

Mehtab Khan

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ACADEMIC POSITIONS

Cleveland State University College of Law

Assistant Professor of Law

Aug 2024 - Present

Harvard University

Fellow at the Berkman Klein Center for Internet & Society

Sept 2023 - Aug 2024

Yale Law School

Resident Fellow at the Information Society Project

Program Director — Yale/Wikimedia Initiative on Intermediaries and Information July 2021 - Aug 2023

EDUCATION

University of California, Berkeley, School of Law

Doctor of Juridical Science (J.S.D.), May 2021

Disciplinary Concentration: Law and Technology

Dissertation Committee: Molly Shaffer Van Houweling (Chair), Pamela Samuelson, Armando Fox

Title: The Role of Intermediaries in Shaping Fair Use

Activities: Submissions Editor, Berkeley Technology Law Journal (BTLJ); Member, Women in Tech Law

Research Assistant: Professor Molly Van Houweling; Professor Sonia Katyal

University of California, Berkeley, School of Law

Master of Laws (LL.M.), May 2014 (Certificate of Specialization in Law & Technology)

Activities: Member, Berkeley Journal of International Law; Berkeley Technology Law Journal

Lahore University of Management Sciences (LUMS), Lahore, Pakistan

Bachelor of Arts (B.A.) & *Bachelor of Laws (LL.B.)*, June 2013

Activities: Editor, LUMS Student Law Review; Team Member, Leiden Sarin Moot Court

TEACHING AND RESEARCH INTERESTS

Primary: Intellectual Property (Copyright, Trademark), Internet Law, Contracts, AI Law

Secondary: International IP, Property, Privacy, Anti Discrimination Law

ACADEMIC PUBLICATIONS

Framing Online Speech Governance as an Algorithmic Accountability Issue, *99 Ind. L.J. Supp.* (forthcoming Dec. 2023) ([SSRN](#))

Automated tools used in online speech governance are prone to errors on a large-scale yet widely used. Legal and policy responses have largely focused on case-by-case evaluations of these errors, instead of an examination of the development process of the tools. Moreover, information on the internet is no longer simply generated by users, but also by sophisticated language tools like ChatGPT, that are going to pose a challenge to speech governance. Yet, legal and policy measures have not responded adequately to AI tools becoming more dynamic and impactful. In order to address the challenges posed by algorithmic content governance, I argue that there is a need to frame a regulatory approach that focuses on the tools used in both content moderation and content generation contexts—which can be done by viewing this technology through an algorithmic accountability lens. I provide an overview of the various aspects of the technical and normative features of these tools that help us frame the regulation of these tools as an algorithmic accountability issue. I do this in three steps: First, I discuss the lack of sufficient attention towards AI tools in current regulatory approaches. Second, I highlight the shared features of both content moderation and content generation to offer insights about the interlinked and evolving landscape of online speech and AI Governance. Third, I situate this discussion of speech governance within a broader framework of algorithmic accountability to guide future regulatory interventions.

The Subjects and Stages of AI Dataset Development: A Framework for Dataset Accountability (with Alex Hanna) *19 Ohio State Tech L.J.* (2023) ([SSRN](#))

There has been increased attention toward the datasets that are used to train and build AI technologies from the computer science and social science research communities, but less from legal scholarship. Large-Scale AI datasets have been at the forefront of such discussions, due to recent controversies involving the use of facial recognition technologies, and the use of publicly-available text for the training of massive models which generate human-like text. The process of developing large datasets is complex and contextual, involving dozens of decisions about what kinds of data to collect, label, and train a model on, as well as how to make the data available to other researchers. However, little attention has been paid to mapping and consolidating the legal issues that arise at different stages of this process: when the data is being collected, after the data is used to build and evaluate models and applications, and how that data is distributed more widely. This paper identifies the legal issues arising at every stage of the development of large-scale AI datasets. We develop a taxonomy and analytical framework to understand the dataset development process. And we situate our discussion within wider discussion of current debates and proposals related to algorithmic accountability.

AI Art and its Impact on Artists (Accepted at AIES 2023) ([ACM](#))

Harry Jiang, Timnit Gebru, Jessica Cheng, Lauren Brown, Mehtab Khan, Johnathan Flowers, Abhishek Gupta, Deja Workman and Alex Hanna.

The last 3 years have resulted in machine learning (ML)-based image generators with the ability to output consistently higher quality images based on natural language prompts as inputs. As a result, many popular commercial “generative AI Art” products have entered the market, making generative AI an estimated \$48B industry. However, corporations that have proliferated image generators have harmed artists by profiting off their work without their consent or compensation, creating a chilling effect among artists with many students quitting the field. In this paper, we review some of the harms the art community has experienced due to the proliferation of large scale image generators trained on image/text pairs from the Internet. These harms include reputational damage, unfair competition, and plagiarism. To guard against these issues while reaping the potential benefits of image generators, we provide recommendations such as regulation that forces organizations

to disclose their training data, and tools that help artists prevent using their content as training data without their consent.

Online Harassment in Majority Contexts: Examining Harms and Remedies across Countries, Sarita Schoenebeck, Amna Batool, Giang Do, Sylvia Darling, Gabriel Grill, Daricia Wilkinson, Mehtab Khan, Kentaro Toyama, Louise Ashwell., CHI '23, (2023) ([arxiv](#))

Online harassment is a global problem. This article examines perceptions of harm and preferences for remedies associated with online harassment with nearly 4000 participants in 14 countries around the world. The countries in this work reflect a range of identities and values, with a focus on those outside of North American and European contexts. Results show that perceptions of harm are higher among participants from all countries studied compared to the United States. Non-consensual sharing of sexual photos is consistently rated as harmful in all countries, while insults and rumors are perceived as more harmful in non-U.S. countries, especially harm to family reputation. Lower trust in other people and lower trust in sense of safety in one's neighborhood correlate with increased perceptions of harm of online harassment. In terms of remedies, participants in most countries prefer monetary compensation, apologies, and publicly revealing offender's identities compared to the U.S. Social media platform design and policy must consider regional values and norms, which may depart from U.S. centric-approaches.

Five Considerations To Guide The Regulation Of “General Purpose AI” In The EU’s AI Act ([Link](#))

This policy brief, written in collaboration with leading experts in AI governance, provides guidance on how to regulate large-scale AI systems.

Open as part of the AI Lexicon (essay published by the AI Now Institute)

This essay argues that the notion of “openness” in data governance needs critical examination due to its connection with various ethical and legal harms and lack of recourse for marginalized communities.

[Works-in-Progress](#)

Fair Use Considerations for Generative AI Platforms ([SSRN](#))

It has been a challenge to adapt fair use to cases involving new technologies in the past two decades. That challenge persists with the advent of generative AI. Fair use is intended to preserve a balance between rightsholders, online platforms, and users but that balance is now in disarray as technology companies are offering generative AI tools and services that infringe on copyrighted works on an unprecedented scale. Generative AI models such as ChatGPT, DALL-E, LAAMA etc. have instigated copyright infringement disputes against the platforms making them available to the public. However, there are fundamental uncertainties with how these disputes are to be framed and resolved. First, the extent to which platforms are liable is unclear. Second, although these AI tools allow a user to create infringing output it is hard to predict how much of that output will be infringing. It is thus difficult to determine the extent to which fair use applies. In this article, I provide a normative framework to take into account the significant challenge that generative AI imposes on fair use. I argue that the fair use analysis should be modified for generative AI cases and offer a framework to incorporate a key consideration within the analysis: decisions from the AI development process to

identify what is infringing conduct and who should be responsible. Part I discusses current perspectives on how fair use applies to generative AI. Part II develops a normative case for why we need to reconceptualize the fair use analysis based on the questions raised by current lawsuits. Part III outlines how the AI development process may be incorporated into the fair use inquiry. This analysis is intended to provide guidance to courts and policymakers on how we should be thinking about generative AI processes and impacts, and where fair use is critical or where it may be counterproductive.

Platform Safe Harbor for Generative AI

Section 230 of the CDA establishes a safe harbor that allows internet platforms to run their websites. This law attempts to balance the interests of users, but also protects platforms against liability for content posted by third-party users. Although content governance has had its challenges, internet platforms are now facing new complexities with the advent of generative artificial intelligence. In wake of new and varied issues posed by generative AI, there are presently no clear answers about platform responsibilities and user protections. In this article, I argue for the need to develop a safe harbor for platforms hosting and allowing the creation of generative AI output. I highlight some of the new issues posed by generative AI and map out how they implicate platforms and users. I propose a hybrid system that builds on the existing content governance approaches to AI but also takes into account the evolving role that platforms play in shaping user expression. In particular, platforms need to respond to two distinct stages of content claims: Input by users in the form of prompts, and output creation by AI that leads to issues such as widespread disinformation or harassment.

Normative Implications of Using Open Source Data for AI Development

Many large-scale AI datasets are built on openly available data and knowledge. Openly licensed and openly available data currently form the backbone of a large number of AI technologies. Privacy is a key concern when it comes to collecting and using open data. In addition to the legal issues, there are ethical dimensions to the collection and use of open knowledge, especially for marginalized groups in the global south and indigenous communities. These communities lose control and meaning over their data when it is made openly available. Furthermore, the representations and restrictions over how this data may be used does not always correspond with existing legal frameworks. Many of the potential risks and harms to marginalized groups arising through the use of openly available data are not directly mapped onto existing IP and privacy law frameworks. In response, marginalized groups have been relying on concepts of “data sovereignty” to articulate the harms they face. Furthermore, there are several actors directing this data curation process, including the institutions that host this data, as well as platforms and open knowledge repositories on the internet. Yet there is a lack of clarity about the responsibilities of these intermediaries when it comes to hosting open data. In this project, I explore these dimensions of open data as they connect to the concerns of marginalized communities. The project proceeds as follows: First, I examine the types of data that do not fit into conventional data-sharing structures, and are instead appropriated into the commons. Second, I identify the values and legal permission structures that facilitate the development of AI technologies, and how they intersect with existing privacy and IP frameworks. Third, I offer a framework to analyze the information risks and harms that arise in both the individual, and the aggregate and collective senses.

TEACHING APPOINTMENTS

University of California, Berkeley School of Law

Teaching Assistant, Aug 2017

Fundamentals of to US Law for LLMs with Professor Jodi Collova

University of California, Berkeley

Graduate Student Instructor, Aug 2018 - May 2021

- Introduction to Economics with Professor James Campbell (Spring 2021)
- Law & Economics with Professor Bruno Salama (Fall 2020)
- Law, Technology & Entrepreneurship with Professor Sonia Katyal (Spring 2020)
- Foundations of Legal Studies with Professor Jonathan Marshall (Fall 2019)
- Supreme Court and Public Policy with Professor Robert Brown (Spring 2019)
- Crime and Criminal Justice with Professor Richard Perry (Fall 2018)

Lahore University of Management Sciences

Adjunct Faculty, Jan 2017 - June 2017

- Designed and taught the first undergraduate course on Internet Law & Policy to be offered at any law school in Pakistan.

AWARDS/RESEARCH GRANTS

Center for Long-Term Cybersecurity, University of California, Berkeley

- 2021 Research Grantee. Developing a skill-based system to increase equity and diversity in cybersecurity roles, in partnership with Epixego, a startup automating job descriptions.

The Aspen Institute

- Guest Scholar, 2020 Roundtable on Artificial Intelligence

The Higher Education Commission, Pakistan

- Recipient of Academic Scholarship for LLM studies, August 2013

Lahore University of Management Sciences, Lahore, Pakistan

- Best Essays of the Year 2009-2010

SELECTED PRESENTATIONS

AI Governance Working Group at Harvard Law School, May 2024

Presentation, "Prompt Moderation."

American University Washington College of Law Workshop on IP and Generative AI, September 2023

Paper Presentation, "Fair Use Considerations for Generative AI."

Freedom of Expression Scholars Conference. Yale University, April 2023

Paper Presentation, "Framing Online Speech Governance as an AI Accountability Issue."

Works-in-Progress for Intellectual Property Scholars Colloquium, Boston, February 2023

Plenary Presentation, "Re-calibrating Fair Use."

Privacy Law Scholars Conference, Boston, June 2022

Paper Presentation, "Dataset Accountability."

Research Workshop-Humboldt Institute for Internet and Society, Berlin, Germany, June 2020
Paper Presentation, “Public-Facing Construction of Content Moderation Policies.”

Center for Technology Society & Policy Event at Google, San Francisco, October 2019
Poster and Presentation, “Emotion Recognition in Hiring.”

University of Wisconsin-Madison Annual Conference on South Asia, Madison, October 2019
Paper Presentation, “Copyright Law in Context: The Construction of ‘Fair Use’ in South Asia.”

Intellectual Property Scholars Conference, Chicago, August 2019
Paper Presentation, “Testing the Boundaries of Fair Use: Commercial Endeavors for Public Interest.”

Connected Life Conference Oxford Internet Institute, London, UK, June 2019
Paper Presentation, “Emotion Recognition in Hiring.”

Freedom of Expression Scholars Conference, Yale University, April 2019
Paper Presentation, “Brand Parodies on the Internet: Confusing, Critical, and Commercial.”

Internet Law Works-In-Progress Conference 2019, Santa Clara University, March 2019
Paper Presentation, “Legitimacy in Content Moderation Policy-making.”

INVITED TALKS

IAPP Leadership Retreat, June 2024
Keynote, “Copyright and AI.”

Inter-University Council of Ohio AI Symposium, June 2024
Invited talk, “AI in Elections.”

Council on Foreign Relations Local Journalists Workshop, May 2024
Panelist, “AI in Journalism.”

Adelphi University Teaching and Learning Conference, May 2024
Keynote, “Copyright and AI in Educational Institutions.”

Paul Tsai China Center at Yale Law School, May 2024
Discussant, “Copyright and AI Governance in China.”

Wayne State Law School Journal of Law Society 2024 Symposium, March 2024
Invited talk, “Data Governance and Marginalized Groups.”

Harvard Student Leaders in AI, March 2024
Invited talk, “Copyright and AI Governance.”

ACM Symposium on CS & Law Symposium, March 2024
Lightning Talk, "Lessons for AI Governance from Recent AI Copyright Lawsuits."

AI and Law Symposium at Northwestern Pritzker School of Law, Feb 2024
Invited Talk, "Aligning Fair Use and AI Governance."

Politics and Markets Project at the University of Rochester, November 2023
Panelist, "AI Regulation."

District Court of Connecticut Judicial Conference 2023, November 2023
Invited Talk, "AI Regulation: An Overview."

Engelberg Center on Innovation Law & Policy at NYU School of Law, October 2023
Panelist, "Copyright Law and Digital Ownership."

Wikimedia Fellows Annual Event, August 2023
Panelist, "Regulations for Artificial Intelligence to Promote Open Knowledge."

NYU Information Law Institute, July 2023
Invited Participant, "Roundtable on Large-Language Models, Law and Policy."

Yale Peabody Museum, July 2023
Invited Talk, "Copyright Issues in Digital Collections."

Tufts University, June 2023
Invited Participant, "Workshop on Cybersecurity Tech and Policy."

ACM Conference on Fairness, Accountability, and Transparency (ACM FAccT), June 2023
Panelist. CRAFT session "AI Art and its Impact on Artists."

Creative Commons and WIKI Loves Living Heritage Webinar, April 2023
Panelist, "Ethics of Open Sharing."

US Copyright Office Listening Session on AI and Copyright, April 2023
Expert Panelist, "AI and Literary Works."

AI Seminar Series, Jackson School of Global Affairs at Yale University, March 2023
Presenter, "Online Speech Governance and AI Accountability."

Fordham University School of Law, Oct 2022
Guest Lecturer, "Civil Rights & Civil Liberties in a Digital Age." (Catherine Powell and Ari Waldman)

Library Futures, Sept 2022
Panelist, "Recap of Recent Copyright and Fair Use Litigation."

The Digital Interests Lab, Sept 2022
Panelist, “Cybersecurity and Interoperability.”

AI Reading Group at Oxford University, Oct 2021
Invited Talk, “Dataset Accountability.”

Conference on Computer Vision and Pattern Recognition, June 2021
Invited Talk, “Ethical Considerations in Creative Applications of Computer Vision.”
Invited Talk, “Beyond Fairness: Towards a Just, Equitable, and Accountable Computer Vision.”

RightsCon 2021, June 2021
Panelist, “The Human Rights Impacts of Emotion Recognition in the Workplace.”
Panelist, “A New AI Lexicon? Challenges to the Critical AI Discourse.”

Creative Commons Webinar Series, March 2021
Panelist, “Decolonizing Knowledge.”

Open Education Global Conference, Nov 2020
Panelist, “Decolonizing Open Knowledge.”

Creative Commons Global Summit 2020
Organizer and Panelist, “Open Licenses for Datasets and AI Technologies.”

Creative Commons Global Summit 2019, Lisbon, Portugal, May 2019
Organizer and Presenter, “Traditional Knowledge and the Commons: Next Steps.”

University of California, Berkeley, Haas School of Business, Nov 2018
Guest Lecturer, “IP for Entrepreneurs.”

The 5th Global Congress on Intellectual Property and Public Interest, Washington DC, Sept 2018
Organizer and Panelist, “Traditional Knowledge and the Commons.”

ACADEMIC ACTIVITIES

Yale ISP Platform Governance Terminologies Essay Series
Editor

Yale ISP Workshop on the “Democratic Regulation of AI”
Organizer

Yale ISP-Georgetown Tech Collaborative AI Governance Series
Organizer and Speaker

Wikimedia Initiative sponsored talks for the Tuesday/Thursday Speaker Series at Yale ISP
Organizer and Moderator

Yale ISP-WIII AI Governance Symposium 2021

Organizer and Moderator

SERVICE

Reviewer, ACM TOCHI 2024

Graduate Student Representative for the Student Technology Council (STC), University of California, Berkeley

Reviewer, ACM Conference on Fairness, Accountability, and Transparency 2021

EXPERIENCE

Stanford Institute for Human-Centered Artificial Intelligence

Visiting Researcher, June 2021 - Aug 2021

- Prepared expert comments on the proposed Algorithmic Accountability Act for Senator Ron Wyden's office; Worked on a paper examining the various transparency proposals related to AI.

Center for Technology, Society & Policy, University of California, Berkeley

Fellow, Jan 2019 - Dec 2019

- Joint Fellow with Center for Technology, Society & Policy (CTSP) and Algorithmic Fairness and Opacity Working Group (AFOG).
- Conducted empirical research on the use of Emotion Recognition in the workplace; Interviewed companies using AI to make hiring decisions; Developed legal framework to regulate Emotion Recognition Technology.

Citizen Clinic, University of California, Berkeley, Berkeley, CA

Advisor, Jan 2019 - May 2019

- Assessed cybersecurity threats using OSINT methodology; Worked with a vulnerable civil society organization over 4 months and devised a customized risk-mitigation plan and cybersecurity policy.

Creative Commons, Mountain View, CA

Research Fellow, June 2018 - Sept 2018

- Advised legal and policy teams on the compatibility of Indigenous Knowledge with CC licenses; Facilitated discussion and exchange between various stakeholders.

Independent Consultant, Lahore, Pakistan

Law & Policy Advisor, Aug 2016 - Jan 2017

- Advised Public Universities in Pakistan on formulating a legal framework for Intellectual Property and Technology Transfer. The project was supported by USAID.

Asian International Arbitration Centre (AIAC), Kuala Lumpur, Malaysia

International Intern, September 2015 - May 2016

- Managed regional and local Domain Name disputes pursuant to Uniform Domain Name Policy (UDRP); Conducted research and capacity-building to introduce KLRCA services in Southeast Asia.

Wikimedia Foundation, San Francisco, CA

Intellectual Property and Internet Law Fellow, January 2015 - June 2015

- Assisted with litigation in *Wikimedia v. NSA*; Mapped legal framework of online harassment and anti-spam legislation around the world; Addressed trademark and patent issues

Electronic Frontier Foundation, San Francisco, CA

Legal Intern, January 2015 - June 2015

- Drafted amicus brief on medical privacy issue for California Supreme Court; Conducted research on copyright exemptions and 1st Amendment; Analyzed California Assembly Bills on privacy.

BAR ADMISSIONS

New York - Admitted 2015

REFERENCES

Molly Shaffer Van Houweling
Professor of Law, and Associate Dean - JD Curriculum
University of California, Berkeley, School of Law
msvh@law.berkeley.edu

Pamela Samuelson
Richard M. Sherman Distinguished Professor of Law
University of California, Berkeley, School of Law
pam@law.berkeley.edu

Sonia Katyal
Professor of Law
University of California, Berkeley, School of Law
skatyal@law.berkeley.edu

Jack Balkin
Knight Professor of Constitutional Law and the First Amendment
Yale Law School
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Niloufar Salehi
Assistant Professor
University of California, Berkeley School of Information
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