Legal challenges related to bias and discrimination in AI within the US

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Technological advancements always come with new risks and unforeseen issues. Historically, it has been proven time and time again, that our legislation is ineffective in protecting us during these changes (Kaal, 2016; Wadhwa, 2014). Technological giants have been embroiled in legal battles over the past decade over their use of user data for financial gains. For example, Facebook paid $5 billion (Henderson & Kaplan, 2019) and Amazon paid $800 million (Chee, 2025) for data privacy violations. The explosive growth in data collection left legislators scrambling to catch up with technology and its associated risks to better protect consumers (Schuett, 2022). Artificial intelligence (AI) has become a mainstay of our daily lives, impacting various aspects of our personal and professional activities. Many people are unaware of how frequently they use AI and the extent of its impact on their lives. Entities worldwide utilize AI to achieve their goals. On one hand, AI can feel like a helpful sidekick when it curates our music playlists on Spotify based on our preferences while simultaneously optimizes our commute by helping us avoid traffic. On the other hand, it can seem like the master of our fate, determining whether a candidate's resume reaches a recruiter's desk or if an employee is deemed redundant due to AI-driven automation. As these AI systems become commonplace, we are now exposed to new threats that we do not fully comprehend. The rapid evolution of AI systems have left a policy gap and US legislators are struggling to keep up with adequate bias and discrimination regulations on the use of AI.

As legislators finally began to catch up with data protection acts (Lamont & Stauss, 2024), the AI boom occurred, starting the cycle anew. The vast amounts of data collected are now being transformed into AI systems that make critical decisions, influencing who gets hired, who pays higher insurance premiums, and who is deemed creditworthy enough to buy a house.

These systems can learn incorrect patterns, such as a resume-checking system preferring male candidates over female candidates due to historical data favoring male hires (Hamilton, 2018). These incorrect patterns, known as biases, can lead to discriminatory practices. Much like the data collection boom, consumers are left to fend for themselves against a new technological revolution.

The field of AI has been rapidly evolving and even the basics such as the definition of AI have still not been agreed upon (Schuett, 2022). The Father of AI, John McCarthy, defined AI as "the science and engineering of making intelligent machines" (McCarthy, 2007) which is a very broad definition. Broad definitions are often harder to regulate and pose greater risks. This broad definition encompasses scenarios from when a machine makes an intelligent decision to recommend the next video on YouTube to automated driving cars that use the information gathered from their sensors to make intelligent decisions on how to get to the destination safely. But there is also much debate about what is "real" AI. Opinions vary from any system using historical data for predictions to generative AI like ChatGPT, which can solve problems such as coding, making notes, summarizing books, or even artificial general intelligence that mimics human intelligence by learning, adapting, reasoning, and understanding (Oke, 2008). The US government under 15 US Code § 9401(3) has defined artificial intelligence as the following:

> The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to –
>
> (A) perceive real and virtual environments;
>
> (B) abstract such perceptions into models through analysis in an automated manner; and

(C) use model inference to formulate options for information or action. (National Artificial Intelligence Initiative Act of 2020, 2020)

This broad definition of AI includes most technologies, but different state and European laws further add to the confusion with varying definitions. The ambiguity of what constitutes AI, compounded by the rapid pace of innovation, makes it hard to understand and regulate AI usages (Kang & Satariano, 2023). Ultimately, the issues we are facing in AI systems are similar to what we have seen in the past. It is important to examine them and assess how AI is affecting industries today to better understand bias in AI as well as the current state of legislation.

AI Bias and Discrimination

Throughout history, numerous instances have shown that automated decision systems can lead to discrimination and unfair practices due to biases. An example is the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), a risk assessment algorithm created by Northpointe in 2000. COMPAS is used to evaluate whether an offender is likely to reoffend in the future. Multiple studies have found that COMPAS is biased against the defendant overall, with a higher bias against young and Black defendants (Engel et al., 2024; Larson et al., 2016). Although this algorithm might not be classified as an AI system by today's standards, it shares similar fundamental issues with AI systems.

Bias in AI systems is often unintentional, influenced by numerous factors. The issue often starts with data, where minorities are often underrepresented or unfairly represented in the data. If the data is not corrected for bias, this bias can be learnt by algorithms and AI systems. Even if race and gender are excluded from the data, other inputs can still train the AI on these

biases. Geography often reflects socio-economic status and race, while occupations like nursing, where most workers are female, can also introduce bias. Moreover, historical data may perpetuate past inequalities, as AI systems learn from patterns that include discriminatory practices. For example, housing data might reveal redlining practices that discriminated against certain racial groups, or employment records could expose wage gaps between genders. These biases are not always easy to identify and often reflect a longer history of being embedded in systems rather than being actively addressed or corrected.

As technology has advanced, it has created black box AI systems that make understanding the underlying logic difficult. With advances in machine learning and deep learning algorithms, the systems are learning to make highly complex decisions from the data. These systems are hard to interpret and make bias in the model harder to isolate and fix. As the issue of bias has become front of mind, interest in the field of explainable AI has grown (Gade et al., 2019). With increased scrutiny from federal agencies against discrimination and bias in automated systems (Khan et al., 2023), explainable AI is becoming a focus in all industries. As industry continues to adopt these complex models, federal agencies are trying to raise awareness that bias and discrimination are not easy to detect and should be front of mind whenever AI is being used. The US has not seen much legislation combating bias in the use of AI. It has largely been reactionary or left on the discretion of federal agencies to deal with bias in automated systems. While the European Union (EU) is trying to take a more proactive approach with new laws such as the EU Act being enacted. Before we dive into the legal landscape, we will discuss key industries and how AI is being used in these industries as well as forms of bias being introduced.

Entertainment

Entertainment industry has seen a significant boom in AI usage driven by the demand for personalized experiences. The global market for AI in this industry is estimated to grow from approximately $15 billion in 2022 to $99 billion by 2030 (Adhikari, 2024). Whether the platform is Netflix or YouTube, millions of dollars have been invested in personalizing consumer experiences to keep them engaged with the relevant content as long as possible. These personalized experiences are often powered by recommendation systems. Netflix attributes saving $1 billion every year due to recommendation systems and personalization due to AI (Gomez-Uribe & Hunt, 2015). YouTube, Amazon Prime Video, Disney+, and Netflix all use recommendation systems and are able to drive growth in revenue either by preventing consumer attrition or using targeted consumer advertising.

With this technology, Netflix is able to find movies and TV shows their subscribers may like by comparing their history against millions of subscribers with similar tastes. The impact of AI in such a use case is largely considered beneficial to both the end user and the company. The user spends less time searching for movies and TV shows and can find content that suits their appetite sooner. There is little consequence if the AI system gets a recommendation wrong, but we still see bias in a low-risk use case like this. In 2017, Netflix introduced an AI system that would personalize the thumbnail of content to match the subscriber's interest given that the thumbnail of the content was a significant factor in determining what the subscriber would watch. While the idea behind this was to drive interest in content by highlighting parts of the content that would resonate with the viewer such as Good Will Hunting showcasing Robin Williams for comedy genre fans while rom-com fans would see Matt Damon and Minnie Driver kissing, it ended up causing unintended experiential differences by race. Black users found that

thumbnails presented to them misrepresented the cast by highlighting Black actors, even if the actor only had a minor role in the movie. This led users to believe the algorithm was profiling them based on their race and ethnicity, and duping them into viewing content by suggesting the plot would revolve around characters they would want to follow (Iqbal, 2018). For example, in the movie "Love Actually," where the main cast is predominantly white, the thumbnail was updated for Black subscribers to feature Chiwetel Ejiofor, a Black actor, alongside Keira Knightley, both of whom have minor roles in the movie. This led to their Black subscribers feeling like they were being profiled and misled to view content that does not truly align with their tastes for the financial benefit of Netflix (Iqbal, 2018).

With the entrance of ChatGPT and AI technologies, a new set of challenges were introduced in the entertainment industry. There was significant concern about AI using internet content without proper regard for intellectual property rights. In 2023, the Writers Guild of America went on strike to address the regulation of AI use, among other issues. By now AI systems had developed the ability to write scripts and generate characters by training on extensive datasets composed of historical scripts and characters. This capability also raised concerns about reintroducing stereotypes and biases that were prevalent in older media, which current writers have worked hard to address. One of the core outcomes of the strike was to ensure that control over AI and its use remained in the hands of the human writers (Davenport & Bean, 2023). Given the relatively new nature of AI applications in the industry, there are currently no established regulations or rules that govern its use. There have been bills being passed which protect name, photograph, voice, and likenesses of actors and persons from being used without consent .

Finance

The finance industry has one of the oldest use cases for using historical data to make automated decisions. Banking and insurance industries were built with these concepts in mind - using data to understand risk and taking action accordingly. This is also the reason banking and insurance are at the forefront of using AI responsibly and addressing bias and discrimination. Historical data used in banking and insurance often has bias inbuilt. Historically minorities were discriminated against and therefore were less likely to own land. This has led to unfair lending practices in the past. In the 1930s, banks in Chicago implemented a policy known as redlining, which involved denying loans to predominantly Black neighborhoods. These practices created patterns in historical data related to race and ethnicity, which AI systems have implicitly learned and replicated as discriminatory behaviors (Browne & Sigalos, 2023). Similarly, credit scores have been shown to be less accurate for minority groups that are underrepresented in the data used to develop these scoring models (Blattner & Nelson, 2021). These are all important use cases of AI, and the finance industry needs to address them with great caution. The implications of a biased model can lead to significant harm by denying access to credit for home ownership or small businesses. The Consumer Financial Protection Bureau (CFPB) helps regulate and protect consumers from bias and discrimination, including from AI systems (Jarrell et al., 2023). Many organizations prioritize the prevention of bias, such as the Casualty Actuarial Society which conducts case studies to identify and mitigate bias within the insurance industry (Bender, 2025). In a related effort, the financial industry employs AI tools to support fraud detection in areas like insurance claims and financial transactions. Over time, numerous AI systems have been developed to flag suspicious activity. However, as with many applications of AI, these systems

can unfairly generate false positives – particularly against minority groups that are underrepresented in the training data. (Butvinik, 2022).

Regulations have been placed on the banking industry to prevent practices such as redlining with the creation of Equal Credit Opportunity Act and agencies such as CFPB and Federal Deposit Insurance Corporation (FDIC). Similarly, the field of insurance is governed by numerous federal and state regulations, such as the Affordable Care Act, which mandates access to affordable health insurance, and the Dodd-Frank Act, which established the Federal Insurance Office to monitor the insurance industry (Berman, 2023). States may have their own insurance code and regulatory bodies such as National Association of Insurance Commissioners and departments of insurance at the state level to set standards and maintain oversight. Even with such regulations, we see discrepancies. A study using 2017 data showed that minorities and women were less likely to be approved for loans or to receive the terms they desired (Tran & Winters, 2024). Another recent example includes Apple Credit Card offering lower credit limits to women compared to men with similar financial profiles due to the bias in the credit limit algorithms (Karami et al., 2024). As AI tools become more complex and data collection increases, the risk of inadvertent bias in the industry grows.

Retail

The retail industry has been revamped with all the modern technologies enabled by AI. Inventory management, dynamic pricing, personalized experiences, and recommendations are a few of the use cases in retail. E-commerce is a particularly heavy adopter of AI with companies like Amazon leading the pack. Companies, such as Amazon, use AI to recommend new items to

customers by using customer order history, finding similar products by using a picture from the customer, automating simple customer service tasks with AI chatbots, optimizing shipping routes with minimal cost and delivery time, and even managing inventory across various warehouses to meet their 2-day Prime delivery guarantee.

Retail has also explored the use of AI to protect their merchandise and customers. AI can be used to monitor water leakage in a warehouse or a customer slip and fall. Rite Aid implemented automated security monitoring that uses facial recognition technology to identify cases of theft. Federal Trade Commission (FTC) found that the artificial intelligence technology was biased against women and minorities and flagged them as shop lifters incorrectly (Drayton & Henderson, 2023). Similar to the entertainment industry, there are few regulations on the use of AI and agencies such as FTC have to step in to protect the consumer.

The Legal Framework Governing Artificial Intelligence in the United States

US legislature has made AI a legislative priority in recent years. Over 150 bills related to AI have been introduced in the US Congress in the past two years alone (Brennan Center for Justice, 2025). The scope of these bills varies from AI having the ability to deploy nukes to the use of AI generated content in political campaigns (Mulligan, 2024). “The flood of bills is indicative of the desperation Congress feels to keep up with the rapid pace of technological improvements” (Mulligan, 2024). The only legislation specifically addressing AI was enacted in 2020 in the form of the National Artificial Intelligence Initiative Act. Since then, the federal government struggled to pass AI-related legislation. This was largely due to Congress’s efforts to balance fostering innovation, maintaining U.S. leadership in AI, and enacting ethical regulation.

In an effort to fill the void of AI regulation on a federal level, individual states such as Colorado, California and Utah have passed their own regulations (Anderson et al., 2025). To understand AI laws in the US, we will discuss federal AI legislation, state AI legislation, and non-AI related existing legislation regulating AI.

Federal AI legal landscape

The US has no regulation or legislation that regulates development or use of AI. Remaining a leader in the field of AI research has been a top priority for the US legislature. The National Artificial Intelligence Initiative Act is currently the only federal legislation on AI in the US. The goal of this Act was to develop a national strategy for the US and expand AI research and development. There is no body of work addressing AI bias despite the biases we have already seen in multiple industries. The release of ChatGPT in 2022 left the federal legislature struggling to grasp AI's advancements, including its ability to fake videos and voices, write books, and have conversations. That same year, the Biden administration introduced the Blueprint for an AI Bill of Rights which laid out five principles to protect the rights of the American public. The main principles were: (1) safe and effective systems, (2) protection against algorithmic discrimination, (3) data privacy, (4) transparency in usage, and (5) providing an opt-out option (Office of Science and Technology Policy, 2022). This was followed up by a joint statement from the CFPB, Justice Department, Equal Employment Opportunity Commission and FTC in 2023 stating these agencies will protect individuals against discrimination and bias in automated systems (Khan et al., 2023). Lastly, the Biden administration also had signed an executive order in 2023 titled *Safe, Secure, and Trustworthy Development and Use of Artificial*

Intelligence, which empowered agencies to ensure AI is used safely, securely, equitably, and respects privacy, among other directives (Figure 1). Under the Biden administration, the FTC cracked down against biased and fraudulent uses of AI such as biased Rite Aid theft monitoring system, fraudulent claims of robot lawyers, fake review generations and more (Federal Trade Commission, 2024).

Given the recent successes in China with AI solutions, there has been much concern over the US losing its position as a global leader in AI. In 2025, the Trump administration signed an executive order *Removing Barriers to American Leadership in Artificial Intelligence*. This executive order rescinded many of the policies put in place by the Biden Administration. The priorities of the Republican Party differed from those of the Democratic Party, focusing on maintaining U.S. leadership globally and expressing concerns that regulatory safeguards could hinder innovation, potentially causing the U.S. to fall behind China (Mulligan, 2024). The 188th Congress introduced over 170 AI-related bills, covering topics like robocalling, AI in political campaigns, and adopting AI technology by the National Oceanic and Atmospheric Administration. Only three bills addressed bias in AI: (1) Eliminating Bias in Algorithmic Systems of Act of 2023, (2) American FATE Act of 2024 and (3) Eliminating Bias in Algorithmic Systems Act of 2024 (Brennan Center for Justice, 2025). Given the transition to a Republican administration, it is unlikely we will see any mandates that may slow down growth in the field of AI as growth remains their top priority.

Figure 1

Biden Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence core principles. The executive order focused on the governance of AI systems, particularly in developing acceptable use cases to benefit consumers and workers, encourage innovation, protect privacy, and ensure safety and security. **(Penn State, 2023)**

State AI legal landscape

While the federal legislature is largely void of regulation, the states are taking responsibilities into their own hands to provide guidance. In May 2024, Colorado became the first state to enact AI legislation in the U.S. passing the Consumer Protections for Artificial Intelligence Act. This Act focuses on AI systems that are used in high-risk scenarios that could lead to differences in education, insurance, healthcare, insurance and more. The Act mandates that developers and deployers must use reasonable care to avoid bias and discrimination in their AI systems (Anderson et al., 2025). This Act not only laid foundational work that other states are closely watching but also prioritized addressing bias and discrimination in AI systems. Connecticut, Massachusetts, New Mexico, and New York are closely following the Act as it goes into effect in 2026 with the intent to introduce similar bills to protect against bias in AI systems. Virginia had passed a bill similar to this Act, but was vetoed by Governor Youngkin (Perry & Watson, 2025). While not as comprehensive as the Colorado Act, Illinois amended the Illinois Human Rights Act to include protections against bias in automated systems that are used for hiring and HR related activities such as promotions, discharge, etc. (Karasik et al., 2024). There is also a similar local law in New York City concerning the use of AI systems for employment decisions. Texas and Connecticut have passed bills that monitor AI use in the state government and ensure there is no bias in the AI systems.

Other AI legislation that does not deal directly with bias and discrimination, have been passed in several states. There has been a push for legislation to address deep fakes and digital replicas. California and Tennessee enacted bills to protect the likeness of people so digital replicas cannot be created and used for content without consent. Similarly, California has passed laws to tag and provide tools to identify AI created or modified content to promote transparency.

Lastly, Utah and California are also requiring certain occupations such as doctors and lawyers to disclose if consumers are engaging with an AI system (Anderson et al., 2025).

Non-AI related existing legislation impacting AI

Since the release of ChatGPT, OpenAI has been battling multiple lawsuits in the copyright space. While the copyright laws are not directly related to AI, they were enacted to protect intellectual property and, in this case, the violation was by the AI system. AI systems require vast amounts of data to train and in some cases the data may be copyrighted or protected. The lawsuits are still being litigated, but multiple publishers including The New York Times have filed a case against Open AI (Allyn, 2025). As with copyright law, data privacy laws are playing a pivotal role in shaping the legal landscape of AI. The Illinois Biometric Information Privacy Act (BIPA) mandates that any biometric data collected must have user consent, a clearly defined purpose, a scheduled retention period and a strict prohibition on sale. Similar to the case of ChatGPT using vast amounts of data for training, Clearview AI were developing a facial recognition technology for law enforcement and government agency use. Clearview AI collected billions of images from the internet to create this dataset without consent. BIPA was applied to protect the privacy of consumers that had their data collected without consent and protecting from potential bias in the model (American Civil Liberties Union, 2022). Facebook also was fined $650 million for violating BIPA by collecting biometrics from uploaded photos without consent to build face recognition technology for face tagging (The Associated Press, 2021).

Lastly, as discussed in the finance industry section, banks and insurance companies have historically seen bias and discrimination in their automated algorithms. In an effort to combat the

bias, several statutes were adopted to protect consumers from bias and discrimination. In banking, the Equal Credit Opportunity Act (ECOA) provides protection against discrimination by race or gender. As banks use AI models trained on large datasets to make decisions, CFPB ensures compliance with ECOA by confirming AI systems do not show bias and provide accurate and specific reasons for credit denials (Consumer Financial Protection Bureau, 2023). Similarly, the National Association of Insurance Commissioners provides guidance on how to use AI systems responsibly to align with regulatory requirements. Insurance premiums should not be impacted by AI system biases such as female or minorities being charged higher rates.

Relationship of Europe and US AI legal landscapes

While the US is seen as the innovation hub of the world, EU is seen as the governance hub of the world. As tech giants such as Facebook and Google emerged in the US, they created many regulatory hurdles that the US legislature still struggles with. On the other hand, EU with its comprehensive regulatory framework and governance structures has been able to tackle such daunting tasks. In 2018, the EU passed the General Data Protection Regulation (GDPR) in response to multiple data breaches, increasing amount of personal data on the internet and loss of consumer power. The GDPR mandates responsible collection, use, and storage of personal data with explicit consent. Prior to the GDPR, consumers had no control over what data was collected, how it was used, or how it was stored. One of the key benefits users across the globe received from the GDPR was the ability to opt-out of data collection. Companies did not have processes in place to offer this to consumers before, but with the GDPR mandating the practice, companies around the world have applied many of the key tenets of GDPR to their entire consumer base. This foundational regulation laid the groundwork for many regulations in the US

such as the California Consumer Privacy Act, Virginia Consumer Data Protection Act and the Colorado Privacy Act. US state laws are also more business friendly than EU GDPR by allowing for exceptions based on annual revenue or consumer count (Bloomberg Law, 2023). Nevertheless, the US legislature is struggling to create a federal privacy protection act, and as such, the current privacy protections are only enacted at the state level.

Much like the GDPR, the EU is poised once again to lead the way in creating a comprehensive framework to regulate AI known as the EU AI Act. The Act classifies AI systems into different risk categories: Unacceptable Risk, High Risk, Limited Risk and Low or Minimal Risk. As previously discussed in relation to the entertainment, finance and retail industries, AI systems risks and potential harm is directly related to how the system is used. The EU AI Act recognizes this and defines acceptable and unacceptable use cases with their respective compliance obligations (Hickman et al., 2025). In the effort to limit bias and discrimination certain use cases, such as social scoring, are outright prohibited while other uses cases such as uses in education and finance are categorized as High Risk to recognize the potential harm from a biased AI system. A High Risk AI system would be subject to requirements on data training, governance, documentation, transparency and more. The EU AI Act, similar to GDPR, serves as a model for US legislation. For instance, the Colorado Consumer Protections for Artificial Intelligence Act incorporates risk categorization from the EU AI Act and imposes regulations on high-risk categories, with a more business friendly approach by allowing for exemptions under certain conditions such as small business with less than 50 people (Levi et al., 2024). As the EU AI Act becomes effective in 2026, the United States has the opportunity to learn from its achievements and shortcomings to create a more business and innovation friendly AI act.

However, like the federal inaction with GDPR, federal action is unlikely to occur in a timely fashion, leaving states to manage their constituents independently.

Conclusion

The rapid advancement of artificial intelligence (AI) has brought about significant benefits and challenges. While AI has the potential to revolutionize various industries and improve our daily lives, it also poses risks related to bias and discrimination. The legal landscape in the US has struggled to keep pace with these technological advancements, leaving gaps in regulation and protection for consumers. The examples of bias in AI systems across different sectors, such as entertainment, finance, and retail, highlight the urgent need for comprehensive legislation to address these issues.

AI systems can unintentionally learn and perpetuate biases, leading to discriminatory practices in areas such as hiring, lending, and insurance. Different industries are facing unique challenges with AI bias, where the entertainment industry experienced issues with personalized content recommendations, the finance industry struggled with biased lending practices, and retail struggled with protecting their merchandise and customers. The US has made some efforts to address AI bias, such as the National Artificial Intelligence Initiative Act and the Blueprint for an AI Bill of Rights, but comprehensive federal legislation is still lacking. States like Colorado, have taken the lead in enacting AI legislation to address bias and discrimination, setting an example for other states to follow.

While the US has enjoyed the benefits of GDPR such as opt-out of data collection being offered to all users, it cannot rely on the same strategy with AI systems. As AI continues to evolve, it is crucial for lawmakers to prioritize the development of regulations that ensure bias-free, transparent, and well documented algorithms in AI systems. By learning from the successes and shortcomings of international frameworks like the EU AI Act, the US can create a more balanced approach that fosters innovation while protecting the rights and interests of its citizens. The US cannot take a stance of only fostering innovation without addressing the need for regulation especially around bias and discrimination.

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