SHARING THE ALGORITHM: THE TAX SOLUTION TO GENERATIVE AI

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Tax policy offers a core tool for mitigating the sweeping public policy challenges of generative artificial intelligence ("AI"). Specifically, we propose a tax that would allow the public to own a share of AI itself, not just through future income tax liabilities or new excise taxes, but a proposed ownership structure that requires a one-time tax payment by generative AI firms in the form of equity.

Fractional public ownership of AI would directly address four of the key harms of AI that have been well-documented in a deep and still expanding literature. First, many types of AI were built through the unauthorized use of millions of copyrighted works, allegedly amounting to copyright infringement on an unprecedented scale. Sharing ownership of AI would compensate injured creators alongside the broader public whose data was nonconsensually harvested. Second, AI is expected to pose massive labor market disruptions, but shared ownership would allow displaced workers to benefit from the profits of the technology substituting for their labor. Third, greater public voice in the corporate governance of AI could lead to greater scrutiny and bolder interventions in the ways AI has been shown to reproduce and compound many existing forms of discrimination. Finally, sharing the ownership of AI through government's principal tool for redistribution, taxation, directly addresses the rapid wealth concentration and monopolization already underway with AI developers. This proposal can also work in tandem with targeted regulation of AI and private law remedies addressing AI's many harms.

Ultimately, the original contribution of this Article is to propose a unique in-kind tax payment structure that would require firms with ownership of AI to remit equity shares to the public. The Article describes multiple structures for this arrangement, drawing from existing models of fractional ownership used in private investment to serve as a paradigm for a partial public interest in AI. In total, this Article argues that many of the greatest concerns related to AI can be solved through sharing AI. And tax policy is the best tool to achieve this goal.

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INTRODUCTION

How should the public participate in the expanding use of artificial intelligence ("AI") to create text, images, music, code, or other traditionally human-made media?[1] In one vision of our future, these tools are entirely privately-owned, with the public limited to the role of a consumer and eventual income tax collector.[2] In an enhanced role, the public may also serve as a regulator.[3] But what if the public were also a partial owner of generative AI? This Article considers the potential of this third possibility: a tax policy design wherein all of generative AI is co-owned by the public whose creations enabled its capabilities and whose society it is reshaping. This ownership interest would be conveyed not by shifting more public funds into private hands, but through tax assessments on AI firms that would be paid with equity.[4]

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[1] We use the term "Generative AI" to mean "an unsupervised or partially supervised machine learning framework, which generates [conventionally] manmade relics." David Baidoo-Anu & Leticia Owusu Ansah, *Education in the Era of Generative Artificial Intelligence (AI): Understanding the Potential Benefits of ChatGPT in Promoting Teaching and Learning*, 7 J. AI 52, 53 (2023). There are many competing definitions of AI more generally. *See, e.g.*, Alan Turing, *Computing Machinery and Intelligence*, 59 MIND 433, 433-460 (1950); Ryan Calo, *Artificial Intelligence Policy: A Primer and Roadmap*, 51 U.C. DAVIS L. REV. 399, 404 (2017); Ryan Abbott, *Everything Is Obvious*, 66 UCLA L. REV. 2, 4 (2019); Sonia K. Katyal, *Private Accountability in the Age of Artificial Intelligence*, 66 UCLA L. REV. 54, 62 (2019); Karl Manheim & Lyric Kaplan, *Artificial Intelligence: Risks to Privacy and Democracy*, 21 YALE J.L. & TECH. 106, 113-14 (2019); Ed Felten et al., *How will Language Modelers like ChatGPT Affect Occupations and Industries?* (2023), https://ssrn.com/abstract=4375268 [https://perma.cc/6CE3-M2TB]; Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. STATE U.L. REV. 1305, 1307 (2019) (using technology to automate tasks that "normally require human intelligence"). The above definitions have a wide variety and there is no consensus about the definition of AI amongst legal scholars. *See* Matthew U. Scherer, *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies*, 29 HARV. J.L. & TECH. 353, 359 (2016) ("[T]here does not yet appear to be any widely accepted definition of artificial intelligence even among experts in the field. . . ."). *See also infra* Section III.B.1 ("Defining the taxable base").

[2] We use the term "eventual" because technology firms consistently produce income tax losses in early years of development, only seeing large year over year profits after they have achieved market dominance. *See* Joseph Bankman, *The Structure of Silicon Valley Start-Ups*, 41 UCLA L. REV. 1737, 1738 (1994). This was the case with Uber and Amazon. *See* Trefis Team, *How Uber's Losses Compare with Amazon's Losses in Its Early Years*, NASDAQ (Sept. 10, 2019), https://www.nasdaq.com/articles/how-ubers-losses-compare-with-amazons-losses-in-its-early-years-2019-09-10 [https://perma.cc/6QBB-HJVV].

[3] In one of the boldest recent efforts to regulate AI, the EU has adopted the "EU AI Act: First Regulation on Artificial Intelligence." *EU AI Act: First Regulation on Artificial Intelligence*, EUR. PARLIAMENT (June 8, 2023), https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence [https://perma.cc/LAH7-S393]. As we note throughout the Article, our proposal can be stacked on top of regulation and is not a complete substitute. The proposal can also apply alongside a corporate income tax and is not a substitute for conventional revenue measures.

[4] President Trump has proposed committing public funds to joint ventures where ownership of the AI would not be conveyed but only invested in data centers that run AI software. *Trump Highlights Partnership Investing $500 Billion in AI,* AP NEWS (Jan. 22, 2025), https://apnews.com/article/trump-ai-openai-oracle-softbank-son-altman-ellison-be261f8a8ee07a0623d4170397348c41 [https://perma.cc/5HY7-CUW4]. The risk of corruption in

There is already a deep and growing literature on the risks associated with AI. AI is expected to radically disrupt labor markets, collapsing public revenue for safety net spending at a time when demand for public goods will be spiking.[5] AI has also been documented to compound human biases while signaling impartiality.[6] AI is expected to produce market monopolies with extreme concentrations of wealth.[7] By some accounts, the virtuosic rise of AI poses an existential threat.[8]

The rapid pace of AI development has been trailed by weak regulatory responses in the U.S. Most agree that automatic and direct licensing proposals to compensate creators whose work has been stolen will provide only nominal income.[9] Meanwhile, courts continue to struggle to competently remedy many of AI's privacy and copyright harms.[10] The "self-regulation" efforts of AI companies to prevent "misuse" of AI sidestep the fact that many of the core purposes and functions of AI are themselves alarming. For example, labor market disruption and market dominance are specific goals of the companies that develop and own AI rather than a form of "misuse."[11] Many of the initiatives around "responsible AI" seem driven by corporate branding intended to forestall more robust policy responses.[12]

We offer a different approach. Tax policy can help solve the problem of AI, but this will require a shift in how these new taxes will be paid. Rather than a tax on AI that requires a cash payment, the best tax tool to address the many potential crises created by AI is to require taxes be paid in equity. This is wholly distinct

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such a setting is far greater, since there are concentrated investments with particular companies rather than broad, but low-level, holdings evenly shared across an entire sector. Owners of servers also have different levers of influence than owners of algorithms.

[5] *See* Joaquín Álvarez Martínez, *Robotics and Taxation: Present Problems and Proposals for the Future*, 2 TECH. TAX J. 51 (2021); RITA DE LA FERIA & MARIA AMPARO GRAU RUIZ, INTERACTIVE ROBOTICS: LEGAL, ETHICAL, SOCIAL AND ECONOMIC ASPECTS 93-99 (2022); *see also infra* Section I.B.

[6] *See, e.g.*, Chaz Arnett, *Dystopian Dreams, Utopian Nightmares: AI and the Permanence of Racism*, 112 GEO. L. J. 1299 (2024); Khiara M. Bridges, *Race in the Machine: Racial Disparities in Health and Medical AI*, 110 VA. L. REV. 243 (2024); *see also infra* Section I.C.

[7] *See* Tejas N. Narechenia, *Machine Learning as Natural Monopoly*, 107 IOWA L. REV. 1543, 1545 (2022) ("In short, machine-learning-based applications are beginning to pervade the economy, transforming operations across sectors, much as the railways, electric grids, and communications platforms once did.").

[8] *See 2022 Expert Survey on Progress in AI*, AI IMPACTS (Aug. 3, 2022), https://aiimpacts.org/2022-expert-survey-on-progress-in-ai/#Extinction_from_AI [https://perma.cc/6T2D-P5N3] (738 AI researchers were asked "what probability do you put on human inability to control future advanced AI systems causing human extinction or similarly permanent and severe disempowerment of the human species?" The median answer across experts was that advanced AI systems will result in a 10 percent chance of human extinction).

[9] For an elaboration on these approaches, *see infra* Section II.A.

[10] *See* Alicia Solow-Niederman, *Do Cases Generate Bad AI Law?*, 25 COLUM. SCI. & TECH. L. REV. 261 (2024).

[11] By contrast, racial discrimination by algorithms is typically not the goal of a model that nevertheless produces biased results. *See, e.g.*, David Arnold, Will Dobbie, & Peter Hull, *Measuring Racial Discrimination in Algorithms*, 111 AEA PAP. PROC. 49 (2021).

[12] *See, e.g.*, *Responsible AI Transparency Report: How We Build, Support Our Customers, and Grow*, MICROSOFT (May 2024), https://www.microsoft.com/en-us/corporate-responsibility/responsible-ai-transparency-report/ [https://perma.cc/E9JU-FZRM].

from the conventional tax proposals to address AI, which draw from income tax, excise tax, and head tax models.[13] A tax that requires the owners of AI to remit an equity stake in the AI would introduce a new governance tool for managing AI while also addressing predicted revenue shortfalls. Public voice in the boardroom could also help make combating bias a greater priority within AI firms.[14] This shared ownership counteracts some of the concerns of outsized political influence of corporate behemoths created through AI monopolies.

Requiring tax remittance in the form of equity offers a substantial layer of corporate governance tools for managing AI risks.[15] It is also wholly distinct from the framework of regulation and distinct from the framework of claiming a profit interest via tax alone. Unlike regulation, owners have different arenas of influence, direct access to information, and can be more preemptive rather than reactionary.[16] Unlike income taxes, our tax on equity can still reach tax-exempt organizations, can more easily reach global activities, and does not have a timing delay wherein new companies with expected year-over-year losses only pay income taxes once profitable. And just like the movement for Environmental, Social, and Governance reforms in investing, our proposal is not meant as a complete substitute for regulation and income taxation, but simply an additional lever for steering private enterprise in ways that benefit the broader public good.

Equity remittances also satisfy the traditional tax policy criteria of administrability, equity, and efficiency. Issuing equity is a routine procedure for large firms and thus the administrative compliance costs of the new tax would be low. In terms of efficiency, the principal question is whether a tax allowing fractional ownership of AI by the public will depress private investment in AI. Any conclusion about future impact on investment is of course speculative, but the drive in stock prices due to the lucrative results of AI is likely robust enough to withstand

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[13] *See infra* Section III.B (describing the many tax proposals recommended in the AI literature to date). In-kind tax proposals, meanwhile, have been considered in the context of wealth taxes. *See* Emmanuel Saez & Gabriel Zucman, *A Wealth Tax on Corporations' Stock*, 37 ECON POL'Y 213, 215-18 (2022); Brian D. Galle, David Gamage, & Darien Shanske, *Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE L. J. 1257 (2023).

[14] For example, under the theory of algorithmic decisionmakers who must decide whether to reject old processes and to adopt new ones, the public would now have an expanded voice. *See* Thomas B. Nachbar, *Algorithmic Fairness, Algorithmic Discrimination*, 48 FLA. ST. U.L. REV. 509, 509 (2021). Corporate boards play a particularly important role in times of uncertainty or rapid change. *See, e.g.*, Omari Scott Simmons, *Political Risk Management*, 64 WM. & MARY L. REV. 707 (2023) (discussing the role of boards during political controversy).

[15] This proposal thus expands public voice in AI governance, consistent with calls from leading figures in AI law. *See, e.g.*, Hannah Bloch-Wehba, *Algorithmic Governance from the Bottom Up*, 48 BYU L. REV. 69, 135 (2022) ("Demands for bottom-up control ought to occupy a central position in contemporary debates about algorithmic governance. Indeed, it is long past time to consider how law and policy might reallocate the power to govern algorithms to those who are most directly affected.").

[16] *See* Robert P. Bartlett III & Ryan Bubb, *Corporate Social Responsibility Through Shareholder Governance*, 97 S. CAL. L. REV. 417, 470-485 (2024) (describing devolution of corporate control to managers to achieve better "enlightened shareholder value"). There are many levers by which shareholders get involved in corporate governance, but one example is when shareholders vote to require a firm to conduct a "racial equity audit." *See* Alvin Velazquez, *Making Racial Equity Audits Effective,* 99 CHI. KENT L. REV. 101, 101-29 (2024).

other taxes, offering an encouraging baseline. Some also argue that AI has already been heavily subsidized through tax policy, so increased taxation of AI is actually a move towards tax neutrality.[17] From an equity standpoint, those with the greatest ability to pay, shareholders in successful technology companies, would bear the primary incidence of the tax.

Our approach also connects with the deep concerns of misappropriation that lie at the heart of AI development.[18] A massive and largely unauthorized extraction of value from data and intellectual property is underway, not only from private owners of copyrighted works, but also from the broader commons of our shared humanity—our conversations, our faces, our voices. We hold equal claims on the features of personhood harvested by AI developers, and we should collectively share in the value of the resulting creations. Our proposal thus moves from private remedies under a tort model to a society-wide redress to a society-wide harm.

Moving from a tax paid in cash to a tax paid in other forms of property or services challenges many presumptions in contemporary tax policy design, but the practice has a long history. At the federal, state, and local level, tax debts are already paid in real and personal property.[19] Contributions of property to government entities also create deductions that are in effect tax remittances, but at a discount rate.[20] Some local governments also allow taxes paid in labor.[21] The private sector also regularly conducts business through exchanges of noncash property, including in structuring executive compensation packages and merger deals.[22]

Despite the successful track record of in-kind taxpaying specifically, and in-kind transactions generally, there are of course many challenges to our proposal. Given the dilution of ownership that current owners will face, we can expect litigation asserting that the tax is a taking, and thus unconstitutional.[23] If designated as eminent domain, then "fair-market value" payment would be required. Like any tax, there will also be strong incentives to avoid meaningful payment by owners of the AI. Partial public ownership in AI can also raise corruption concerns. As with other tax policies, there are also competition concerns for our economy vis-à-vis

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[17] Christina Dimitropoulou, *Scaling Back Tax Preferences on Artificial Intelligence-Driven Automation: Back to Neutral?*, 12 WORLD TAX J. 409 (2020).

[18] Indeed, the recent settlement with Clearview compensates the injured class with a 23% stake in the company. Mike Scarcella, *US Judge Approves 'Novel' Clearview AI Class Action Settlement*, REUTERS (Mar. 21, 2025), https://www.reuters.com/legal/litigation/us-judge-approves-novel-clearview-ai-class-action-settlement-2025-03-21/ [https://perma.cc/9JS9-3Y92].

[19] Jeremy Bearer-Friend, *Tax Without Cash*, 106 MINN. L. REV. 953, 959 (2021).

[20] *Id.* at 971-77.

[21] *See id.* at 966-67 (describing the Massachusetts "Property Tax Work-Off Program" enabling citizens, or a surrogate in their place if they are disabled, over the age of 60 to volunteer their services in exchange for a reduction in real property tax obligations).

[22] *Id.* at 957.

[23] A separate line of argument would be that this tax is a "direct tax" and thus needs to be "apportioned." While this type of challenge can be expected of any new federal tax that imposes costs on litigious billionaires, the scope of the apportionment requirement is far from certain. *See* Ari Glogower, *The Constitutional Limits to the Taxing Power*, 93 FORDHAM L. REV. 781, 786 ("[A]pportionment served as an intentionally ambiguous compromise with undetermined implications for the federal taxing power.").

other countries where AI may be developing. We do not attempt to address every possible critique in this introduction, but later portions of the Article do engage with these points, concluding that our core proposal is superior to the current tax and regulatory approach to AI.

It is also important to note that this proposal is not motivated by an assumption that AI is entirely undesirable. AI is an extraordinary advancement of technology that can improve many aspects of life. But the fact that AI has many great qualities doesn't mean we need to ignore its dangerous qualities. This Article is willing to recognize these dangers and offers a tool for remedying them. This is why our proposal is preferable to simply banning or even destroying AI.[24] And with AI development only accelerating, our proposal is even more urgent.[25]

The power of sharing the algorithm means that the best aspects of AI continue to develop while safeguarding against the biggest risks. Our central claim is that many of the challenges of AI can be solved through sharing AI. And tax policy is how societies use the law to share what they have.

This Article is organized as follows. In Part I, we query how seriously to take the problems associated with AI, focusing on four specific problems: (1) stolen AI training material; (2) mass unemployment; (3) algorithmic bias; and (4) radical market concentration. We conclude in this Part that the problems associated with AI are both legitimate and urgent. In Part II, we review prominent efforts to mitigate the problems of AI with and without using tax tools. These proposals may be helpful in combination with our recommended approach, but they fail to fully address the scale of the issue. In Part III we propose to share AI. This sharing would be achieved through a tax policy that required remittance of fractional ownership interests rather than cash. This intellectual move, from cash to equity, is a signature contribution of the paper. Part IV concludes by summarizing how the problems identified in Parts I and II are addressed by the solution proposed in Part III.

I. IS AI A PROBLEM IN NEED OF A SOLUTION?

There is a deep and expanding literature on the harms of generative AI. Most commentators expect these harms to compound as public reliance on private algorithms continues to grow. In this Part, we discuss four of the principal harms of AI. Section A describes the stolen material used to train AI. Section B describes the labor expected to be displaced by AI. Section C describes the well-documented biases compounded by AI. Section D describes the escalating concentration of

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[24] For example, the FTC has pursued "algorithmic disgorgement" wherein firms must destroy all algorithms derived from stolen or deceptively acquired data. *See, e.g.*, Cambridge Analytica, LLC, F.T.C. File No. 182 3107, Docket No. 9383, at 3-4 (Dec. 6, 2019) (final order). For a discussion of the increasing popularity of this approach, and its problems, *see* Christina Lee, *Beyond Algorithmic Disgorgement: Remedying Algorithmic Harms*, 16 U.C. IRVINE L. REV. (forthcoming 2026).

[25] The New York Times reports that, in 2025 alone, Amazon intends to invest $100 billion in AI capacity, Microsoft $80 billion, Alphabet $75 billion, and Meta up to $65 billion. Karen Weise, *Despite Investors' AI Concerns, Big Tech Goes All In*, N.Y. TIMES, Feb. 8, 2025, at B1.

wealth expected as a result of AI. Each of these harms is concerning on its own. Taken together, they present an urgent case for policy intervention.

A. The Problem of Stolen Material

Generative AI systems have acquired their capabilities by consuming (often via web scraping) vast troves of digitized human-made works: texts, images, music, videos.[26] The amount and quality of data used in training is as important as the amount of available compute power when it comes to scaling up the performance of each generation of AI models.[27]

Model developers know exactly what data their models were trained on, of course, but they have typically been guarded about disclosing details of the specific works in their training datasets.[28] The vast majority of content on the open web is currently protected by copyright.[29] While there has been some licensing activity for small amounts of high-quality data,[30] and companies like Google have created opt-out systems akin to robots.txt, pursuant to which webpage owners can provide notice that they do not want their content to be viewed for model training purposes,[31] it is an open secret that many of the best performing LLMs have been trained on as much of the "open" web as possible; i.e. on any data that is not paywalled.

We can be relatively confident that the bleeding-edge AI models can attribute their improvements importantly to the unauthorized use of copyrighted works in the training data, even though their developers have not publicly disclosed

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[26] Jared Kaplan et al., *Scaling Laws for Neural Language Models* (2020), http://arxiv.org/abs/2001.08361 [https://perma.cc/L8PS-J4M8] (discussing a correlation between the quantity of training data and quality of output); Jason Wei et al., *Emergent Abilities of Large Language Models* (2022), http://arxiv.org/abs/2206.07682 [https://perma.cc/NQ97-EFDJ].

[27] Micah Musser et al., *The Main Resource is the Human*, CTR. FOR SEC. & EMERGING TECH. (Apr. 2023), https://cset.georgetown.edu/publication/the-main-resource-is-the-human/ [https://perma.cc/2XYM-ZSB7].

[28] For this reason, California passed the "Generative Artificial Intelligence Training Data Transparency Act" (AB 2013), which comes into effect on January 1, 2026. Act of Sept. 28, 2024, ch. 817, 2024 Cal. Legis. Serv. 817 (West) (to be codified at Cal. Civ. Code §§ 3110-3113). As of October 2025, 52 copyright infringement lawsuits have been brought by content owners against model developers. Updates on the status of lawsuits in this wave of AI copyright litigation are maintained on sites such as Chat GPT is Eating the World. *Status of All 51 Copyright Lawsuits v. AI (Oct. 8, 2025): No More Decisions on Fair Use in 2025*, CHAT GPT IS EATING THE WORLD (Oct. 8, 2025), https://chatgptiseatingtheworld.com/2025/10/08/status-of-all-51-copyright-lawsuits-v-ai-oct-8-2025-no-more-decisions-on-fair-use-in-2025/ [https://perma.cc/J9EZ-BXY4].

[29] By contrast, public domain content, while significant, largely consists of content created prior to 1930 in digitized form, government publications, or works dedicated to the public domain. *See* Matthew Kopel, *Copyright Services: Copyright Term and the Public Domain*, CORNELL UNIV. LIBR., https://guides.library.cornell.edu/copyright/publicdomain [https://perma.cc/Q5MF-B74R].

[30] A list of licensing deals between publishers and model developers is maintained by Ithaka S+R, *Generative AI Licensing Agreement Tracker*, https://sr.ithaka.org/our-work/generative-ai-licensing-agreement-tracker [https://perma.cc/X45L-JRBX].

[31] Danielle Romain, *An Update on Web Publisher Controls*, GOOGLE: THE KEYWORD (Sept. 28, 2023) https://blog.google/technology/ai/an-update-on-web-publisher-controls [https://perma.cc/9K7G-9UG9].

the training data used.[32] The bases for this inference include, firstly, that even with respect to the creation of so-called open source models, very little of the training data used is copyright-free, and the use of this data is being litigated.[33] The OpenAI GPT-4 technical report explicitly states that GPT-4 was pre-trained on "publicly available data (such as internet data)" along with "some" licensed third-party data.[34] Second, AI models that disclose their training data, such as OpenAI's GPT-3, perform worse on benchmark tasks relative to models that do not disclose their training data, such as GPT-4, Google's Gemini, and Anthropic's Claude.[35] This is true even for models released by the same company, e.g., GPT-3 and GPT-4.[36] The number of model parameters, length of training, and the sheer quantity of training data are the key differences between the leaps in performance between these model generations.[37] Developers understand that if they restricted their models' training data to the public domain, as opposed to publicly available or publicly visible yet copyrighted data, model performance would be significantly worse.[38] AI models trained on datasets that exclude copyright-protected works do not hold the promise of AI's future.[39]

This is the technological backdrop for model developers' embrace of the view that it is not stealing to read and copy something online in order to learn how to make new creative works from it, even without authorization or compensation of the rights holders.[40] It is a permissive attitude towards using protected works that has outraged artists and workers in creative industries.[41] After all, as Brauneis

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[32] An empirical study of Norwegian LLMs found that model performance is improved by training on copyright-protected works versus exclusively works in the public domain. Javier de la Rosa et al., *The Impact of Copyrighted Material on Large Language Models: A Norwegian Perspective* § 6, ARXIV (Jan. 24, 2025), https://arxiv.org/abs/2412.09460 [https://perma.cc/F657-98R3].

[33] *See, e.g.*, DOE 1 v. GitHub, Inc., No. 22-CV-06823 (N.D. Cal. Nov. 3, 2022).

[34] OPENAI, GPT-4 TECHNICAL REPORT (Mar. 27, 2023), https://cdn.openai.com/papers/gpt-4.pdf [https://perma.cc/XAP6-HVPD].

[35] *See* NESTOR MASLEJ, ARTIFICIAL INTELLIGENCE INDEX REPORT 2025 (2025).

[36] *See id.*

[37] *See* Kaplan et al., *supra* note 26, at 7-10.

[38] *See* de la Rosa et al., *supra* note 32, § 6; *see also* OpenAI, *supra* note 34, at 4-9 (highlighting the improved capabilities of GPT-4 relative to previous models).

[39] *See* de la Rosa et al., *supra* note 32, § 6.

[40] *See, e.g.*, Complaint at 3-5, Kadrey v. Meta Platforms, Inc., No. 23-CV-03417 (N.D. Cal. July 7, 2023) (alleging that the training dataset for LLaMA, a set of LLMs developed by Meta, included materials written by the plaintiffs, obtained without their consent).

[41] *See, e.g.*, Min Chen, *The Year in A.I.: How the Tool Amused, Infuriated, and Confused in 2024*, ARTNET NEWS (2024), https://news.artnet.com/art-world/ai-developments-2024-2579809 [https://perma.cc/N3EJ-FURF]; Jocelyn Noveck and Matt O'Brien, *Visual Artists Fight Back Against Artificial Intelligence Companies for Repurposing Their Work*, PBS NEWS (2023), https://www.pbs.org/newshour/arts/visual-artists-fight-back-against-artificial-intelligence-companies-for-repurposing-their-work [https://perma.cc/RRA7-UW7N]; Kristian Hammond, *Musical Artists' Warning about AI Use*, https://casmi.northwestern.edu/news/articles/2024/statement-on-musical-artists-open-letter-about-ai.html [https://perma.cc/36X2-3AGR]; Wendy Lee, *Hollywood Writers Say AI is Ripping Off Their Work. They Want Studios to Sue*, L.A. TIMES, https://www.latimes.com/entertainment-arts/business/story/2025-02-12/hollywood-writers-say-ai-is-ripping-off-their-work-they-want-studios-to-sue [https://perma.cc/WZY4-PHTS].

notes, *human* creators are not exempt from liability for unauthorized copying "so long as they use those works for learning purposes and do not include actionable expression from those works in the new works that they create."[42] Most often, human authors pay, in one way or another, for the copyrighted works from which they acquire knowledge and skills.[43] So why shouldn't machines? The internet-scale unauthorized copying of copyright-protected books, websites, and other formats of creative works violates the property rights of copyright owners, even if the pirated copies are later used to train AI models in a manner that is determined to be a transformative fair use.[44] In *Bartz v. Anthropic PBC*, Anthropic's pirating of half a million books in this manner resulted in a record-setting copyright infringement settlement with authors and publishers for $1.5 billion.[45] This settlement will be paid out to over 380,000 potential rights holders, and only covers the unauthorized copying of their works by one AI company.[46] Considering the size of the settlement for about 500,000 books, and taking into account that there are over 1 billion websites and 10,000 created every hour,[47] aggregated settlements for hundreds of billions or even exceeding a trillion dollars are not inconceivable as damages for similar infringement claims which could be brought by website rights holders against AI companies. With tens of millions of potential claimants, if not more, the rights violations by AI companies' piracy are societal-scale. The huge class of potential claimants also gives rise to concerns about bankrupting the AI industry on the one hand, and rights holders' ability to bring legitimate claims on the other hand. Our proposal amounts to a complementary path for pursuing such societal-scale compensation.

B. The Problem of Labor Market Disruption

After learning from hundreds of millions of human-authored works, generative AI tools have learned to compose songs, produce text, write code, and create art with a level of proficiency previously acquired only by skilled humans.[48]

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[42] Robert Brauneis, *Copyright and the Training of Human Authors and Generative Machines*, 48 COLUM, J.L. & ARTS 1 (2025), https://papers.ssrn.com/abstract=4909592.

[43] *Id.* at 13.

[44] *See* Bartz v. Anthropic PBC, No. 24-CV-05417 WHA (N.D. Cal. June 23, 2025), ECF No. 231.

[45] Melissa Korn & Jeffrey A. Trachtenberg, *Anthropic Agrees to Pay at Least $1.5 Billion in Landmark Copyright Settlement*, WALL ST. J., Sept. 5, 2025, https://www.wsj.com/tech/ai/anthropic-to-pay-at-least-1-5-billion-in-landmark-copyright-settlement-with-authors-bfcdd57b [https://perma.cc/7GGF-VQDF].

[46] Dave Hansen, *Bartz v Anthropic Settlement Gets Preliminary Approval – Key Takeaways*, AUTHORS ALLIANCE (Sept. 28, 2025), https://www.authorsalliance.org/2025/09/28/bartz-v-anthropic-settlement-gets-preliminary-approval-key-takeaways/ [https://perma.cc/UD7X-5YY5].

[47] *How Many Websites Are There in the World?*, SITEEFY (July 3, 2025), https://siteefy.com/how-many-websites-are-there/ [https://perma.cc/MN44-5UWS].

[48] For example, GPT-3 was able to write short news articles (approximately 500 words long) that human evaluators correctly identified as AI authorship with accuracy little greater than pure chance (52%). Similarly, AI's coding abilities have been advancing with incredible speed: in 2022 DeepMind's AlphaCode achieved the median human score in coding contest problems; OpenAI CEO Sam Altman has claimed that OpenAI has an internal model that codes at the level of the 50th

Every few months, the technology improves.[49] Already, slowdowns in hiring of human workers have been attributed to employers' increasing reliance on AI's new skills.[50] This has raised alarms about a coming wave of job losses and downward pressure on wages.[51] Generative AI is able to automate tasks previously "thought safe from automation," including many historically secure professions. Law, medicine, and creative industries are set to be among the first fields impacted.[52]

Labor organizations in the entertainment industry are starting to grapple with the threat AI poses to jobs in Hollywood, from those of actors to writers.[53] In 2023, the Writers Guild of America (WGA) and Screen Actors Guild–American Federation of Television and Radio Artists (SAG-AFTRA) went on strike, and for the first time, they added to their demands additional protections specific to AI to keep movie studios from using AI to replicate actors' voices or likenesses without ongoing compensation.[54] Actors discovered they were being asked to do full-body scans on set—essentially creating digital copies of themselves that studios could reuse indefinitely without paying them.[55] This touches on a pervasive fear among creative workers: that companies will use AI to either eliminate their jobs entirely or capture and exploit their unique talents—whether that's an actor's likeness or a writer's distinctive voice.[56]

C. The Problem of Discrimination

Generative AI learns from historical data, and consequently its outputs and decisions can perpetuate, or even amplify, the societal prejudices reflected in that data.[57] Studies have already documented such instances; it is not merely a

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best programmer in the world, and predicts that AI will code better than all humans by the end of 2025. David Choi et al., *Competition-Level Code Generation with AlphaCode*, SCIENCE 1092 (2022), https://doi.org/10.1126/science.abq1158; OfficeChai Team, *An AI Will Be The World's Best Programmer By The End Of 2025: OpenAI CEO Sam Altman*, OFFICECHAI (2025), https://officechai.com/ai/an-ai-will-be-the-worlds-best-programmer-by-the-end-of-2025-openai-ceo-sam-altman/ [https://perma.cc/Q52A-TDQJ]; Tom Brown et al., *Language Models Are Few-Shot Learners*, 34TH CONFERENCE ON NEURAL INFORMATION PROCESSING SYSTEMS (2020), https://proceedings.neurips.cc/paper_files/paper/2020/file/1457c0d6bfcb4967418bfb8ac142f64a-Paper.pdf [https://perma.cc/4FVK-WUEV].

[49] David Choi et al., *Competition-Level Code Generation with AlphaCode*, SCIENCE 1092 (2022), https://doi.org/10.1126/science.abq1158.

[50] Belle Lin, *IT Unemployment Rises to 5.7% as AI Hits Tech Jobs*, WALL ST. J. (Feb. 8, 2025), https://www.wsj.com/articles/it-unemployment-rises-to-5-7-as-ai-hits-tech-jobs-7726bb1b [https://perma.cc/53MZ-R6RP].

[51] Orly Mazur, *Taxing the Robots*, 46 PEPPERDINE L. REV. 277 (2019).

[52] *Id.* at 279.

[53] *See* Jake Coyle, *In Hollywood Writers' Battle Against AI, Humans Win (for now)*, AP NEWS (Sept. 27, 2023), https://apnews.com/article/hollywood-ai-strike-wga-artificial-intelligence-39ab72582c3a15f77510c9c30a45ffc8 [https://perma.cc/M966-N9S2].

[54] *See* Ifeoma Ajunwa, *AI and Captured Capital*, 134 YALE L. J. 372, 374-76 (2025).

[55] *Id.* at 375.

[56] *Id.* at 376.

[57] *See, e.g.*, Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CAL. L. REV. 671 (2016); Rushan Fu et al., *AI and Algorithmic Bias: Source, Detection, Mitigation, and*

hypothetical concern.[58] AI systems have produced biased recommendations with respect to hiring, lending, and in law enforcement contexts, which, if followed, could result in outcomes that violate anti-discrimination laws.[59] Professors Barocas and Selbst note that algorithmic tools can lead to "disparate impacts" even though AI is not capable of intentional bias, and consequently they are a misfit for the existing legal framework, which was built on the assumption of human decision-makers.[60]

Additionally, generative AI used in media or customer-facing applications can output discriminatory or offensive content.[61] For example, a text generator might produce misogynistic or racist language if prompted in certain ways, reflecting biases in its training corpus. This raises reputational and legal concerns for companies deploying AI chatbots or content generators. Beyond increasing bias in contexts that attract legal liability, at least as concerning is that AI bias presents a more pervasive societal problem to the extent that AI's learned biases normalize bias at scale as citizens interact with chatbots and consume AI-created content. Many commentators argue that without increasing attention to this issue and timely intervention, for instance via transparency requirements or bias auditing, generative AI could erode hard-won gains in civil rights.[62] The potential for biased AI to negatively impact multiple domains of civic life is a risk that requires active management and ought to be a consideration in pursuing a robust solution.

Implications, 16 INFORMS 39, 39-63 (2020); Spencer Overton, *Overcoming Racial Harms to Democracy from Artificial Intelligence*, 110 IOWA L. REV. 805 (2025); Daniel E. Ho et al., *Fairness Through Difference Awareness: Measuring Desired Group Discrimination*, (forthcoming 2025), https://arxiv.org/abs/2502.01926; Julian Nyarko et al., *What's in a Name? Auditing Large Language Models for Race and Gender Bias* (forthcoming 2025), https://arxiv.org/abs/2402.14875; Anya E. R. Prince & Daniel Schwarcz, *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, 105 IOWA L. REV. 1257 (March 2020).

[58] *See* Crystal Yang & Will Dobbie, *Equal Protection Under Algorithms: A New Statistical and Legal Framework*, 119 MICH. L. REV. 291 (2020); *see also* David Hadwick & Shimeng Lan, *Lessons to be Learned from the Dutch Childcare Allowance Scandal: A Comparative Review of Algorithmic Governance by Tax Administrations in the Netherlands, France and Germany*, 13 WORLD TAX J. 609 (2021).

[59] *See, e.g.*, W. Nicholson II Price, *Medical AI and Contextual Bias*, 33 HARV. J. L. & TECH. 65 (2019); Khiara M. Bridges, *Race in the Machine: Racial Disparities in Health and Medical AI*, 110 VA. L. REV. 243, 289 (2025); Donald E. Bowen III et al., *Measuring and Mitigating Racial Bias in Large Language Model Mortgage Underwriting* (Aug. 1, 2025), SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4812158; Alina Köchling & Marius Claus Wehner, *Discriminated by an Algorithm: A Systematic Review of Discrimination and Fairness by Algorithmic Decision-making in the Context of HR Recruitment and HR Development*, 13 BUS. RSCH. 795, 795-848 (2020).

[60] Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CAL. L. REV. 671 (2016).

[61] Philipp Hacker et al., *Generative Discrimination: What Happens When Generative AI Exhibits Bias, and What Can Be Done About It*, in THE OXFORD HANDBOOK OF THE FOUNDATION AND REGULATION OF GENERATIVE AI, https://arxiv.org/abs/2407.10329 (identifying "two main types of discriminatory outputs: (i) demeaning and abusive content and (ii) subtler biases due to inadequate representation of protected groups, which may not be overtly discriminatory in individual cases but have cumulative discriminatory effects.").

[62] Ajunwa, *supra* note 54, at 372.

D. The Problem of Wealth Concentration

The final major concern is that generative AI is on track to exacerbate economic inequality and entrench the existing first-mover advantages as it reshapes our economy and way of life. It is early in humanity's encounter with AI, yet already the AI industry is dominated by a handful of large technology companies and well-funded startups.[63] Absent corrective measures, shareholders of these entities are poised to capture enormous economic value from productivity gains driven by AI, at the expense of not only workers in the core copyright industries but the broader workforce.[64]

Evidence of this dynamic is already apparent both at the development phase and the deployment phase for AI products. OpenAI, the company behind ChatGPT, recently received a purchase bid of $97.6 billion, which it turned down.[65] Clearly, investors expect their interests to be better served by what they anticipate will be massive profits when it follows through on its plan to transition from a non-profit to a for-profit company.[66] At this time, it is a given that any future payout will not flow to workers who indirectly helped create that value at the development phase – for instance, low-paid data labelers who spent hours screening and annotating training data.[67] The deployment phase for AI products is likely to be many times more effective at concentrating wealth among the shareholders of AI companies.

In addition to AI products functioning as market substitutes for traditional work product of those in the creative industries, one of AI's much-anticipated benefits is that it will allow one person or a small team to do the work of dozens. The result will be that companies reap greater profits with fewer employees, translating into higher returns for owners and lower labor costs. The U.S. tax system already tends to *undertax capital and overtax labor*, and as Professor Mazur and others have noted, AI may worsen that imbalance by increasing the share of income that comes in the form of AI-driven capital gains and monopolistic rents.[68] Without intervention, the current environment is conducive to a winner-take-all scenario

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[63] *See* Amba Kak et al., *Make No Mistake—AI Is Owned By Big-Tech*, MIT TECH. REV. (Dec. 5, 2023), *https://www.technologyreview.com/2023/12/05/1084393/make-no-mistake-ai-is-owned-by-big-tech/* [https://perma.cc/P995-WGW4]; Courtney Radsch, *Dismantling AI Monopolies Before It's Too Late*, TECH POL'Y PRESS (Oct. 9, 2024), https://www.techpolicy.press/dismantling-ai-data-monopolies-before-its-too-late/ [https://perma.cc/QB4W-P4EK]; Staff in the Bureau of Competition & Office of Technology, *Generative AI Raises Competition Concerns*, FTC (June 29, 2023), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/06/generative-ai-raises-competition-concerns [https://perma.cc/ZNW9-RELY].

[64] Mazur, *supra* note 51.

[65] Tom Dotan, *OpenAI Rejects Elon Musk's Takeover Offer*, WALL ST. J. (Feb. 14, 2025), https://www.wsj.com/tech/ai/openai-elon-musk-bid-rejected-sam-altman-62ba1ca5 [https://perma.cc/FC4K-HK8G].

[66] Ajunwa, *supra* note 54, at 377.

[67] A 2023 investigation by Time revealed that Kenyan workers were paid under $2 per hour to perform monotonous content labeling tasks as part of the required cleaning to remove potentially harmful content from ChatGPT's training data. Billy Perrigo, *Exclusive: OpenAI Used Kenyan Workers on Less Than $2 Per Hour to Make ChatGPT Less Toxic,* TIME (Jan. 18, 2023), https://time.com/6247678/openai-chatgpt-kenya-workers/ [https://perma.cc/FC4K-HK8G].

[68] Mazur, *supra* note 51, at 281.

where a handful of AI companies and their investors accumulate vast wealth, while displaced workers and uncompensated creators are left out in the cold.[69]

This concentration of AI wealth could also translate into outsized political power for AI giants and reduced opportunities for those not in these inner circles.[70] Historically, extreme concentrations of wealth in many industries have prompted policy responses to rebalance the playing field, ranging from antitrust enforcement to progressive taxation and revised labor laws.[71] Similarly, the AI revolution will warrant multiple complementary policy responses including new tax frameworks designed to ambitiously and deliberately redistribute the economic benefits created by AI.

II. OTHER PROPOSED AI SOLUTIONS ARE INCOMPLETE

Given the multifaceted harms posed by generative AI, targeted solutions have been proposed, yet none have been fully adopted. Even if adopted, they are not expected to resolve the problems set out in Part I. This Part surveys two leading ideas adapted from existing frameworks for compensating rights holders. Section A evaluates proposals for a collective compulsory license regime and the existing private licensing default as paths to ensuring AI companies pay for the use of copyrighted content. Section B describes historical levy systems for compensating and considers current proposals for reimagining how they could address AI. Each approach offers some benefits, yet each would leave many, if not most, content creators uncompensated for the value derived from their works. We then argue that these considerations position our more far-reaching solution—using the tax system to capture and redistribute AI's gains—as a superior response. This Part concludes with a description of incomplete tax proposals that have previously been recommended for mitigating the harms of AI.

A. Collective Compulsory Licensing and Private Licensing Are at Best Partial Solutions

One oft-discussed idea is to implement a collective compulsory licensing regime for AI training data and outputs.[72] Under this approach, AI developers

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[69] *Id.*

[70] There is a burgeoning literature in the Law and Political Economy movement ("LPE") on the connection between economic power and political power. *See* Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020). Tax is a longstanding tool to address the outsize influence of oligarchs within a polity. *See* Jeremy Bearer-Friend & Vanessa Williamson, *The Common Sense of a Wealth Tax: Thomas Paine and Taxation as Freedom from Aristocracy*, 26 FLA. TAX REV. 326 (2022) (describing the role of a wealth tax in Paine's vision of creating a new society without kings).

[71] *See* Jeremy Bearer-Friend et al., *Taxation and Law and Political Economy*, 83 OHIO ST. L. J. 471 (2022).

[72] In 2023, the U.S. Copyright Office sought public comments with respect to whether Congress should mandate collective licenses for AI training data. Contributing to the Copyright Office's study, stakeholders and scholars raised the benefits and drawbacks of such a system in the context of AI. United States Copyright Office, *Notice of inquiry ("NOI") and request for comments: Artificial Intelligence and Copyright*, 88 FED. REG. 59942 (Aug. 30, 2023) (Docket No. 2023-6).

would be permitted to use copyrighted works without individualized consent from rights holders, but they would be required to pay a set amount into a pool for content creators.[73] This could mimic existing compulsory licensing systems in copyright law – the statutory mechanical license for musical compositions that allows anyone to cover a song as long as they pay a fixed royalty, or the compulsory licenses that cable TV and digital music services use to pay copyright owners for retransmissions or streaming.[74] Such a system could, in theory, streamline permissions and ensure that creators receive some compensation when their works are used to train AI models.[75]

Proponents argue that a blanket license regime would be an off-ramp from years of costly litigation over fair use.[76] Instead of facing challenges from myriad content creators about which uses of a copyrighted image or text to train AI are infringing, developers would simply pay a license fee for all covered uses.[77] Another appealing factor is that the concept of a collective licensing regime is compatible with various options for calculating fees. For instance, fees may be agreed upon through negotiations,[78] set by an administrative body,[79] or via government authority,[80] as is the case with music's mechanical licensing concept.[81] Collective licensing is one possible compromise for the AI copyright wars that has the advantage of useful precedents currently in operation, albeit at a smaller scale. Should policymakers take this path, proponents hope for two rosy outcomes: first, that AI innovation will continue apace having been freed from the transaction costs and price tag of bargaining for millions of individual licenses; and second, that creators will continue to get paid, however nominally, for their contributions.[82] Still, while a collective licensing regime might be a partial solution, there are

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[73] David Opderbeck, *Copyright in AI Training Data: A Human-Centered Approach*, 76 OKLA. L. REV. 951 (2024).

[74] 17 U.S.C. § 115 (2024).

[75] Matthew Sag, Pamela Samuelson, & Christopher Jon Sprigman, COMMENTS IN RESPONSE TO THE COPYRIGHT OFFICE'S NOTICE OF INQUIRY ON ARTIFICIAL INTELLIGENCE AND COPYRIGHT, SSRN (Nov. 20, 2024), https://papers.ssrn.com/abstract=4976391.

[76] Celeste Shen, *Fair Use, Licensing, and Authors' Rights in the Age of Generative AI*, 22 NW. J. TECH. & INTELL. PROP. 157 (2024). The Authors Guild, which represents creators, has come out in support of legislation which could require AI developers to negotiate fees with larger-than-ever collective management organization (CMO) representing rights holders. The Authors Guild, *Authors Guild Calls on U.S. Copyright Office to Require Consent and Compensation for AI Training*, THE AUTHORS GUILD (Nov. 2, 2023), https://authorsguild.org/news/ag-to-copyright-office-require-consent-and-compensation-for-ai-training/ [https://perma.cc/D2GX-TEKD].

[77] Shen, *supra* note 76.

[78] Nate Lanxon and Jackie Davalos, *AI Companies Must Rethink How They Compensate People For Their Data*, BLOOMBERG (Nov. 16, 2023), https://www.bloomberg.com/news/articles/2023-11-16/ai-companies-must-rethink-how-they-compensate-people-for-their-data [https://perma.cc/9NR6-B9H2].

[79] Daniel J. Gervais et al., *The Heart of the Matter: Copyright, AI Training, and LLMs*, (2024), https://papers.ssrn.com/abstract=4963711.

[80] Paul Goldstein, *Goldstein on Copyright*, INTELL. PROP. TEXTS & TREATISES (3d ed., 2005).

[81] *Id.*

[82] Martin Senftleben, *Generative AI and Author Remuneration*, INT'L REV. INTELL. PROP. & COMPETITION L. 1535, 1538 (2023).

several reasons why collective licensing for AI would likely disappoint and is therefore unlikely to be implemented:

Logistical and Administrative Complexity. Implementing a new collective licensing regime targeting the vast corpora of internet content used for AI training would be enormously complex.[83] The U.S. Copyright Office and academic commentators have questioned whether any compulsory or collective licensing scheme for generative AI training data is logistically feasible at all.[84] Sag, Samuelson, and Sprigman have expressed strong skepticism that a suitably structured framework could be administered.[85] Existing collective licensing regimes focus narrowly on industry sectors, whereas a system focusing on the user, namely generative AI, rather than the industry, creates an explosion of genres and mediums that must be wrangled into one accounting system.[86] Accordingly, the vast number of copyright owners, individual works and categories of works implicated, would require a feat of bureaucratic coordination for which there is no existing model in copyright.[87] There are ideas emerging about how to grapple with this complexity via novel tracking methods—Jaron Lanier, for instance, has imagined a data dignity framework that warrants further consideration—but none have been proven yet.[88]

A central and comparatively overlooked hurdle is that identifying all eligible rights holders and their heirs would be a challenge due to a lack of existing registry, uniform system, or standard for the inclusion of identifying information on webpages.[89] This is a crucial step if the system's goal is for creators to be duly recognized and compensated for their contributions. The conversation with respect to honoring content creators has often assumed that the population of rights holders is comprised of the classic creative economy workers. But casting our net of copyright justice only to service these historically well-represented groups of professionals overlooks that the copyrighted works at issue are predominantly web-user content of a more everyday character: posts on Reddit, Facebook, WordPress, and videos on YouTube.[90] An objection to this observation is that we need not

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[83] Sag, Samuelson, & Sprigman, *supra* note 75.

[84] Pamela Samuelson, *Fair Use Defenses in Disruptive Technology Cases*, 71 UCLA L. REV. 1486, 1565 (2025).

[85] Sag, Samuelson, & Sprigman, *supra* note 75.

[86] Samuelson, *supra* note 84, at 1566.

[87] Sag, Samuelson, & Sprigman, *supra* note 75.

[88] Lanxon and Davalos, *supra* note 78; Imanol Arrieta-Ibarra et al., *Should We Treat Data as Labor? Moving Beyond "Free,"* 108 AEA PAP. PROC. 38 (2018); Jaron Lanier, *There Is No A.I.*, THE NEW YORKER (Apr. 20, 2023), https://www.newyorker.com/science/annals-of-artificial-intelligence/there-is-no-ai [https://perma.cc/65PA-YLGB].

[89] Wayne Brough & Ahmad Nazeri, *Regulatory Comments Before the U.S. Copyright Office, Library of Congress, In the Matter of Artificial Intelligence and Copyright*, R Street Institute (Oct. 27, 2023), https://www.rstreet.org/outreach/regulatory-comments-before-the-u-s-copyright-office-library-of-congress-in-the-matter-of-artificial-intelligence-and-copyright/ [https://perma.cc/ACX6-TKME].

[90] *Id.* The LlaMA-2 Model Card shows that 2 trillion tokens from public data were used in development. *MODEL_CARD.md*, GITHUB, https://github.com/meta-llama/llama/blob/main/MODEL_CARD.md [https://perma.cc/T3B5-GTJ6]. Google Research

concern ourselves with user created content scraped in the AI training process from platforms whose terms stipulate that user content can be used in AI training (sometimes the terms are vague, regarding user consent for content to be used in product improvement as consent for its use in AI training).[91] We contend that AI represents a revolution in the structure of our economy and that economic justice for those whose creations and contributions have made it possible requires thinking outside the copyright and contractual boxes.[92]

On key fronts, we are missing the information and technological means to build a collective licensing system fit for the nuances of AI. The administrative overhead involved makes this scheme difficult to get off the ground, let alone continuously manage as content creation continues to increase exponentially.[93]

Valuation Difficulties. In the unlikely event that a collective licensing regime is established, the goal ought to be fair compensation for the use of works of different mediums and formats being consumed in the training of multimodal AI products.[94] Pricing is a concern not only for compensating creators fairly, but for its impact on competition.[95] If the price is too high, it favors large companies like Google, whose competitive advantage is further expanded by policy choices requiring larger upfront costs.[96] This is why we find vocal champions of this solution in the tech industry even while licensing costs may stifle AI innovation more generally by limiting competition. If the royalty rate is set too low, however, then creators receive no meaningful economic benefit, or feel wronged by a one-size-fits-all rate that undervalues certain works.[97] Under either scenario, the largest AI companies are advantaged with minimal benefit for creators.

Limited Scope of Relief. A collective licensing regime would by design be narrowly focused on redressing the legal and ethical challenges connected with the copyright dimensions of generative AI.[98] It might lead to at least some authors, artists, and other rightsholders receiving some payment for the use of their works.[99] But it would not directly address the other problems identified in Part I – such as labor displacement, bias, or wealth concentration. For example, a royalty system

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PaLM announcement that 780 billion token corpus was used that included filtered web pages and 50% social media dialogs. Aakanksha Chowdhery et al., *PaLM: Scaling Language Modeling with Pathways*, 24 J. MACH. LEARNING RES. 1 (2023), https://www.jmlr.org/papers/v24/22-1144.html; *See also* GPT-4 Technical Report, *supra* note 34 (revealing the use of publicly available Internet data).

[91] Doe v. Github, Inc., 672 F. Supp. 3d 837 (N.D. Cal. 2023); Matthew Butterick, *GitHub Copilot litigation*, https://githubcopilotlitigation.com/ [https://perma.cc/W6JK-777H].

[92] Other scholars, such as Brauneis, recognize the unsatisfactory and unjust results of possible resolutions to the AI copyright litigation that fail to account for AI's revolutionary impact. *See* Brauneis, *supra* note 42.

[93] Sag, Samuelson, & Sprigman, *supra* note 75.

[94] Senftleben, *supra* note 82.

[95] Daniel J. Gervais, *The Economics of Collective Management* (Dec. 10, 2018), SSRN, https://papers.ssrn.com/abstract=3266572.

[96] *Id.*

[97] Lanier, *supra* note 88.

[98] Gervais et al., *supra* note 79.

[99] *Id.*

would not, of course, compensate the truck driver or customer service representative whose job is lost to AI, nor would it ensure that AI outputs are free from discrimination, nor significantly check the accumulation of AI profits by big tech firms.

Enforcement and Compliance. Without and until countries widely adopt similar compulsory licensing regimes, AI companies could sidestep payment compliance by training models in less regulated international jurisdictions.[100] A compulsory licensing or collective licensing scheme for AI also risks being overly broad.[101] It would be challenging to differentiate between training which qualifies as non-expressive fair use, which would not require licenses in the existing ecosystem, from training intended to learn from the expressive qualities of the data.[102]

Extending familiar copyright policy solutions like compulsory licenses to the challenges of AI is understandable. However, these historical policy models fall short given the scale and unprecedented disruption of AI to copyright's foundational assumptions. If the technical and legal challenges of setting up an automatic licensing system could be surmounted, it would still be at most a partial solution. A partial solution narrowly targeting the problem of stolen creative works might help the central players in creative fields, the Nashville songwriters and published authors, but it does not confront the labor displacement of central but non-rights-holding workers in those fields, such as editors and sound engineers. Rather than mitigating the concentration of AI profits, it would potentially further divide the haves (rights holders) and have-nots within the core copyright industries. A compulsory licensing regime offers a nod of recognition for creators, however obtaining this limited scope of relief could come at the cost of passing over an opportunity to reconceive AI training data governance in ways that reduce algorithmic discrimination. In other words, it deals with incentivizing creators but not with protecting workers or society at large. It's less a piece of the puzzle than a diversion.

B. Copying Levies Are a Misfit in the Context of AI

As in the case of collective licenses, the creation of collective funds to compensate authors for the use of their works has historical precedent. This Section examines the rationales behind different fund types, how they were administered, and evaluates whether adapting those frameworks to resolve the uncompensated copying occurring in AI model development would be preferable to our proposed AI equity tax.

AI is not the first technology to expose the inadequacy of licensing approaches to dealing with technological innovations in copying. In the past, when the monitoring of unauthorized copying has proven impractical, notably with the

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[100] Senftleben, *supra* note 82.

[101] Matthew Sag, *Copyright Safety for Generative AI*, 61 HOUS. L. REV. 295, (2023).

[102] Mark Lemley & Bryan Casey, *Fair Learning*, 99 TEX. L. REV. 743 (2021); Sag, Samuelson, & Sprigman, *supra* note 75.

availability of blank media to consumers, collective funds have been created using a levy system to partially offset lost creator revenue. The Audio Home Recording Act of 1992 imposed a small royalty on digital audio recording devices and media (e.g. blank digital tapes and minidiscs), with the proceeds distributed to songwriters and music copyright owners. The actual amount distributed to rights holders, however, is less than $1 million annually. This pitiful sum reflects the narrow scope of the Act, which is concerned with media that are now effectively obsolete and does not extend to computers, or general-purpose storage.[103] By contrast, in other jurisdictions, levies have provided more income for rights holders. Private copying levies imposed in Europe have added a small fee to consumers' purchase price for blank CDs, DVDs, and per device with respect to MP3 players or photocopiers. These fees are collected by a central body—a government-managed fund or a private collective rights organization—which then distributes royalties to creators to offset the loss of income from the home copying which the system assumes to take place. Small fees can add up. A World Intellectual Property Organization (WIPO) survey found that in 2014, private copying levies worldwide generated €804 million in revenue, with German right holders coming out ahead with a third of the total.[104] These amounts provide some supplemental income for authors, musicians and filmmakers, although their designs have not kept pace with the way in which content is consumed in 2025.[105]

A modified version of the AHRA levy system has been proposed as a response to the unauthorized use of copyrighted works by Pasquale and Sun.[106] Whereas the levy established by the AHRA was linked to each recording device (whether by sale, importation, or distribution), Pasquale and Sun suggest that in the context of generative AI, the triggers for a levy could be the use of certain datasets in model training, or the volume of responses to users given by an AI product.[107] Notably, this proposal envisions a process requiring copyright owners to bear the burden of identifying themselves and establishing proof of copyright ownership, along with documentation of the unauthorized reproduction.[108] The pool of

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[103] WORLD INTELLECTUAL PROPERTY ORGANIZATION, *International Survey on Private Copying: Law & Practice 2015* (2015), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1037_2016.pdf [https://perma.cc/S45K-WS2J].

[104] *Id.* Beyond private copying, some jurisdictions operate funds connected with public uses of creative work. A Public Lending Right (PLR) exists in the UK, Canada, Australia, and many European countries, pursuant to which authors are paid when their books are borrowed from public libraries. The government imposes fees such that authors receive a small royalty per library loan. The rationale is that library lending may displace some sales, so authors should be compensated for that usage. No such system operates in the U.S. on account of the First Sale Doctrine, which provides that if a legal copy of a book is sold, the purchaser has the right to lend, resell, or give away that copy without paying royalties to the author (17 U.S.C. § 109 (2024)). Daniel Y Mayer, *Literary Copyright and Public Lending Right*, 18 CASE W. RESERVE J. INT'L L. 483 (1986).

[105] *Id.*

[106] Frank Pasquale & Haochen Sun, C*onsent and Compensation: Resolving Generative AI's Copyright Crisis*, 110 VA. L. REV. ONLINE 207 (2024), https://virginialawreview.org/articles/consent-and-compensation-resolving-generative-ais-copyright-crisis/.

[107] *Id.*

[108] *Id.*

potential recipients of the levy funds extends to those more sophisticated rights holders who have a sufficient economic stake in their works for the transaction costs of participating in this direct notice process to be worthwhile.

But the reality of how AI developers have derived value from copyrighted works is very different from the picture painted by Pasquale and Sun. AI developers have experienced success after success by pursuing a scaling approach with respect to both training data and compute.[109] On a work-by-work basis, the vast majority of copyrighted works that have been consumed in the model development process are not what we classically think of as protected works – published books, songs released by record labels, films created by film studios – but rather Internet data that is not paywalled, such as user-created content on sites like Reddit, GitHub, and YouTube.[110] These everyday creators and everyday users interacting in the online environment – the "digital public" – are in important ways as deserving of credit for AI's impressive capabilities as traditional authors[111], although the digital public will not have filed any copyright registrations for their contributions to the web's immense training data.[112] Because the everyday digital public are the authors and creators whose thoughts and communications have fueled the rapid rise of generative AI, we contend existing proposals that recommend attempting to track dataset usage and map proportionally weighted attributions[113] to individuals face a missing authors problem at a grand scale. The same issue arises with a fund which aims to narrowly compensate traditional rights holders in the core copyright industries.

C. Prior Proposals to Tax AI Will Not Reach Many AI Harms

The challenge of taxing new technologies is recurring. AI is not unique in this respect. And as this latest technology has developed, so too has a burgeoning menu of tax approaches for AI.[114] Christians & Magalhães categorize AI Tax approaches under three possibilities: (1) multilateral income-based tax approaches; (2) unilateral income-based tax approaches; and (3) special taxes.[115] Others distinguish between taxing the robot as a subject versus taxing the owner of the robot.[116] This Section describes three broad approaches to tax AI organized by

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[109] Kaplan et al., *supra* note 26.

[110] GPT-4 Technical Report, *supra* note 34. Public availability of works, for instance by lack of a paywall, is not equivalent to works being in the public domain, which are not protected by copyright.

[111] Lanxon & Davalos, *supra* note 78; Lanier, *supra* note 88.

[112] Pasquale & Sun, *supra* note 106.

[113] Jaron Lanier, WHO OWNS THE FUTURE? (Simon & Schuster, 2013); Lanxon & Davalos, *supra* note 78; Lanier, *supra* note 88.

[114] Maurício Barros, *Robots and Tax Reform: Context, Issues and Future Perspectives*, 2 INT'L TAX STUD., no. 6, 2019, at 6. These new tax proposals have also inspired skeptics. *See* Orly Mazur, Chapter 19, in *Mobility of Individuals and Workforces* 19 (Svetislav V. Kostić et al. eds., 2024).

[115] Allison Christians & Tarcísio Diniz Magalhães, *17 Ways to Regulate Big Tech with Tax*, 78 TAX LAW 1 (2024).

[116] Vikram Chand et al., *Taxing Artificial Intelligence and Robots: Critical Assessment of Potential Policy Solutions and Recommendations for Alternative Approaches*, 12 WORLD TAX J. 711 (2020).

choice of tax base: income taxes, excise taxes, and head taxes. None of the prior proposals look to in-kind taxation, utilizing either equity assessments or equity remittances as a tax policy tool. This Section then turns to our original contribution in Part III.

1. Income Taxes

Our current corporate income tax regime is notoriously ineffective at reaching some of the largest, multinational U.S. companies.[117] For example, Tesla paid nearly zero dollars of federal income tax on over $11 billion of income over the past three years.[118] Many tech firms that are growing rapidly are most likely to be outside of the federal income tax because their expenses surpass any profits. The for-profit subsidiaries of tax-exempt AI companies are an example of this. According to public reporting:

> OpenAI is losing billions of dollars, however, because of the unusually high cost of building and running A.I. technologies like ChatGPT. It expects to lose roughly $5 billion after paying for costs related to running its services and other expenses, according to an analysis of the documents by a financial professional.[119]

This low to zero tax rate also describes the early years of current tech giants like Alphabet and Meta.[120]

To address the issue of low-income tax liability and the rise of AI, the most provocative extension of the income tax concept has been to automated labor. That is, imputing some type of wage onto automated labor and folding that amount into the income tax base. The logic is as follows:

> Robot taxes may sound futuristic, but in practice they are just another iteration of income taxation… [R]obot taxes are income taxes, revised to identify "who" is the taxpayer that should be subject to income tax. In reality, and as long as the [robots] do not take over the world, it is but a mere proxy for the taxation of the

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[117] Daniel de Vise, *Major Companies Haven't Paid Federal Income Taxes in Five Years. How Could That Be?,* USA TODAY (Mar. 13, 2024), https://www.usatoday.com/story/money/2024/03/13/companies-spend-more-executive-salaries-than-taxes/72941207007/ [https://perma.cc/97P6-ZE2D]

[118] Matthew Gardner, *Tesla Reported Zero Federal Income Tax on $2 Billion of U.S. Income in 2024*, INSTITUTE ON TAXATION AND ECONOMIC POLICY (Jan. 30, 2025), https://itep.org/tesla-reported-zero-federal-income-tax-in-2024/ [https://perma.cc/QYW5-GLS4].

[119] Cade Metz, *Open AI Completes Deal that Values Company at $157 Billion*, N.Y. TIMES (Oct. 2, 2024), https://www.nytimes.com/2024/10/02/technology/openai-valuation-150-billion.html [https://perma.cc/K2FN-T7UM].

[120] *See* Rebecca Greenfield, *2012: The Year Facebook Finally Tried to Make Some Money*, ATLANTIC (Dec. 14, 2012), https://www.theatlantic.com/technology/archive/2012/12/2012-year-facebook-finally-tried-make-some-money/320493/ [https://perma.cc/AX6Y-PR8T] (describing how now lucrative tech giants did not have income in early years, in turn falling outside of income tax).

> owner of the robots…. a robot tax is an income tax, and it does not fix any of the philosophical tax concerns of the data economy.[121]

This approach was first presented by Xavier Roberson, seeking to address the expected revenue shortfalls of displaced labor:

> [G]ranting a legal personality to robots could lead to the emergence of an electronic ability to pay, which may be recognized for tax purposes. As a consequence of such a development, a specific tax personality would need to be granted to robots. This would require a clear definition of robots, which could be based on the use of artificial intelligence, combined with a sufficient level of autonomy. From the perspective that smart robots may now replace inherent human activities, such as the interaction, learning and decision-making processes, the potential implications of a tax on robots, or on the use of such robots, is considered. The possibility of an income tax on an imputed salary from robots' activities, or on other income, is also considered. Initially, the economic capacity to pay the tax should still be attributed to the employer or owner of the robots. Later, when technology allows, an ability to pay to robots may be recognized.[122]

Overall, the income tax only partially reaches tax-exempt organizations[123] and has difficulty reaching global activities.[124]

2. Excise Taxes

Multiple scholars have proposed applying excise taxes to AI. Unlike income taxes, excise taxes impose tax liability even when a firm has net losses. Excise taxes can also apply to tax-exempt organizations.[125] Laying and collecting excises is a plenary power under Article I, Section 8 of the U.S. Constitution.

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[121] Omri Marian, *Taxing Data*, 47 BYU L. REV. 511, 558-59 (2022).

[122] Xavier Oberson, *Taxing Robots? From the Emergence of an Electronic Ability to Pay to a Tax on Robots or the Use of Robots*, 9 WORLD TAX J. 247 (2017).

[123] *See* Ellen Aprill, Rose Chan Loui, & Jill Horwitz, *Board Control of a Charity's Subsidiaries: The Saga of OpenAI*, 182 TAX NOTES 289 (2024).

[124] Michael Weilandt, *American Pharmaceutical Companies Aren't Paying Any Tax in the United States*, Council on Foreign Relations (Apr. 17, 2024), https://www.cfr.org/blog/american-pharmaceutical-companies-arent-paying-any-tax-united-states; Kimberly A. Clausing, *5 Lessons on Profit Shifting from the U.S. Country-by-Country Data* (Nov. 9, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287; Reuven Avi-Yonah & Lucas Brasil Salama, T*axation of Autonomous Artificial Intelligence: Socially Sustainable Expansion of Automation and Impacts on International Tax* (May 8, 2024), https://wealthstrategiesjournal.com/2024/05/08/reuven-s-avi-yonah-lucas-salama-taxation-of-autonomous-artificial-intelligence-socially-sustainable-expansion-of-automation-and-impacts-on-international-tax-apr-15-2024/ [https://perma.cc/M3ZN-YLBH].

[125] For example, a tax-exempt organization that purchases gasoline has paid the federal gas tax even though the entity is exempt from federal income tax.

With an excise tax, the taxable base is the amount of consumption of the designated good or activity to be taxed. Under the Marian Data Tax proposal, for example, "raw data is the tax base… the tax is imposed as data is collected and used… and tax is imposed on the user of the data."[126] Some justify these taxes as a way to internalize the costs of many negative externalities associated with AI.[127] Others view data taxes as a strategy for addressing the cross-border taxing challenges of large, multinational tech firms.[128]

While this approach has not been adopted in the US, digital services taxes have become popular in the EU as a strategy for taxing large US-based firms that conduct commercial activity in their domestic economies. The efficacy of this approach has been limited, however. In Anu Bradford's account of the 'Virtual Constitution' in Europe, she acknowledges, "While the developments discussed above are significant, to date the European Union has had limited ability to shape the digital economy through taxation, as tax policy remains to a large extent a competence of individual Member States."[129] One of the political challenges to adopting digital services taxes is increased costs to consumers.

While excise taxes could easily be applied in addition to our AI Tax, an excise tax does not provide the corporate governance tools created through our proposal. For example, an excise tax is unlikely to increase public voice in the types of corporate decision making that impact reliance on, or revisions to, discriminatory algorithms. A high-rate excise tax could also create competitive disadvantages for U.S. tech firms relative to foreign competitors by increasing the costs of developing technology that will need to be globally competitive.[130] How the revenue of an excise tax will compensate those whose labor has been displaced or whose creative works have been stolen will depend on drafters of the tax.

3. Head Taxes

A head tax imposes a flat, lump sum amount on all taxpayers of the eligible category.[131] In the context of AI, this would mean decomposing AI models into individual taxpayers.[132] This could be based on a certain level of computing power,

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[126] Marian, *supra* note 121.

[127] Vincent Ooi & Glendon Goh, *Taxation of Automation and Artificial Intelligence as a Tool of Labour Policy,* 19 EJOURNAL OF TAX RSCH. 273, 277-78 (2022) ("This article focuses on an economic basis as the normative justification for an automation tax. It argues that increased automation induces worker displacement, resulting in social costs arising from the need to support and retrain displaced workers, which constitute a negative externality. Such market failures can be countered through the use of a Pigouvian tax.").

[128] *See* Marian, *supra* note 121, at 511; Christians & Magalhães, *supra* note 115.

[129] Anu Bradford, *Europe's Digital Constitution*, 64 VA. J. INT'L L. 1, 35 (2023).

[130] As discussed in *infra* Section III.C, no liquidity is required to pay our proposed tax, though the future availability of capital may be impacted and the diluted ownership interest will also impact a shareholders' earnings per share.

[131] Poll taxes are a form of head tax. *See*, Jeremy Bearer-Friend, *Race-Based Tax Weapons,* 14 UC IRVINE L. REV. 1067, 1068 (2024).

[132] Xavier Oberson, *Robot Taxes: The Rise of a New Taxpayer*, 75 BULL. FOR INT'L TAX'N 370, 378 (2021) ("Robots, as defined by the legislator for profit tax purposes, could be subject to some

measured as the human equivalent, or it could be associated with other characteristics of the AI. Oberson proposes "autonomy" as a potential taxable characteristic, though it is unclear how a single LLM would be disaggregated into multiple taxpayers.[133] Another potential threshold for tax liability would be "sentience," which then also raises questions about taxpayer rights imputed to the AI.[134]

One of the strongest arguments in support of "robot taxes" is that they are appealing to the public:

> Robot taxes could have a bright future because they're among the rarest of commodities: a tax that can be increased with minimal political risk. This is the same reason why so many state and municipal governments are eager to legalize cannabis. It's not because our lawmakers suddenly acquired a permissive stance about smoking pot; it's because they can tax the hell out of it without significant repercussions.[135]

However, that robot taxes have been proposed by the very makers of the technology could raise doubts about their potential efficacy.[136] Presumably the owner of the technology has an incentive to minimize tax liability on their property. The incidence of a tax on AI will principally be borne by its owners and consumers, and a head tax on AI doesn't offer the governance powers that fractional public ownership would.

III. THE TAX SOLUTION TO GENERATIVE AI

This Part describes our proposed AI Tax to address the many harms of AI. It begins by discussing the central role of tax to address distributive justice concerns, the longstanding use of tax policy as a regulatory device, the incredible scope of the federal taxing power, and the ways that tax policy is less severe than

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kind of profit tax. The objective ability to pay would correspond to the possibility to obtain such income by entering into a transaction and the right to decide, autonomously, how to use the funds. As with a corporation, the robots could have the legal possibility to retain the funds, under specific limitations and, therefore, give rise to a deferral of revenue to its owners, i.e., the shareholders, which is usually regarded as justifying corporation profit tax.").

[133] Oberson also appreciates that seeing a robot as a taxpayer doesn't answer what type of tax is then applied to the robot (e.g., income tax or VAT). *Id.* at 378.

[134] Lucas de Lima Carvalho & Victor Guilherme Esteche, *Sentience as a Prerequisite for Taxing AI*, 108 TAX NOTES INT'L 1263, 1266 (Dec. 5, 2022) ("[T]hough autonomy is what makes it necessary or desirable to tax AI as a separate entity, sentience is what helps us approximate it to an individual. That statement, however, belies the fact that individual taxpayers have specific rights in democratic societies. Would granting taxable personhood to sentient AI require us to recognize those rights for them as well?").

[135] Robert Goulder, *Taxing Robots: Is Negative Depreciation in Your Future?*, 95 TAX NOTES INT'L 1203, 1206 (Sept. 16, 2019).

[136] Jeannine Mancini, *Bill Gates Wants to Tax the Robots That Take Your Job*, BENZINGA. (Jan. 27, 2025), https://www.benzinga.com/personal-finance/25/01/43255222/bill-gates-wants-to-tax-the-robots-that-take-your-job-and-some-say-it-could-fund-universal-basic [https://perma.cc/DTG6-2B5J].

other policy choices for mitigating the risks of AI.[137] The Part then continues by describing the design of our AI Tax. The key design choices are to define the taxable category, specify the form of in-kind remittance, set the tax rate, and decide on stewardship of the remitted equity. The Part concludes by describing precedents in fractional public ownership of private enterprise within thriving capitalist economies.

A. Why Look to Tax to Address AI?

Tax policy is one of government's principal instruments for achieving distributive justice.[138] Unlike private law remedies for harms like copyright infringement, tax law is a society-wide policy tool that offers a society-wide benefit.[139] Hence, tax can be an instrument to address concerns with unjust enrichment at a broader scale than connecting specific victims with specific perpetrators.[140] Tax law is also how societies redistribute resources. Since one of the principal concerns with the rise of AI is the risk of rising wealth and income inequality, tax policy is a natural starting point.

Tax policy also directly shapes public fiscal capacity through its revenue raising function. To the extent that greater demands on the social safety net are anticipated as a result of labor dislocation from AI, tax policy is a first-order concern for ensuring available public financing.[141] Aside from increased demand of public services, there are expected revenue shortfalls due to a shrinking wage tax

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[137] *See* Feria & Ruiz, *supra* note 5 ("The choice of a particular tax instrument to tackle these challenges – or indeed any others—should be preceded by a two part-test suitability, as follows: (i) is tax policy the best way to address the challenges in question?; and (ii) if the answer is yes, then what is the best tax instrument to address them."). These authors do not consider the possibility of a tax paid in equity within their analysis.

[138] *See generally* LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE 76 (2002) ("Taxation has two primary functions. First, it determines how much of a society's resources will come under the control of government, for expenditure in accordance with some collective decision procedure, and how much will be left in the discretionary control of private individuals, as their personal property; call this public-private division. Second, it plays a central role in determining how the social product is shared out among different individuals, both in the form of private property and in the form of publicly provided benefits; call this distribution.").

[139] *See* Kyle D. Logue, *Reparations as Redistribution*, 84 B.U. L. REV. 1319, 1329 (2004) (distinguishing corrective justice approaches to reparations that pair injured parties with perpetrators, and distributive justice approaches, which are concerned with the overall distribution of resources in a polity). In the context of taxing AI, tax policy is able to achieve both types of justice. *See, e.g.*, Hilary G. Escajeda, *Technology Justice: Taxation of Our Collective and Cumulative Cognitive Inheritance*, 56 LOY. L.A. L. REV. 1073 (2023) (describing how the accumulation of human knowledge over time is a shared inheritance all people are entitled to benefit from).

[140] *See, e.g.*, Ayelet Gordon-Tapiero & Yotam Kaplan, *Unjust Enrichment by Algorithm*, 92 GEO. WASH. L. REV. 305 (2024) (describing attempts to hold specific platforms liable for enrichment as a result of harmful algorithms).

[141] *See*, *e.g.*, Noam Scheiber, *He's Replacing Humans with AI, and Bragging About It,* N.Y. TIMES (Feb. 2, 2025), https://www.nytimes.com/2025/02/02/business/klarna-ceo-ai.html [https://perma.cc/U5SQ-95XE] ("I am of the opinion that AI can already do all of the jobs that we, as humans, do.")

base.[142] This decline in revenue also points to the need to consider alternative tax tools to substitute taxes on wages.

Beyond distributional and revenue goals, tax law is also a potent regulatory device.[143] In particular, many features of tax policy can be democracy-enhancing.[144] The very origins of the corporate income tax are directly tied to regulatory goals in addition to revenue goals.[145] The corporate tax is an instrument to manage the influence of corporate managers, who use available funds to control legislators and regulators.[146] A leading voice in the American Revolution, Thomas Paine, argued that taxing wealth is also fundamental to the project of building a democratic society without kings.[147] Paine proposed a tax rate of 100% on the returns to estates valued over $1 billion in current dollars.[148] Taxation was also entwined with the power of the state to limit, or subsidize, slavery.[149] An AI Tax could also address the alarming problem of AI firms having significant political influence.

While the task of asserting public control over AI is daunting, the taxing power is extraordinary relative to other government powers. It allows the federal government to claim private property without fair-market value compensation so long as the collected property is put towards the general welfare.[150] Tax is a plenary power in the Constitution not limited to income taxation under the 16th Amendment, but also excise taxes, which are separately granted.[151] Excise tax authority is

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[142] *See* Barros, *supra* note 114, at 2 ("In addition to mass unemployment, the replacement of human workers by robots could lead to a great loss of state revenue, as revenues from taxes on wages would be reduced. It is also believed that there will be a significant reduction in the collection of indirect taxes, due to less consumption as a result of the job losses. Conversely, public expenditures are expected to increase, especially on unemployment insurance, welfare programmes, health and education.").

[143] Christians & Magalhães, *supra* note 115 ("[T]axation is a legitimate regulatory tool which states must be able to wield when business avails itself of local laws, rights, and economic prospects. As such, when business can avail itself of a market without the presence of physical factors, these factors cannot be used as a legal shield against the state's regulatory reach.").

[144] Jeremy Bearer-Friend et al., *Taxation and Law and Political Economy,* 83 OHIO ST. L. J. 471 (2022); AJAY K. MEHROTRA, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929 (Cambridge Univ. Press 2013).

[145] *See* Avi-Yonah & Salama, *supra* note 124 ("This research therefore aims to clarify the benefits of using taxation of autonomous A.I. as a regulatory tool, whilst identifying its potential shortcomings and exploring the effects of this consideration on the existing analyses on the adoption of this policy from the perspective of overly incentivizing the use of capital over labor and the negative externalities associated with the displacement of human labor.").

[146] *See* Reuven S. Avi-Yonah, *Corporations, Society, and the State: A Defense of the Corporate Tax*, 90 VA. L. REV. 1193, 1211 (2004).

[147] Jeremy Bearer-Friend & Vanessa Williamson, *The Common Sense of a Wealth Tax: Thomas Paine and Taxation as Freedom from Aristocracy*, 26 FLA. TAX REV. 321 (2022).

[148] *Id.* at 329.

[149] *See generally* ROBIN EINHORN, AMERICAN TAXATION, AMERICAN SLAVERY (2008) (showing how debates over the taxing power in colonial and antebellum U.S. history were principally about the power of the state to control the property rights of wealthy enslavers).

[150] U.S. CONST. art. I, § 8, cl. 1.

[151] *Id.* The proposed AI Tax we discuss in Section III.B can potentially be categorized as an excise tax though in economic effect it is likely to be viewed as a property tax. In some respects, it is a narrower application of the broad corporate tax proposal sketched out by Saez & Zucman.

allowed within state constitutions, should a state such as California decide to pursue the AI Tax on its own.[152] The Supreme Court has specifically addressed the question of in-kind taxation by a state government, upholding the tax.[153]

Even skeptics of the federal taxing power can see the role for "special assessments." For example:

> Epstein, applying his strict disproportionate burden standard, generally approves of special assessments since the law governing them requires some proportionality between the benefit conferred and the assessment imposed. Yet the case law's proportionality requirement is extremely loose, giving the state very wide leeway in setting the assessments due from individual property owners.[154]

Hence, passing the constitutional threshold for a "special assessment" is relatively easy. According to Kades, "[t]he language from the special assessment cases is vivid, declaring an assessment valid unless it is palpably arbitrary and a plain abuse . . . unless the exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property, it cannot be maintained that the state has exceeded its taxing power."[155] Issuance of new shares does not confiscate the shares previously held, but simply dilutes their value.

The most substantial hurdle in applying an in-kind tax liability that will not be deemed a taking is the standard of fungibility.[156] Whether publicly traded securities constitute a "fungible" asset has not been tested, though the convention in many financial transactions is to view publicly traded stock as equivalent to cash.[157] The Supreme Court recently examined a case of a local tax authority

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Emmanuel Saez & Gabriel Zucman, *A Wealth Tax on Corporations' Stock*, 37 ECON POL'Y 213, 215 (2022).

[152] *See* Ilya Lipin & John Damin, *State Tax Considerations for Financial Institutions*, THE TAX ADVISER (May 1, 2023), https://www.thetaxadviser.com/issues/2023/may/state-tax-considerations-for-financial-institutions.html [https://perma.cc/CWD5-L9DM] ("Other states may instead impose a specific tax on a 'financial institution' or 'financial organization,' measured by a tax base other than net income (e.g., net worth, capital, or book income). Ohio imposes the financial institutions tax based on a taxpayer's 'Ohio equity capital' (see Ohio Rev. Code §5726.04(A)). South Carolina imposes a tax on every 'bank engaged in business in [South Carolina]' a separate income tax with its own income and deduction provisions (see S.C. Code §§12-11-20 and 12-13-20).").

[153] *See* Leonard v. Earle, 279 U.S. 392 (1929) (regarding a Maryland tax assessed and paid in oyster shells).

[154] Eric Kades, *Drawing the Line Between Taxes and Takings*, 97 NW. L. REV. 189, 257 (2002).

[155] *Id.* at 260 (citing Houck v. Little River Drainage Dist., 239 U.S. 254, 262 (1915)).

[156] *Id.* at 198 ("*Eastern Enterprises* . . . distinguishes taxation and takings based on the formal notion of fungibility. When the government requires citizens to part with fungible assets by imposing a general liability and taking money, it is taxation according to *Eastern Enterprises*. When the government requires a specific, non-fungible asset, however, it is deemed a taking.").

[157] Although rather technical, it is important to distinguish three aspects of in-kind taxation: (1) whether the taxable base must be cash; (2) whether the remittance must be made in the form of cash; and (3) whether the assessment must be denominated in cash. There is longstanding acceptance that neither the taxable base nor the tax remittance must be in cash to meet constitutional requirements. The largest constitutional question is whether the assessment must be in cash. The question of fungibility would apply to an assessment denominated in securities as proposed in this Article.

seizing real property to satisfy a tax assessment, holding there was no question about the constitutionality of seizing property to cover the amount of tax due, but that the government could not take property in *excess* of the taxes due.[158]

Although there will inevitably be legal challenges to any effort to tax AI given the immense private fortunes at stake, the fate of an AI Tax is ultimately a political decision. As some scholars who have proposed seventeen different ways to tax AI have concluded, "the real challenge for taxing the data giants will be a policy battle rather than a legal one."[159] We do not assume to know whether Congress or state governments will be willing to adopt this tax.

One encouraging feature of our proposal for purposes of its political prospects is that while the taxing power is broad, our tax policy proposal remains a moderate intervention relative to many alternatives. Fractional public ownership is a far less extreme tool than receivership, where total governance powers are conveyed and all other private owners are replaced. Here, there can be partitioned ownership. The extraordinary benefits of generative AI also make simply banning it an unappealing option.[160] However, if the pace of technological development is the sole criterion for policymaking, then this tax would be expected to delay AI progress in two ways. First, it makes investment in AI less appealing because that investment is now diluted by the additional issuance. We in turn would expect less investment. Second, the involvement of the public voice in corporate governance decisions could pause or delay certain types of development also associated with

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[158] *See* Tyler v. Hennepin Cnty., 598 U.S. 631, 639-40 (2023) ("The principle that a government may not take more from a taxpayer than she owes can trace its origins at least as far back as the Magna Carta, and that from the founding of the United States, the government could seize and sell only 'so much of [a] tract of land . . . as may be necessary to satisfy the taxes due thereon.'"). Current doctrine identifies three key aspects of distinguishing a tax from a taking. *See* Glogower, *supra* note 23, at 831 ("First, the archetypical scenario of a taking is an exaction from a particular individual, whereas a tax affects a broad group of taxpayers in accordance with common characteristics. Second, an exaction is more likely to be characterized as a taking when it applies to a particular property, or, as in *Koontz*, the monetary exaction is made with respect to a particular property. Third, an exaction is more likely to be characterized as a taking when it is designated for a particular public purpose or use, in contrast to taxes which are in the paradigmatic case laid for the broader purpose of providing for the 'general welfare' of the public as a group."). The question of constitutionality is also distinct from the question of desirability—that is, whether something *should* be the law rather than whether something *complies* with current law.

[159] Allison Christians & Tarcisio Diniz Magalhães, *Why Data Giants Don't Pay Enough Tax*, 18 HARV. L. & POL'Y REV. 119, 121 (2023).

[160] *See, e.g.*, Valerio Capraro et al., *The Impact of Generative Artificial Intelligence on Socioeconomic Inequalities and Policy Making,* 3 PNAS NEXUS 1 (2024) (describing capacity of AI to both exacerbate and ameliorate inequality).

large public harms.[161] But neither of these risks seems comparable to current and growing harms of AI.[162]

A new AI Tax also does not need to be a full substitute for regulation. Taxation is a different policy lever that can operate in tandem with police powers. Some of the proposed regulatory solutions like rate setting and industry accountability standards are appealing.[163] New EU regulations that emphasize transparency, accountability, non-discrimination, and privacy in AI systems are also compatible with additional tax liabilities on AI.[164] But political economy limitations also limit the potential of achieving redistribution through regulation. As Raskolnikov observes, "Redistribution through legal rules, it turns out, is limited in a way that redistribution through the tax law is not."[165] So the answer to the emergence of the new Gilded Age is the same today as it was when the original Gilded Age arrived over a century ago: higher taxes. The AI Tax we propose in the subsequent section details this approach.

B. Policy Design for a New AI Tax

The AI Tax would require the remittance of an equity interest from firms designated "AI Firms." This Section describes the core design elements of such a tax: defining the taxable category; specifying the form of equity to be remitted; selecting the tax rate; and stewarding the equity after remittance.

1. Defining the Taxable Category

All taxes face a familiar challenge: taxpayers will seek to avoid paying the tax by taking advantage of ambiguities in the law that will allow for lower tax liability. This phenomenon is expected and is not, in itself, a reason not to adopt a tax.[166] One of the principal strategies for avoiding a tax is trying to fall outside the

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[161] The recent success of DeepSeek, a Chinese AI company, also informs this question of whether fractional public ownership will limit the pace of technological advancement. It developed this software in the context of the Chinese economy where government plays a larger role in the management of private firms, although the full scope of the Communist Government's relationship with DeepSeek has not been disclosed. DeepSeek is widely regarded as a pathbreaking development in performing AI functions with fewer chips and less electricity than U.S. rivals. *See* Kelly Ng et al., *DeepSeek: The Chinese AI App That Has the World Talking,* BBC NEWS (Feb. 4, 2025), https://www.bbc.com/news/articles/c5yv5976z9po [https://perma.cc/34KT-NPCW].

[162] *See supra* Part I (discussing the problems of stolen material, labor dislocation, discrimination, and wealth concentration).

[163] For a typology of additional regulatory tools available beyond transparency and disclosure requirements, *see* Hannah Bloch-Wehba, *Information Law for an Information Economy* (2025) (unpublished manuscript) (on file with author); Tejas Narechania, *Machine Learning as Natural Monopoly*, 107 IOWA L. REV. 1543, 1596-1608 (2022); Frank Pasquale, *The Second Wave of Algorithmic Accountability*, THE LPE PROJECT (Nov. 25, 2019), https://lpeblog.org/2019/11/25/the-second-wave-of-algorithmic-accountability/ [https://perma.cc/279K-V2ZN].

[164] *See* Capraro et al., *supra* note 160, at 10.

[165] Alex Raskolnikov, *Law for the Rich*, 109 MINN. L. REV. 1399 (2025).

[166] For example, much of the introductory federal income tax course taught in law school is focused on the question, "What is income?" Acknowledging that there are ambiguities in what

defined taxable category. There are also well-hewn strategies for addressing this kind of avoidance.

Take the example of the largest federal revenue raiser in the United States: the federal income tax.[167] If you go to the relevant code provision entitled "Gross Income Defined" you see not a definition, but a nonexclusive list of examples of what is included in gross income. It is subsequently up to administrative bodies of law, created by Treasury and the I.R.S., and judicially created law, under Article III courts, to ultimately define what is income.[168]

Defining AI will face similar challenges. AI encompasses a wide array of technologies, from knowledge-based systems to machine learning,[169] and legal scholars often focus on its ability to mimic aspects of human cognition using machines.[170] Beyond the machine, many legal scholars underscore the fact that AI is created by humans and can automate tasks that traditionally require human intelligence.[171] This capacity enhances the efficiency and effectiveness of typically "human" tasks.[172] Further, AI definitions often highlight the system's ability to process, interpret, and act, sometimes even without human intervention.[173]

Although AI definitions have a few key commonalities, there are arguably more differences. Some definitions highlight the technical complexities of AI, such as data processing and pattern recognition.[174] Others focus on specific aspects such as generative AI, RAISA, or natural language processing.[175] Legal scholars often

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counts as income is not equivalent to calling to abolish the federal income tax, but rather is foundational to the adoption and implementation of an income tax. The argument to reject a tax based on definitional issues arises when the tax is no longer effective at raising revenue, or when the avoidance is so pervasive or its incidence so inconsistent that there are serious fairness concerns.

[167] U.S. Dep't of the Treasury, *How Much Revenue Has the U.S. Government Collected This Year?*, FISCAL DATA (Dec. 31, 2024), https://fiscaldata.treasury.gov/americas-finance-guide/government-revenue/ [https://perma.cc/D362-BQHW].

[168] *See, e.g.*, Moore v. United States, 602 U.S. 572 (2024); Treas. Reg. § 1.61-1(a) (1960).

[169] *See* Hannah Hilligoss et al., *Artificial Intelligence & Human Rights: Opportunities & Risks*, BERKMAN KLEIN CTR. (Sept. 25, 2018), https://cyber.harvard.edu/publication/2018/artificial-intelligence-human-rights [https://perma.cc/83W9-7UYV].

[170] *See* Karl Manheim & Lyric Kaplan, *Artificial Intelligence: Risks to Privacy and Democracy*, 21 YALE J.L. & TECH. 106, 113-14 (2019).

[171] *See* Harry Surden, *Artificial Intelligence and Law: An Overview,* 35 GA. ST. U. L. REV. 1305, 1307-10 (2019).

[172]Muneer M. Alshater, *Exploring the Role of Artificial Intelligence in Enhancing Academic Performance: A Case Study of ChatGPT* (Dec. 27, 2022), https://ssrn.com/abstract=4312358.

[173] *See* David C. Vladeck, *Machines without Principals: Liability Rules and Artificial Intelligence*, 89 WASH. L. REV. 117, 121-22 (2014).

[174] *See* Jessica Fjeld et al., *Principled Artificial Intelligence: Mapping Consensus in Ethical and Rights-Based Approaches to Principles for AI*, BERKMAN KLEIN CTR. 11 (2020), https://ssrn.com/abstract=3518482.

[175] *See* David Baidoo-Anu & Leticia Owusu Ansah, *Education in the Era of Generative Artificial Intelligence (AI): Understanding the Potential Benefits of ChatGPT in Promoting Teaching and Learning*, 7 J. AI 52, 53 (2023); Stanislav Ivanov & Craig Webster, *Adoption of Robots, Artificial Intelligence and Service Automation by Travel, Tourism and Hospitality Companies—A Cost-Benefit Analysis*, International Scientific Conference "Contemporary tourism—traditions and innovations" (Oct. 21, 2017), https://ssrn.com/abstract=3007577; Alshater, *supra* note 172.

emphasize AI's machine learning abilities to varying degrees. Some conclude that AI follows predefined rules, while others believe that AI can be completely autonomous, learning and adapting to the environment without the need for human supervision.[176]

The most intricate and technologically astute definitions focus on a particular aspect of AI and, thus, can fail to encompass the entire field of AI properly. For example, a definition that equates AI and machine learning provides a narrow view of the entire field and overlooks the other subcategories of AI.[177] On the other hand, the most simple and straightforward definitions of AI can sometimes be so broad that they fail to accurately explain or identify what AI actually is. For example, a definition that defines AI simply as a "non-human program that solves sophisticated tasks" is so vague that it could encompass nearly any machine ever created.[178] Similarly, a definition that states that AI is a machine capable of performing tasks that, "if performed by a human, would be said to require intelligence" is so subjective and unclear that anything could arguably be "AI."[179]

One solution for this challenge is to then look at procedural solutions for arriving at a definition. That is, prioritize the entity that is empowered to issue the definition and police its application. So long as that specified entity is the one making the definition, it is legitimate.[180] Treasury, as the agency empowered to write all needful rules and regulations to administer our Internal Revenue Code, could be well-positioned to issue the definition.[181] Treasury is also accustomed to amending regulations as issues arise, so the process is expected to be iterative depending on worrisome tax avoidance or ineffective rules.

Additionally, enforcement of the AI Tax could look to attestations of functionality to shareholders or other investors, attestations to customers, and attestations to journalists. This way tax administrators would not just be limited to detecting AI functionalities independently and directly, or relying only on the self-assessment claimed on a tax filing. To illustrate, in a version of third-party reporting, large purchases of AI functionalities above a dollar threshold could be required to report that purchase to the relevant tax authority. Although the purchaser has no tax liability from the purchase, there would be penalties for nonreporting.

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[176] *See* Jessica Fjeld et al., *supra* note 174, at 11.

[177] *See* Michael Webb, *The Impact of Artificial Intelligence on the Labor Market* 35 (Jan. 2020), https://www.michaelwebb.co/webb_ai.pdf [https://perma.cc/BX3A-EWKF].

[178] *See* Luciano Floridi et al., *capAI—A Procedure for Conducting Conformity Assessment of AI Systems in Line with the EU Artificial Intelligence Act* 75 (Mar. 23, 2022), https://ssrn.com/abstract=4064091.

[179] *See* Matthew U. Scherer, *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies*, 29 HARV. J. L. & TECH. 353, 362 (2016).

[180] Such definitions will inevitably be criticized, but they nevertheless have force of law by the body enacting them. *See, e.g.*, Capraro et al., *supra* note 160, at 11 ("The broad definitions and categories within the [European Union's AI Act] pose challenges, creating potential uncertainty for AI developers and users.").

[181] *See* I.R.C. § 7805 (2022) ("[T]he Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.").

This type of third-party reporting is well-documented to have better compliance rates than self-reporting.[182]

Increasingly, AI is also embedded within broader supply chains that raise questions about which firms will be liable for the new AI Tax. For example, would a programmer who modifies an open-source model to create their own sole proprietorship need to remit an ownership stake of their startup? One approach to this challenge is to sort between foundational models and secondary, customized ones. To the extent that the algorithmic supply chain is consolidating around "systemically important actors," then these identified actors could be the sole target for the tax.[183] Alternatively, the tax could have a zero bracket wherein firms below a certain annual revenue amount could be exempt.[184]

While the principal targets of the AI Tax are firms with ownership of a specific type of AI, there is also the challenge of AI hardware makers in addition to software creators. Chipmakers are an indispensable part of the execution of AI, but do not necessarily hold property interests in the algorithms that software firms run on their machinery. A strategy for folding in this group of firms is to design the scope of the tax to reach the suppliers of identified AI firms once the principal taxable category of AI is defined. For example, if a firm receives over a certain portion of its revenue from entities that are already designated as AI firms, then the supplying firm is also designated an AI firm and liable for remitting its own assessed tax liability.

2. Specifying the Form of Equity to Be Remitted

Simply calling for taxes to be paid in equity rather than cash still leaves open the enormous question of what type of equity is to be remitted. Since the birth of capitalism, a wide array of financial instruments have been created to allow for investors to own fractional shares in firms.[185] These property interests are generally referred to as equity securities.[186] Under our proposal, the centuries of innovation in designing such property interests would now be available to the tax authorities who will be requiring such a payment. A challenge, however, is that we assume broad variety of underlying ownership structures. In this Section, we propose three potential options for the type of equity securities to be remitted under the AI Tax.

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[182] *See* Joel Slemrod, *Tax Compliance and Enforcement* 22 (Nat'l Bureau of Econ. Rsch., Working Paper No. 24799, 2018), https://www.nber.org/system/files/working_papers/w24799/w24799.pdf.

[183] *See* Jennifer Cobbe, Michael Veale, & Jatinder Singh, *Understanding Accountability in Algorithmic Supply Chains* (ACM Conf. on Fairness, Accountability, and Transparency, 2023), https://ssrn.com/abstract=4430778.

[184] This type of approach is common in United States tax policy. *See, e.g.*, I.R.C. § 448(c) (2024) (where the rules for which firms can elect to rely on a cash accounting method are based on an annual gross receipts test).

[185] *See* MAARTEN PRAK & JAN LUITEN VAN ZANDEN, PIONEERS OF CAPITALISM: THE NETHERLANDS 1000–1800, 124 (2023).

[186] *See* Theresa A. Gabaldon, *A Sense of Security: An Empirical Study*, 25 J. CORP. L. 307, 309-10 (2000).

The first option is to require remittance in exact proportion of the types of equity securities already outstanding. This approach does not require the development of any new type of security nor the expansion of the classes of shares or ownership interests that a firm already has issued. Rather, the new issuances mirror forms of equity already outstanding.[187] As with all the options described in this Section, the number of shares to be issued would be determined by the selected rate. While the administrative simplicity of this approach is appealing since firms will already be experienced at issuing each class of equity security, there are horizontal equity issues across firms if ownership interests look very different in how firms have been previously capitalized. That is, one firm that exclusively has common stock would be liable for remitting only common stock, while another dual-class firm would be issuing multiple classes of stock to the fund. Both would be sharing equivalent proportions of ownership but not necessarily equivalent control rights. An additional downside is this type of remittance is somewhat over inclusive since many firms will have other business activities in addition to AI, yet the equity security is conveying ownership in all the lines of a firm's business.[188]

A second option is to require identified AI firms to drop ownership interests of their AI into a specified entity, then remit a proportion of the equity interests in this entity based on the assessed tax rate. An advantage of this approach is that it limits fractional public ownership to the AI interests rather than other lines of business of the firms that currently own AI. An additional advantage is that the approach has consistency across taxpayers, since the type of holding company required to be formed and the proportion of equity interest to be remitted would be standardized.[189] This approach would also address some of the complications related to tax-exempt organizations, like OpenAI, being subject to the AI Tax.[190] However, there are much greater opportunities for taxable firms to play games with the value of the remitted equity interests since there will be no other equivalent non-insider shareholders also overseeing that they are adequately enjoying a profit interest or increasing share value. Such interests may not be tradeable, also limiting the value of the remitted property.

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[187] This method was proposed as a way to capitalize a trillion-dollar reparations fund in less than a year by assessing the tax on all publicly traded firms listed on U.S. exchanges. *See* Jeremy Bearer-Friend, *Paying for Reparations,* 67 HOW. L.J. 1 (2023). One additional advantage of this approach is that, after remittance, other shareholders with equivalent interests have common cause to ensure that profit distributions continue and that share value is maintained.

[188] A retort to this concern is the argument that AI is currently driving the record-breaking share price of these firms and that the value of these shares is what is being divvied up under the AI Tax.

[189] The entity could also be a B Corp or some other type of social enterprise, adding additional levers of accountability in the public interest.

[190] An AI Tax design where equity is issued by the subsidiary would look similar to the same arrangements that Microsoft has set up with Open AI when taking role as an investor in its subsidiary joint ventures that are essentially co-owned by the parent nonprofit and the Microsoft investors. Alternatively, nonprofits are organized as corporations under state law and have corporate boards, so there is room to claim governance powers at the parent-level through remittances under our AI Tax, but the non-distribution constraint would prevent any flow of profits to owners. All property held by the firm needs to remain in the charitable stream unless purchased for fair-market value.

A variation on the second option is that firms do not need to create a holding company. Instead, each taxable firm is required to issue some newly specified equity interest to satisfy the tax. The tax would require certain terms, like seats on the board, voting rights, and/or entitlement to profits. Due to the diversity of entity types that currently own AI, including corporations, partnerships, and LLCs, there would need to be a specific type of equity interest for each type of entity.[191] In the Galle, Gamage, and Shanske proposal of in-kind remittance in the context of paying wealth taxes, the notional interest that could be conveyed would not include any control rights.[192] There is a wide menu of possible terms to include in any equity interest and that menu is available here.

Across all the above options, the AI Tax could have a distinct impact on behavioral response depending on different classes of firms. Conclusions about the generic impact of a 'dividend tax' for example, are muddied when combined across large and small firms, which respond differently.[193]

3. Selecting the Tax Rate

We do not envision a controlling interest being remitted to the taxing authority collecting the AI Tax. Of course, even a low rate could eventually yield a controlling interest if the AI Tax were assessed annually. Hence, the AI Tax should be a one-time tax. The tax will be applied either in the year of enactment, or retroactively to address potential tax avoidance. Firms that become designated "AI firms" in later tax years will also, upon meeting the tax eligibility rules, be liable for remittance of the AI Tax.[194] While we expect the same tax rate to apply to all firms designated as "AI firms," the AI Tax could conceivably have graduated rates, with larger proportions of equity interests remitted depending on the qualifying activity. The choice to tax the entire entity through an assessment in equity interest also captures both the predictive and exchange values of social data.[195]

Although the actual rate to be adopted will largely be a political question, just as the recent corporate income tax rate choices have been, the ideal rate will

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[191] For example, with an LLC, profit and loss allocations would need to be specified, unlike stock in a corporation.

[192] Brian Galle, David Gamage, & Darien Shanske, *Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE L. J. 1257, 1297 (2023).

[193] See Michael Love, Equity Financing, Dividend Taxes and Corporate "Non-Capital" Investment 23 (Feb. 10, 2022) (unpublished manuscript), https://www.law.berkeley.edu/wp-content/uploads/2022/07/Love_dividendtax.pdf [https://perma.cc/63FL-KSR2].

[194] This also raises the corollary question that, if a firm no longer meets the definition of being an AI firm in a later tax year, will the equity interests also expire? An approach that would allow the prior tax payment to be unwound does not comport with numerous tax norms and should be rejected. For example, when a firm converts to nonprofit status, it is not entitled to a tax refund for all the years when it operated as a for-profit. Elsewhere in the code, when taxpayers seek to carryback losses to prior tax years based on changed conditions from one tax year to the next, a carryback is viewed as a tax preference that departs from baseline tax rules. The ambition of the AI Tax is to increase tax liability on AI firms, not design tax preferences for AI firms. Nevertheless, this design option is available for legislative drafters.

[195] Amanda Parsons & Salome Viljoen, *Valuing Social Data*, 124 COLUM. L. REV. 993, 1016-18 (2024).

have the following qualities: it will provide the adequate level of public voice in corporate decisions to address public harms of AI,[196] will provide a sufficient profit interest to compensate injured workers and creators, and will minimally crowd out private investment. There is of course a tradeoff between the first two goals and the third. And while there is no single rate that optimizes all three considerations, there could be an identifiable rate that in aggregate across the three priorities, is optimal.

4. Stewardship of Remitted Equity

An additional design choice for the AI Tax is who will ultimately hold the AI equity interests once shares have been remitted to pay the assessed AI Tax. The two main options are for shares to be distributed directly to the public and for the shares to be held by a publicly managed fund. This publicly managed fund could also issue shares to the public or could make distributions through other types of public expenditures. Unlike current tax levies of property under local, state, and federal tax systems, we do not propose liquidating the new holdings immediately through auction or some other sale, since this would not provide the corporate governance opportunities of fractional ownership.

If shares go directly to the eligible public, the goals of compensating individuals for stolen data and workforce displacement could be directly achieved. The benefit of the tax would also be highly salient to the recipient, just as stimulus fund policies are visible in ways tax expenditures often are not.[197] Although this achieves distributional and reparational goals, the downside of this approach is that we would not expect to achieve many of the governance benefits of the AI Tax. Most shareholders are passive and all shareholders will have a diluted voice, so they won't be able to steer much relative to an institutional investor.[198]

Alternatively, once the revenue authority has verified that the tax assessment has been paid, the shares could go into a publicly managed fund. The fund would be governed by an appointed or elected board following the models from sovereign wealth funds and public pension funds.[199] Because of the governance role envisioned by the AI Tax, equity interests would not be traded, but

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[196] For example, under German law, there is a specified proportion of corporate board seats that must be held by labor representatives. *See* Paul Davies & Klaus Hopt, *Corporate Boards in Europe – Accountability and* Convergence, 61 AM. J. COMP. L. 301, 301-76 (2013). This threshold is higher for larger size firms. *See id.* A similar quota could be applied here. Again, setting the rate, such as board seats, will be a political question.

[197] *See* Suzanne Mettler, *Sustaining and Expanding the Submerged State: Tax Policy and Health Care Reform*, 10 PERSP. ON POL. 88, 95 (2011) (describing the invisibility of tax expenditures to most citizens, undermining public support for public safety-net spending); Maliha Singh, *Public Sentiment and Opinion Regarding CARES Act,* 58 BUS. ECON. 24, 24-33 (2023) (showing significant improvement in public opinion after highly salient stimulus spending).

[198] *See, e.g.*, LARRY CUNNINGHAM, QUALITY SHAREHOLDERS, 91 (2020) (describing the categories of involvement of typical shareholders).

[199] *See infra* Section III.C for an account of precedents in fractional public ownership of private enterprise currently deployed within thriving capitalist economies.

they could be borrowed against to achieve liquidity.[200] Shares of the fund could then be issued to the public, or cash could be distributed to the public (like the oil profits that fund the Alaska Permanent Fund, managed by the state-owned Alaska Permanent Fund Corporation), or the fund expenditures could be allocated to specific expenditures (like the Federal Highway Trust Fund or Medicare trust fund).[201]

Management of the fund could correspond with the government entities proposed under the Framework for Mitigating Extreme AI Risks proposed by the Chairman of the Senate Armed Services Committee, "a new interagency coordinating body, a preexisting federal agency, or a new agency."[202] The preexisting agencies identified are Department of Energy and Department of Commerce.[203]

C. Precedents in Fractional Public Ownership of Private Enterprise

Our proposal is consistent with the longstanding legacy of fractional public ownership of private enterprise within thriving, capitalist economies.[204] These precedents include the trillions in public pension funds and the trillions in sovereign wealth funds managed throughout the globe. In both instances, public entities manage private investment portfolios that include substantial equity interests in private firms. The returns on these investments are then distributed to various public priorities.[205]

Public pension funds are typically managed by a state or local government, or other public entities, and provide retirement benefits to former public employees

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[200] The fiduciary duties of the board could be specified by statute. Alternatively, contractual terms could bolster enforceability of public demands on board decisions. *See* Kelli Alces Williams, *The Harm in the Fiduciary Myth*, 49 B.Y.U. L. REV. 1465, 1479 (2024).

[201] *See, e.g.*, Becky Bohrer, *Alaskans get a $1,312 oil dividend check this* year, ASSOCIATED PRESS (Oct. 5, 2023), https://apnews.com/article/alaska-oil-wealth-fund-dividend-c512839da89902b06f39e87866733cf8 [https://perma.cc/3N9N-SBUU]; Zachary Liscow, *State Capacity for Building Infrastructure*, ASPEN ECON. STRATEGY GRP. (2024), https://www.economicstrategygroup.org/wp-content/uploads/2024/12/Liscow-AESG-2024.pdf [https://perma.cc/ZS3P-U7TM].

[202] Press Release, Sen. Jack Reed et al., Framework for Mitigating Extreme AI Risks (Apr. 16, 2024), https://www.reed.senate.gov/news/releases/romney-reed-moran-king-unveil-framework-to-mitigate-extreme-ai-risks [https://perma.cc/9AUC-QUQX].

[203] *Id.* These agencies could perform duties similar to the Black Lung Disability Trust Fund. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-21, BLACK LUNG BENEFITS PROGRAM: IMPROVED OVERSIGHT OF COAL MINE OPERATOR INSURANCE IS NEEDED (Feb. 21, 2020), https://www.gao.gov/products/gao-20-21 [https://perma.cc/MEJ3-C6DK].

[204] We include this observation to dispel any misconception that this proposal is "Marxist." Although Marx did anticipate that "market norms gradually dominate all spheres of life, public and private" and this proposal does position the public sphere as a market participant, by positioning the state as a shareholder in private enterprise the proposal further expands capitalist systems rather than substituting them with Communist ones. *See* Brian Leiter, *Marxism and the Continuing Irrelevance of Normative Theory*, 54 STAN L. REV. 1129, 1137 (2002).

[205] The dimension that is most unique about our proposal is that the initial equity interest is acquired through a tax assessment rather than being purchased. By contrast, pension funds and sovereign wealth funds act as traditional investors rather than tax collectors.

and their beneficiaries.[206] At the federal level, public pension plans, like the Thrift Savings Plan, provide retirement income to former employees that are established by an employer or employee organization. [207] Generally speaking, pension programs owe a fiduciary duty to pension beneficiaries.[208] In 2023, there were 304 state-administered funds and 4,632 locally-administered "defined benefit public pension systems."[209] Combined, these plans have $5.3 trillion in assets, 14.9 million active working members, 12 million retirees, and $334 billion in annual benefit distributions.[210]

In the United States, the three largest public pension funds are the California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System, and the New York State Common Retirement Fund (NYSCRF).[211] These pensions are invested broadly and earn annual returns. For example, in fiscal year 2023, the NYSCRF's annual return was 11.5%[212] and 42.85% of the fund's assets were invested in publicly traded equities.[213]

Because public pension funds must balance multiple priorities in addition to seeking the highest possible return, many public funds underperform relative to private funds.[214] Since the motivation behind our proposed ownership structure is not simply to maximize rate of return, but has many additional regulatory goals, the lower rate of return is not particularly worrisome. The revenue raising component of our proposal is but one of multiple goals, including increased public voice in corporate governance decisions of AI firms. This goal is already achieved in the

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[206] *See, e.g.*, N.Y. RETIRE. & SOC. SEC. LAW § 152(5) (McKinney 2018) ("'Public employee pension plan 'shall mean any . . . program . . . established . . . in whole or in part, by a public employer of the state . . . which provides retirement income to employees or their beneficiaries."); OR. REV. STAT. ANN. § 238.005 (West 2024) ("'Pension 'means annual payments for life derived from contributions by one or more public employers."); MINN. STAT. ANN. § 518.003 (West 2024) ("'Public pension plan 'means . . . a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation . . . or from other public sources.").

[207] 29 U.S.C. § 1002(32) (defining "governmental plan" as a pension plan, or other plans, that is maintained by the United States government, any State or subdivision of a state government, or governmental agency).

[208] 29 U.S.C. § 1002(21) ("[A] person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan.").

[209] U.S. CENSUS BUREAU, ANNUAL SURVEY OF PUBLIC PENSIONS *(ASPP)* (Feb. 5, 2025) https://www.census.gov/programs-surveys/aspp.html [https://perma.cc/4EA2-PSBR].

[210] PUBLIC PLANS DATA, NATIONAL DATA, https://publicplansdata.org/quick-facts/national/ [https://perma.cc/8JW2-AUAU].

[211] *Largest U.S. Retirement Plans 2023*, PENSIONS & INV. (Feb. 13, 2023) (the assets, in millions, for each fund are $430,364, $288,640, and $233,227 respectively), https://www.pionline.com/largest-us-retirement-plans/2023/ [https://perma.cc/Y6PY-8J6S].

[212] *Id.*

[213] *Id.* (describing the proportion of funds investments by category).

[214] *See* Julia L. Coronado et al., *Public Funds and Private Capital Markets: The Investment Practices and Performance of State and Local Pension Funds*, 56 NAT'L TAX J. 579-94 (2003) (showing empirical evidence of lower rate of return on public pension funds).

context of public pension funds, where institutional investors do have greater levels of influence over firm priorities.[215]

Notably, fractional public ownership of AI firms is distinct from recent 100% ownership scenarios from the financial crisis. In extraordinary periods of economic distress, the government may take a receivership role in a failed firm, assuming all liability of the firm and claiming total control. This occurred in the fallout of AIG and also GM.[216] Our proposal does not entail purchasing a firm, does not entail taking a 100% ownership interest in the firm, and does not place the firm under receivership.[217] Hence, public pension funds and sovereign wealth funds are a closer analogy since both entail only fractional public ownership alongside many private investors.[218]

IV. PAIRING AI PROBLEMS WITH AN AI TAX SOLUTION

No single intervention will be sufficient to address the full scope of AI harms identified in this Article. And to be sure, the identified harms we have described are themselves only a partial list of concerns related to AI.[219] While we expect additional regulatory tools will be needed, our goal with this Article is to demonstrate how a specific tax policy can substantially mitigate many of the problems related to AI. Each identified problem is of varying concern to different audiences. But our broad policy solution touches on all of them. In this Part, we

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[215] *See* Jill E. Fisch & Jeff Schwartz, *The Singular Role of Public Pension Funds in Corporate Governance*, 104 TEX. L. REV. (forthcoming 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5243139.

[216] *See* LAWRENCE A. CUNNINGHAM & MAURICE R. GREENBERG, *Nationalization,* in THE AIG STORY, at 243-61 (2013); Douglas Baird, *Lessons from the Automobile Reorganizations*, 4 J. LEG. ANALYSIS 271 (2012).

[217] Our fractional ownership approach is also distinct from the "public option" approach, where entirely publicly owned firms compete with entirely privately owned firms. *See* Hannah Bloch-Wehba, *A Public Technology Option*, 86 LAW & CONTEMP. PROBS. 223 (2023).

[218] Another relevant analogy is the U.S. International Development Finance Corporation ("DFC") which has authority to take equity positions in private companies. The agency was created by Congress as a way to encourage capitalist principles and growth. U.S. INT'L DEV. FIN. CORP., *America's Development Finance Institution*, www.dfc.gov [https://perma.cc/9ZBX-RSHQ]. Notably, the creation of the DFC was a bipartisan effort and included both Republican and Democratic votes of support. Press release, Liz Schrayer, USGLC CEO Statement on Bipartisan House Legislation to Reauthorize the U.S. Development Finance Corporation (July 11, 2024), https://www.usglc.org/newsroom/usglc-ceo-statement-on-bipartisan-house-legislation-to-reauthorize-the-u-s-development-finance-corporation/ [https://perma.cc/M6UF-5PGQ].

[219] For example, environmental devastation, national security risks, and tyrannical state surveillance are all noted harms of the growth of AI. *See* Shaolei Ren & Adam Wierman, *The Uneven Distribution of AI's Environmental Impacts*, HARV. BUS. REV. (July 15, 2024), https://hbr.org/2024/07/the-uneven-distribution-of-ais-environmental-impacts [https://perma.cc/3YE3-XQQX]; Arnett, *supra* note 6, at 1338 ("An AI empire is held together through interconnected systems of oppression, including 'heteropatriarchy, racial capitalism, white supremacy, and coloniality' and relies upon the 'mechanisms of extractivism, automation, essentialism, surveillance, and containment.'") (citing Jasmina Tacheva & Srividya Ramasubramanian, *AI Empire: Unraveling the Interlocking Systems of Oppression in Generative AI's Global Order*, BIG DATA & SOC'Y 1 (July 2023), https://doi.org/10.1177/20539517231219241).

conclude the Article by pairing the problems identified in Part I with the proposal elaborated in Part III.

Our AI Tax is motivated, in part, by the broad public contributions that trained generative AI. There has been a societal level theft and we have proposed using a tool that is at the broad level of the public.[220] This is distinct from the private law remedies that require fact intensive inquiries and are unlikely to produce compensation for most creators.[221] The entirety of the public that was fed into AI algorithms will now also receive compensation through the AI Tax.

The AI Tax also provides an additional lever of public influence over AI, bringing in public voice to additional forms of decision making that impact corporate choices. The benefits of this new governance tool can help prioritize addressing discrimination in AI, in addition to many negative externalities of AI.[222] These include grave democracy concerns.[223] There is already a greater expectation of accountability when it is the public that is using the AI.[224] A shift to public ownership further expands that duty. Our proposed expansion of the role of public voice in AI firm governance also tempers some of the power of billionaire oligarchs who increasingly control both public and private life.[225] The AI Tax would give more public voice in firm decisions, thus diluting the influence of majority shareholders.[226]

The AI Tax will also provide revenue at a time when it is urgently needed.[227] These revenue needs are only expected to increase as the taxable wage base shrinks due to displaced workers.[228] These displaced workers also impose greater costs on the public due to greater need for public services.[229] Unlike income taxes, the AI Tax does not have lag-time for early years of development. A greater tax liability

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[220] *See supra* Section I.A.

[221] *See supra* Sections II.A and B.

[222] Spencer Overton, *Overcoming Racial Harms to Democracy from Artificial Intelligence*, 110 IOWA L. REV. 805, 854-65 (2025) (stating four general principles for guiding policy intervention related to AI: (1) "[a]nticipate racial harms to democracy"; (2) "facilitate pluralism and prevent algorithmic discrimination"; (3) "mitigate racial disinformation and manipulation"; (4) "provide meaningful accountability").

[223] Francis Fukuyama, Barak Richman & Ashish Goel, *How to Save Democracy from Technology: Ending Big Tech's Information Monopoly*, 100 FOREIGN AFFS. 98 (2021).

[224] Christine Chambers Goodman, *AI, Can You Hear Me? Promoting Procedural Due Process in Government Use of Artificial Intelligence Technologies*, 28 RICH. J. OF L. & TECH. 700 (2022).

[225] *See, e.g.*, Susan B. Glasser, *Elon Musk's Revolutionary Terror*, NEW YORKER (Feb. 6, 2025), https://www.newyorker.com/news/letter-from-trumps-washington/elon-musks-revolutionary-terror [https://perma.cc/Q4H4-HZUV]; Kate Andrias & Ben Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 577-86 (2021).

[226] As we note in Section III.B.2, there are multiple options for the types of control rights that would be conferred to the public and whether these control rights would be centrally managed or diffuse across the public.

[227] This revenue is not the result of shares being sold, but the distributions of profit from AI firms. A public fund created through the AI Tax could also borrow against the shares in the fund.

[228] *See, e.g.*, Noam Scheiber, *Why is This C.E.O. Bragging About Replacing Humans with AI,* N.Y. TIMES (Feb. 2, 2025), https://www.nytimes.com/2025/02/02/business/klarna-ceo-ai.html [https://perma.cc/4JC6-4UU6] ("I am of the opinion that AI can already do all of the jobs that we, as humans, do."); *see also supra* Section I.B.

[229] *Id.*

on AI also claws back some of the ways that the federal income tax has already subsidized AI development.[230]

There are some additional tax administration considerations that also make the AI Tax appealing. Companies are familiar with issuing equity. It is a routine process and imposes less overhead compliance costs relative to many other proposed interventions.[231] Companies are already familiar with how to divvy up ownership interests, and this tax does not require inventing a whole new system. The AI Tax also applies to foreign activities and foreign investors, which is a notorious challenge for the corporate income tax.[232] The parent company issues the equity interest, and this dilutes the value of shares held by foreign and domestic investors alike.[233] Given the dominant position of U.S. tech companies in the current AI arms race, the United States has a particularly important role to play in addressing the challenges posed by AI.[234]

CONCLUSION

Generative AI poses immediate and long-term threats. Tax policy can help. Imposing an AI Tax that requires remittances in the form of equity rather than cash will help mitigate many of the risks of generative artificial intelligence.

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[230] *See* Dimitropoulou, *supra* note 17, at 409; *see also* Joseph Bankman, *The Structure of Silicon Valley Start-Ups*, 41 UCLA L. REV. 1737, 1741 (1994) (describing the more general dynamic where tech start-ups enjoy current deduction for R&D costs such as costs of salary, rent, and equipment under the Internal Revenue Code).

[231] By contrast, the newly imposed CAMT requires a third book of accounting that is notoriously cumbersome. *See, e.g.*, Corey Goodman & Kara Mungovan, *Corporate Alternative Minimum Tax Rules Multiply Compliance Tasks*, BLOOMBERG (OCT. 3, 2024), https://news.bloombergtax.com/tax-insights-and-commentary/corporate-alternative-minimum-tax-rules-multiply-compliance-tasks [https://perma.cc/C727-3TZU].

[232] *See, e.g.*, Reuven-Avi Yonah, *Does the US Have to be a Tax Haven?*, 116 TAX NOTES INT'L 1009 (Nov. 11, 2024).

[233] For example, if a sovereign wealth fund in Saudi Arabia is a primary investor in an AI firm, the U.S. is not in a position to directly tax the Saudi sovereign wealth fund through a wealth tax. But if the U.S. were to dilute the fund's interest in the U.S. AI company, the U.S. has imposed a tax incidence on the foreign fund within our taxing jurisdiction.

[234] *See* Christians & Magalhães, *supra* note 159, at 121 ("Our thesis is that there are no hard law barriers in domestic or international law; rather, any barriers that exist are purely geo-political in nature. As such, the United States, as the headquarter jurisdiction of the main data giants, is faced with a political decision of either cooperating with or contesting the reform initiative as it continues forward. We believe the national interest is best served through cooperation rather than resistance.").