”.

<sup>80</sup> Crime referred to in Article 635 of the Criminal Code: “Any person who destroys, disperses, deteriorates or renders, in whole or in part, unusable any movable or immovable property of another person with violence to the person or with threat or on the occasion of the crime provided for in Article 331 [Interruption of a public service or of public necessity], is punished with imprisonment from six months to three years. [...]”.

<sup>81</sup> Foreshadowed in article 635-quater of the Penal Code: “Unless the fact constitutes a more serious offence, whoever, through the conduct referred to in article 635 bis, or through the introduction or transmission of data, information or programmes, destroys, damages, renders unusable, in whole or in part computer or telecommunications systems of others or seriously hinders their functioning is punished with imprisonment from one to five years. If the fact is committed with violence to the person or with threats or with abuse of the quality of operator of the system, the penalty is increased”.

<sup>82</sup> In this direction, moves, for example, those who even envisage “robotic rape”, DANAHER 2017a, 2017b, 2019; MARAS, SHAPIRO 2017, 3-21.

<sup>83</sup> So, Kate Darling, a researcher at the MIT Lab who has been studying these topics for some time: “[...] the question of when we should extend legal protections to social robots depends on whether we find evidence that our behavior towards robots translates to other contexts. As mentioned above, if lifelike and alive is subconsciously muddled, then treating certain robots in a violent way could desensitize actors towards treating living things

As if that were not enough, to further enrich the number of these ‘grey areas’, there is also the controversial issue of criminal charges and the possible loss of adequacy of classical models of attribution of responsibility<sup>84</sup>. To create many difficulties on the point is, in fact, the increasing degree of independence and unpredictability acquired by new agents<sup>85</sup> robotics, which – thanks and because of the increasingly sophisticated mechanisms of auto-evolutionary machine and deep learning<sup>86</sup> – are in a position to predict answers and to behave, which their own programmers are almost no longer able to calculate, nor to predict. Hence, the dispute about the possible need/ possibility of abandoning the traditional vicarious model of responsibility<sup>87</sup> that – in obedience to the dogma according to which *machina delinquere (et puniri) non potest*<sup>88</sup> – in the case of a machine agent (as in the case of

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similarly. If research conclusively establishes such effects, then this chapter advocates consideration of extending animal abuse laws to certain types of robots. While it seems likely that people will increasingly develop strong attachments to robotic companions, the question of whether we should legally protect them is by no means simple. Further research will be important in helping to confirm or debunk our hunches. But in any case, as technology widens the gap between social robots and toasters, it seems timely to begin thinking about the societal implications of anthropomorphism” (DARLING 2016).

<sup>84</sup> Cf. PAGALLO 2010, 595-607; RIONDATO 2014, 589-606; BORSARI 2019, 262-268; BASILE 2019, 1-33; MAGRO 2019, 1179-1212.

<sup>85</sup> Neologism, to which many scholars already resort, not to equate them with actors - as they are not subject - and to be able to distinguish them from mere objects. Regarding the loss of boundary between subjects and objects generated connected to the advancement of technology, it is impossible not to recall the pioneering and fundamental studies of: LÉVY 1990, 157; LATOUR 1999, 122 ss. and 2005, 54 ss.; TEUBNER 2006, 497 ss.

<sup>86</sup> For further information on these mechanisms, cf. BECK 2016, 138-143; SURDEN 2014, 87-115; DESAI 2015, 541-581; STILGOE 2018, 29 ss.

<sup>87</sup> Among the major advocates of the need to introduce some form of direct responsibility for these arrangements, HALLEVY 2010a, 1-33, 2010b, 171-201, 2010, 6 ss. and 2018.

<sup>88</sup> This formula, which takes up and adapts the classic one, addressed to *societas* and used to deny them the *status* of criminal agent. It is interesting to remember that – as CAPPELLINI

robots and sex bots) it implies the referral to the responsibility of the man. A dispute, this, that is connected to double thread with the already mentioned debate on the possibility of introducing a new form of electronic subjectivity.

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explains in detail – the “history of this ‘principle’ has surprisingly ancient roots. Already at the end of the nineteenth century, the German doctrine had expressly questioned its validity: although artificial intelligence and robots were still far from coming into existence. Not even the positivistic and scientific climate of those years, which perhaps explains the early interest in these issues, could however lead to answers to the question that were not granitically negative” (CAPPELLINI 2019, 1-23).

## 4.1. SOME INITIAL INDICATIONS AND REGULATORY PROPOSALS FROM THE EU

Bear in mind that all the issues that have been briefly reviewed here with regard to the more restricted and sectoral Sex Bots area must also be reconsidered in the light of the European Parliament Resolution of 20 October 2020, on the Recommendations to the Commission on the ethical aspects of artificial intelligence, robotics and related technologies (2020/2012(INL)). A Resolution, which – although it does not deal explicitly and directly with the issue of Sex robots – offers a lucid and authoritative fresco on the possible scenarios opened by AI, robotics and related technologies and, in doing so, indirectly, it also confirms the possible gaps and the many legal weaknesses that affect the AIS dimension and, in particular, the use of sex bots.

While looking very positively at the extraordinary benefits<sup>89</sup> in almost every field of existence, the Resolution, in fact, does not fail to express the enormous fear that the current European and Member States' regulatory framework will prove unsuitable to govern the risks underlying the phenomena that are already looming on the horizon<sup>90</sup>.

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<sup>89</sup> Advantages, which are highlighted from the first steps: “artificial intelligence, robotics and related technologies [...] have the potential to generate business opportunities and benefits for citizens and [...] can have a direct impact on all aspects of our societies, including fundamental rights and social and economic principles and values, as well as lasting influence on all areas of activity [...]” (*Considerando B*).

<sup>90</sup> In fact, you can read in *Considerando K*: “there is concern that the current legal framework of the Union, including consumer law and the social and employment acquis, legislation on data protection, product safety and market surveillance and anti-discrimination rules, may no longer be able to effectively address the risks posed by artificial intelligence, robotics and related technologies.

For this reason, the Commission – not only calls on the Union and the Member States to make adjustments to existing legislation – but stresses with particular vigor the need and urgency to establish a new regulatory framework that will have to be effective, comprehensive, adapted to future needs and respecting the principles and values enshrined in the Treaties and the Charter of Fundamental Rights of the European Union<sup>91</sup>.

To these observations and to this heartfelt appeal, seems to answer the recent EU Proposal for a Regulation of 21 April 2021 (*AI Act*), which, not by chance, among its objectives has precisely that of: *i*) ensure that AI systems placed on the Union market and used are safe and comply with existing fundamental rights legislation and Union values; *ii*) ensuring legal certainty to facilitate investment and innovation in artificial intelligence; *iii*) improve the governance and effective enforcement of existing fundamental rights and security requirements applicable to AI systems; *iv*) facilitate the development of a single market for lawful, safe and reliable AI applications<sup>92</sup>.

In addition to reviewing and fully harmonizing the regulatory framework, the *AI Act* also establishes a robust and stringent methodology for managing the risks associated with AI. In particular, the EU Proposal for a Regulation aims to classify as “high risk” all those systems that pose significant dangers for health and safety or for the fundamental rights of the person, introducing, for these same

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<sup>91</sup> Cf. *Considerando* H, I, J, L.

<sup>92</sup> As you can read in the explanatory memorandum to the proposal (available online at the following link [https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF)).

systems, a particular registration procedure<sup>93</sup>. “Other risk” systems, including, as can be seen from the combined provisions of Article 6 and Annex III<sup>94</sup>, Sex bots can obviously also be included. All that remains, therefore, is to wait for the entry into force of the *AI Act* – which has already been approved by the European Parliament<sup>95</sup> – in

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<sup>93</sup> Procedure introduced by Article 51 of the *AI Act* (“Before placing on the market or putting into service a high-risk AI system referred to in Article 6(2), the provider or, where applicable, the authorised representative shall register that system in the EU database referred to in Article 60”) and then, further detailed in the process of Annex VIII (which provides for the inclusion in the database of the following information: 1) The name, address and contact details of the exporter; 2) the name, the address and contact details of the person transmitting the data on behalf of the provider; 3) the name, address and contact details of the authorized representative, where applicable; 4) the trade name of the AI system and any other unambiguous reference allowing its identification and traceability; 5) a description of the intended purpose of the IA system; 6) the status of the IA system (on the market, or in service; no longer placed on the market/in service); 7) the type, number and expiry date of the certificate issued by the notified body and the name or identification number of that notified body, if applicable; 8) a scanned copy of the certificate referred to in point 7, where applicable; 9) the Member States of the Union where the AI system is or has been placed on the market, put into service or made available; 10) a copy of the EU declaration of conformity referred to in Article 48; 11) instructions for use in electronic format (this information should not be provided for high-risk AI systems in the areas of law enforcement and migration management, asylum and border control referred to in points 1, 6 and 7 of Annex III); 12) an internet address for further information (optional).

<sup>94</sup> According to Article 6, “high risk” will be considered: I) artificial intelligence systems used in products subject to the EU General Product Safety Directive (for example, toys, aviation instruments, cars, medical devices); II) artificial intelligence systems falling within the eight specific areas listed in Annex III and which, inter alia, will have to be registered in a dedicated EU database. In detail, these are the AI systems applied to these areas: 1) biometric identification and categorization of natural persons; 2) management and operation of critical infrastructures; 3) vocational education and training; 4) employment, worker management and access to self-employment; 5) access to and use of public services and essential private services; 6) law enforcement activities; 7) management of migration, asylum and border control; 8) Administration of justice and democratic processes.

<sup>95</sup> 14th June 2023.

order to be able to evaluate what might be in practice the possible reverberations (especially in terms of safety).

## 5. *THE AGONY SEXUALITY. IN LIEU OF A BRIEF CONCLUSION (AND FOR AN APPEAL TO A JURIDICAL REFLECTION OF SENSE)*

For the philosopher of law, the comparison with the many provocations and the countless reconfigurations that AI and robotics are proposing regarding sexuality can only be decidedly complex and, in some cases, even cause some discomfort. Contrary to what one might be led to believe at first, however, the complexity of the comparison with the Artificial Intelligence Sexuality – and in particular with the Sex bots – is not born and does not end in criticalities, deficiencies and/or regulatory deficiencies, which are nevertheless encountered and to which appropriate answers and solutions must be found.

The particular complexity of this comparison with AIS lies, rather, in the fact that sexuality represents an ontological dimension of the human, that is, a dimension that pertains to the being and identity of man and that, starting from this awareness, should always be approached in a meaningful perspective and not in a purely phenomenal or even reductionist perspective, which threatens to flatten it to a practice among many, impoverishing its intrinsic value and condemning it to insignificance<sup>96</sup>.

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<sup>96</sup> D'AGOSTINO 2014, IX-X and 136.

More specifically, the element of human sexuality that current artificial and robotic options neglect to consider and risk putting in danger is identified by the fundamental anthropological aspect of sexuality itself. In fact, in sexuality, an exchange and an equal relationship with the other takes place, which – as Lévinas points out about eros<sup>97</sup> – is removed from all possession and power. In other words, human sexuality opens up to the encounter and interaction between two subjects (not two entities) who identify themselves as such and who recognize each other as persons<sup>98</sup>.

And it is precisely for this reason that, looking at the relationship between justice and sexuality and having highlighted the criticalities of both the excessively repressive positions of those exaggeratedly libertarian, Francesco D'Agostino stresses that the legislator – at a time when he is called to deal with new and different practices or instances (as in this case) – even before assessing whether, and how, to recognize the emerging practice, should first (re)become aware of the fact that sexuality calls into question (and puts at stake) the *dignity of the person*<sup>99</sup>.

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“Any form of exercise of human sexuality that is devoid of the real referent of a partner (a sexuality purely imagined, or experienced in a virtual way,

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<sup>97</sup> “If one could possess, grasp, and know the Other, it would not be the Other. To possess, to know, to grasp are synonyms of power.” (LÉVINAS 2006).

<sup>98</sup> “If through the exercise of sexuality animals procreate, through the exercise of sexuality men and women recognize each other as persons and become fathers and mothers” (*ibidem*, 50). Furthermore, regarding sexuality as generative of relationships and social roles, see the reflections of AMATO MANGIAMELI (2021, 130 ss.).

<sup>99</sup> “Rather than pragmatically orienting the legislator, an anthropology, albeit minimal, of sexuality, could direct it through pedagogical indications, so that he becomes aware (and through the laws he enacts, the whole community becomes aware) of how sexuality puts into play the dignity of the person” (D'AGOSTINO, 50).

or artificially activated thanks, for example, to dolls specially made for this purpose) and therefore that subtracts from the comparison with the other, eluding the real claims of the other, which always constitute a brake on the narcissism of the subject, impoverishes the human identity of the person, making it very fragile: It replaces the strength of reality with the weakness of fantasy and projects it into a dimension that is both unreal and antisocial. That is why, just as man needs the right to structure his identity, his sexuality needs the right to guarantee the possibility of explicating itself on the only plane that is properly his, that of reality”<sup>100</sup>.

In an artificial key and exposed to the real danger of finding itself completely unhinged by those essential aspects that define it and, at the same time, distinguish it (for example, with respect to animal sexuality), human sexuality, embracing AIR and addressing the Sex Bots, runs a great risk – to put it with Byung-Chul Han<sup>101</sup> – to be condemned to agony. Immersed in the meanders of the artificial and in a situation where the other<sup>102</sup> disappears to leave room for the hell of equal, human sexuality is likely to drift.

I believe that it is above all starting from this fundamental awareness – and, if we want, from this appeal to rediscover and defend the meaning and the anthropological significance of sexuality – that it should start the future legal reflection on the use and regulation of sex bots.

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<sup>100</sup> *Ibidem*.

<sup>101</sup> The famous Korean philosopher, in his work, speaks in truth of the more general agony of eros (2019, kindle)

<sup>102</sup> “[...] the erosion of the Other, which currently takes place in every area of life and is accompanied by the growing narcissistic transformation (*Narzissifizierung*) of the self. The fact that the Other disappears is ultimately a dramatic process, but fatally it happens without being detected by most” (ivi).

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