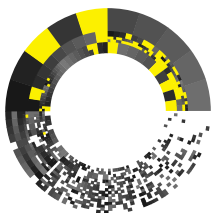
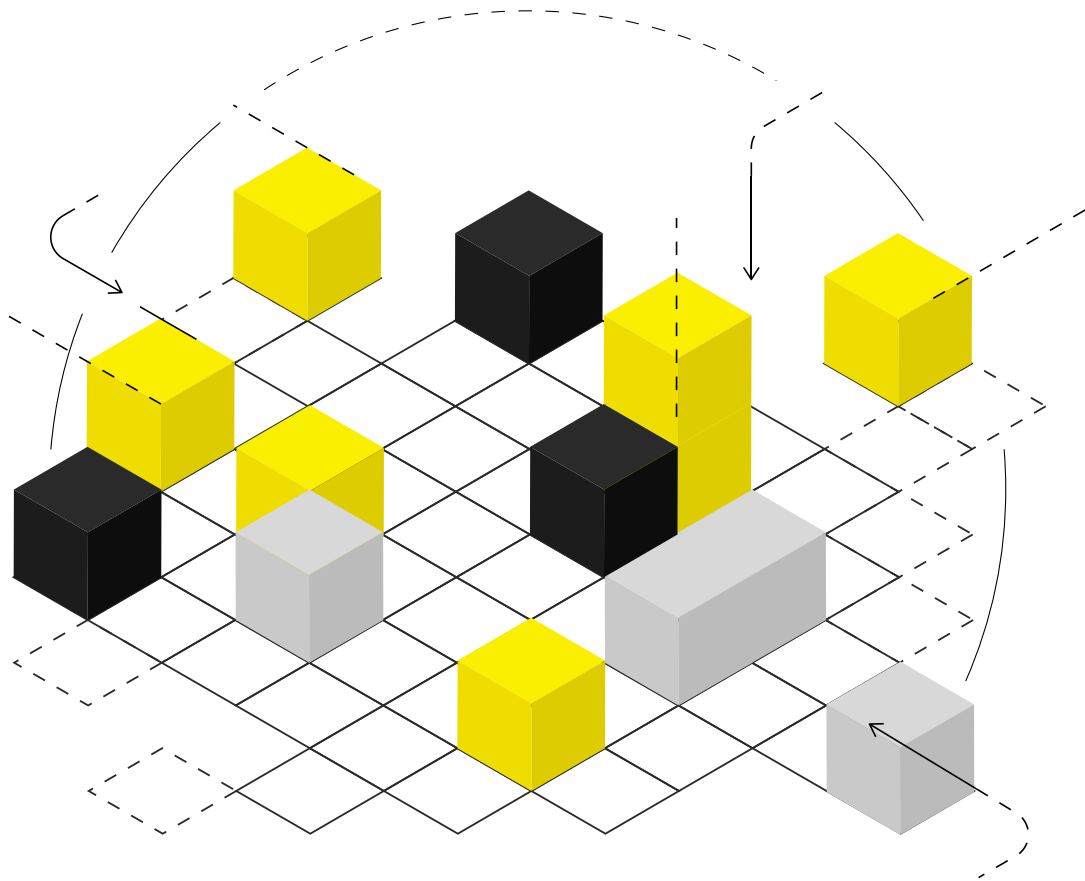


# DIGITAL RIGHTS REVISITED:

*a rights-based approach to building  
digital public spaces*



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## **EXECUTIVE SUMMARY**

For the past decade, online ecosystems have been dominated by commercial platforms that monetize user engagement and interactions. True digital public spaces, where people can openly express themselves, exchange ideas, and engage in substantive discourse without being exploited and having value extracted from them, are rare. Against this backdrop, this paper examines digital rights as a framework that plays a role in shaping the dynamics of online ecosystems. It considers the feasibility of a holistic rights-based approach to creating genuine digital public spaces.

The paper looks into the concept of digital rights and its scope, pointing out that it is an amalgam of various rights frameworks with roots in human rights. It highlights a historical context where distinctions among different categories of human rights, stemming from the political and ideological divisions of the 1950s and 1960s, led to a prolonged period of overlooking social and economic rights by states, both in the digital and non-digital domains. The paper underscores the complex landscape of claiming digital rights, given the peculiar situation of privately owned platforms, such as social media platforms, frequently serving as de facto digital public spaces. Within these spaces, various rights frameworks operate concurrently due to the different functions and conceptualizations of the same digital environments. These spaces, which allow for community activism as well as social and political interaction, are dominated by market-driven principles and dynamics.

Drawing from this analysis, the paper explores the key limitations inherent in the prevailing conception of digital rights. These limitations encompass challenges with the enforcement of rights, a disregard for social justice issues, and neglect of materiality and the environmental impacts of technologies that underpin digital public spaces.

The paper argues that despite its limitations, a rights-based approach to building digital public spaces can shape these spaces in a way that combats exploitative business models and protects individual and collective well-being. However, for digital rights to fulfill that role, the scope of digital rights must first be reconsidered. This rethinking must result in a greater emphasis on historically marginalized rights, such as socio-economic rights and environmental protections.

The analysis conducted in this paper underscores the interdependence of rights and an enabling environment. The practical realization of rights is contingent on the existence of an environment conducive to their exercise.

This leads to the conclusion that addressing the challenges arising from the digital environment's interrelated political, economic, and social dynamics necessitates a dual approach. While acknowledging the value of a rights-based approach, the paper argues that it alone cannot resolve complex digital challenges. It points to the fundamental misalignment between private economic interests on the one hand and conditions required for the full enjoyment of rights on the other as the potential root cause of the difficulty in enforcing digital rights.

Given that the digital platform landscape is characterized by exploitative business models, the paper argues that creating truly public digital spaces is just as important as platform regulation and defending rights within current online ecosystems.

## **1. INTRODUCTION**

Digital public spaces are digital ecosystems that exist outside the control of commercial entities that extract value from users. They provide fora for public and private exchanges, access to information, and tools for civic organization. Digital public spaces are based on democratic values and public digital infrastructure and ensure the existence of a rights-based, society-centered alternative to the services provided by commercial platforms.

Genuine digital public spaces, where people can freely express themselves, exchange ideas, and engage in meaningful discourse without value being extracted from them, exist to a limited extent in today's digital landscape. This scarcity is primarily due to the dominance of commercial platforms, which have taken on the role of shaping and governing our online interactions.

Our previous work explored different models for developing the infrastructure required to run digital public spaces.<sup>1</sup> We made a case for establishing a European Public Digital Infrastructure Fund to support the emergence and maintenance of such spaces by investing in the creation and maintenance of public digital infrastructures.

In this paper, I take a close look at the concept of digital rights, which has played a significant role in shaping digital spaces. The paper identifies its limitations in addressing the harms occurring in these spaces and caused by digital technologies more generally. It does so on the basis of critical scholarship and reports from civil society organizations. The goal of this exploration is to provide the basis for a more comprehensive and holistic rights-based approach to building digital public spaces.

The paper proceeds as follows. Following the introduction (section 1), section 2 explores the value and limits of rights-based approaches to addressing social problems and struggles. Section 3 seeks to identify the processes that have impacted the scope and understanding of the category of “digital rights.” It takes a closer look at the EU Declaration on Digital Rights and Principles and how it reflects a limited approach to digital rights. Section 4 identifies and discusses the limitations of the dominant digital rights conceptualization in effectively addressing socio-economic and environmental harms resulting from the development, use, and disposal of digital technologies. Building on this analysis, the discussion in section 5 outlines the conditions for a more comprehensive and holistic rights-based approach to digital public spaces, which incorporates considerations for social, economic, and environmental justice concerns more prominently within the digital rights framework.

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<sup>1</sup> Paul Keller, “European Public Digital Infrastructure Fund White Paper,” Open Future, December 16, 2022, <https://openfuture.pubpub.org/pub/public-digital-infra-fund-whitepaper/release/2>.

The analysis conducted in this paper leads to the conclusion that addressing the challenges arising from the interrelated political, economic, and social dynamics within the digital environments necessitates a dual approach. On the one hand, it is essential to adopt a more comprehensive rights-based approach as a guiding principle to mitigate the risks associated with the functioning of digital spaces. In this context, taking a rights-based approach to digital public spaces entails prioritizing rights over profits. As such, it is opposed to the current “market-based” approach.

However, given that the current digital platform landscape is characterized by exploitative business models, the paper argues that creating truly public digital spaces is just as important as platform regulation and defending rights within current online ecosystems. Such digital spaces, governed as digital commons, would allow individuals and communities to truly enjoy their rights.

While rights serve as the normative framework, a digital public space serves as an enabler, allowing rights to be accessible and enjoyed by all, regardless of the commercial interests that govern the platforms.

This is consistent with the idea that **the practical realization of rights is dependent on the existence of an environment conducive to their exercise** and the concept of (digital) affordance, which holds that the environment allows for certain actions or behaviors.<sup>2</sup> In this context, a digital public space allows people to exercise their rights freely and without undue influence. The dual approach acknowledges the interdependence between a rights-based framework and the provision of enabling digital public spaces.

## **2. THE VALUE AND LIMITS OF A RIGHTS-BASED APPROACH TO DIGITAL PUBLIC SPACES**

Human rights scholars and practitioners frequently share a critical self-awareness about the contingency and limits of human rights. They recognize that human rights are not a fixed or universal truth but a product of cultural, economic, and political contexts. This recognition leads to questioning the assumptions embedded within human rights discourses and recognizing the limitations of human rights in addressing social and environmental justice issues. For instance, in his book *Not Enough: Human Rights in an Unequal World*, Samuel Moyn asserts that an exclusive emphasis on human rights as a global and universal norm marginalized other perspectives on social justice. According to Moyn, while human rights themselves may not have promoted neoliberalism, they failed to curb its detrimental effects.<sup>3</sup>

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<sup>2</sup> In psychology, the term affordance was first defined by J.J. Gibson. For an overview of its use and relevance in digital contexts, see, e.g., Samuele Colombo et al., “Digital Artefacts and The Role of Digital Affordance,” *Proceedings of the Design Society 2* (May 2022): pp. 11–20, <https://doi.org/10.1017/pds.2022.2>.

<sup>3</sup> Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2018).

Notwithstanding these critical accounts, social movements worldwide continue to frame their struggles and demands through the language of human rights. Against this disjuncture, Paul O'Connell argues that:

*“human rights can and should be deployed in emancipatory political projects today, but (...) reaching such a conclusion requires us to go beyond narrow, formalistic and overly juridical concepts of what human rights are, and stress the centrality of social and political struggle in the formulation and defence of human rights.”<sup>4</sup>*

By empowering individuals to assert and defend their rights, rights-based approaches have been recognized as influential in transforming power relations. Their value and significance stems from several reasons.<sup>5</sup>

First, a rights-based approach to a problem encourages the redefinition of its nature into demands and duties, which implies a focus on accountability. Accountability and redress mechanisms are inherent in rights-based approaches. Individuals have avenues for seeking justice and remedies when their interests are violated. Adopting a rights-based approach to digital technologies and digital public spaces provides individuals with tactics to claim and enforce their demands. It adds value by increasing institutional accountability. By grounding regulations and practices in rights, institutions are held to a higher standard of accountability, resulting in greater transparency and improved oversight.

Additionally, rights-based approaches to addressing societal challenges inherently balance the interests of various stakeholders, such as individuals, businesses, and governments. They provide a framework and mechanisms for looking at competing interests and finding an adequate solution.

Moreover, taking a rights-based approach fosters an understanding that the very process by which given goals are pursued must respect and fulfill human rights. In that sense, it forces a normative shift and has the potential to challenge conventional practices and power structures.

Finally, one of the key strengths and values of a rights-based approach is that it is rooted in legal frameworks that are binding. The authority of rights-based approaches is derived from well-established legal foundations. This foundation increases the credibility and enforceability of rights-based principles in a variety of contexts. The legal frameworks are often enshrined in international human rights treaties and conventions. States commit to “respecting, protecting, and fulfilling” human rights in accordance with these legal instruments. These commitments are binding under international law.

Individual rights, although important, are not a panacea for addressing structural issues that emerge from the development of digital technologies. Even though the discourse of digital

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<sup>4</sup> Paul O'Connell, “On the Human Rights Question,” *Human Rights Quarterly* 40, No. 4 (2018): pp. 2–3, <https://doi.org/10.1353/hrq.2018.0051>.

<sup>5</sup> Andrea Cornwall and Deborah Eade, eds., *Deconstructing Development Discourse: Buzzwords and Fuzzwords* (Rugby, Warwickshire, UK : Oxford: Practical Action Pub. ; Oxfam, 2010), p. 170.

rights has acted as a counterforce against excessive power, both from the state and corporations, a mere focus on individual rights has proven insufficient to resolve complex challenges, such as, for example, the widespread collection, use, and exploitation of personal data, digital lock-ins, lack of algorithmic transparency, or the spread of disinformation. The limits of individual rights frameworks are elaborated in section 5 of this paper.

In light of these challenges, it has been noted that “instead of applying a fundamental rights framework whose application demands identifiable violations, this new situation requires a more multifaceted approach that can address the breadth of actors and possibilities inherent in contemporary data collection and use.”<sup>6</sup>

**In this paper, I argue that, for the reasons stated above, we should not dismiss rights as a strategy for creating fair and just digital public spaces. Instead, we should revisit the concept of “digital rights,” investigate its shortcomings, and reconceptualize it to make better use of it.**

Furthermore, given the current challenges, regulatory efforts should take a comprehensive approach that includes other forms of regulation in addition to operationalizing rights. This broader view includes at least two types of regulatory interventions. Firstly, it recognizes the significance of market regulation. This recognition in the European Union has resulted in the implementation of the [Digital Markets Act](#) (DMA), which aims to regulate and ensure fair competition in digital markets. The DMA establishes a framework for addressing market dominance and unfair practices and ensuring a level playing field for all participants. Second, a rights-based approach to digital public spaces must be accompanied by support for the development of appropriate infrastructure to ensure that digital rights can be enjoyed (fulfilled). Creating an enabling environment that promotes the realization of these rights necessitates significant investments in strong technological infrastructures. **Policymakers and stakeholders can work toward the holistic advancement of digital rights in the digital ecosystem by recognizing the interconnectedness of rights, market regulation, and infrastructure.**

### **3. DIGITAL RIGHTS TODAY**

The goal of digital rights is to protect people from harm and threats to their interests and well-being in various realms of digital ecosystems. The digital rights movement in the United States initially focused on the intersection between consumer rights and copyright laws in relation to digital content and the legal barriers affecting digital media consumption.<sup>7</sup> In Europe, the term has gained a somewhat different meaning, encompassing a wider variety of digital freedoms and rights, particularly related to privacy and data protection. While digital rights advocates today

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<sup>6</sup> Linnet Taylor, “What Is Data Justice? The Case for Connecting Digital Rights and Freedoms Globally,” *Big Data & Society* 4, No. 2 (December 2017): p. 4, <https://doi.org/10.1177/2053951717736335>.

<sup>7</sup> Hector Postigo, *The Digital Rights Movement: The Role of Technology in Subverting Digital Copyright*, The Information Society Series (Cambridge, Mass: The MIT Press, 2012).

rely heavily on human rights,<sup>8</sup> they also draw from other legal frameworks. Digital rights today are, in fact, an amalgam drawing from different legal fields.

## *Human Rights Roots*

Nevertheless, given the role of the human rights frameworks in shaping the digital rights discourse, it is relevant to take a closer look at these human rights roots of digital rights and note that governments have not given equal attention or protection to all categories of rights. After the Second World War, states adopted the Universal Declaration of Human Rights, which recognized both civil and political rights, as well as social, economic, and cultural rights. The adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) eight years later marked a significant shift. By signing the ICCPR, the states committed to safeguarding the rights included in that act. In contrast, the ICESCR did not speak of such binding commitments but rather of “undertaking steps (...) to the maximum of [state’s] available resources, with a view of achieving progressively the full realization of rights.” This approach led to the perception that the ICESCR primarily contains programmatic, political declarations concerning economic, social, and cultural rights rather than binding legal obligations.

A similar historical trajectory can be observed in the European context with the European Convention on Human Rights (ECHR) and the European Social Charter. ECHR, which entered into force in 1953, was primarily concerned with civil and political rights, and it established mechanisms for individuals to bring claims of violations before the European Court of Human Rights. In contrast, the 1961 European Social Charter emphasized social and economic rights. It created a framework for safeguarding rights such as the right to work, the right to social security, and the right to an education. However, it did not provide for individual complaint mechanisms to the same extent as the ECHR.

**The distinction between different categories of rights, which dates back to the political and ideological divisions of the 1950s and 1960s, translated into a more general neglect of social and economic rights by states in both digital and non-digital realms that lasted for decades.**

## *Legal Frameworks Shaping Digital Rights in the EU*

Within the EU, the legal frameworks relevant to defining the scope of “digital rights” include fundamental rights, consumer protection laws, data protection regulations, telecommunications laws (including infrastructure laws), and cybersecurity legislation. Different rights frameworks become more prominent depending on how a digital space is conceptualized.

When we view it primarily as a forum for social and political discourse, fundamental rights take precedence. Unlike the European Convention on Human Rights, the EU Charter of Fundamental Rights covers a broad range of rights, including civil, political, social, and economic dimensions. When the digital public space primarily functions as a market, the dominant framework often

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<sup>8</sup> See, e.g., <https://digitalfreedomfund.org/digital-rights-are-human-rights/>.

comprises consumer rights. Consumer protection laws aim to safeguard the interests of consumers in various commercial transactions, including those conducted in the digital realm. In this context, individuals assume the roles of “consumers” and “users”. Fundamental rights and consumer protection in the EU law converge, at least since the adoption of the EU Charter of Fundamental Rights. In the Charter, consumer protection finds its place within the Solidarity chapter. As a result of this convergence, experts have begun to conceptualize consumer protection as a human right.<sup>9</sup>

**The relevance of various rights frameworks for claiming digital rights is compounded by the paradox of privately owned platforms, such as social media platforms, frequently serving as *de facto* digital public spaces. Various rights frameworks operate concurrently, interact, and sometimes coalesce due to the various functions and conceptualizations of the same digital spaces. These spaces, which allow for community activism as well as social and political interaction, are frequently dominated by market-driven principles and dynamics.**

## *European Declaration on Digital Rights and Principles for the Digital Decade*

In December 2022, the European Parliament, the Council, and the European Commission signed [the European Declaration on Digital Rights and Principles for the Digital Decade](#) (the Declaration).

The Declaration, as the name implies, is of a declaratory nature and has no bearing on legal rules or their application. It does not create new rights but rather reaffirms existing ones, emphasizing a set of rights that could be grouped into three categories.

The first category includes the first generation of digital rights,<sup>10</sup> which are civil and political in nature, and include the right to free expression and information, the right to privacy and personal data protection, and the right to communications and information confidentiality.

The second category concerns workers' fundamental rights in the digital environment. This group, just like the first group, includes the right to privacy, but now, in the context of employment, the right to associate, the right to engage in collective bargaining and collective action, and the right to be protected from illegal and unjustified surveillance. The Declaration recognizes socio-economic rights, but as I will show later in the text, this recognition is limited in scope, and relevant legislation has not yet been adopted at the EU level.

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<sup>9</sup> Iris Benohr and Hans-W Micklitz, “Chapter 2: Consumer Protection and Human Rights,” in Handbook of Research on International Consumer Law, Second Edition, 2018, <https://www.e-elgar.com/shop/gbp/handbook-of-research-on-international-consumer-law-second-edition-9781785368202.html>.

<sup>10</sup> Spasimir Domaradzki, Margaryta Khvostova, and David Pupovac, “Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse,” Human Rights Review 20, No. 4 (December 2019): pp. 423–43, <https://doi.org/10.1007/s12142-019-00565-x>.



The third category encompasses digital rights to education, training, and lifelong learning. Interestingly, the Declaration includes a reference to the right to disconnect.

In many instances, the Declaration refrains from explicitly using the language of “rights” to express the commitments that the EU institutions are making. For instance, it states, “Everyone should be *empowered* to benefit from the advantages of algorithmic and artificial intelligence systems” instead of framing it as a right. Notably, Chapter IV on Participation in the digital public space emphasizes that “Everyone should have access to a trustworthy, diverse, and multilingual digital environment,” again avoiding the use of rights language altogether.

The Declaration’s distinction between principles and rights reflects the division from the Charter of Fundamental Rights. Article 51(1) of the Charter instructs the recipients of its provisions to “respect” rights while “observing and promoting” principles. Article 52(5) of the Charter further explains this function of principles in the following way:

*“principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.”*

The [“Explanations relating to the Charter of Fundamental Rights”](#) clarify that principles are significant for the Courts only when [legislative](#) and executive acts are interpreted or reviewed. Importantly, “they do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities.” This approach is consistent with the case law of the Court of Justice and with the Member States’ constitutional systems to principles, particularly in the field of social law.

All of this demonstrates how framing a commitment as a digital right or principle makes a significant difference. Rights and principles serve different purposes and have different legal ramifications. As was previously mentioned, rights give people entitlements and protections, and violations of these rights can result in legal repercussions and judicial remedies. Principles in EU law are not directly enforceable. Rather, they exert influence on the development of legal norms. Unlike rights, which can be directly asserted in a court of law, principles serve as guiding values that shape the interpretation and application of legal provisions.

On the one hand, the Declaration acknowledges the broader societal context of digital transformation by recognizing the labor and sustainability issues related to digitalization. At the same time, the EU institutions have stopped short of fully empowering individuals. For example, instead of explicitly recognizing a “right to participate in the digital public space,” the commitment has been framed as a principle without providing individuals with tools or mechanisms to claim their entitlements.

## 4. LIMITS OF THE TRADITIONAL DIGITAL RIGHTS-BASED APPROACHES TO DIGITAL PUBLIC SPACES

In recent years, EU digital policies have witnessed a turn away from viewing the digital space only as a marketplace toward a more human-centric approach.<sup>11</sup> However, applying a human rights-based approach to the digital environment still encounters various challenges and limitations. Recognizing these obstacles is crucial to developing a more inclusive and impactful strategy for addressing the dynamics of the digital landscape.

### *Issues with the Enforcement of Rights*

Legislation aimed at ensuring rights protection online has frequently encountered serious enforcement challenges. For example, this is true of the General Data Protection Regulation. Access Now, a nonprofit that defends digital civil rights, examined concerns about GDPR enforcement and noted that, since its implementation, GDPR enforcement has been slow and uneven.<sup>12</sup>

Looking at the global landscape, the World Economic Forum report “Pathways to Digital Justice”<sup>13</sup> investigates key failures in global and judicial systems regarding digital justice issues, as well as the main reasons why justice is difficult to achieve. It confirms that human rights protection online is critically lacking in terms of application and implementation by governments worldwide and that there is a gap between the harms caused by digital technologies and the methods for resolving these harms.

The report points out that emerging technologies pose prominent legal and judicial challenges. It argues that “states must not only recognize and protect the application of human rights through binding frameworks but also put in place independent oversight mechanisms to monitor the application of these rights.” The report identifies the lack of accessible, participatory, and interoperable pathways to justice as a source of the ineffective protection of rights online.

In a similar vein, Sean M. McDonald points out that:

*“Data governance and digital rights have prominent placement in international negotiations, billions of dollars have been spent by the technology industry to motivate and shape global standards, and advocates and policy makers alike have undertaken significant, sustained campaigns to prompt action. What these projects haven’t accomplished, though, is the materialization of mechanisms that enable those with digital rights or interests or who have experienced harms to seek redress. Even before we address the wisdom or feasibility of novel digital rights, it’s already*

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<sup>11</sup> This shift has occurred following calls from civil society for a new framework to guide policymakers toward a more equitable and democratic digital environment, see, for example: A Vision for a Shared Digital Europe, available at: <https://shared-digital.eu/>.

<sup>12</sup> See: <https://www.accessnow.org/wp-content/uploads/2023/05/GDPR-5-Year-report-2023.pdf>.

<sup>13</sup> See: <https://www.weforum.org/whitepapers/pathways-to-digital-justice/>.

*hard to count on the few meaningful digital rights that do exist, because they're only enforced by authorities and mechanisms that are inaccessible and unaccountable to the public. Rights you can't enforce are hardly rights at all.*"<sup>14</sup>

Experts and organizations agree that effective digital rights protection faces significant challenges, primarily due to a lack of appropriate enforcement mechanisms.

When applying digital rights online, some of the core tenets of the relevant legal frameworks must be reconsidered.<sup>15</sup> For example, in the case of human rights obligations, it is the dominance of the territorial model for their application and the emphasis on the responsibility of governments for human rights violations rather than transnational corporations, or the propensity of international human rights bodies to apply human rights instruments in isolation from other legal instruments, such as consumer protection law.

As noted by Julie E. Cohen, the author of the book *Between Truth and Power: The Legal Constructions of Informational Capitalism*:

*"traditional mechanisms for defining and enforcing human rights have begun to unravel. New, hybrid modes of infringement that involve private economic power and privately developed surveillance infrastructures and information services play an important part in that shift, but other changes set in motion by the movement to informational capitalism are equally important. Highly informationalized forms of rights discourse and practice that link human rights to development and sustainability have confronted difficult implementation challenges, and new techniques for data-driven, algorithmic surveillance and control also have proved powerfully resistant to traditional forms of human rights oversight."*<sup>16</sup>

Cohen emphasizes how private economic interests increasingly control the circumstances under which people can exercise their freedoms. The platform-based and massively intermediated information systems that rely on private actors have destabilized the basic assumptions about the material conditions for enjoying rights online.

**The fundamental misalignment between private economic interests on the one hand and of conditions required for the full enjoyment of rights on the other may be the root cause of the difficulty in enforcing digital rights and why it has been such an uphill battle. It also emphasizes the importance of viable public (community-driven and community-serving) alternatives to big tech's dominant commercial platforms.**

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<sup>14</sup> Sean Martin McDonald, "On Forging a Path to Digital Rights," Centre for International Governance Innovation, accessed June 22, 2023, <https://www.cigionline.org/articles/on-forging-a-path-to-digital-rights/>.

<sup>15</sup> Yuval Shany, "Digital Rights and the Outer Limits of International Human Rights Law," *German Law Journal* 24, No. 3 (April 2023): pp. 461–72, <https://doi.org/10.1017/glj.2023.35>.

<sup>16</sup> Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (New York, NY: Oxford University Press, 2019), pp. 238–39.

## *Social Justice Issues*

As digital technologies pervade various aspects of human life, there is a growing recognition of the role that social and economic factors and existing power structures have in how technology affects different people. Linnet Taylor highlighted that “the impacts of big data are very different depending on one’s socio-economic position” and that “the greatest burden of dataveillance (surveillance using digital methods) has always been borne by the poor.”<sup>17</sup> The use of digital technologies has the potential to not only replicate but also amplify existing forms of exploitation.

Digital rights efforts have primarily focused on safeguarding civil and political rights. The idea of socio-economic digital rights has not gained much traction until more recently. An illustrative case in this domain concerns platform workers’ rights.<sup>18</sup>

Although workers’ rights to just and fair working conditions are recognized in the Charter of Fundamental Rights (Article 31), and the Declaration contains a Chapter on fair and just working conditions, in the case of platform workers, these commitments still, to a large extent, remain declaratory in nature. Despite the rapid expansion of the gig economy and the growing reliance on digital platforms for a wide range of services, the EU’s response to the specific needs and rights of workers facing financial insecurity and instability within this ecosystem has been notably slow.<sup>19</sup> This lag has allowed large tech firms to profit from institutional inaction, to the detriment of workers.

The use of digital technologies, in many cases, reflects and perpetuates oppressive practices that are historically rooted in colonialism. Activists have drawn attention to compelling evidence demonstrating how digital technologies have the potential not only to replicate, but also to exacerbate, existing forms of oppression faced by racialized minorities,<sup>20</sup> which highlights the interplay between digital technologies and broader societal dynamics. Historically, the economic growth in Europe has come from the extraction of labor and other resources under unfair conditions imposed by colonialism. Now, the growth of the digital sector relies on data extraction and exploitation, the practice of outsourcing and the reliance on low-cost labor in developing countries, and the offshoring of environmental debts. For example, large-scale AI

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<sup>17</sup> Taylor, “What Is Data Justice?” p. 2.

<sup>18</sup> Nani Jansen Reventlow, “Digital Rights Are \*all\* Human Rights, Not Just Civil and Political,” Berkman Klein Center Collection (blog), February 27, 2019, <https://medium.com/berkman-klein-center/digital-rights-are-all-human-rights-not-just-civil-and-political-daf1f1713f7a>.

<sup>19</sup> It was not until 2021, almost a decade after Uber entered into the European market in 2012, that the European Commission proposed a directive aimed at improving the working conditions of platform workers.

<sup>20</sup> For an examination of how unequal power dynamics, exclusion, and privilege play out in the field of digital rights, see: Decolonising Digital Rights, <https://digitalfreedomfund.org/decolonising/>.



on protecting individual rights in the digital realm, the material foundations of this digital space must not be overlooked.

Over the last few years, researchers and activists have begun to investigate the overlap between digital and environmental rights in a systematic manner.<sup>24</sup> Their research has revealed, for example, a lack of clarity among environmental and climate justice advocates about the scope of digital rights.<sup>25</sup> At the same time, post-growth advocates in the digital rights field are beginning to interrogate their vision for digital infrastructure from an environmental and social angle, and there is a deepening recognition that the extractivism of Big Tech enterprises and the extractivism of fossil fuel companies are increasingly resembling one another.

But overlooking the material underpinning of online spaces in the past constituted a blind spot in the advocacy efforts for digital rights and is, again, reflective of a broader historical pattern of downplaying social, economic, and environmental rights.

The environmental implications of digital technologies have been framed and examined from various angles. On the one hand, for example, in the official EU narrative, the potential of information and communications technologies (ICTs) to facilitate environmental sustainability has been emphasized – this perspective asserts that digital technologies will be crucial in achieving climate neutrality, reducing pollution, and reinstating biodiversity.<sup>26</sup>

At the same time, the adverse consequences stemming from the creation, utilization, and disposal of digital technologies have started to attract substantial attention. These investigations have scrutinized aspects such as the energy and water consumption linked to processing and transmitting extensive data, as well as the environmental and societal repercussions of extracting raw materials for digital artifacts and their associated supply chains. Such analyses contribute to an increased awareness and more profound comprehension of the material nature of digital technologies. However, in terms of regulatory measures required to tackle these negative impacts, existing legal frameworks exhibit significant gaps.

For example, many ICT products, including software in general, are not included and fall between the cracks of both current and planned EU regulations concerning ecodesign. Even if these gaps are addressed, however, it will not be sufficient to reduce energy consumption. It has

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<sup>24</sup> For an exploration of the intersection of the climate crisis and digital rights see: Fieke Jansen et al., “The Climate Crisis Is a Digital Rights Crisis: Exploring the Civil-Society Framing of Two Intersecting Disasters,” in *Ninth Computing within Limits 2023* (Ninth Computing within Limits 2023, Virtual: LIMITS, 2023), <https://doi.org/10.21428/bf6fb269.b4704652>.

<sup>25</sup> Becky Kazansky et al., *At the Confluence of Digital Rights and Climate & Environmental Justice: A Landscape Review* (The Engine Room, 2022), <https://engn.it/climatejusticedigitalrights>.

<sup>26</sup> See, e.g., European Commission, *2022 Strategic Foresight Report: twinning the green and digital transitions in the new geopolitical context*, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4004](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4004).

been shown that the sole focus on “the efficiency improvement has not been able so far to compensate for the increase in affluence, which leads to an increase of the energy footprint.”<sup>27</sup>

While the principle of sustainability is recognized in the Declaration in Chapter IV, given the gravity of the environmental crisis, the language of “avoiding significant harm,” “incentivizing sustainable consumer choices and business models,” or “fostering sustainable and responsible corporate behavior” appears too weak.

## **5. DISCUSSION AND RECOMMENDATIONS**

This paper argues that despite its limitations, a rights-based approach to building digital public spaces has the potential to shape these spaces in a way that combats exploitative business models and protects individual and collective well-being. However, in order for digital rights to fulfill that role, the scope of digital rights must first be reconsidered. This rethinking must result in a greater emphasis on historically marginalized rights, such as socio-economic rights and environmental protections. The digital rights framework, primarily concentrating on civil and political rights, has yet to offer effective strategies for tackling the socio-economic and environmental damages arising from the rapid expansion of private digital platforms and the all-encompassing influence of data-driven technologies.

### *Socio-economic Digital Rights*

Rights language can be used to voice concerns about the political economy of data, but digital rights frameworks must evolve to better address issues related to economic inequality, fair labor practices, access to education and healthcare, and the environmental impact of digital technologies. By giving due prominence to traditionally sidelined rights, a more robust framework can be established that is better equipped to confront the socio-economic and environmental harms associated with the rapid growth of digital platforms and data-driven technologies.

Individuals on their own have little negotiation power in digital environments when negotiating “terms of use” of online services. The availability of public alternatives would increase this bargaining power by providing people with meaningfully different options. In addition, mechanisms that strengthen collective agency or recognize individuals as members of a group, such as the right to collective bargaining and the right to collective redress, may be a useful tactic to engage with the political economy of data more effectively. Their potential to safeguard rights online needs further exploration. Adopting a collective agency approach calls for strategies that facilitate collective oversight of algorithmic procedures and participatory decision-making.

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<sup>27</sup> David Bol, Thibault Pirson, and Remi Dekimpe, “Moore’s Law and ICT Innovation in the Anthropocene,” in *Proceedings of the IEEE Design, Automation and Test in Europe Conference 2021* (Design, Automation & Test in Europe Conference 2021, Grenoble, France: IEEE, 2021), <https://doi.org/10.23919/DATES1398.2021.9474110>.

Due to the transnational nature of digital infrastructures, the EU policies on digital rights and the rights-based approach to digital public spaces must recognize the connections between the digital rights of people living in the EU and the rights of people outside the EU, whose lives are affected by the EU's industrial policies.

## *Environmental Digital Rights*

Traditionally, digital rights activists have focused their efforts on safeguarding the rights affected by the deployment and use of digital technologies. The material underpinning of digital public spaces necessitates extending digital rights reflection to include the impact of digital technologies on the environment. That would help to ensure that concerns around autonomy and fair treatment are addressed throughout the entire lifecycle of these artifacts.

Environmental digital rights would then encompass the recognition, protection, and promotion of ecologically responsible practices throughout the lifecycle of digital technologies, including their development, use, and disposal. By framing the environmental risks and harms of the production, use, and disposal of digital technologies in terms of environmental digital rights, these concerns can be recognized as integral components of digital policies rather than just the context (or “externalities”) in which the policies are adopted and implemented (currently these concerns are siloed into industrial policies).

Environmental digital rights are not intended to be new human or consumer rights but rather a tool for framing environmental concerns that arise at various stages of the lifecycle of digital technologies. As such, examples of environmental digital rights include the right to sustainable production and repair, which entails having access to digital technologies that have a low environmental impact and the ability to repair them, thereby reducing resource depletion and pollution, and the right to transparent information and environmental impact data for making informed decisions about digital technology usage.

The intention is that by defining and recognizing environmental digital rights, the negative environmental consequences of digital technologies are addressed as core concerns, integrated into digital policies, and no longer considered mere “externalities” and siloed into industrial policies. Such an approach would promote a holistic viewpoint that values environmental sustainability, ensuring that digital progress is in line with the well-being of the planet and its inhabitants.

## *EU Vision for Digital Transformation*

European Union legislators are gradually recognizing the urgency of addressing socio-economic and environmental harms arising from the digital economy. In line with this, the European Union's vision for digital transformation should undergo an evolution, recognizing the need for a more comprehensive and holistic perspective. This transformation would entail several shifts that should inform the approach to building digital public spaces:



1. From empowering individuals to empowering individuals and groups to tackle all forms of exploitation;
2. From putting people in Europe at the center to recognizing that EU policies have a global effect;
3. From fostering innovative businesses to fostering repair and maintenance of infrastructure, prioritizing health and safety throughout the tech lifecycle.

The digital rights framework can serve as a solid foundation for such an approach if the framework is reexamined and updated in light of the challenges it faces.

### *Digital Rights need Digital Public Spaces*

Recognizing that the concept of digital rights covers concerns related to the development, use, and disposal of digital technologies should contribute to a more holistic narrative and build bridges between digital rights, social justice, and environmental movements.

However, it might be overly optimistic and counterfactual to anticipate that commercial platforms operating under their current business models can operationalize the shift that needs to take place and create conditions for digital rights to be fully enjoyed.

Because privately owned online platforms now serve as digital public spaces, businesses are acting as enforcers of fundamental rights. Nonetheless, they continue to be commercial actors motivated by the interests of their shareholders, with obligations to protect and fulfill rights that differ from those of public entities acting in the public interest.

Currently, data exploitation serves as the fundamental operating principle for some commercial digital services and is ingrained in their business models. Prioritizing just and sustainable information and communications technology practices, including socio-ecological restoration over purely economic justification,<sup>28</sup> are fundamentally at odds with that logic. This situation creates a chasm between expectations regarding rights protection and online reality.

For this reason, while advocating for the enforcement of rights in the current digital ecosystems (which are to a large extent synonymous with commercial online platforms), it is critical also to encourage the development of alternative platforms that can effectively address these concerns and offer a substantive departure from the status quo. The analysis carried out in this paper indicates that such a dual approach is required to address the challenges outlined in the previous sections. To address the risk of harm that arises in digital public spaces, a holistic rights-based approach should be adopted as a guiding principle. However, given the current exploitative business models underlying commercial platforms, it is equally important to create digital public spaces where these rights can be genuinely enjoyed.

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<sup>28</sup> Samuel Mann, Oliver Bates, and Raymond Maher, “Shifting the Maturity Needle of ICT for Sustainability,” in EPiC Series in Computing, 2018, pp. 209–26, <https://doi.org/10.29007/d6g3>.

A rights-based approach establishes the framework for developing standards, norms, and legal safeguards to protect human rights. It gives people the means to assert their rights. The practical realization of these rights is contingent on the existence of a space in which individuals can freely exercise them. While rights are the foundation, rights-based digital public spaces allow them to be enjoyed by all, regardless of the commercial interests of those running the platforms.



## ABOUT OPEN FUTURE

Open Future is a European think tank that develops new approaches to an open internet that maximize societal benefits of shared data, knowledge, and culture.

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