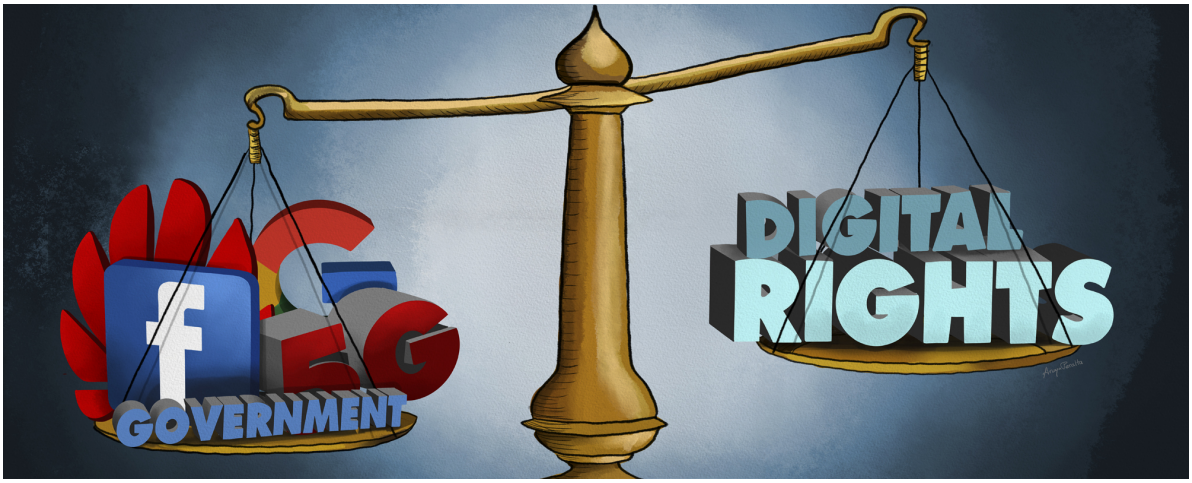
DATA, AI AND GOVERNANCE

Charter of digital rights and responsibilities

It is also essential to safeguard the public's digital rights and responsibilities

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«The Spanish government can now shut down digital services without a court warrant as a "threat of public order.». So began the article in which the EUobserver, a leading digital newspaper published in Brussels, described the coming into force on 6 November of the "digital decree", which has already been called the "anti-server" decree. A decree that was certainly approved with considerable political noise by the Standing Committee of the Congress of Deputies on 27 November.

The Royal Decree-Law puts not only Catalonia but the whole of Spain under a "digital state of emergency". With the Decree approved, it is now possible for digital services (websites, apps, Internet access ...) to be closed as a precautionary measure, without the order of a court, when there is "a threat to public order". Or for reasons of "national security". Or when a "suspected unlawful activity [...] creates serious economic or operational problems for other providers or users". Generic situations open to free interpretation by the Spanish Administration.

Since its approval, the Spanish Government has acknowledged that the law will prevent the eventual "digital separation" of Catalonia. Or in other words, a digital Article 155.

Some thoughts on the matter:

Trying to control the Internet or communication networks through the so-called #decretazodigital or #leymordazadigital (digitalkodecree or digitalgagdecree) projects a bad international image. Not only of Catalonia but of Spain too, which with this law has put itself on the same level as policies introduced by authoritarian regimes rather than fully fledged democracies.

The Internet must be a space of communication and free expression of information among people. As long as it is done respectfully, everyone must be free to express their ideas and opinions, even in the digital arena. And to that end the government and public sector in Catalonia are working to give the public the best technology infrastructure and the best possible digital services.

Article 11 of Charter of Fundamental Rights of the European Union says “everyone has the right to freedom of expression” and that that right “shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” Royal Decree-Law 14/2019, approved in one Member State opens the door to non-observance of those fundamental rights. Banning communication as a precaution breaches the rights of the public, constrains work-related activity and is a direct attack on the privacy of the individual. The use of technology to achieve that can only be compared to censorship under authoritarian regimes from other times

The fundamental rights and freedoms of all Spaniards are being disregarded, in breach of Article 18 of the Spanish Constitution: “Secrecy of communications is guaranteed, particularly of postal, telegraphic and telephonic communications, except in the event of a court order to the contrary.” For the Royal Decree-Law envisages acting against digital services and network infrastructure without a court order.

The measures enacted in this Royal Decree-Law will impact negatively on the attraction of talent and technological innovation and generate legal uncertainty. It constrains businesses because it allows the Spanish Government to act against social media, servers and electronic communication networks; and it hinders the development of applications of distributed ledger technologies.

Spain is thus putting itself at the head of digital repression in Europe, descending to the level of countries like Turkey and China. We must therefore “fight it in every political, judicial and international forum. It is unacceptable that in twenty-first century Europe, laws like this should be passed”, as Jordi Puigneró, Minister for Digital Policy and Public Administration in the Government of Catalonia, has said on more than one occasion.

The Catalan Charter for Digital Rights and Responsibilities approved by the Catalan Parliament is a clear example of the work being done by the Government of Catalonia.

The Charter has been adopted at a time when societies, caught up in change that they must lead, are continually rethinking the overarching compacts that define how we organise our

lives and how we live together. Information and communication technology (ICT) is now moving us to a new discussion: how can we continue to defend human rights and fundamental freedoms in this new digital age, how can we take responsibility together, grow together and agree a new social contract.

The digital world is not separate from the day-to-day world that we live in, it is rather another dimension that brings new things that shape our lives. We are at the dawn of a new age, and so the Catalan Charter for Digital Rights and Responsibilities starts from and takes as its frame of reference the need to constantly build our fundamental rights so that it can more specifically focused on how those rights should develop in the digital realm.

The proposed Charter therefore brings together human rights already acknowledged and the digital versions of those rights – "digitised rights" – and goes on to explore new, emerging rights. Goal 17 of the UN's Sustainable Development Goals (SDGs) advocates "Partnership for the Goals: strengthen the means of implementation and revitalize the global partnership for sustainable development." In that context, we can see the Catalan Charter for Digital Rights and Responsibilities as a contribution to a global debate.

The Charter considers every member of society to be a full citizen and starts from the premise that as citizens were are agents and not subjects. We must participate in decisions that affect us. The digital age makes that universal empowerment possible. The Institute of Catalan Studies' Dictionary of the Catalan Language defines responsibility as "the capacity to answer for something, to ensure the performance of a task, the fulfilment of a duty, to account for something."

For us to have the benefit of any right requires government bodies and institutions to meet their responsibility to make available all the required, auditable resources to ensure that the right is implemented, and to disseminate the existence of the right, enabling people readily and quickly to access the right and for every citizen to understand it. They also have a responsibility to demand that other stakeholders do the same and are accountable to a proactive public for the effective implementation of rights.

The Charter also envisages that it is a responsibility of citizens to exercise their right to be involved, to share that responsibility. Capable, empowered citizens will exercise that responsibility, not by voting at periodic elections but with the sum of their contributions to the collaborative construction of a shared space of shared rights and freedoms.

In any event, responsibilities must be exercised and enforceable given the nature and scale of impact of the bodies that have those responsibilities. The proposed digital rights and responsibilities are intended for the whole of society, for every individual and organisation, including companies, not-for-profits and public bodies. Also, we must be especially vigilant for the right of the most vulnerable individuals and groups, at the greatest risk of discrimination and make bridging the digital divide a priority.

An initial working group made up of professionals and community representatives prepared the first draft of the Charter. The text reflects a consensus amongst government and civic

society that reflects the work of social and digital activists, lawyers, public representatives, the private sector, experts in international relations and academics and researchers.

The Catalan Charter for Digital Rights and Responsibilities is therefore a living tool that is constantly being created. Open, inclusive and following a governance model that involves many different actors (multistakeholderism), the draft Charter was recently put out to a first round of public consultation and review by experts from all round the world. The initial group now thinks that a second draft of the Charter should be prepared to take account of all the responses. Some responses have been identified as needing to be worked on in specific working groups before being included in a future version of the Charter.

At the moment, the Chartet sets out the following areas of rights and responsibilities:

- Universal Internet Access. Throughout the world, even in the most developed countries, despite the great progress that we have seen there is not universal access to ICT: neither the infrastructure, nor the hardware, nor the software. If we take the Internet to be a global public good, it must be resilient and everyone must be able to access it in a stable, secure way [1] .

- An open, inclusive model of Internet governance, involving many stakeholders. The exercise and defence of digital rights and responsibilities and universal Internet access require new democratic structures. The global model of Internet governance based on cooperative systems involving many stakeholders requires people to be empowered so that, locally and globally, they can defend and contribute to the construction of human rights. Public authorities must recognise and provide the mechanisms to keep Internet governance and digital identity as something for all citizens. ICT can be used to improve the quality of processes for the development of public policy and to give it greater legitimacy. For that reasons, government, working closely with civil society and diverse stakeholders in an inclusive way, must continue to develop ways to allow genuine popular participation in decision-making and policy formation. The government and public sector must make those participative mechanisms available to the public openly such that they are open to audit by anyone, consistent with the principle of privacy by design and by default.

- Freedom of expression and of information. To achieve an Internet free of censorship, and to guard it against censorship, the exercise of the right to freedom of expression and of information must be defended as much online as offline.

- Digital innovation, creation, access and distribution of knowledge. In 1948 the Universal Declaration of Human Rights recognised that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.” Beyond those two great fields of learning, the arts and science, the digital age has put in relief a third – technology – which was not captured by the Declaration. If societies are to be open and inclusive, everyone

must have rights to generate, distribute and share digital learning, that is, learning that allows us to design, understand, build and assess new digital age systems, applications and services and new economic, political and social structures and new ethical principles. The right and the responsibility to access technological learning, freely and openly, must be at the root of the digital society and forms the basis of the sovereignty of the people in this new age. The right to innovate in the different areas of the digital society is a new universal human right and a responsibility of the people in our age. The Internet does not only allow us to find out what is already known (browsing) and share it; it also above all allows us to create new knowledge, to co-create, adapt, compare, edit, improve, scale-up and distribute new knowledge freely.

- Personal data protection and privacy of information. The right to privacy of individuals will be protected whenever he or she accesses and uses open data of legitimate public interest for purposes of open innovation, research and democratic learning. That demands a framework of individual control of our own personal data in which, by design, the privacy of the individual and the transparency of institutions are defended.

- Ensure digital empowerment and inclusion. Everyone has the right and the responsibility to be educated and to educate others about and through digital technology and about the new rights and the new social, economic and cultural structures of the digital age.

- On ethics in the field of Artificial Intelligence and algorithmic governance. Systems based on artificial Intelligence in the public and private spheres must be trustworthy and must be designed in a way that respects privacy and ethical principles on the basis of transparent standards of verifiability. Confidence in the development, implementation and use of those systems reflects not only the inherent characteristics of the technology but also their socio-technical effects and requires the involvement of all stakeholders and processes that form part of the system through the whole lifecycle.

- Safeguarding mechanisms for digital rights. The interpretation of the rights and responsibilities set down in the Charter must take into account the public interest in protecting both expression and the forum in which it takes place. By way of example, we should note the fact that the Internet operates as a space for public expression and debate.

Goal 16 of the UN’s Sustainable Development Goals (SDGs) advocates “Promote just, peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

This means that public institutions must put in place public mechanisms to safeguard the rights of all in the use of technological developments and ensure for everyone universal and

effective access to conflict resolution systems and mechanisms that are efficient, free and quick. Those mechanisms must allow for the economic, geographical and logistical discrepancies between consumers and users of new technologies and their developers and the technology corporations.

We have already denounced the repressive situation in Catalonia, but the defence of human rights, including in the digital arena, is a global question that calls for a global debate. This is how Goal 17 of the Sustainable Development Goals (SDGs) envisages the situation, advocating strengthening the global partnership to reach global objectives. For that reason, we have an Advisory Board for the Charter, an international group of human rights and digital society experts.

Digital rights and responsibilities (those proposed in the Charter as well as those referred to by the Royal Decree), affect the whole of society, every individual and organisation, including companies, not-for-profits and public bodies. Every responsibility must be exercised and enforceable given the nature and scale of impact of the bodies that have those responsibilities.

And Catalonia must be a reference nation in terms of enacting and defending digital rights and freedoms.

REFERENCES

1 — Secure access: availability, integrity and confidentiality of network connected data guaranteed.



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