

2023

## Who Will Watch the Watchers? Generative AI Oversight in the United States: Navigating Policy and Self-Regulation in a Rapidly Evolving Digital Landscape

Adrienne A. Wallace

Follow this and additional works at: <https://surface.syr.edu/newhouseimpactjournal>

---

### Recommended Citation

Wallace, Adrienne A. (2023) "Who Will Watch the Watchers? Generative AI Oversight in the United States: Navigating Policy and Self-Regulation in a Rapidly Evolving Digital Landscape," *Newhouse Impact Journal*. Vol. 1: Iss. 1, Article 7.

DOI: <http://doi.org/10.14305/jn.29960819.2024.1.1.03>

Available at: <https://surface.syr.edu/newhouseimpactjournal/vol1/iss1/7>

This Article is brought to you for free and open access by SURFACE at Syracuse University. It has been accepted for inclusion in Newhouse Impact Journal by an authorized editor of SURFACE at Syracuse University. For more information, please contact [surface@syr.edu](mailto:surface@syr.edu).

# Who Will Watch the Watchers?

## Generative AI Oversight in the United States: Navigating Policy and Self-Regulation in a Rapidly Evolving Digital Landscape

**Adrienne A. Wallace**

Grand Valley State University, USA

In September of 2023, a group of United States (U.S.) companies pledged to “make AI safe” as part of an effort to voluntarily establish and follow improved standards in the development of AI within an ever-changing digital field.<sup>1</sup> This commitment included testing and other security measures, which are not regulations nor enforced by the US government at this time. The companies include the usual suspects: Adobe, IBM, Palantir, Nvidia, and Salesforce. They joined seven leading AI companies, Amazon, Anthropic, Google, Inflection AI, Microsoft, and OpenAI, which previously initiated an industry-led effort on safeguards in an announcement with the White House in July.<sup>2</sup> As part of this initiative, the U.S. government announced they will “work with allies and partners to establish a strong international framework to govern the development and use of AI.”<sup>3</sup> To date, the U.S. has consulted on voluntary commitments with over 20 ally governments to maintain support for and complement domestic AI governance efforts.

The state of consumer data privacy laws in the U.S. is already murky at best, as no single comprehensive federal law regulates how most companies use, collect, store, share, or protect customer data.<sup>4</sup> As I write this, Google is facing an antitrust case that revealed the company “may be altering billions of queries a day to generate results that will get you to buy more stuff.”<sup>5</sup> So far, not so good in the trust category. They are not the only “make AI safe” company to be in hot water. A recent media darling, American company OpenAI (the developers of ChatGPT), is accused of a string of data protection breaches in a General Data Protection Regulation (GDPR) complaint filed in an Italian court in August.

The GDPR is a European Union regulation on information privacy in the European Union and the European Economic Area. The GDPR is an essential component of EU privacy law and human rights law.<sup>6</sup> The complaint alleges that the tech company is in “breach of the bloc’s GDPR across a sweep of dimensions: lawful basis, transparency, fairness, data access rights, and privacy by design.”<sup>7</sup> These are all areas of concern fiercely protected by European Union privacy rules in effect since the post-Cambridge Analytica Facebook scandal of 2014, which violated the privacy of over 50 million Facebook/Meta users by data harvesting from accounts without consent on the precipice of an election year.<sup>8</sup>

In addition to that privacy breach, OpenAI is being sued by the likes of John Grisham, Jodi Picoult, and George R. R. Martin, among 17 other authors, for intellectual property theft, which they say is “systematic theft on a mass scale.”<sup>9</sup> The large language model (LLM) was trained on a dataset that included a lot of copyrighted material - though they claim “fair use” applies.

The U.S. is decidedly behind in regulating AI and in creating AI policy and, therefore, Generative AI policy. It was only in July (2023), six months after OpenAI flooded news coverage with the

release of ChatGPT,<sup>10</sup> that the Biden-Harris administration secured voluntary commitments from the most prominent players in the advancing technology world to help move toward “safe, secure, and transparent development of AI technology.”<sup>11</sup> As regulators seek to keep up with the sheer pace of tech change in the AI space, we will likely see a shift from high-level principles to concrete public policy with the public sector first. However, as is to be expected, the idea of self-regulation in technology-by-technology companies poses obvious issues, minimally presenting an earnest conflict of interest within the very process of legislation.

Influential tech company voices in discussions related to AI regulations can’t be privileged over the rest of society’s needs or concerns. The influences on policymakers by the tech industry is already a tumultuous situation at best and begs the question: who is watching the watchers? This is an all-too-common story surrounding big tech regulation. If those in power are big-tech and create the rules, regulations, policies, and even laws for big-tech - how are citizens empowered to protect their rights and privacy? Is the game rigged? Are we too late in that policy is following AI advances like Generative AI, instead of governing it?

As it is, in the U.S., five states (California, Colorado, Connecticut, Utah, and Virginia) have created comprehensive statutes to create a foundation for improving data privacy and providing a modicum of safety and trust with the general internet-wielding public.<sup>12</sup> While details among the US laws differ, the rights parallel those initially established in the GDPR, which sets forth several rights of individuals concerning their personal information. The specific rights that apply depend on the type of data, especially data deemed highly sensitive, and work in conjunction with established laws and regulations like the Graham-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), the Children’s Online Privacy Protection Act (COPPA) and countless others to provide a comprehensive safety net for the privacy and trust of its citizens.<sup>13</sup>

Worldwide, it’s not much more straightforward. Abroad, countries like India are not planning any real AI regulation - they are planning to expand current policy laws and regs to apply to AI where necessary.<sup>14</sup> Japan has also come out with statements around the idea of a “light touch” regulation.<sup>15</sup> China has very direct guidelines around Generative AI, which have been touted as “some of the strictest in the world.”<sup>16</sup> South America is not subscribing to de facto legislation; instead, special committees are conducting a joint analysis of many different bills to legislate the issue. Only Brazil, Chile, and Peru have specific regulations related to artificial intelligence.<sup>17</sup> In contrast, the European Union has built a comprehensive and far-reaching set of regulations that includes requirements for foundation AI model developers to “declare training data and minimize illegal or harmful content generation.”<sup>18</sup>

AI is revolutionizing various aspects of society, including employment and political campaigns. Anyone with a computer, smartphone, or tablet can use Generative AI apps without so much as training, but in that widespread availability and access, it does pose certain risks. As a result, policymakers are in a hurry to safeguard the public from all AI-related risks while ensuring that innovation remains unhampered. Foreseeing additional regulation in this space is vital for deploying AI in operations in all industries.

The AI community, specifically Generative AI adopters, ought to adopt a proactive approach in advocating for the responsible and intelligent utilization of these technologies. As interest in

securing safety, privacy, ethics, minimizing risk, and concerns related to discriminatory practices amass, tech giants have asked us to “trust them” to self-regulate as experts in the industry. I’m not sure that’s enough to assuage my concerns about letting the watchers be the watch.

## References

- 1 Kang, Cecilia. “8 More Companies Pledge to Make A.I. Safe, White House Says.” *New York Times* (New York, NY), September 12, 2023. Accessed September 1, 2023. <https://www.nytimes.com/2023/09/12/technology/white-house-ai-tech-pledge.html>.
- 2 Shear, Michael D., Cecilia Kang, and David E. Sanger. “Pressured by Biden, A.I. Companies Agree to Guardrails on New Tools.” *New York Times* (New York, NY), July 21, 2023. Accessed September 3, 2023. <https://www.nytimes.com/2023/07/21/us/politics/ai-regulation-biden.html>.
- 3 The White House. “FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI.” *The White House*. Last modified July 21, 2023. Accessed August 6, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>.
- 4 Bellamy, Fredric D. “U.S. data privacy laws to enter new era in 2023.” *Reuters* (Toronto), January 12, 2023. Accessed July 31, 2023. <https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12/>.
- 5 Gray, Megan. “How Google Alters Search Queries to Get at Your Wallet.” *Wired*, October 2, 2023. Accessed October 3, 2023. <https://www.wired.com/story/google-antitrust-lawsuit-search-results/>.
- 6 General Data Protection Regulation. Accessed August 22, 2023. <https://gdpr.eu/>.
- 7 Lomas, Natasha. “ChatGPT-maker OpenAI accused of string of data protection breaches in GDPR complaint filed by privacy researcher.” *TechCrunch*. Last modified August 30, 2023. Accessed September 8, 2023. <https://techcrunch.com/2023/08/30/chatgpt-maker-openai-accused-of-string-of-data-protection-breaches-in-gdpr-complaint-filed-by-privacy-researcher/>.
- 8 Cadwalladr, Carole, and Emma Graham-Harrison. “Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach.” *The Guardian* (New York, NY), March 17, 2018. Accessed August 8, 2023. <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.
- 9 Italie, Hillel. “‘Game of Thrones’ creator and other authors sue ChatGPT-maker OpenAI for copyright infringement.” *AP News*, September 21, 2023. Accessed September 28, 2023. <https://apnews.com/article/openai-lawsuit-authors-grisham-george-rr-martin-37f9073ab67ab25b7e6b2975b2a63bfe>.

- 10 OpenAI. "Introducing ChatGPT." Entry posted November 30, 2023. Accessed July 29, 2023. <https://openai.com/blog/chatgpt>.
- 11 The White House. "FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI." *The White House*. Last modified July 21, 2023. Accessed August 6, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>.
- 12 Bellamy, Fredric D. "U.S. data privacy laws to enter new era in 2023." *Reuters* (Toronto), January 12, 2023. Accessed July 31, 2023. <https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12/>.
- 13 Bellamy, Fredric D. "U.S. data privacy laws to enter new era in 2023." *Reuters* (Toronto), January 12, 2023. Accessed July 31, 2023. <https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12/>.
- 14 Singh, Manish. "India opts against AI regulation." *TechCrunch*. Last modified April 5, 2023. Accessed September 8, 2023. <https://techcrunch.com/2023/04/05/india-opts-against-ai-regulation/>.
- 15 Morrison, Ryan. "Japan becomes latest country proposing hands-off AI regulation, but businesses 'likely to follow EU rules.'" *TechMonitor* (WA), June 30, 2023. Accessed September 17, 2023. <https://techmonitor.ai/technology/ai-and-automation/japan-ai-europe-regulation-artificial-intelligence>.
- 16 Henshall, Will. "How China's New AI Rules Could Affect U.S. Companies." *Time*, September 10, 2023. Accessed September 19, 2023. <https://time.com/6314790/china-ai-regulation-us/>.
- 17 Castellanos, Daniel Salazar. "Which Latin American countries lead the way In AI regulation?" *Bloomberg Linea*, August 30, 2023. Accessed September 5, 2023. <https://www.bloomberglinea.com/english/which-latin-american-countries-lead-the-way-in-ai-regulation/>.
- 18 Morrison, Ryan. "EU warned AI act could harm the industry." *TechMonitor* (WA), June 30, 2023. Accessed September 17, 2023. <https://techmonitor.ai/technology/ai-and-automation/eu-ai-act-harmful-open-letter>.