

Data and Public Policy: An Approach to Data Ecosystems from a Human Rights Perspective

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This paper is one of the contributions to an academic panel titled: “Bio-creation of informatics: Rethinking data ecosystems in the network economy”. The panel seeks to explore different approaches for trans disciplinary media art and design practitioners in re-imagining data ecosystems and at the same time engaging members of the general public to reflect and contribute to an inclusive discourse that may re-shape public policy surrounding data ecosystems, from the lenses of ownership, privacy, transparency, openness and choice of individuals. The panel is moderated, co-authored and edited by Catalina Alzate.

Abstract

The public policies that encourage the implementation of infrastructures for data management are mostly adopted by governments with great technological enthusiasm, leaving aside the notion of human rights and potential effects for freedom of expression, privacy, inclusion and security of citizens'. The government of Colombia encourages spaces for citizens' participation like public consultations, in order to include people in the design of policies that can dramatically modify the way they interact with other citizens and with the state.

In this paper two examples that look at policy for data infrastructures will be discussed for researchers and information artists interested in public interventions and engagement. 1) The discussion around the copyright reform, as part of the implementation of the FTA (Free-Trade Agreement) of Colombia with the United States. 2) The implementation of cell phone registry as part of the strategy against mobile theft in Colombia.

As a civil society organization, our advocacy strategy has included creating or taking advantage of participative spaces to introduce new narratives into public policy.

Keywords

Internet Policy, Human Rights, Data Infrastructures, Freedom of Expression, Privacy, Inclusion, Copyright, Cell Phone Databases, Citizen Engagement, Advocacy.

Introduction

The promises and benefits of Information and Communication Technologies (ICTs) and particularly the Internet, are gaining special attention because of their potential to enhance interactions between the citizens and the state. However, when it comes to analyzing the design of infrastructures that support such interactions, the impact of ICTs regarding human rights are either underestimated or governments fail to estimate the degree of consequences that in many cases entail hindering the very access of people to governance and their possibility of achieving full citizenship.

In Colombia, where the most prevalent relationship with technology is instrumental, meaning that technology is used but not created, and that knowledge is transferred but not appropriated, the scope of introducing ICTs on society is not predicted and the impact of such technologies is not measured. A common belief is that introducing technologies in the *citizen - state* equation, will benefit people and the system in evident ways: less time spent in legal procedures, less use of paper and greater control of official processes. These assumptions reveal the general lack of knowledge both in governments and in the society about the design of technological platforms, the management of information and the roles that these platforms suppose people to adapt: merely as passive users.

There are particular manual requirements for the generation of public policies that take into account the necessary discussion about the design of infrastructures and platforms that manage large amounts of information of citizens, as well as the inclusion of participative mechanisms for citizens to contribute to the evaluation and the design of requirements for these platforms. In the general framework of these discussions a frequent reference is made to 'the *respect and promotion of human rights*', but what this implies for the construction of public policies is still uncertain. Beyond introducing

analysis of security and privacy risks, the design of public policies in Colombia suffers from a profound gap in terms of approach to human rights, that could allow governments to measure impact and evaluate the scope of the introduction of ICTs in the interactions between government and citizens in the short, medium and long term. Above all, it is necessary to re-think the future implications of collecting, storing and managing vast amounts of information that circulate through these platforms.

This paper introduces two case studies where it is possible to trace the need to explore the relationship between the design of the platforms and human rights challenges emerging in a digital context.

Case Study 1. The Discussion on Copyright, Access to Knowledge and Culture and the Challenges to Freedom of Expression.

The right to freedom of expression contemplates not only the possibility of individuals to express their opinion, but also the right to access information to understand the world around us. This dual character of freedom of expression is permanently in tension with other rights. This is the particular context of copyright.

In its conception, copyright is born as an exception to the right to access knowledge and information, recognizing the role of authors and artists in the creation of culture and granting them with the monopoly of commercial exploitation of their works for a limited period of time. In theory, after the lock-in period determined by law, all works become part of the public domain and therefore of the universal cultural baggage. Once the works are located in this realm, they can be freely used by anyone. Some of the concerns for public policies developed in copyright laws include: when and how works move into the public domain, in which cases or under what requirements can such works be used by others before being in the public domain and how can authors and artists control access to their work when they are still under their ownership? Even though the issue of access should be central to the discussion of these policies, the commercial interests and the heavy lobby of large corporations that own the title of the works (and therefore the rights of commercial exploitation), have tipped the balance towards protectionist policies of the rights held by authors, harming the open access to knowledge, which is a central aspect for achieving freedom of expression.

Designed for the world of atoms and not for the world

of bits, control and access in the digital world simulate the depletion of the tangible by creating mechanisms of artificial scarcity, as it is in the case of the technological measures of protection. The extensive use of these measures is encouraged through their incorporation into the copyright law in the United States (Digital Millennium Copyright Act MCA) and the exportation of this model through free-trade agreements (FTA) to countries like Colombia.

As in all negotiations, there is a margin for local implementation and the adaptation of national laws. This particular process could be highly enriched with active participation of citizens. In the case of Colombia, the implementation of the free trade agreement with the United States includes the need to adapt the national copyright law and incorporate on it a chapter on technological measures of protection that without proper balance can result in a huge barrier for accessing knowledge. There have been two reforms to the copyright law in Colombia: On the first case, the law was approved by the congress but declared unenforceable by the Constitutional Court. On the second occasion, the law was archived without debate.

For the second reform, Karisma Foundation requested the government of Colombia for a space of participation where citizens and experts from different disciplines could contribute to the debate. The request was made by the collective “RedPaTodos” and was effectively opened up by The Ministry of Commerce¹². After providing feedback and comments, the same copyright project was proposed again a couple of years later by the government, without the comments being addressed. Even though it is possible to open up spaces for discussion, there is scope for creative practitioners to intervene in communication strategies that can involve more citizens, and come up with strategies to escalate the comments and increase the effectiveness of the feedback between civil society organizations and governments.

On this line of thought, there are also several fields of investigation and dialogue where artists can adopt active roles of participation and contribute to the gathering of detailed information to model public policy. Given that current policies are being designed without considering

¹ The request to the government can be found on this link: <https://redpatodos.co/blog/mesas-de-trabajo-con-mincit-para-leyladeras4-apuntese/>, and its results on this link: <https://redpatodos.co/blog/mesas-de-trabajo-con-mincit/>. The comments to the several versions of the copyright law can be found here: <https://redpatodos.co/blog/vuelve-la-burra-al-trigo-leyladeras-5/> (all the links are in Spanish).

their consequences, there is scope to explore with citizens the balance between copyright and freedom of expression.

There is also a clear need for collecting data to clarify the following provocations: What are the effects on freedom of expression of increasing the term of copyright protection?

How does protection time affect the dynamics of production of new works and how does it affect growth and use of the public domain? How much public money is spent on paying for access to information that should be publicly accessible (such as research results or state-funded educational resources)? What is the scope of promoting access to community information such as libraries and cultural centers and how much of the budget is spent on licensing?

Elucidating answers to these provocations through artistic and public engagement will greatly contribute to discussions regarding public policy and copyright, and to support arguments on favor or against particular regulatory proposals.

Case Study 2. Cellular Databases in Colombia: Underestimating Their Scope as Massive Surveillance Systems.

The cellular registration system in Colombia is considered a strategy to prevent cell phone theft. However, due to its design and characteristics, it can easily become an instrument for massive identification and surveillance of citizens, available to the reach of any authority.

In order to use any mobile device in Colombia, the International Equipment Identification Number (IMEI) must be registered on a centralized database. Each mobile phone operator not only registers this number to the database, but also includes a set of personal information about the user: the number of the operator's subscription (IMSI) and the line number (MSISDN). Mobile phone operators also create a database of the mobile phones that have been reported as stolen or lost, in order to disable such devices. These two database bases are delivered from the Mobile phone operators to a third private party called "Informática El Corte Inglés", which is commissioned by the country's operators to centralize, store and manage all the databases provided by the operators. As a result, there are currently two centralized data bases: Positive (contains information of all devices that can be used in the country) and Negative (devices that have been disabled). This same company, by law, must give access to this information to any authority.

The databases described are used for a variety of purposes like controlling the legal validity of devices that are being used by people, and other processes that require the operator to disclose phone numbers that are making or receiving a call, location and time of particular calls. The centralization of this information is highly problematic for ensuring privacy and security of cell phone users: from the databases, it is easy to infer the name of the user and other personal information. As a result, the ecosystem does not allow for anonymous communication amongst citizens, violating the right to self-expression, for which anonymity must be protected.

According to the current regulation, any authority can access information from the databases without an order from the Court. This provision is not constitutional, since access should be authorized by a judge, and granted only in cases of criminal investigation. In addition, the verification procedure uses very sensitive data and metadata that can be used to profile a person's activities and preferences. Even though it has been established that access to communications metadata enhances the state's capacity of surveillance, the lack of control over access to this information opens up the possibility of abusing the infrastructure especially as it is centralized. In terms of spaces for dialogue with citizens, the regulations regarding cell phone databases in Colombia have been subject to numerous modifications which makes it difficult for civil society organizations to find the time and space to hold public debates. On this scenario, Karisma Foundation has invited delegates from the Commission for Communications Regulation to join the conversation about particular research projects conducted by the organization. On this regard, as it was established on the first case study, there is a need for joining efforts of different practitioners to create spaces for socialization and for effective communication of public opinion.

As creative practitioners, artists and members of the general public, we need to be less complacent with technological solutions and more critical and reflexive about their consequences, especially when it comes to protecting the privacy of citizens and favoring the access to information and culture.

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she has been engaged in several strategic projects on access to knowledge, privacy and security, internet governance, Social Innovation, freedom of expression, and gender perspectives.

Author Biography

Pilar is a physicist by training and activist by vocation. Pilar is a free software, open technology and open culture enthusiast, working in areas related to education and technology. As project manager of Karisma Foundation,