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The unconstitutionality of abstinence-based sex education

L'espérance Etienne

Sexuality has become a growing hot topic in the media, with some crediting this surge in popularity as directly correlated with increasing promiscuity in youths. Many states have instituted sex education programs in schools to combat these concerns. However, the content of the course is questionable. Certain government-funded sex education programs promote abstinence rather than comprehensive and medically accurate sex education, which can contribute to higher teen pregnancy rates and sexually transmitted infections. Abstinence-only sex education refers to programs that have outright or underlying themes encouraging students to abstain from premarital sex. Abstinence-focused sex education programs violate the Constitution through the disregard of Amendment 14, the Equal Protection Clause, and defy principles set in place by Title IX of the Education Amendments of 1972.

Sex education in the United States has a long history, starting in the early 1900s with concerns about venereal diseases and prostitution. The American Social Hygiene Association (ASHA) aimed to address these issues and promote sex education in schools and universities. However, their efforts were limited and focused on discouraging masturbation and promoting sex only within marriage.[1]

In the following decades, organizations like the Sexuality Information and Education Counsel of the United States (SIECUS) emerged to provide accurate information and destigmatize sexuality. Conservative groups criticized sex education for promoting immorality and communist beliefs, leading to the rise of abstinence-only programs.[1]

The Reagan administration implemented the Adolescent Family Life Act (AFLA) to promote chastity and prevent pregnancy. The Clinton administration expanded AFLA's goals through the Personal Responsibility and Work Opportunity Reconciliation Act. It introduced the Title V Sexual Risk Avoidance Education (SRAE) grant program, which emphasized abstinence and prohibited comprehensive education.[2]

During the Obama administration, there were efforts to fund comprehensive sex education like Teen Pregnancy Prevention (TPP) and Office of Adolescent Health (OAH). However, abstinence-only programs like SRAE and Discretionary Sexual Risk Avoidance Education programs are still funded and persist in schools today.[3]

When comparing the impact of sexual education on girls and boys, there is an evident disparity. Young males face several negative consequences when they engage in irresponsible sexual behavior. Like all youth, boys are negatively impacted by inadequate sex education, resulting in issues such as the spread of STDs and STIs, as mentioned above. Additionally, boys face repercussions when an unplanned pregnancy occurs during their teenage years. One significant consequence is the potential legal obligation for child support, even in cases where the child is a product of statutory rape. While boys may face financial and emotional implications from unwanted pregnancies, these effects pale in comparison to the physical, social, and psychological effects that girls and children who are at risk of pregnancy suffer when they become pregnant unintentionally because of inadequate sex education.

Pregnant teenagers face more significant mental health risks than teenagers who do not experience pregnancy. Teens who are pregnant have a greater likelihood of being predisposed to mental health issues than teens who are not pregnant. In contrast to teenagers who are not pregnant (5-20%), *PubMed Central* indicates that teens who are pregnant develop depression at a significantly greater rate (14-44%). [4] Accordingly, research has indicated that as many as 11-30% of adolescent moms develop suicidal thoughts.[4] Intimate partner violence and other traumatic experiences are additionally more prevalent among adolescent moms than adult mothers. This finding may be a contributor to why nearly 50% of participating young parents in another study reported having post-traumatic stress disorder.[5] Specifically, when girls and children who are at risk of pregnancy get inadequate sex education, they suffer the physical

repercussions of pregnancy, whereas males do not. The United States is the highest-ranked developed country with high maternal mortality, and people of color are disproportionately impacted, with even more coming close to death. Youths and girls are more vulnerable to the adverse outcomes that follow.[6] A cesarean delivery may culminate in infections, substantial hemorrhaging and blood loss, anesthetic complications, blood clots, and surgical damage.A significant portion of cesarean section patients—up to 25%—experience chronic discomfort in their scars. [7]

Females additionally endure stigma while receiving sex education centered strictly on abstinence, as well as psychological and social repercussions from pregnancy. A sexuality curriculum concentrating primarily on abstinence engenders a stigma that does not merely wound females' mental health but conjointly induces schools to treat female students indifferently during sex education sessions. ASRE abstinence sex education, for instance, would compare girls' sexuality to chewing gum and say, "Once you've been chewed, nobody else is going to want you."[8] Further instances of how girls are conditioned to feel ashamed of any potential sexual activity involve passing around a piece of chocolate to demonstrate how dirty it became and, therefore, no longer appetizing—taping several children's arms to show how the "tight bond" is lost and passing around a rose and removing the petals.[8] In each scenario, the object being defiled and thus devalued was symbolic of the girl's body. The notion perpetuates the widespread misconception that females and children with vaginas become "used up" or "loose" after having several sexual partners; these analogies have a disproportionately negative emotional impact and foster shame. It is discriminatory to have this disproportionate effect. This disproportionate effect is reflective of discrimination. Instead of providing children with a thorough education on sexuality and sexual decision-making, the programming that perpetuates this inequality prefers to blame females, who have traditionally experienced comparable shame. The decision of grantees to use this curriculum that amounts to unequal treatment of girls poses concerns to its constitutionally. Abstinence-only sex education programs most clearly disproportionately harm girls and children vulnerable to pregnancy because they are ineffective at aiding children in preventing pregnancy.

In comparison to males, girls receive a less comprehensive and inequitable sex education since the same knowledge on protecting their bodies is not given, including how to prevent pregnancy,

a major health issue, alongside how to prevent STDs. The disparate consequences of the government's abstinence-only sex education grant program on females may be witnessed in the implications of inadequate sex education for girls compared to boys. Girls are disproportionately affected by improper sex education. A girl getting pregnant when she is a teenager possesses greater social, psychological, and bodily repercussions than guys who impregnate a girl when they are teenagers. Girls are thus disadvantaged significantly by the SRAE financing scheme. Under Title IX, such injustice and the uneven possibilities for sexual education that follow to safeguard one's health are not permitted.

Title IX of the Education Amendments (1972) prohibits discrimination based on sex in educational programs funded by the government. [9] The curriculum gaps in abstinence-based sex education impose unjustifiable responsibility on girls to protect themselves from being abused or impregnated, from the limited guidance the program provides which creates an apparent disparity between the usefulness of the program for the sexes. Title IX policies take inspiration from the previously enacted policy Title VII. Under Title VII employees can raise accusations of discrimination when practices have an adverse effect or cause based on sex.[10] Abstinence-based sex education leaves girls vulnerable to emotions and physical risks that boys do not face, creating a disparaging effect of the policy and making SRAE and similar programs unlawful under Title XI disparate impact theory. In *Lau v. Nichols* (1971), students of Chinese descent unable to speak English sued the San Francisco school district for not providing supplemental English instruction, leading to an impediment to their education. The Supreme Court ruled in favor of Lau, stating that the school district's oversight excluded students from meaningful education and violated their rights under Title VI.[11] Likewise, girls exposed merely to abstinence-only sex education are precluded from receiving vital education to protect themselves from the dangerous results of unplanned pregnancy in comparison to boys' education.

The 14th Amendment Equal Protection clause states that the government must abide by specific procedures before stripping citizens of their natural rights: life, liberty, and pursuit of happiness regardless of race or gender.[12] Programs like SRAE place the responsibility of preventing "sexual immorality" in youths solely on girls through shameful demonstrations and inadequate lessons on consent. Demonstrations comparing female bodies to tarnished flowers or filthy lollipops enforce the belief that girls become "used up" after intercourse, implying it is a

girl's responsibility to abstain from sex to preserve themselves. This notation is upheld further through the program's lack of lessons on consent. Consent ensures both parties are willing to engage in sex. Nevertheless, the program neglects to mandate these lessons or resources to assist if they face sexual or dating violence, which affects girls at a disproportionate rate.

The federal government may contest the SRAE grant program to reinforce the state's interest in guiding children to create healthy life skills, decision-making skills, and relationships and reduce risk through education. SRAE and other abstinence-based sexual education programs include neutral policy wording, making it lawful under Title XI and the 14th Amendment equal protection clause. However, despite the policy's unbiased wording, its unequal administration is prohibited under the Constitution. In *Yick Wo v. Hopkins(1886)*, two Chinese citizens were fined and imprisoned for disobeying their city's ordinance requiring laundry operators whose businesses were in wooden buildings to obtain a permit. They argued that applying the city's ordinance discriminated against them as it denied 237 of 238 Chinese laundry operators' permit applications, while 80 of the 81 applications for white laundry operators were accepted. The Supreme Court ruled that despite the impartial wording of the ordinance, its arbitrary and discriminatory enforcement violated the 14th Amendment equal protection clause.[13] Applying this precedent to the institution of absence-based sex education, while the wording of the policy aims to benefit all students, its implementation is discriminative and unequally imposed on girls and in violation of the Equal Protection Clause.

When a policy violates an Amendment, it must pass the strict scrutiny test to validate its necessity and constitutionality. Government officials could argue that government-funded abstinence-based sex education has a compelling government interest as an advocate for students' sexual health and protection from the harms of premarital sex, subsequently protecting America's youth, a compelling interest. However, it fails to prove that it is narrowly tailored to accomplish this goal. Children who received comprehensive sex education were significantly more likely to report safe sex (60%) [14]and reduced teen pregnancy (.21-.69)compared to abstinence-only education that protected adolescents (.38-.145) more likely to report teen pregnancy [15] SRAE programs are ineffective and, therefore, not narrowly tailored.

Programs offering sex education focused solely on abstinence continue to be funded by the federal government. Due to their discriminatory nature toward females and children who are at risk of pregnancy, these programs are both illegal and unsuccessful. They infringe upon both the Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment and Title IX. For sex education to be both effective and lawful, the federal government, individual states, and educational institutions must alter their current regulations.

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Biden's Student Loan Forgiveness Battle in Nebraska

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The case of Biden v. Nebraska is essential for student loan forgiveness programs and legislation as its decision will set a far-reaching precedent. The core issues of the conflict include executive authority and congressional intent. In 2023, the Supreme Court had to decide whether the Secretary of Education had adequate power to set an extensive student loan relief program in motion. This program was intended to alleviate the astonishing $430 billion in debt binding thousands of American borrowers. In a majority opinion led by Chief Justice John Roberts, the Court decided that the Secretary of Education would exceed their statutory authority if it established the student debt cancellation plan under the HEROES Act. The ruling created new delicate bounds between the exercise of authority and the limits of the law. The implications of this decision extend beyond the immediate realm of student loans, affecting economic and administrative considerations. This case was, and still is, met with intense public criticism, causing conversations regarding the boundaries of executive authority and the role of the law in defining its limits.

The Biden v. Nebraska case concerns student loan forgiveness policies in the United States, a contentious subject for many years. In recent decades, the financial stress caused by student loan debt has dramatically increased for millions of Americans. However, various administrations and federal systems have created different legislative and executive actions as potential solutions. The Higher Education Act of 1965, for example, was the first to establish federal student

financial aid programs. Throughout the years, revisions to this Act and other relevant laws have aimed to increase the availability of higher education and reduce the increasing financial obligations of students. In response to the financial crises and economic downturns, Congress has occasionally enacted laws to temporarily relieve borrowers. One example of the legislative measures taken to tackle this issue is the Higher Education Relief Opportunities for Students Act (HEROES Act) of 2003, which gave the Secretary of Education the authority to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under Title IV" of the Higher Education Act of 1965. The HEROES Act aimed to prevent placing people who received financial assistance in more complicated financial situations during a national crisis like the COVID-19 pandemic. HEROES initially approved in response to the 9/11 terrorist attacks, aimed to offer assistance to military personnel and others impacted by national crises.

However, the Act's broad language allows the Secretary of Education to take action very quickly with little process that, although vital for ensuring legality, can hinder necessary actions during crises. The flexibility of the HEROES Act’s diction was important to the Department of Education’s ability to respond quickly to unforeseen emergencies and protect borrowers' financial stability. During his 2020 presidential campaign, Joe Biden promised to address the student loan debt crisis by canceling up to $10,000 of federal student loan debt per borrower. Later after assuming office, President Biden called on the 117th U.S. Congress to pass legislation that would facilitate this debt forgiveness. However, when legislative efforts stalled, Biden decided to use executive action to fulfill his campaign promise. In August 2022, President Biden announced a comprehensive student loan forgiveness plan to help control the financial burden exacerbated by the COVID-19 pandemic. The plan had the promise of canceling $10,000 in student loan debt for borrowers earning less than $125,000 individually or $250,000 as married couples, with an additional $10,000 for Pell Grant recipients. The Biden administration cited the HEROES Act as the legal basis for this executive action, asserting that the ongoing national emergency warranted the Secretary of Education's relatively broad authority to take such measures. The announcement of the student loan forgiveness plan was almost immediately legally challenged.

On September 29, 2022, the states of Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina filed a lawsuit in the Eastern Missouri U.S. District Court. The states argued that the forgiveness program violated the separation of powers principle and the Administrative Procedure Act. They claimed to stand on the basis that the American Rescue Plan Act of 2021 prevented them from taxing discharged loans for three years, which would result in financial harm. Missouri specifically highlighted that the Higher Education Loan Authority of the State of Missouri (MOHELA), a public entity, would lose a large amount of revenue and, therefore, impair the state's financial aid programs. On October 20, 2022, District Judge Henry Autrey dismissed the case, ruling that the states lacked standing to sue. However, the states appealed, and the U.S. 8th Circuit Court of Appeals granted an injunction pending appeal on November 14, 2022, allowing the case to continue. Separately, on October 10, 2022, two student loan borrowers who did not qualify for the proposed debt forgiveness filed a lawsuit in the Northern Texas U.S. District Court. They argued that the program did not allow them to participate in the notice-and-comment rulemaking process required by the Administrative Procedure Act. On December 12, 2022, the Supreme Court agreed to hear both cases jointly, and oral arguments for Biden v. Nebraska and Department of Education v. Brown were held on February 28, 2023.

The legal arguments in Biden v. Nebraska centered on the interpretation of the HEROES Act, the scope of executive authority, and the major questions doctrine. Each side presented strong arguments that addressed the case's statutory, procedural, and constitutional aspects. On one hand, the Biden administration argued that the HEROES Act provided the Secretary of Education with the power to “waive or modify” statutory or regulatory arrangements related to federal student loans during a national emergency. They then claimed that the COVID-19 pandemic was considered such an emergency that it created significant economic hardships for many borrowers, making debt forgiveness a reasonable and necessary measure under the Act’s provisions. The administration asserted that the decision to implement the loan forgiveness program did not require a notice-and-comment period under the Administrative Procedure Act (APA) because the HEROES Act allows for quick actions in response to national emergencies and that the urgent nature of the pandemic justified bypassing the typical procedural requirements to provide immediate relief.

Regarding the standing issue, the government argued that the states and the individual plaintiffs in the Department of Education v. Brown case failed to demonstrate concrete evidence to prove the injuries they have caused by the loan forgiveness program. They also highlighted that speculative financial impacts on state tax revenues or entities like MOHELA's operations were not sufficient to establish standing under Article III. Nevertheless, the opposing states argued that the loan forgiveness program violated the separation of powers in the government because it exceeded the executive branch's authority. They brought up the major questions doctrine, which requires explicit congressional permission for executive actions of significant economic and political impact and importance. The states claimed that the HEROES Act did not directly grant the Secretary of Education the power to forgive student loans on such a large scale and that such an action required explicit legislative approval. They additionally asserted that the Act provided relief to specific groups, such as military personnel and those directly affected by national emergencies, rather than broad, unilateral debt cancellation. The individual plaintiffs of the Department of Education v. Brown argued that the Biden administration's failure to have a notice-and-comment rulemaking process violated the APA. They claimed that the shortcuts taken in the process affected them and people like them were unable to participate in the decision-making process and voice their objections to the proposed debt forgiveness program. This perspective shows the importance of transparency and public participation in creating significant policies and changes. Chief Justice John Roberts, a part of the majority, asserted that the plaintiffs did stand, specifically recognizing Missouri's potential financial harm through MOHELA. The majority opinion then addressed the scope of the HEROES Act, concluding that the law did not grant the Secretary of Education the authority to implement a broad loan forgiveness program. Roberts emphasized that the cancellation of billions of dollars in student debt was a major policy decision requiring clear congressional permission. Therefore, while broad, the HEROES Act's language did not unambiguously authorize the Secretary to cancel student debt on this scale; thus, the program exceeded the executive branch's statutory authority. Justice Elena Kagan, writing for the dissenting side, said that the HEROES Act's language granted the Secretary broad discretion to address the financial impacts of national emergencies on student loan borrowers. The Secretary's actions were consistent with this purpose. Kagan also criticized the majority for failing to recognize the urgency and scope of the COVID-19 pandemic as a national emergency that justified the loan forgiveness program. From now on, she claimed

that this decision would undermine the executive branch's ability to respond effectively to crises and protect vulnerable populations. The legal arguments presented in Biden v. Nebraska highlight the complex interplay between statutory interpretation, executive authority, and judicial oversight. The Supreme Court's decision underscores the importance of clear legislative mandates for significant policy actions and raises questions about the future of administrative flexibility in times of crisis.

The ruling, delivered on June 30, 2023, concluded with a 6–3 majority opinion authored by Chief Justice John Roberts, ultimately striking down the Biden administration's student loan forgiveness program. The Supreme Court's decision in Biden v. Nebraska has far-reaching implications for the future of executive authority and administrative law. The decision also effectively halts the Biden administration's plan to forgive a significant portion of federal student loans, impacting millions of borrowers who would have been able to get some relief. The case and ruling demonstrate the importance of clear legislative mandates for significant policy actions, particularly those with substantial economic impacts. It sets a precedent that substantial debt cancellation initiatives require explicit congressional authorization, potentially limiting future executive actions in this area. The use of the major questions doctrine in this case reaffirms the need for clear legislative guidance for major executive actions. Additionally, the case results reinforce the principle of separation of powers, emphasizing the distinct roles of the legislative and executive branches in policymaking and the law's role in maintaining the balance of power among the branches of government. The ongoing dialogue between the branches of government will be crucial in navigating these challenges and ensuring that adequate and lawful policy measures can be implemented to address the needs of the American people.

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What is the legality of jury nullification:

Peter Fleming

Background

Jury Nullification has been a reason for debate for centuries, and the question of its legality has been pondered upon for years by legal scholars, however, to fully answer this question, we must explore the history, applications, and recent case law of jury nullification. Juries in cases of criminal law have been established since the 13th century [1], however, these juries typically ruled in direct accordance with royal opinion on the case, and facing punishments for dissent, jury nullification was not common. The 6th and 7th Amendments to the Constitution allow nearly all civil and criminal cases to be tried in the presence of a jury, allowing for a large amount of opportunities for nullification to occur. As sectionalism ravaged the nation in the 1850's, multiple instances of nullification occurred over the controversial Fugitive Slave Act of 1850, including the case of United States v. Castner Hanway [2]. Castner Hanway was charged with treason, following the Christiana Riot over the enforcement of the Fugitive Slave Act on 4 runaway slaves; Hanway was alleged to be a leader of the riot. Despite these charges, the Pennsylvania jury refused to convict Hanway, leading many to believe this was based on sympathies to abolitionism and resentment of the Act, as Hanway's county of residence was a haven for runaway slaves. Despite the clear deviation from the provisions of the fugitive slave act, the jury in Castner remained under legal protection following their decision, in accordance with the provisions of the 8th Amendment. Another case that includes the likely presence of jury nullification is the rather infamous 1931 trials of the Scottsboro Boys. 9 African-American teenagers were charged with the alleged rape of 2 white women aboard a train in Alabama.

Despite no evidence indicating rape, an all-white jury convicted all 9, and sentenced 8 of the 9 to death, with the sole exception of 13-year-old Roy Wright. Despite an eventual reversal by SCOTUS in 1932 [3], the initial decisions by southern, all-white juries; ruling solely based on race and ruling in the absence of evidence, is a prime example of the power of jury nullification. Once again, the jury faced no repercussions, despite clearly ruling against the evidence and laws in place at the time of the crime. Another famous criminal case with perceived jury nullification is perhaps one of the most famous of all time- that of O.J. Simpson's murder trial [4]. Simpson's jury- which included 9 African-Americans- had been recent witnesses to the beating of Rodney King and subsequent acquittal of Los Angeles Police Department officer, perhaps fueling the anti-police sentiment among the jury; The case was tried by the State of California, and in the face of what was believed to be insurmountable evidence against Simpson, the jury returned an acquittal. While it is not fair to credit the entire verdict to jury nullification, as the prosecution committed many mishaps in their trying of the case, political leanings and anti-police sentiment were major factors, as evidenced by Lionel Cryer's black power salute following the acquittal. In a world of more divisive rhetoric and political issues with clear divides between those who side for and against, the opportunities for jury nullification, particularly in the form of activism against laws considered unjust, has become increasingly abundant. Issues centered around race, drug policy, and police brutality among others have become hotbeds for those who wish to influence trials once selected to jury duty. While many rulings, as we will see later, technically prohibit this practice, the right to practice jury nullification will always be maintained due to the immunity of those who sit on the jury, and the lack of repercussions for violating their duty.

Rule

To fully understand this solution to our issue, we must demonstrate which court cases apply to our given issue, and introduce the application of said rules to our issue. Before introducing these rules, we must understand, that due to the nature of jury immunity, even if a juror hands down a ruling that is contrary to evidence or laws applicable to the case, they may not be punished under the law, and they are not held responsible for this; Subsequently, while jurors can be charged with perjury for false statements during selection, any other functions, including those that have major effects on jury nullification, do not place the juror under criminal liability. The most

significant case that attempts to tackle this issue is the 1895 Supreme Court decision Sparf v. United States [5]. Sparf holds that the jury must apply the laws solely to the facts of the case; While this holding would seem to thwart any attempts at jury nullification, it does not necessarily prohibit jury nullification, it only denies juries the right to do so. Additionally, this decision limited the court's ability to direct a jury towards a guilty or not guilty verdict in a criminal decision. This rule has been commonplace since the Sparf decision, particularly in preventing the court's influence on the decision of the jury. This has been used in regard to jury nullification, as the jury may not be informed of the possibility of jury nullification, in order to protect the integrity of the case, and the jury's duty to uphold the law, and apply it using only the evidence presented in court that conforms to the rules of evidence. This belief is upheld under US law, particularly by 18 USC § 504, which states that: "Whoever attempts to influence the action or decision of any grand or petit juror … shall be fined under this title or imprisoned not more than six months, or both." This US Law upholds the ruling in Sparf, however, the application in regard to jury nullification cases has been rather light in recent years, as will be shown later. In fact, certain jurisdictions have gone so far as to effectively allow prospective jurors to be informed of their ability to nullify any given case. This ruling [6] interpreted the Colorado jury tampering statute, 18-8-609(1), C.R.S., as rather irrelevant in cases where activists may attempt to promote jury nullification. While jury nullification appears to be limited by a singular Supreme Court case, its practical application has been far more complicated than simply applying the ruling of Sparf to how courts run.

Application

In modern times, the limitations set forth by part still exist; no case has reached our highest courts that has changed the ruling with regard to jury nullification. The 2010 trial of Julian P. Heicklen is a prime example of this; Heicklen was charged under the aforementioned US Code for handing out information regarding jury nullification to potential jurors, possibly setting him to one of the punishments in Code 1504. Heickle's case, however, got dismissed by the federal judge who was trying it [7], on effectively the same basis as the Colorado Supreme Court made the Iannicelli decision upon. In a second modern-day example of jury nullification is the case of Keith Wood [8]. Wood was originally convicted of misdemeanor charges for jury tampering, due

to the evidence pointing to him handing out pamphlets to prospective jurors about jury nullification; however a decision by the Michigan Supreme Court decision overturned his conviction, once again, on a similar basis to that of the Colorado decision. Even the Sparf decision does not fully stop jury nullification, as it specifically does not prohibit the practice.

Conclusion

These decisions, which put the issue in a more modern context than the cases originally discuss, allow us to view the issue of jury nullification, its legality, and the relaxed enforcement of jury tampering laws in the context of jury nullification, and see how it truly functions in our modern justice system. Nowadays, while discouraged, jury nullification is effectively legal, as court decisions and case law allow it to function without any repercussions for jurors, and do not discourage jury nullification of the process unless done in an official manner via the court. Overall, jury nullification has an interesting future, whether a tool of activism, or solely one of civil disobedience, its place in the justice system is here to stay.

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NYT vs OpenAI

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It is not a stretch to say that this generation uses AI tools as their second brain. Since the release of Generative AI tools in the early 2020s, it has revolutionized the way people gather information and get answers to their questions. Rather than scrolling through multiple websites and articles, typing the inquiring, and pressing 'enter', one could get straightforward information that is generally accurate at most times. These AI generative tools are used in multiple educational settings, providing necessary information and data for their users. In many senses, these AI tools are generated through progressive learning algorithms, fed with thousands of raw data, and use this information to create new content and information into any of the modalities input (McCallum et al.). Therefore, the quality of these generative AIs depends on how much data has been input to “train”.

Due to this particular characteristic, when these AI platforms use other resources to generate new content for their users, the controversy of intellectual property and copyright comes into play (Pope et al.). Ever since its release to the public, these tools have faced much controversy and numerous lawsuits, however, recently, it became involved with a lawsuit filed by The New York Times.

On December 27, 2023, the newspaper company filed a lawsuit against OpenAI, accusing the Artificial Intelligence of using their articles and published works and mimicking their writing style without the company’s consent. This claim that OpenAI's "commercial success is built in large part on OpenAI's large-scale copyright infringement." This alleges that 1) OpenAI's success

is largely facilitated by The New York Times' publications, and 2) the tool recites the newspaper's articles, closely mimicking their style and contents.

Before the lawsuit, Open AI defended their tools stating that the material is protected as "fair use" under the Copyright Act, according to Lanquist, Ray of "Baker Donelson". The "fair use" promotes unlicensed use of copyrighted work under certain circumstances:

1. Non-profit, educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used concerning the copyrighted work as a whole
4. The effect of the use upon the potential market for the value of the copyrighted work

It is expected that in the court trials, the Open AI would have to prove that their materials meet these four circumstances for "fair use", and it will be the defense's main argument.

Similar court rulings where it was crucial to find "fair use" under the copyright law are De Fontbrune v. Wofsy (2022), where the court discussed if copying artwork photographs documenting the pieces in a book that are sold commercially is fair use. Wofsy argued that the use of photos in a book of artwork is different from nature hence it is different. However, the court found that the nature of the book itself is informative and documenting purpose, not serving a different function to the photograph's purpose. Furthermore, Defendant (Wofsy) failed to show why putting the entire picture in the book was necessary, hence the court did not find the book under "fair use".
Universal City Studios vs City Corp. (1984), in which the Supreme Court decided that videotaping the TV broadcast was fair use. This is one of the very few instances of copying a complete work of another's product was acceptable because the court believes that for most cases, the viewers were simply recording the broadcast to watch later ("time-shifting") rather than collecting them for video library ("library building"). Thus the delayed viewership did not deprive the company of the revenue. For Roy Export Co. Estab. of Vaduz v. Columbia Broadcasting Sys., Inc. (1982), in which a television show copied around 15 seconds of a Charlie

Chaplin movie for news reporting the death of the actor, their use was not considered fair use for the court believed that those specific segment of the clip was a crucial part of the entire film.

In this case, if Open AI wants to argue its use of NYT under the "fair use", it is crucial for the company to prove that its use serves different purposes and justify the amount of the NYT's published work they've used. Also, the OpenAI company needs to prove that their method of training their AI engines by “feeding” them hundreds of articles written by The New York Times does not deprive the publishing company of their revenues. However, it also seems that the opinion and the perspective of the court will come to play a big role in the court case itself. Depending on how the court sees the use of NYT’s work applied to Open AI, the decisions could sway significantly.

Lawsuits against generative AIs are not unheard of. For the past few years, many companies filed legal proceedings against these new companies regarding their intellectual properties and how these tools are using them, for instance, Stability AI vs Getty Images (2023) alleged that Stability AI used millions of Getty's images to generate new images from the commanded prompts using the AI. However, what makes Open AI vs NYT even more significant is that it advocates a consensus on AI's use in copyrighted materials, and to what extent intellectual materials on the internet can be scraped to be used to "feed" these Artificial Intelligence tools. Furthermore, the fact that part of the NYT's complaint is in the actual outputs of the Open AI. The New York Times alleges that the use of language, sentence structures, and information is nearly parallel to the ones published by the publishing company. Looking at the filed lawsuits from The New York Times alone, it is expected that this will set the new standard of how copyright and intellectual property law will be imposed in these AI tools.

The NYT vs Open AI is considered the copyright battle of 2024 because depending on the court’s decision, the future of AI and probably most journalism and published works could change significantly. To this day, there aren’t specific, or effective copyright laws that restrict information being fed to the generative AIs nor about the products created by this algorithm. Therefore, this case could set the foundation for future inquiries on how these AIs can be

programmed while respecting the individual's creations, later determining how AI models are built and used.

As new technology emerges, new policies and social rules that match the rapid change are necessary. Artificial Intelligence is a new concept that people are still grappling with. While it made homework and summarizing long essays a lot easier, there are still legal and ethical aspects of these tools that need to be considered. Just as there is still an ongoing debate on how these machines take in this data/information, regardless of how comfortably we utilize this tool, there is still so much to learn about AI. NYT vs OpenAI is a case in which new technology opens a new door for debate. It is a process, a continuous trial, and error to shape how we can incorporate Artificial Intelligence into the 21st century.

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