

## **Syllabus – The Emerging Law of Artificial Intelligence**

**Antonin Scalia Law School – Spring 2025**

**Matthew F. Ferraro & Jamil N. Jaffer**

### **Brief Course Description:**

This course provides an overview of emerging legal issues, governance structures, and authorities that relate to artificial intelligence (AI). The course aims to prepare students to be informed participants in the unfolding legal and policy debates surrounding the rapidly evolving technologies of machine learning, predictive AI, and generative AI.

The course will survey a broad array of legal and policy topics as they relate to AI, including intellectual property, ethics, criminal law, torts, antidiscrimination, consumer protection, trust, safety, and security, cybersecurity and data privacy, national security, and business law, as well as practice of law itself and the use of AI in the legal academy.

The course will provide students with a background in the interplay between these areas of law and AI, as well as in the legal, regulatory, and policy structures that are being developed to address these issues at state, federal, and international levels.

### **Learning Outcomes:**

The class will examine the application of existing laws and new laws and regulations in both domestic and international spheres to AI. Of particular note:

- Students will learn about the tensions facing an innovation society built on the strong protection of privacy and intellectual property alongside technology that relies on large amounts of sensitive or controlled data, including personally identifiable information or copyrighted or patented works.
- Students will also learn about efforts in the United States and abroad to consider the regulation of AI to protect against real and perceived threats to national security, privacy, and other critical areas of concerns, as well as efforts to address potential biases in data and algorithms.
- Students will also have the opportunity to think through some of the key ethical issues at play with respect to artificial intelligence, including the potential issues raised by the use of autonomous military or intelligence capabilities and by the development of technologies that outperform humans or otherwise approach artificial general intelligence.

- At the end of this course, students will understand AI's core technology, including large language models, and the evolving legal and regulatory frameworks. They will be able to identify and analyze key legal and ethical issues in AI development, deployment, and use.

**Class Format:**

Between 10 to 20 students; two credits; one two-hour class per week, in-person only. Active participation in class discussions is required and students are expected to be fully prepared for each class session. This is an in-person course, so all students are expected to be in class for each class session.

**Class Details:**

Tuesdays, 8:10 pm – 10:10 pm ET

**Grading:**

Grades will be based on a single exam with only class readings and student's notes permitted to be used for the exam to be administered at the end of the course (currently scheduled for May 9, 2025 at 6:00 PM ET).

**No access to the Internet or resources other than a student's notes and the readings will be permitted.** The exam will ask students to analyze the legal and policy issues discussed in the course and proffer legal and policy proposals.

**Class Participation:**

Class attendance and participation will also factor into grading, consistent with law school policy. Students who will miss more than two class sessions must receive advance permission from the instructors and may be required to complete additional work to receive credit for the course.

**Office Hours:**

Appointments can be made to meet in person, over Zoom, or by telephone. Professors will provide staff information for making appointments in class.

**Faculty Contact Information:**

Professor Matthew F. Ferraro  
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## **Course Materials:**

The course does not use a textbook; the syllabus includes readings from a variety of sources. Most course materials are available through the links provided below. In addition, most materials (if cases/statutes/ articles/etc.) should also be available on Westlaw and LEXIS.

Please be sure to pull and read all materials well ahead of the relevant class session.

Any slides, study guides, or other material prepared by the professors are their intellectual property and shared for class and student use only; students should not input such material into AI systems, which, depending on their configuration and terms of use, may be able to assert claims of ownership over such material.

## **Course Specific Policies:**

- Students are expected to complete the assigned readings and to come prepared to discuss them.
- Instructors will employ Socratic dialogues to facilitate learning.
- If unforeseen circumstances prevent a student from preparing for class, the student should attend nonetheless and inform the instructors in advance if they are not prepared to be called upon.
- All students are expected to treat each other and the instructors with courtesy and respect.
- The instructors seek a welcoming academic environment wherein critically important ethical and philosophical issues can be intellectually explored. Ideas and theories are welcome and encouraged to be challenged, but such critiques should never take the form of personal attacks on another speaker.
- Students must use their GMU email account to receive important University and Law School information, including communications related to this class.
- The instructors will not respond to messages sent from or send messages to a non-Mason email address. Students may wish to text instructors in addition to sending emails to ensure prompt responses.

### **Class Recordings Prohibited:**

- Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device, camera, or computer.
- Any exceptions to this policy must be expressly authorized in writing by the instructor(s).
- The instructors do not intend to record the weekly course meetings.

### **Note on Assignments:**

- Given the fast-developing nature of AI law and policy, the instructors will likely be updating the assignments listed below throughout the semester. Please stay alert to such amendments.

### **Course Assignments**

#### **Class 1 (1/21/25): Introduction to AI and Its Underlying Technology**

- Matthew Mittlesteadt, *AI Policy Guide*, Mercatus Center (updated September 2024) (read material at the following links):
  - *An AI Paradigm Shift*: <https://www.mercatus.org/ai-policy-guide/ai-paradigm-shift-i>
  - *What Is AI?*: <https://www.mercatus.org/ai-policy-guide/what-is-ai>
  - *AI Policy Challenges*: <https://www.mercatus.org/ai-policy-guide/policy-challenges>
- Timothy B. Lee & Sean Trott, *A Jargon-free Explanation of How AI Large Language Models Work*, ARS Technica (July 31, 2023): <https://arstechnica.com/science/2023/07/a-jargon-freeexplanation-of-how-ai-large-language-models-work/>

#### **Class 2 (1/28/25): Introduction to Key Legal, Business, and Policy Issues Implicated by AI**

- Noah Berman, *What Is Artificial Intelligence (AI)?*, Council on Foreign Relations (Dec. 27, 2023): <https://www.cfr.org/backgrounder/what-artificial-intelligence-ai>
- Center for AI Safety, *Statement on AI Risk* (May 30, 2023): <https://www.safe.ai/statement-on-airisk#open-letter>

- Bridget Neill & John D. Hallmark, *Eight AI-Related US Policy Issues for Boards and Management to Consider*, Ernst & Young (Sept. 21, 2023): [https://www.ey.com/en\\_us/publicpolicy/ai-policy-landscape](https://www.ey.com/en_us/publicpolicy/ai-policy-landscape)
- Matthew Ferraro et al., *Ten Legal and Business Risks of Chatbots and Generative AI*, Tech Policy Press (Feb. 28, 2023): <https://www.techpolicy.press/ten-legal-and-business-risks-of-chatbotsand-generative-ai/>

### **Class 3 (2/4/25): AI and Intellectual Property Law I: Patent Law & Introduction to Copyright**

#### Patent Law

- Steve Lohr, *Can AI Invent?*, New York Times (July 15, 2023): <https://www.nytimes.com/2023/07/15/technology/ai-inventor-patents.html>
- *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 1783 (2023): [https://cafc.uscourts.gov/opinions-orders/21-2347.OPINION.8-52022\\_1988142.pdf](https://cafc.uscourts.gov/opinions-orders/21-2347.OPINION.8-52022_1988142.pdf)
- Regina Sam Penti, et al., *Can AI inventions be patented? The USPTO speaks*, WestLaw Today (Feb. 22, 2024): [https://today.westlaw.com/Document/I51a13eb7d1bd11ee8921fbef1a541940/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://today.westlaw.com/Document/I51a13eb7d1bd11ee8921fbef1a541940/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

#### Introduction to Copyright

- Edward D. Lanquist & Dominic Rota, *The Impact of the Supreme Court's Goldsmith Decision on Copyright Enforcement Against AI Tools*, Baker Donelson (Jul. 27, 2023): <https://www.bakerdonelson.com/the-impact-of-the-supreme-courts-goldsmith-decision-on-copyright-enforcement-against-ai-tools>
- Leading Case: *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 137 HARV. L. REV. 410 (Nov. 2023): <https://harvardlawreview.org/wp-content/uploads/2023/11/137-Harv.-L.-Rev.-410.pdf>
- Christopher T. Zirpoli, *Generative Artificial Intelligence and Copyright Law*, Congressional Research Service, LSB10922 (Sept. 29, 2023): <https://crsreports.congress.gov/product/pdf/LSB/LSB10922>

- Ferraro et al., *Potential Implications of US Copyright Office Determination on AI-Generated Work*, Tech Policy Press (May 4, 2023): <https://www.techpolicy.press/potential-implications-of-us-copyright-office-determination-on-ai-generated-work/>

#### **Class 4 (2/11/25): AI and Intellectual Property Law II: Copyright Issues Related to Journalism**

- First Amended Complaint, *New York Times vs. Microsoft, OpenAI, et al.* (S.D.N.Y., Aug. 12, 2024): [https://storage.courtlistener.com/recap/gov.uscourts.nysd.612697/gov.uscourts.nysd.612697.170.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.nysd.612697/gov.uscourts.nysd.612697.170.0_2.pdf) (read pp. 1-4, 8-59)
- Memorandum of Law in Support of OpenAI Defendants' Motion to Dismiss, *New York Times v. Microsoft, OpenAI, et al.* (S.D.N.Y., Feb. 26, 2024): [https://storage.courtlistener.com/recap/gov.uscourts.nysd.612697/gov.uscourts.nysd.612697.52.0\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.nysd.612697/gov.uscourts.nysd.612697.52.0_1.pdf) (read pp. 1-14)
  - Note: Judge Stein has scheduled a hearing on the motion to dismiss for January 14, 2025.

#### **Class 5 (2/18/25): Alleged AI Harms I: Product Liability, Discrimination, and Defamation/Publicity**

##### Product Liability

- Complaint, *A.F. et al. v. Character Technologies, Inc. et al.* (E.D. Tex., Dec. 9, 2024): <https://www.documentcloud.org/documents/25450619-filed-complaint/#document/> (read pp. 1-8)

##### Discrimination

- Order Granting in Part and Denying in Part Motion to Dismiss, *Mobley v. Workday, Inc.* (N.D. Cal., July 12, 2024): <https://www.courtlistener.com/docket/66831340/80/mobley-v-workday-inc/>
- Jeff Bedayn, *Class Action Lawsuit on AI-related Discrimination Reaches Final Settlement*, AP News (Nov. 20, 2024): <https://apnews.com/article/artificial-intelligence-ai-lawsuit-discrimination-bias-1bc785c24a1b88bd425a8fa367ab2b23>
- Anton S. Ovchinnikov, *How Anti-Discriminatory Measures Can Worsen AI Bias*, INSEAD Knowledge (Oct. 26, 2023): <https://knowledge.insead.edu/operations/how-anti->

[discriminatory measures can worsen AI bias](#) (read pp. 1-9)

### Defamation/Publicity

- Amended Complaint, *Walters v. OpenAI* (Sep. 8, 2023, N.D. Ga.): <https://cdn.arstechnica.net/wp-content/uploads/2023/09/Walters-v-OpenAI-Amended-Complaint-9-8-2023.pdf>
- Kelsey McCroskey, ‘Big Brother’ Star Cries Foul Over Alleged Reface App Publicity Rights Violations, Newswire (Apr. 6, 2023): <https://www.classaction.org/news/big-brother-star-cries-foul-over-alleged-reface-app-publicity-rights-violations>

## **Class 6 (2/25/25): Alleged AI Harms II: Facial Recognition, Intimate Harms, and Data Privacy**

### Facial Recognition

- Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, The New York Times (Aug. 6, 2023): <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>
- *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards*, Federal Trade Commission (Dec. 19, 2023): <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>

### Intimate Harms

- First Amended Complaint, *People v. SOL ECOM, Inc., et al.* (Sup. Ct. Calif., Aug. 16, 2024): [https://www.sfcityattorney.org/wp-content/uploads/2024/08/2024-08-16-First-Amended-Complaint\\_Redacted.pdf](https://www.sfcityattorney.org/wp-content/uploads/2024/08/2024-08-16-First-Amended-Complaint_Redacted.pdf) (read pp. 2-20)
- Office of Public Affairs, *Man Arrested for Producing, Distributing, and Possessing AI-Generated Images of Minors Engaged in Sexually Explicit Conduct*, U.S. Department of Justice (May 20, 2024): <https://www.justice.gov/opa/pr/man-arrested-producing-distributing-and-possessing-ai-generated-images-minors-engaged>

### Data Privacy

- Kristen E. Busch, *Generative Artificial Intelligence and Data Privacy: A Primer*, Congressional Research Service (May 23, 2023): <https://crsreports.congress.gov/product/pdf/R/R47569>

**Class 7 (3/4/25): AI and National Security: CBRN, Cybersecurity, and Disinformation**

CBRN

- *Department of Homeland Security Report on Reducing the Risks at the Intersection of Artificial Intelligence and Chemical, Biological, Radiological, and Nuclear Threats* (Apr. 26, 2024): [https://www.dhs.gov/sites/default/files/2024-06/24\\_0620\\_cwmd-dhs-cbrn-ai-eo-report-04262024-public-release.pdf](https://www.dhs.gov/sites/default/files/2024-06/24_0620_cwmd-dhs-cbrn-ai-eo-report-04262024-public-release.pdf) (read pp. 1-19)
- The White House, *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (Oct. 30, 2023): <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> (read only Sects. 1-2, Sec. 3(k), and Sect. 4.1(b))

Cybersecurity

- *Secure, Empower, Advance: How AI Can Reverse the Defender's Dilemma*, Google (Feb. 2024): <https://services.google.com/fh/files/misc/how-ai-can-reverse-defenders-dilemma.pdf> (read pp. 2-5, 16-21, 31-37)
- *Deploying AI Systems Securely: Best Practices for Deploying Secure and Resilient AI Systems*, Cybersecurity and Infrastructure Security Agency (Apr. 2024): <https://media.defense.gov/2024/Apr/15/2003439257/-1/-1/0/CSI-DEPLOYING-AI-SYSTEMS-SECURELY.PDF> (read pp. 1-10)

Disinformation

- *FCC Settles Spoofed AI-Generated Robocalls Case*, Federal Communications Commission (Aug. 21, 2024): <https://www.fcc.gov/document/fcc-settles-spoofed-ai-generated-robocalls-case> (read “News Release”)
- Peter Carlyon, *Deepfakes Aren't the Disinformation Threat They're Made Out to Be*, RAND (Dec. 19, 2023): <https://www.rand.org/pubs/commentary/2023/12/deepfakes-arent-the-disinformation-threat-theyre-made.html>

***Spring Recess: Monday, March 10 – Sunday, March 16 (no class on March 11)***



**Class 8 (3/18/25): AI in War: Capabilities, Opportunities, Threats and Ethical Considerations**

- Birgitta Dresch-Langley, *The Weaponization of Artificial Intelligence: What the Public Needs to Be Aware of*, *Frontiers in Artificial Intelligence* (Mar. 8, 2023): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10030838/pdf/frai-06-1154184.pdf>
- Lucas Ropek, *The Killer AI That Wasn't*, *Gizmodo* (June 2, 2023): <https://gizmodo.com/usartificial-intelligence-drone-tucker-hamilton-1850502251>
- Kelley Saylor, *Artificial Intelligence and National Security*. Congressional Research Service (Aug. 26, 2020): <https://crsreports.congress.gov/product/pdf/R/R45178/9> (read pp. 10-15, 35-39)
- Amitai Etzioni & Oren Etzioni, *Pros and Cons of Autonomous Weapons Systems*, *Military Review* (May/June 2017): <https://www.armyupress.army.mil/Portals/7/militaryreview/Archives/English/pros-and-cons-of-autonomous-weapons-systems.pdf>
- Kelley Saylor, *Defense Primer: U.S. Policy on Lethal Autonomous Weapon Systems*, Congressional Research Service (May 15, 2023): <https://crsreports.congress.gov/product/pdf/IF/IF11150>

**Class 9 (3/25/25): Regulating AI: Initial Efforts in the United States**

- The White House, *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (Oct. 30, 2023): <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> (read only Sects. 4.2 through 4.8)
- Laurie A. Harris, *Highlights of the 2023 Executive Order on Artificial Intelligence for Congress*: Congressional Research Service (Nov. 17, 2023): <https://crsreports.congress.gov/product/pdf/R/R47843>
- U.S. Senate, *TAKE IT DOWN Act*, S. 4569 (pending legislation): <https://www.congress.gov/index.php/bill/118th-congress/senate-bill/4569/text>
- *Bipartisan House Task Force Report on Artificial Intelligence*, U.S. House of Representatives (December 2024): <https://www.speaker.gov/wp-content/uploads/2024/12/AI-Task-Force-Report-FINAL.pdf> (read pages v through xix).

- The White House, Office of Management and Budget Guidance: *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence* (March 28, 2024): <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-GovernanceInnovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf> (read pages 1 through 5, 9 through 11, 15 through 20, 24 through 26)

#### **Class 10 (4/1/25): Regulating AI: Selected State Efforts**

- Chanley T. Howell & Leighton B.R. Allen, *Decoding California's Recent Flurry of AI Laws*, Foley & Lardner (Oct. 4, 2024): <https://www.foley.com/insights/publications/2024/10/decoding-california-recent-ai-laws/>
- Stuart D. Levi et al., *Colorado's Landmark AI Act: What Companies Need To Know*, Skadden, Arps, Slate, Meagher & Flom (June 24, 2024): <https://www.skadden.com/insights/publications/2024/06/colorados-landmark-ai-act> |
- David Strauss & Owen Davis, *Utah Legislature Passes Private Sector AI Bill*, Byte Back, (Mar. 14, 2024): <https://www.bytebacklaw.com/2024/03/utah-legislature-passes-private-sector-ai-bill/>
- AP, *New York Monitoring its AI Use Under New Law*, NBC New York (Dec. 29, 2024): <https://www.nbcnewyork.com/news/local/new-york-government-to-monitor-its-use-of-ai-under-a-new-law/6087206/>
- State of Tennessee, *Ensuring Likeness Voice and Image Security (ELVIS) Act*, Pub. Ch. 588 (enacted Mar. 21, 2024): <https://publications.tnsosfiles.com/acts/113/pub/pc0588.pdf>
- State of Michigan, *Enrolled House Bill No. 5144* (enacted Dec. 1, 2023): <https://legislature.mi.gov/documents/2023-2024/publicact/htm/2023-PA-0265.htm>
- State of Hawaii, *Haw. Rev. Statutes §711-1110.9, Violation of Privacy in the First Degree* (rev. 2021): <https://law.justia.com/codes/hawaii/title-37/chapter-711/section-711-1110-9/>

#### **Class 11 (4/8/25): Regulating AI: The EU AI Act**

- European Union, *High-level Summary of the AI Act*, EU Artificial Intelligence Act (updated May 30, 2024): <https://artificialintelligenceact.eu/wp-content/uploads/2024/11/Future-of-Life-InstituteAI-Act-overview-30-May-2024.pdf>
- Ernst & Young, *The European Union Artificial Intelligence Act: Latest developments and key takeaways* (Jul. 12, 2024): <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-gl/insights/public-policy/documents/ey-gl-eu-ai-act-07-2024.pdf>

- Tate Ryan-Mosley, *Why the EU AI Act was So Hard to Agree On*, MIT Technology Review (Dec. 11, 2023): <https://www.technologyreview.com/2023/12/11/1084849/why-the-eu-ai-act-was-sohard-to-agree-on/>

## **Class 12 (4/15/25): Trust, Safety, and Security in AI: Voluntary Instruments**

- The White House, *Voluntary AI Commitments* (Sept. 12, 2023): <https://www.whitehouse.gov/wp-content/uploads/2023/09/Voluntary-AI-CommitmentsSeptember-2023.pdf>
- Trusted Capital Group, *Investment Principles and Commitments on Trust, Safety, and Security* (March 2024): <https://www.paladincapgroup.com/investment-principles-and-commitments/>
- NATO DIANA, *Allied Capital Community Investment Principles* (July 2024), <https://www.diana.nato.int/resources/site1/general/acc%20investment%20principles.pdf>
- United Nations, *General Assembly Adopts Landmark Resolution on Artificial Intelligence* (Mar. 21, 2024): <https://news.un.org/en/story/2024/03/1147831> (read press release and linked resolution, A/78/L.49)
- UK Government, et al., *The Bletchley Declaration by Countries Attending the AI Safety Summit* (Nov. 1, 2023): <https://www.gov.uk/government/publications/ai-safety-summit-2023-thebletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2november-2023>
- G7 Countries, *Hiroshima Process: International Code of Conduct for Advanced AI Systems* (Oct. 30, 2023): <https://ec.europa.eu/newsroom/dae/redirection/document/99641>

## **Class 13 (4/22/25): AI in the Legal Academy and the Practice of Law**

- Chief Justice Roberts, *2023 Year-End Report on the Federal Judiciary*, U.S. Courts (Dec. 31, 2023): <https://www.uscourts.gov/news/2023/12/31/chief-justice-roberts-issues-2023-year-endreport> (read pp. 5-7)
- Vince Beiser, *AI & the Law... & What it Means for Legal Education & Lawyers*, Georgetown Law Magazine (Jan. 4, 2024): <https://www.law.georgetown.edu/news/ai-the-law-what-it-meansfor-legal-education-lawyers/>

- Law360 Staff, *Study Sees Promise For Gen AI Tools In Closing Justice Gap* (Mar. 20, 2024): <https://www.law360.com/pulse/articles/1815450>
- Yasmin Lambert, *In-House Lawyer Role Broadens in Response to Technological Change*, Financial Times (Dec. 10, 2024): <https://www.ft.com/content/73e807cb-21fa-47a6-b934-0bb2439133b3>