ISSUE BRIEF

WHO GOVERNS THE ALGORITHM? UNPACKING LEGISLATIVE EFFORTS FOR ALGORITHMIC ACCOUNTABILITY IN THE UNITED STATES

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OVERVIEW

Over the past two years, Principal Investigator Erykah Benson has conducted extensive research and interviews to investigate the various challenges Black creatives face on digital creative platforms, such as Etsy, with the goal of understanding how these experiences shape their identities as entrepreneurs. All participants were required to: a) identify as Black b) be over 18 years of age and c) be currently selling their original products online. Volunteer participants engaged in 1-2 hour interviews during which they were asked a series of questions regarding their work, experiences with various platforms, and general perceptions of the digital marketplace. Collected data was de-identified and analyzed using Dedoose, a qualitative coding software, to observe shared patterns and experiences.

This was a paid interview study sponsored by the University of Michigan College of Literature, Arts, and the Sciences department. Benson's research is supported by the National Science Foundation Graduate Research Fellowship, the University of Michigan Population Studies Center, and the University of Michigan National Center for Institutional Diversity.

Interviewees received compensation for their participation. This study is IRB approved (ID: HUM00232281).

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LEGAL AND TECHNOLOGICAL FOUNDATIONS

Generally, the platform economy refers to a widely accessible digital marketplace where economic activity is directed by individual users (Boutueil, 2019). Examples of digital platforms include social media channels, online marketplaces, and crowdsourcing websites (Gibson, 2024). Following the 2020 Covid-19 pandemic, a surge in digitalisation contributed to the growth and widespread use of the digital platform economy (Sasikumar, 2021). With this growth came new work relationships and employment types, specifically those that rely solely just on these platforms for product promotion and sales.

As platforms evolved, so did the technologies that govern them — most notably, algorithms. In 2019, University of Pennsylvania scholars Cary Coglianese and David Lehr released an article with the Penn Carey Law School analyzing the need for continued algorithmic transparency and governance as algorithm use became more widespread. Their work centered around the question, "Can algorithmic governance be squared with legal principles of governmental transparency?"

To fully understand this question, it is important to understand the United States' social and legal history of discrimination against communities of color and other marginalized groups. Dating back to the Constitution, the Founders established concerns about eminent domain and the Takings Clause (5th Amendment) because of the feared abuse of its despotic power (Berliner, 2006). Following the landmark

Kelo vs. City of New London case, where the Supreme Court promoted the rationality that commercial development needs trumped the personal ones of current owners (Berliner, 2006). While *Kelo* relates to the housing industry, it reflects a broader pattern of manipulation of the law to serve private interests at the expense of marginalized communities, a pattern directly translating to the technological and algorithmic world today. As the 14th Amendment affirms, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without the due process of law."

This constitutional foundation informs how algorithmic decision-making and regulation must be approached. With algorithms increasingly shaping visibility and opportunities on online platforms, there is a growing need to address historical injustices through practices such as algorithmic reparations. Jenny L. Davis argues that technologies reflect existing social order, developing a call to action to address the historical and legal foundations of modern discrimination tactics in technology and the digitized world (Davis, Williams & Yang, 2021). According to Davis, algorithms today often perpetuate and reinforce inequalities, whether this be by race, class, or other individualized classifications.

By definition, learning algorithms are a class of technologies which combine machine learning, computational methods, and various statistical techniques to analyze and sort large sets of data (Tkáč & Verner, 2015). Learning algorithms are self-sustaining, pre-programmed processes that possess the complete control of content visibility and promotion (Chen, 2023). These algorithms can be broken down into 4 key aspects; black-boxed performance, comprehensive digitization, anticipatory quantification, and hidden politics (Faraj, Pachidi & Sayegh, 2018). Today, these tools are employed across a variety of industries including cybersecurity, healthcare, and e-commerce (Sarker, 2021). For policymakers, the growing use of learning algorithms raises concerns about the extent to which algorithms are authorized and enabled to make individual choices that produce tangible consequences for users.

INTERVIEW OBSERVATIONS

Below are various excerpts from interviews conducted by PI Erykah Benson in the project "Black Creatives' Experiences in the Platform Economy." All interview participants selected or were appointed pseudonyms. Quotes were selected based on their reference of frustrations, confusion, and disappointments with algorithms as they pursue creative work in a primarily digital marketspace. *Disclaimer*: some quotes have been modified for clarity.

Sienna, a 31-year-old from Las Vegas who sells her streetwear clothing brand on [Square] described the *continuously developing online landscape, especially in recent years.*

"A few years ago, Facebook and Instagram were different, they didn't have the algorithm, if I'm not mistaken, or the algorithm was different. I would get more likes, I would get more people seeing my post on my personal page. I used to make reels, and I would get like 800 likes or thousands of views, like a year ago, and something changed and people just stopped liking it, or I wasn't getting that window of visibility. On my business page, I average about eight likes on each post… I just felt like my post visibility is being blocked, or they want me to promote or buy ads and stuff like that. And even when I do buy ads if they don't perform well."

"It's disheartening, because they have control over a lot … It's not organic, how it used to be. Or as organic as it was before. I just felt like they have the opportunity to make things go viral, that they choose to make viral and not what probably potentially should, you know? Yeah – it's hard."
Elle G., a 25-year-old crochet artist from New York who sells their items on [Depop], described the additional toll the algorithms and visibility frustrations bring for them as they try to promote their content online.

"The way platforms are set up and how their algorithms are or whatever. I was just getting very discouraged. Because it's obvious that, you know, race and like that kind of stuff, it doesn't matter when it should matter. Like when the diversity stuff should be happening, y'all don't really care. But then when it shouldn't matter, aka [on] TikTok and we're trying to sell stuff — now you want to be playing the race card."

"I realized that, being an entrepreneur, although you can escape some of the stuff like your co-workers being racist or microaggressions, there are still systemic things that are set up against you even as an entrepreneur that other people do not have to struggle with."

Elle G. compares their experience with their crochet business to the same industry, but for white women, and draws attention to biases present for Black crocheters.

"When you think of white women who are running their crochet business, they don't have to deal with the racism that comes. Even in the fiber arts community, there's a lot of racism and bias within that with people's work, like when Black women post their finished products versus when White women post their finished product."

"Just in the way that social media, like the algorithms – will they push it or not? It can literally be the exact same sort of content and looks basically the same, but it's like you got this white girl wearing this top versus me wearing this top. And it's like this is gonna have 200,000 million views and then this one is gonna have 20 views, you know. We use the same song, we use the same hashtags, the same whatever."

"[Self promotion] dries out the process, it cuts into your working time which cuts into your profits. The social media and the platforms and stuff intersecting with the business of it — it's a slippery slope. I just noticed you know, [with] my psych and sociology background, there are a million ways that this is about to turn. Like if we don't address this stuff now, there's a million ways that this is just going to create further division."

Mercurian Princess, a 24-year-old from Washington D.C. who sells her fashion items on [Etsy](), described her frustrations working with Etsy and the lack of understanding associated with Etsy's algorithms and visibility.

"I don't know how Etsy could kind of gauge demand … It's making a lot of money and bringing in money for themselves and bringing in a lot of traction for Etsy. One of the things about Etsy is that it's like your clients, or the sellers, are bringing in a whole new audience for Etsy. For me, I feel like most of my products are not sold through Etsy's algorithm, but through my own advertisements — my own network. So I'm bringing them money. For the people who are regular Etsy sellers, absolutely they should get benefits. I'm super anti-capitalist and anti-imperialist and anti-establishment. I'm all for that kind of stuff. And I think workers deserve rights, workers deserve to be paid."

Mel, a 22-year-old commissioned artist from Michigan who primarily sells their items on [Instagram](), also describes their previous experiences with Etsy.

"When you are a creative on Etsy, you are able to pay extra for them to do advertising for you. So, I necessarily, I couldn't do that — I couldn't afford to have them, you know, supplement advertisements and send it to people. When you go on an Etsy page, and you just look up custom charcoal, pet portraits — you'll see so many people. And they'll have like a little ribbon that says, 'verified'; these are most likely people that have paid Etsy to do advertising for them or paid to have them put higher up on this page, so I was never going to see a customer based off of people googling like these keywords. I was never going to see people like that, even though my prices are significantly lower."

Mel describes their personal experiences struggles trying to gain more exposure and traction as an artist upon starting an Etsy page.

"I tried opening an Etsy, but it just wasn't getting foot traffic whatsoever. Like, I shared it on my socials, and people were looking at it. But the people that I have on my socials, they're not necessarily in the market or they're [not] necessarily able to afford a custom hand piece art. So people were nice enough to look at my page, but they couldn't necessarily partake in this exchange of goods and services. So eventually, I just went on like a word of mouth based thing. I would be like, 'Hey, I do this,' and some people are like, 'Oh, oh, that's cool,' and they started sharing it. And they'd give me their contact. I'd send people to my Instagram, or I would just show them pictures on my phone. And we would share contacts through that way. And honestly, that works so much better for my platform."

THE ALGORITHMIC JUSTICE AND ONLINE TRANSPARENCY ACT

"The method by which [this] type of algorithmic process prioritizes, assigns weight to, or ranks different categories of personal information to withhold, amplify, recommend, or promote content (including a group) to a user." H.R. 4624, Section 4 (Transparency)

On May 27, 2021, in an effort to address and amend issues of platform transparency, the [Algorithmic Justice and Online Transparency Act (S.1896)](#) was introduced to the [117th Congress](#). The bill aimed to establish, "requirements for certain commercial online platforms (e.g., social media sites) that withhold or promote content through algorithms and related computational processes that use personal information" (S.1896). Specifically, the legislative piece would have required platforms to disclose information about their collection and use of personal information, content moderation practices, records of how employed algorithms used personal information, and whether or not algorithms produced different outcomes based on race, housing, employment, financial services, or other demographic factors (S.1896). The Act's ultimate goal was to promote and maintain equitable advertising for all users of online platforms, protecting users and creators from civil rights violations as a result of discriminatory algorithms. If passed, the bill would also provide funding for an interagency task force to conduct studies on the

discriminatory use of personal information by various platforms through their customizable algorithms (S.1896).

Section 6 of the Algorithmic Justice and Online Transparency Act explicitly calls for equal opportunity for all online platform users. It states, "it shall be unlawful for online platforms to employ any proprietary online platform design features, including an algorithmic process, or otherwise process the personal information of an individual for the purpose of advertising, marketing, soliciting, offer, selling, leasing, licensing, renting, or otherwise commercially contracting for housing, employment, credit, insurance, healthcare, or education opportunities in a manner that discriminates against or otherwise makes the opportunity unavailable on the basis of an individual's or class of individuals' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, biometric information, or disability status" (S.1896). Thus, in addition to racial discrimination, the Act would generally criminalize all forms of algorithmic discrimination against digital platform site users.

After failing, the bill was reintroduced as S.2325 to the 118th Congress in 2023. Massachusetts Democratic Senator Edward Markey described the importance of this act as Big Tech continued to grow. In a July 2023 press release, Markey stated, "Among other things, the Act would prevent algorithms that exclude certain people from seeing online advertising – racial minorities for housing ads, for example, or certain gender identities from job ads" (Markey, 2023). Markey also outlined the specific ways the Act would grow user trust and equity in online spaces if it passed: "The legislation would ban harmful algorithms, bolster transparency by holding websites accountable for their content amplification and moderation practices, and commission a cross-government investigation into discriminatory algorithmic processes throughout the economy" (Markey, 2023). In the same press release, co-sponsor California Democratic Representative Doris Matsui echoed the broader importance of this Act, stating, "Harmful content continues to proliferate online, and online platforms are making conscious efforts to spread it through their platforms" (Matsui, 2023).

Despite its reintroduction to the House, the Act referred to the House Committee on Energy and Commerce, then the Subcommittee on Communications and Technology, and subsequently died. Had it been approved, the Algorithmic Justice and Online Transparency Act would have required all online platforms in the United States to adhere to strict transparency and anti-discrimination standards, including publicly disclosing how personal information is used in the algorithmic processes.

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OTHER REGULATORY APPROACHES TO ALGORITHMIC ACCOUNTABILITY

After the Algorithmic Justice and Online Transparency Act failed to pass twice, the barriers between platform transparency and congressional approval became increasingly apparent and concerning. The American Privacy Rights Act (H.R. 8818) was introduced to the 118th Congress on June 25, 2024. The proposed bill aimed, "to provide Americans with foundational data privacy rights, create strong oversight mechanisms, and establish meaningful enforcement, and for other purposes" (H.R. 8818). Spearheaded by Republican Representative Cathy McMorris Rodgers and New Jersey Democratic Representative Frank Pallone, the act aimed to establish a national standard for data privacy rules. Notably, revisions of the bill included specifically removing a provision previously called "Civil Rights and Algorithms," a section explicitly outlining protections for Americans against race biased-decision making from algorithms (Kelley, 2024).

Following the Algorithmic Justice and Online Transparency Act, Democratic New York Representative Yvette Clark introduced the Algorithmic Accountability Act (S.2822) of 2023 to the 118th Congress. The Act specifically scrutinizes the interaction between systems using artificial intelligence (AI) powered systems as they are proving to be more and more inherently biased. According to the brief, "numerous press reports and studies have documented examples of flawed automated systems, which could have been mitigated if companies had tested their products for faulty data, unfair results, safety risks, performance gaps and other problems" (S.2822). The bill reveals another critical aspect to consider: the involvement of AI and automated systems with algorithmic processes dictating visibility and promotions on sites. Conflicts in recruitment practices have revealed algorithmic bias in hiring, where programs are found using raw data sets and algorithm designs to create frameworks that are inherently biased according to gender, race, color, and specific personality traits (Chen, 2023). These hiring and career control algorithms continue to raise concerns about the institutionalized exclusion of entrepreneurs of color, whose challenges are continuously left largely unaddressed.

In contrast, the European Union's Digital Services Act introduced in 2022 sets an admirable example for the United States in its comprehensive approach to regulation. According to the European Commission, the DSA, "regulates online intermediaries and platforms such as marketplaces, social networks, content-sharing platforms, app stores, and online travel and accommodation platforms" (European Commission, 2022). Among the Commission's key goals are protecting consumers, setting clear rules about site regulation, and to rebalance the roles of users, platforms, and establish greater access to European Union wide markets through these platforms (European Commission, 2022). Article 54 of the DSA grants users the right to seek compensation from service providers if they believe their rights under the DSA were violated.

A general concern with such legislation enforcement – given the vast scale of the internet, it is difficult for governments and regulators to uphold standards and monitor individual privacy across the country. While the Algorithmic Justice and Online Transparency Act has yet to be approved, state-level initiatives are beginning to make headway on this issue. In May 2024, Democratic Minnesota Governor Tim Walz signed the Minnesota Consumer Data Privacy Act (HF 4757) ("MNCDPA"). This Act applies broader data privacy

laws to smaller businesses, specifically the control and processing of Minnesota consumers personal data and endowing them with a unique right to question the businesses' profiling practices (HF 4757). With this, the Act introduces a mandated response period of 45 days and free information supply up to twice a year for consumers as valuable accountability measures (HF 4757). While only at the state level, the MNCDPA sets a valuable precedent for data privacy protection and algorithmic accountability, giving consumers greater power to understand and influence how their personal information is being used.

Another key part of the MNCDPA is in Article 5 ("Consumer Data Policy") which requires businesses to acquire explicit permission from consumers before selling sensitive information. The Act defines "sensitive data" as, "personal data revealing racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sexual orientation, or citizenship or immigration status" (HF 4757). Section 6 of Article 5 specifically addresses targeted advertising, giving consumers the right to opt out of the processing of their personal data for such purposes (Choi & Lim, 2020).

A broader concern at the forefront of many U.S. debates around platform transparency and regulation is the protection of consumers' data privacy and content moderation. These tensions were amplified with the recent scrutiny of TikTok and its parent company ByteDance. In January 2025, the U.S. Supreme Court rejected TikTok's appeal of a law that banned the app in the United states, citing concerns that the Chinese government could manipulate content and gain access to sensitive user data. Heightening attention to foreign data threats, this ruling contrasts with the repeated failure of the Algorithmic Justice and Online Transparency Act, revealing inconsistencies in legislative priorities which seem to heavily scrutinize foreign platforms but overlook domestic ones.
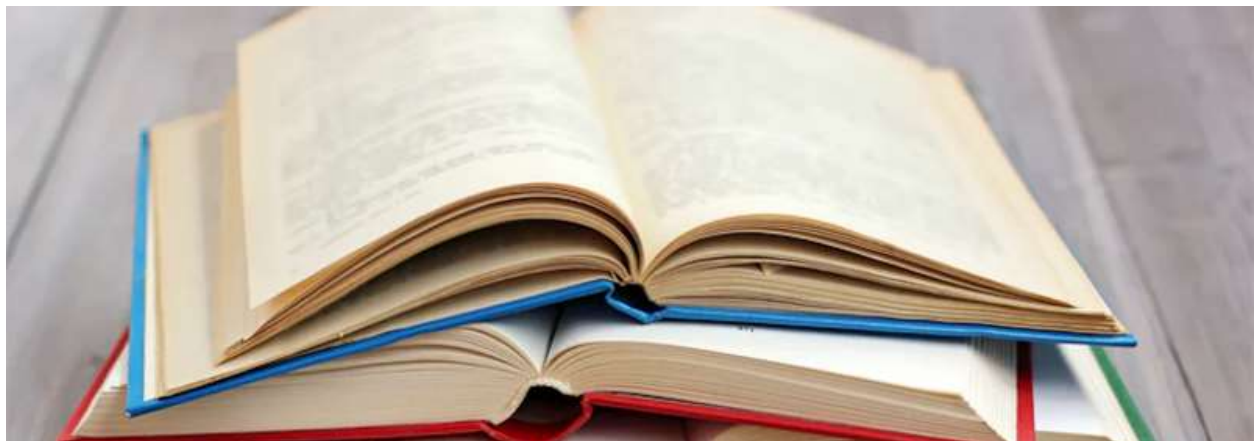
CONCLUSION

The shared frustrations of interviewed artists and creators are deeply valid; legal calls for reform and transparency would not be repeatedly proposed and supported unless there were legitimate concerns about discrimination in the digital platform economy. The firsthand experiences of Mel, Elle G., Sienna, and Mercurian Princess underscore the urgent need for transparency and legal protections against algorithmic discrimination. Ultimately, the barrier between digital platform users and algorithmic governance is upheld by systemic and transgenerational racism. While transparency is an ethical pillar the government and many companies claim to uphold, the failure to implement official and meaningful change suggest these commitments are performative rather than action-oriented and supportive.

Paired with Erykah Benson's interview observations, it becomes clear the current U.S. legislature fails to protect historically marginalized communities. It is only through xenophobic fears that the concern of data privacy enters the forefront of the law, as apparent by the urgent TikTok ban. When the law continues to discriminate against Black people, while not always explicitly, there is a continued violation of the Civil Rights Act by enabling race-based discrimination. As technology continues to develop internationally, it is essential for lawmakers and politicians to recognize these patterns in treatment of different creators across various platforms such as Etsy, Instagram, and Square. If platforms remain opaque and

discriminatory, entire populations become isolated from the digital marketplace and modern segregation will ensue throughout the digital platform economy.

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FURTHER READING SUGGESTIONS

If you are interested in learning more about current algorithms in addition to PI Erykah Benson's ongoing research, the following suggestions contain algorithm composition research, legislative action, or restorative actions in progress to amend existing injustices:

- [Mathematical algorithm design for deep learning under societal and judicial constraints: The algorithmic transparency requirement](#) by Holger Boche, Adalbert Fono, and Gitta Kutyinok (2025). This paper looks at the European Union's efforts to mitigate AI risks in accordance with regulatory guidelines presented in the European AI Act. From a mathematical and programming perspective, they focus on the widespread development and promotion of trustworthy algorithms.

- [What do we know about algorithmic literacy? The status quo and a research agenda for a growing field](#) by Anne Oeldorf-Hirsch and German Neubaum (2023). As algorithm use continues to grow, it is important to grow awareness about how they work and dismantle harmful, misinformed theories. The study notes the difficulty in developing a comprehensive understanding of algorithms due to their opaque nature today but proposes ideas and steps for future algorithmic literacy research.
- [Reparative AI](#) by Germaine Halegoua (2024). As aforementioned, algorithmic reparation is a new approach being used to address inequalities in AI algorithms already deeply embedded into online platforms. Dr. Halegoua's team is working to define reparative AI and study its contributions to achieving algorithmic justice.
- [Algorithmic Opacity, Private Accountability, and Corporate Social Disclosure in the Age of Artificial Intelligence](#) by Sylvia Lu (2020). Lu's article analyzes the legal and democratic need of transparency for currently opaque machine learning algorithms. She discusses regulatory gaps in United States disclosure laws and calls for a new framework to reveal crucial information about algorithms and limit their harmful social impact.

FOR MORE INFORMATION

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