You Might Be a Robot
Testimony in Support of H. 2701

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As robots and artificial intelligence (AI) increase their influence over society, policymakers are increasingly regulating them. But to regulate these technologies, we first need to know what they are. And here we come to a problem. No one has been able to offer a decent definition of robots and AI—not even experts. What’s more, technological advances make it harder and harder each day to tell people from robots and robots from “dumb” machines. We have already seen disastrous legal definitions written with one target in mind inadvertently affecting others. In fact, if you are reading this you are (probably) not a robot, but certain laws might already treat you as one.

The problem is not simply that we have not hit upon the right definition. Instead, there may not be a “right” definition for the multifaceted, rapidly evolving technologies we call robots or AI. Even the most thoughtful of definitions risk being overbroad, underinclusive, or simply irrelevant in short order. Rather than trying in vain to find the perfect definition, policymakers should do as the great computer scientist, Alan Turing, did when confronted with the challenge of defining robots: embrace their ineffable nature.

That implies several things. First, whenever possible, laws should regulate behavior, not things. Put another way, the legislature should regulate verbs, not nouns. Second, where we must distinguish robots and AI from other entities, the law should apply what we call Turing’s Razor, identifying robots and AI that are the subject of regulation on a case-by-case basis. In the attached paper, we offer six functional criteria for making these types of “I know it when I see it” determinations and argue that courts are generally better positioned than legislators to apply such standards to specific cases. Mark A. Lemley & Bryan Casey, You Might Be a Robot, Cornell L. Rev. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3327602. Finally, we argue that if we must have definitions rather than apply standards, they should be as short-term and contingent as possible. That, in turn, suggests regulators—not legislators—should play the defining role whenever possible.

H. 2701 is consistent with these principles. Rather than jumping in to a new and important field with rules that might or might not be appropriate, and which are likely to have unintended consequences, it urges appropriate caution and deliberation before legislating. This “look before you leap” approach is a good one. It is likely to encourage innovation and experimentation in a field that is, after all, in its infancy. And it is likely to lead to ultimate regulations that are targeted to real problems and do less harm than broader-brush solutions. That is not to say that regulation won’t be necessary at all; it may well turn out that the legislature needs to act. But we need to know more than we currently do about what technologies cause problems and how to tailor legislation narrowly to specific, identified problems. Studying the legal issues raised by AI is a critical first step in that process.