

# DISAGGREGATING DIGITAL RIGHTS: THE CIVIL RIGHTS-CIVIL LIBERTIES DISCONNECT

Laura Moy\*

*Civil rights and civil liberties have long existed in tension within U.S. information law and policy—a tension rooted in the very architecture of communication technologies. Broadcast media, being scarce and resource-intensive, invited regulation to ensure it was available for equitable use. In contrast, the early internet’s abundance and openness gave rise to a civil libertarian ethos focused on individual freedom and minimal state involvement.*

*This Article traces how public interest information policy advocacy has shifted between these paradigms across three eras. First, a civil rights-oriented media justice movement flourished from the 1950s to the 1980s. Second, information policy advocacy took a civil libertarian turn during the rise of the commercial internet from the 1990s to 2013. Third, from 2013 to the present day, an American racial reckoning, coupled with a growing recognition that data-driven technologies can reinforce inequality, has driven efforts to reconcile the civil rights-civil liberties disconnect.*

*Viewed through this lens, the civil rights-civil liberties disconnect emerges as a key factor in the success or failure of public interest advocacy campaigns. When organizations bridge the divide, their coalitions grow and campaigns are politically stronger. When they don’t, they risk fractured alliances, weakened framing, and policy proposals that fall short. This Article argues that public interest organizations must confront and actively engage this disconnect. A deliberate realignment that embraces both liberty and equity is essential to meeting the substantial challenges of the current moment.*

---

\* Associate Professor of Law, Georgetown University Law Center. I am deeply grateful to David Brody, Alan Butler, Julie Cohen, William McGeeveran, Paul Ohm, Hannah Sassaman, Chris Soghoian, Daniel Solove, Ari Waldman, and Harlan Yu for their input, feedback, and guidance during development of this article. Many thanks also to all those who engaged with the paper at the 2024 Privacy Law Scholars Conference and at a discussion of it at a 2024 Yale ISP lunch.

INTRODUCTION . . . . .	539
I. CIVIL RIGHTS AND CIVIL LIBERTIES DISCONNECTED IN INFORMATION POLICY. . . . .	544
A. Defining and Distinguishing Civil Rights and Civil Liberties . . . . .	544
B. The Relationship Between Civil Rights, Civil Liberties, and Information Technology Architecture. . . . .	547
II. THE INFORMATION ADVOCACY COMMUNITY'S RELATIONSHIP WITH CIVIL RIGHTS AND CIVIL LIBERTIES . . . . .	550
A. 1950s–1980s: Civil Rights and the Fight for Media Justice. . . . .	550
B. 1990s–2013: The Internet and the Dominance of Cyberlibertarianism. . . . .	557
C. 2013–Present: Confronting and Navigating the Disconnect. . . . .	565
1. A Nationwide Racial Reckoning that Reverberated Through Information Policy Organizations . . . . .	565
2. Growing Public and Academic Discourse About Connections Between Information Policy and Civil Rights. . . . .	567
3. The Civil Rights Principles for the Era of Big Data . . . . .	571
4. Policymakers' Recognition of the Connection Between Information Policy and Civil Rights. . . . .	573
5. Attempts to Use Existing Law to Rein in Information-Related Civil Rights Violations . . . . .	575
6. Mounting Concerns About the Inadequacy of Policy Approaches Widely Supported by Information Policy Organizations . . . . .	577
7. Growing Self-Awareness of the Field's Whiteness . . . . .	579
D. Emerging Attempts to Re-Anchor Information Policy Organizations to Civil Rights. . . . .	580
III. THE CONSEQUENCES OF THE CIVIL RIGHTS-CIVIL LIBERTIES DISCONNECT . . . . .	584
A. Disconnect, Disagreement, and Tentative Reconciliation About "Privacy" . . . . .	585
B. Disconnect and Disagreement About Online Hate Speech . . . . .	588
C. Consequences of the Disconnect. . . . .	593
IV. CONSTRUCTIVE CONFLICT . . . . .	596
CONCLUSION . . . . .	598

## INTRODUCTION

Civil rights are a key part of public interest information policy's origin story. In the 1950s and 1960s, civil rights leaders recognized the importance of harnessing information media to build the movement but sometimes struggled to have their work and message fairly reported on in print and broadcast media. In an effort to improve the information footprint of the civil rights movement, a number of advocates and organizations coalesced around a shared strategy of using legal tools to advance a fairer and more equitable information environment. This civil rights orientation in public interest information policy persisted through the 1980s.<sup>1</sup>

With the birth of the World Wide Web in the 1990s, however, public interest information advocacy shifted its focus toward civil liberties. A utopian vision of the internet future flourished—one of unbounded individual freedom. As this vision came to dominate internet-era public interest information policy advocacy, organizations began to concentrate more on individual rights and less on equality.<sup>2</sup>

Public interest organizations working on information policy have been struggling to swing back in the direction of civil rights since 2013. In the 2010s, recognition grew among academics, advocates, and policymakers that the internet could replicate and exacerbate inequities across society. Brewing concern about these problems was fed and intensified by a broader racial reckoning nationwide, catalyzed by the acquittal of George Zimmerman and a series of police killings of Black people. Efforts to reorient public interest information policy advocacy back toward civil rights are ongoing.<sup>3</sup>

The shifting of focus back and forth between civil rights and civil liberties matters because these two different foci translate to different types of policies. When public interest advocacy organizations focus on civil rights, they advocate for policies that promote fairness and equality, including, at times, by expanding government power to achieve that purpose. In contrast, when organizations focus on civil liberties, they typically advocate for policies that constrain government power and maximize individual freedom.<sup>4</sup>

This ongoing, unresolved civil rights-civil liberties disconnect in the field means that the field's priorities are split between different types of policies and that public interest organizations in the field

---

1. See discussion *infra* Part II.A.

2. See discussion *infra* Part II.B.

3. See discussion *infra* Part II.C.

4. See discussion *infra* Part I.A.

are plagued by a fair amount of infighting. This disconnect impedes the field's ability to unite its work around a shared set of priorities, thus diminishing advocates' power and hindering the field's ability to achieve meaningful policy change.<sup>5</sup>

Infighting and strategic disagreement are problems the field cannot afford, especially in light of the tremendous challenges that public interest advocacy organizations face at this particular time in American history. At the time of this writing, public interest policy organizations are under tremendous pressure to defend civil liberties and civil rights against a variety of threats. In an affront to free speech principles, President Donald Trump is willing to use government power and resources to pursue revenge against those who speak out against him.<sup>6</sup> The administration's attacks on its perceived enemies have included attacks on political opponents,<sup>7</sup> Democratic Party infrastructure,<sup>8</sup> law firms,<sup>9</sup> journalists and media outlets,<sup>10</sup> and universities.<sup>11</sup> The White House has also mounted

---

5. See discussion *infra* Part III.

6. See Michael S. Schmidt, *In Trump's Second Term, Retribution Comes in Many Forms*, N.Y. TIMES (Apr. 7, 2025), <https://www.nytimes.com/2025/04/07/us/politics/trump-biden-law-firms-revenge.html> [<https://perma.cc/K6JW-M6LJ>].

7. See Rebecca Jacobs, *Trump Has Threatened Dozens of Times to Use the Government to Target Political Enemies*, CITIZENS FOR RESP. & ETHICS IN WASH. (May 22, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-has-threatened-dozens-of-times-to-use-the-government-to-target-political-enemies/> [<https://perma.cc/EC9Y-JWMC>] (reporting that an analysis of over 13,000 of Trump's Truth Social posts from January 1, 2023, to April 1, 2024, found that "threatening political opponents has been a consistent fixation for Trump"); Tom Dreisbach, *Trump Has Used Government Powers to Target More than 100 Perceived Enemies*, NPR (Apr. 29, 2025, 5:00 AM), <https://www.npr.org/2025/04/29/nx-s1-5327518/donald-trump-100-days-retribution-threats> [<https://perma.cc/FVW4-L7F7>] (describing threats and actions against thirteen political opponents).

8. See Brian Slodysko & Steve Peoples, *Trump Wants an Investigation of Democrats' Fundraising. His Own Campaign Has Issues*, ASSOCIATED PRESS (May 27, 2025, 11:08 AM), <https://apnews.com/article/trump-actblue-winred-fundraising-justice-department-3e73d4022bb47e0533f9dcfd35d37371> [<https://perma.cc/GMR5-H9C3>].

9. See Mike Spector et al., *How Trump's Crackdown on Law Firms Is Undermining Legal Defenses for the Vulnerable*, REUTERS (July 31, 2025, 6:00 AM), <https://www.reuters.com/investigations/trumps-war-big-law-leads-firms-retreat-pro-bono-work-underdogs-2025-07-31/> [<https://perma.cc/B8U8-2HBA>] (describing the Trump Administration's attacks on law firms and the resulting chilling effect on some pro bono work).

10. See Edward Helmore, *Trump Is Waging War Against the Media – And Winning*, GUARDIAN (July 5, 2025, 1:00 AM), <https://www.theguardian.com/us-news/ng-interactive/2025/jul/05/trump-attack-us-media> [<https://perma.cc/PA3X-9CBQ>] (describing the Trump Administration's actions against ABC and CBS).

11. See Elissa Nadworny, *All the Ways the Trump Administration Is Going After Colleges and Universities*, NPR (June 10, 2025, 5:00 AM), <https://www.npr.org/2025/06/10/nx-s1-5424450/ways-trump-administration-is-going-after-colleges> [<https://perma.cc/375Z-YMD7>] (summarizing the various strategies the Trump Administration has used to try to get higher education institutions to follow its agenda).

attacks against institutional mechanisms designed to check abuses of executive power, including both those internal to the executive branch and those situated within the judiciary.<sup>12</sup> In addition, the administration has undertaken a frontal assault on civil rights.<sup>13</sup>

Organizations whose primary mode of advocacy involves law and policy are trying to adjust to a volatile policy ecosystem, in which the institutions responsible for making and enforcing U.S. law are undergoing rapid reorganization and reorientation. There is general consensus among experts that in the first few months of the second Trump Administration, democracy in the United States declined sharply. Surveys of 760 political scientists and 2,000 Americans conducted in April 2025 found that “[o]verall ratings of American democracy dropped significantly among every group surveyed.”<sup>14</sup> In particular, political scientists perceived the largest declines during Trump’s first 100 days in office “in protections for unpopular speech or expression, government agencies not being used to punish political opponents, freedom of the press, the impartiality of criminal investigations, and judicial independence.”<sup>15</sup> A number of experts believe that the United States may even be descending—or perhaps has already descended—into authoritarianism.<sup>16</sup>

---

12. See David Lopez, *3 Ways Trump Is Acting Like a King and Bypassing the Constitution’s Checks and Balances on Presidential Authority*, CONVERSATION (Feb. 24, 2025, 8:40 AM), <https://theconversation.com/3-ways-trump-is-acting-like-a-king-and-bypassing-the-constitutions-checks-and-balances-on-presidential-authority-249347> [<https://perma.cc/VN6V-BZQL>]; Sareen Habeshian, *Trump Administration Escalates Attacks on Judges*, AXIOS (May 29, 2025) <https://www.axios.com/2025/05/29/trump-administration-courts-judges> [<https://perma.cc/52DH-YUCU>]; David M. Driesen, *Donald Trump and the Collapse of Checks and Balances*, 77 SMU L. REV. F. 199, 207–18 (2024) (examining Trump’s erosion of checks and balances during his first term in the White House).

13. See Nikole Hannah-Jones, *How Trump Upended 60 Years of Civil Rights in Two Months*, N.Y. TIMES MAG. (June 27, 2025), <https://www.nytimes.com/2025/06/27/magazine/trump-civil-rights-law-discrimination.html> [<https://perma.cc/JY6U-G9Y9>]; *Statement on the Trump Administration’s Attacks on Civil Rights*, N.Y.C. BAR ASS’N COMM. ON C.R. (June 2, 2025), <https://www.nycbar.org/reports/statement-on-the-trump-administrations-attacks-on-civil-rights/> [<https://perma.cc/XY3Q-96BU>]; *Trump Administration Civil and Human Rights Rollbacks*, LEADERSHIP CONF. CIV. & HUM. RTS., <https://civilrights.org/trump-rollbacks/> [<https://perma.cc/62ZN-ANN3>].

14. BRIGHT LINE WATCH, THREATS TO DEMOCRACY AND ACADEMIC FREEDOM AFTER TRUMP’S SECOND FIRST 100 DAYS: BRIGHT LINE WATCH APRIL 2025 SURVEY (2025), <https://brightlinewatch.org/threats-to-democracy-and-academic-freedom-after-trumps-second-first-100-days/> [<https://perma.cc/K8BB-BZGH>].

15. *Id.*

16. See Steven Levitsky et al., *How Will We Know When We Have Lost Our Democracy?*, N.Y. TIMES (May 8, 2025), <https://www.nytimes.com/2025/05/08/opinion/trump-authoritarianism-democracy.html> [<https://perma.cc/H4KG-SFSY>].

Information policy organizations have a critical role to play in defending civil rights, civil liberties, and democratic infrastructure in this pivotal moment. It is in the field of information policy that the limits of government surveillance<sup>17</sup>—including to drive mass deportation operations or to detect and suppress dissenting speech<sup>18</sup>—are defined. This field will also define and shape any restraints (or lack thereof) on data-driven discrimination,<sup>19</sup> social media algorithms that drive hate speech and disinformation,<sup>20</sup> and AI chatbots and companions that are replacing humans in a variety of contexts. It will determine whether or not the American public has access to publicly-funded journalism that is not accountable to profit-driven corporations.<sup>21</sup> It will determine whether or not data security is sufficiently protected in future elections.<sup>22</sup> In addition, failures of information policy are at least partly responsible for the largely unrestrained political and economic power that tech giants now enjoy, arguably elevating them to the status of oligarchs.<sup>23</sup>

This Article calls on public interest information policy advocates to overcome differences stemming from the civil rights-civil liberties disconnect so that they can rise to meet this historic moment. It explains the origins of this disconnect in public interest information policy, how it has evolved over the past seven decades, and how it manifests today.

---

17. See Trevor Hughes, *How Much Does the Government Know About You? Likely More than Ever*, USA TODAY (June 6, 2025, 6:49 AM), <https://www.usatoday.com/story/news/politics/2025/06/04/trump-surveillance-state-federal-data/83924420007/> [<https://perma.cc/47AR-5Q4Z>].

18. See NINA WANG ET AL., GEO. L. CTR. PRIV. & TECH., *AMERICAN DRAGNET: DATA-DRIVEN DEPORTATION IN THE 21ST CENTURY I* (2022), [www.americandragnet.org](http://www.americandragnet.org) [<https://perma.cc/K29A-MFJR>] (“By reaching into the digital records of state and local governments and buying databases with billions of data points from private companies, ICE has created a surveillance infrastructure that enables it to pull detailed dossiers on nearly anyone, seemingly at any time.”).

19. See discussion *infra* Part III.A.

20. See discussion *infra* Part III.B.

21. See Hamilton Nolan, *Journalism Needs Government Funding to Survive*, COLUM. JOURNALISM REV. (July 22, 2025), <https://www.cjr.org/analysis/journalism-needs-government-funding-to-survive.php> [<https://perma.cc/9MMA-VQN5>] (explaining that public media not accountable to profit-driven corporations relies on government funding, and that the “fight [to preserve public media] requires politics”).

22. See DEREK TISLER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUST., *SECURING THE 2024 ELECTION: RECOMMENDATIONS FOR FEDERAL, STATE, AND LOCAL OFFICIALS 3* (2023), <https://www.brennancenter.org/our-work/policy-solutions/securing-2024-election> [<https://perma.cc/34MH-ST3Q>] (describing a multitude of threats to U.S. elections and calling for a “whole-of-government response,” including actions to protect cybersecurity and to protect against election-related misinformation).

23. See generally Julie E. Cohen, *Oligarchy, State, and Cryptopia*, 94 FORDHAM L. REV. 563 (2025) (providing an account of tech oligarchy within contemporary political economy).

Finally, the Article calls on advocates to address the disconnect head on in hopes of developing a shared set of top priorities to unite behind.

Before continuing to the heart of this Article, I offer a note about terminology. This Article refers to several different “public interest organizations” throughout, always meaning nonprofit organizations with public interest missions. Organizations the Article refers to as “civil rights organizations” are public interest organizations with a mission focused primarily on advancing the rights of communities of color, sexual and gender minorities, or otherwise focused on societal equity. Organizations the Article refers to as “information policy organizations” are public interest organizations that focus on laws and policies that shape, govern, and constrain communications and information media and technology.<sup>24</sup>

This Article makes a deliberate choice to refer to the organizations it examines as “information policy” organizations, rather than by using the term “technology policy” or “internet policy”—somewhat narrower frames that focus on digital technology while typically relegating broader communications law and policy concerns to a separate field.<sup>25</sup> The Article endorses the view of communication scholars Milton Mueller, Brenden Kuerbis, and Christiane Pagé that “the digitization of information and communication technologies and the resulting convergence of media forms end that segregation.”<sup>26</sup> There is a great deal of overlap between policies that shape the ways in which people communicate with one another and exchange information and policies that shape the development and deployment of technology. Many, if not most, organizations that study and attempt to influence policy on, for example, the buildout of communications networks are also active in policy discussions regarding, for example, the collection and use of the personal data of people who use those networks.

I also note that my personal experience as a participant in this field informed this Article’s account of the civil rights-civil liberties disconnect in public interest information policy. Prior to becoming a professor, I worked as a policy attorney for two public interest information policy organizations that appear in this Article, and in that capacity served as an expert, policy advocate, and legislative negotiator

---

24. See MILTON MUELLER ET AL., *INFO. SOC’Y, REINVENTING MEDIA ACTIVISM: PUBLIC INTEREST ADVOCACY IN THE MAKING OF U.S. COMMUNICATION-INFORMATION POLICY, 1960–2002*, at 9 (2004), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=586625](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=586625) [<https://perma.cc/92JV-QJHT>] (defining communication-information policy organizations as those focused on “the role of laws, regulations, and public institutions in shaping the deployment and use of communication and information systems”).

25. *Id.* at 10.

26. *Id.*

on a number of information policy issues. I worked on issues related to the Civil Rights Principles for the Era of Big Data discussed in this Article and helped steer coalitions of privacy-oriented organizations in the direction of civil rights. Through that work, I gained a particular insight into complex interpersonal dynamics related to the civil rights-civil liberties disconnect among organizations in the field that is difficult to observe from outside the field. Although my experience in the field informed my thinking on this topic, with few exceptions, I have cited heavily to external sources throughout this Article, so as not to rely on my own imperfect memory.

This Article is structured as follows. Part I defines and distinguishes the concepts of civil rights and civil liberties and explains how their differences correspond to aspects of the technical architecture of information systems. Part II traces the shifting alignment of public interest information policy advocacy across three historical periods: from its roots in the civil rights movement during the broadcast era, to a dominant civil libertarian orientation during the rise of the commercial internet, and finally to a more recent reckoning, beginning around 2013, in which advocates have sought to reconcile these frameworks. Part III analyzes the consequences of the civil rights-civil liberties disconnect, focusing on its impact on policy debates around online hate speech and privacy legislation and arguing that the failure to bridge the disconnect has weakened coalitions, undermined issue selection and framing, and limited the effectiveness of proposed reforms. Part IV calls for “constructive conflict”—an approach that embraces the friction between civil rights and civil liberties not as a problem to be resolved once and for all, but as a necessary and productive dialogue for the development of information policy that can advance democratic values and serve the public interest.

## I. CIVIL RIGHTS AND CIVIL LIBERTIES DISCONNECTED IN INFORMATION POLICY

Because this Article will delve into the history of and the lessons learned from the disconnect between civil rights and civil liberties in United States information policy advocacy from the 1950s to present day, it is necessary first to provide a foundational overview of key concepts. This Part defines civil rights and civil liberties and discusses the inherent disconnect between them, both in general and in the specific context of the information policy field.

### A. *Defining and Distinguishing Civil Rights and Civil Liberties*

Civil rights and civil liberties are often discussed and advanced together. Both categories have a long and intertwined history in U.S.

law, and there are multiple law journals devoted to both topics.<sup>27</sup> In the words of legal scholar Thomas C. Grey, “American liberals believe that both civil liberties and civil rights are harmonious aspects of a basic commitment to human rights.”<sup>28</sup>

Although often advanced together, civil rights and civil liberties are distinct from one another. They differ both in their respective approaches to individualism and in their orientation toward government intervention. A summary of these key differences serves to help define the terms.

Civil liberties generally are examined through an individualistic lens and civil rights through a social or collective lens.<sup>29</sup> As explained by critical race theorist Richard Delgado, “[u]nlike equality and civil rights, which are inherently social in nature, liberty interests are ones we are capable of exercising by ourselves. . . . They separate us, emphasizing our individualistic, rightsguarding, solitary tendencies.”<sup>30</sup> Civil liberties are more focused on individuals’ protections against government interference with their freedom, including guarantees of freedom in speech, religion, and association and freedom against warrantless searches.<sup>31</sup>

Civil rights, in contrast, are more focused on balance across society, advancing equality in political, economic, and social rights, especially

---

27. Among others, this includes the *Alabama Civil Rights & Civil Liberties Law Review*, *Harvard Civil Rights-Civil Liberties Law Review*, *Stanford Journal of Civil Rights & Civil Liberties*, and *Texas Journal on Civil Liberties & Civil Rights*.

28. Thomas C. Grey, *Civil Rights vs. Civil Liberties: The Case of Discriminatory Verbal Harassment*, 8 SOC. PHIL. & POL’Y 81, 81 (1991); see also John E. Semonche, *Civil Rights and Civil Liberties*, in THE OXFORD COMPANION TO AMERICAN LAW 110, 110 (Kermit L. Hall et al. eds., 2002) (stating that civil rights’ and civil liberties’ “stories are so intertwined that they are often treated together”).

29. See Christopher W. Schmidt, *The Civil Rights-Civil Liberties Divide*, 12 STAN. J. C.R.-C.L. 1, 3 (2016) (“Autonomy rather than equality is the guiding principle of civil liberties.”); Semonche, *supra* note 28, at 110 (“Civil rights are premised on equality or equal treatment; civil liberties are premised on individual freedom or the ‘liberty to be unequal or different.’”).

30. Richard Delgado, *About Your Masthead: A Preliminary Inquiry into the Compatibility of Civil Rights and Civil Liberties*, 39 HARV. C.R.-C.L. L. REV. 1, 9 (2004) [hereinafter Delgado, *About Your Masthead*].

31. See Semonche, *supra* note 28, at 110 (“Civil liberties are those rights incumbent on government to respect.”); *Civil Liberty*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining civil liberty as “[f]reedom from undue governmental interference or restraint; esp., the right of all citizens to be free to do as they please while respecting the rights of others.”); *Civil Liberty*, OXFORD ENG. DICTIONARY (rev. 2010) (defining civil liberty as “[e]ach of those social and political freedoms which are considered to be the entitlement of all members of a community”); Grey, *supra* note 28, at 82 (“The civil-liberties mentality . . . tends to limit the kinds of harms that can justify abridgment of that freedom to traditionally recognized infringements of tangible interests in property and bodily security.”).

by considering how the free exercise of those rights is advanced by law and protected from discrimination, including by private actors.<sup>32</sup>

Efforts to advance civil rights and civil liberties often exhibit stark differences in their orientation toward government. Indeed, hands-on regulation of private activities plays different—arguably opposite—roles in the infringement and protection of civil rights and civil liberties. Where civil liberties are concerned, interference with private activities, such as by government intervention, is typically viewed as the primary threat.<sup>33</sup> Skepticism of government is a deeply ingrained feature of the United States’ history and identity.<sup>34</sup> Civil libertarian advocacy thus typically advances law and policy that prohibits or restrains—and opposes law and policy that empowers—interference with private actors and private affairs.<sup>35</sup>

Conversely, where civil rights are concerned, intervention is looked upon favorably as a way to defend and protect fairness, rather than as a threat. Much of civil rights law in fact empowers the government to intervene in situations where public or private actors curtail others’ freedom and equality. This is because discriminatory decisions and activities by others, if left unchecked in a context of pure liberty, will drive inequality across numerous aspects of society.<sup>36</sup> Government intervention is often necessary to curb that discrimination and promote

---

32. See Semonche, *supra* note 28, at 110 (“Civil rights are those rights we have, as individuals, to be treated equally with others.”); *Civil Right*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining civil rights as “individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act”); *Civil Right*, OXFORD ENG. DICTIONARY (defining civil rights as “each of the political, social, and economic rights which are recognized as the entitlement of every member of a community and which can be upheld by appeal to the law”); Grey, *supra* note 28, at 82 (arguing that the goal of civil rights, in contrast to civil liberties, “is not so much to protect a sphere of autonomy or personal security from *intrusion* as to protect potentially marginal members of the community from *exclusion*—from relegation, that is, to the status of second-class citizens”).

33. See Grey, *supra* note 28, at 82 (“[t]he active state is traditionally conceived as the sole or dominant threat to civil liberties.”).

34. See ROBERT K. CARR, FEDERAL PROTECTION OF CIVIL RIGHTS: QUEST FOR A SWORD 3 (1947) (“[T]he American has been inclined to regard the state itself as the great enemy of civil liberty. . . . In the light of our ancestors’ lengthy and costly experience with arbitrary government, it is not surprising that we have held such views. Government can be an enemy to civil liberty!”).

35. See Schmidt, *supra* note 29, at 3, 35 (“[C]ivil libertarianism is premised on skepticism toward government interference in the private sphere”; “[c]ivil libertarians generally believe that government power and individual freedom operate as a zero-sum game. Their basic demand is that the government do less.”).

36. See TO SECURE THESE RIGHTS: THE REPORT OF THE PRESIDENT’S COMMITTEE ON CIVIL RIGHTS 99–100 (1947) (laying out the justification for the government to play a leading role in improving civil rights by stating that “many of the most serious wrongs against individual rights are committed by private persons or by local public officers”).

equality.<sup>37</sup> As a result, civil rights advocacy often advances law and policy that empowers oversight and restraint of private actors and activities.<sup>38</sup>

In sum, civil liberties tend to be more individualistic in their focus compared to the social focus of civil rights. To advance civil liberties, interference with private actors and actions should generally be minimized, while to advance civil rights, private actors must be restrained.

*B. The Relationship Between Civil Rights, Civil Liberties, and Information Technology Architecture*

Not only is there generally an inherent disconnect between civil rights and civil liberties, but this disconnect has been brought into stark relief by changes in information technology architecture over time and attendant shifts in information advocacy from the mid-1900s to present. Differences in information technology architecture and advocacy along two dimensions are particularly paramount: scarcity versus abundance, and resource-intensiveness versus accessibility. As explained below, due to differences along these dimensions, broadcast arguably lends itself intuitively to a civil rights approach, and the internet more intuitively to a civil libertarian and individualistic approach.

Broadcast is a scarce medium because only certain frequency bands are suitable for the transmission of radio and television broadcast signals. As a result, if everyone were permitted to broadcast radio or television over any frequency of their choice whenever they wanted to using traditional broadcast equipment, every useful broadcast frequency would become overwhelmed by numerous overlapping broadcasters interfering with one another.<sup>39</sup> No one would be able to send or receive a

---

37. See Grey, *supra* note 28, at 82 (noting that “[g]overnment may deny equal protection by omission as well as by action”); Danielle K. Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 66 (2009) (arguing that “the cyber civil rights agenda must be fundamentally pro-regulatory”).

38. See Schmidt, *supra* note 29, at 3, 35 (“The civil rights canon revolves around the Equal Protection Clause of the Fourteenth Amendment, supplemented by an array of local, state, and federal civil rights laws, which today protect against state and many forms of private discrimination based on race, sex, disability, and sexual orientation. . . . [C]ivil rights policy often calls for government regulation of private relations . . . .”; “advocates of civil rights typically ask the government to do more: to implement more aggressive antidiscrimination regulations, to extend the equal protection norm, through legislative or judicial or administrative action, to new areas of society and to new groups.”); Grey, *supra* note 28, at 82 (explaining that the “‘anti-discrimination principle’ goes beyond cleansing government action of bias; it also attacks discrimination on the suspect bases of race, sex, and so on, in the other major institutions of civil society”).

39. *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 375 (1969) (recounting that, before radio was regulated, “the result was chaos”).

clear signal, rendering broadcasts unintelligible and the medium useless to everyone.<sup>40</sup>

The fact that broadcast-suitable frequencies are a scarce resource is a defining characteristic of broadcast as an information medium. The medium itself presents a physical limit to the number of parties that can use it at one time. As a result, in the early years of broadcast, policymakers wishing to preserve the medium's utility found it necessary to interfere with private activities in the form of enforced limits on the use of certain frequencies by anyone except for a limited number of licensed parties.<sup>41</sup>

In contrast, the internet historically has been characterized by abundance.<sup>42</sup> Parties using the internet as their information medium do not threaten to cause interference with one another the way those using the broadcast medium do, and there is no physical limit to the number of parties that can use the internet. On the contrary, countless—approaching infinite—parties may communicate at one time via the internet.

Broadcast as a medium is not only far scarcer than the internet, but using broadcast to transmit information is also more resource-intensive. To broadcast, a party must obtain (or partner with a party that obtains) broadcasting equipment, including an antenna that may cost tens, or even hundreds, of thousands of dollars to lease or build.<sup>43</sup>

Transmitting information or communications via the internet, on the other hand, is more accessible. A user requires both a device and a connection, but the associated costs are a fraction of the costs associated with broadcast licenses and equipment. Once connected, an internet user can express themselves via any number of free or low-cost services.

As a result of these differences, in general, far fewer parties can transmit information, communications, or other speech via broadcast as compared to the internet. Virtually anyone can express themselves via

---

40. *Id.* at 376 (“Without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard.”).

41. *Id.* (“It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government.”).

42. See *Reno v. ACLU*, 521 U.S. 844, 845 (1997) (noting that “[t]he special factors recognized in some of the Court’s cases as justifying regulation of the broadcast media . . . [including] the scarcity of available frequencies at its inception . . . are not present in cyberspace”).

43. *How to Start a Radio Station: Step-by-Step Guide for 2025*, LIVE365, <https://live365.com/broadcaster/how-to-start-a-radio-station-guide> [<https://perma.cc/5N9P-MS2Z>] (estimating the cost of tower lease construction at \$20,000–\$500,000, and total FM/AM radio station costs at \$260,000–\$1,350,000); see *How to Apply for a Radio or Television Broadcast Station*, FED. COMM’NS COMM’N, <https://www.fcc.gov/media/radio/how-to-apply> [<https://perma.cc/WAS6-PU7S>] (explaining the requirements to apply for a broadcast license).

the internet because it is an abundant and accessible medium. But by comparison, very few parties can express themselves via broadcast because it is a scarce and resource-intensive medium.

Due to these technical differences, broadcast arguably lends itself more naturally to the civil rights perspective, and the internet more naturally to the civil libertarian perspective. In broadcast, government intervention is unavoidable because at a minimum, some would-be speakers must be silenced in order to preserve the utility of the medium for licensees against the threat of interference. Once the government is in the position of deciding among various possible licensees, it is easy to imagine how civil rights concerns might enter into the analysis. But on the internet, where the number of speakers is practically limitless, it is easy to imagine how the civil libertarian perspective—aiming to maximize the freedom of each individual speaker—is naturally well aligned.

Of course, both broadcast and the internet have changed dramatically from their early days, when patterns of government support and regulation were initially established. Modern broadcasters and transmitters are capable of clearer transmission over narrower frequency bands using always-advancing digital technology than broadcasters were capable of in the early days of the medium, rendering physical limitations less significant.<sup>44</sup> Similarly, unlike the early internet days of Usenet groups, bulletin boards, and web browsing, for many people, the internet today is dominated by social media services such as YouTube, TikTok, and Instagram.<sup>45</sup> In contrast to early visions of an internet

---

44. See Gregory Staple & Kevin Werbach, *The End of Spectrum Scarcity: New Technologies and Regulatory Reform Will Bring a Bandwidth Bonanza*, 41 IEEE SPECTRUM 48, 50 (2004) (explaining that “interference is not some inherent property of spectrum. It’s a property of devices. . . . Consequently, the extent to which there appears to be a spectrum shortage largely depends not on how many frequencies are available but on the technologies that can be deployed.”).

45. See Robert Kahn & Michael Aaron Dennis, *Internet*, in ENCYCLOPEDIA BRITANNICA (Jan. 12, 2026), <https://www.britannica.com/technology/Internet> [<https://perma.cc/C6VL-U5XM>] (providing an overview of connected networks that preceded the World Wide Web and a brief history of the World Wide Web); BARRY M. LEINER ET AL., INTERNET SOC’Y, A BRIEF HISTORY OF THE INTERNET 10 (1997), [https://www.internetsociety.org/wp-content/uploads/2017/09/ISOC-History-of-the-Internet\\_1997.pdf](https://www.internetsociety.org/wp-content/uploads/2017/09/ISOC-History-of-the-Internet_1997.pdf) [<https://perma.cc/2UTS-DAD2>] (describing USENET in discussion of early widespread Internet infrastructure); Jeffrey Gottfried, *Americans’ Social Media Use*, PEW RSCH. CTR. (Jan. 31, 2024), <https://www.pewresearch.org/internet/2024/01/31/americans-social-media-use/> [<https://perma.cc/NC2B-9FGN>] (reporting details of Americans’ use of social media platforms); Nic Newman, *Overview and Key Findings of the 2025 Digital News Report*, REUTERS INST. (June 17, 2025), <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2025/dnr-executive-summary> [<https://perma.cc/FZD3-SURZ>] (“Engagement with traditional media sources such as TV, print, and news websites continues to fall, while dependence on social media, video platforms,

without gatekeepers, information and communications transmitted via social media services today are often gatekept by platforms that decide which content each user will see. The promotion (and demotion) of particular content by social media platforms arguably renders the internet scarcer as a communications medium than its once-envisioned ideal.<sup>46</sup>

## II. THE INFORMATION ADVOCACY COMMUNITY'S RELATIONSHIP WITH CIVIL RIGHTS AND CIVIL LIBERTIES

Information policy organizations in the years prior to the World Wide Web were anchored in the civil rights movement, but around the start of the internet era, organizations participating in information policy then grew relatively disconnected from civil rights. Recent years, however, have seen an evolving effort to reconcile the civil rights-civil liberties disconnect in the field.

Examining the history of public interest information policy advocacy in three periods reveals shifts from a civil rights orientation to a civil liberties one and back again. In the first period, from the 1950s to the 1990s, inspired and spurred to action by the civil rights movement, a rich community of public interest advocacy organizations sprang up focused on media reform through an equality and civil rights lens. Second, from the 1990s until about 2013, the emergence and growth of the World Wide Web disrupted this existing public interest advocacy ecosystem, and as the internet grew, cyberlibertarianism largely replaced civil rights as the dominant vision guiding public interest information policy advocacy. Third, around 2013 and lasting to the present day, a racial reckoning in the United States brought the civil rights-civil liberties disconnect in the field into stark relief. In the decade-plus since then, public interest organizations engaged in information policy work have been striving to reconcile the disconnect.

### A. 1950s–1980s: Civil Rights and the Fight for Media Justice

Before the advent of the commercial internet, there was a rich decades-long tradition of public interest advocacy organizations pushing

---

and online aggregators grows. This is particularly the case in the United States where polling overlapped with the first few weeks of the new Trump administration.”)

46. See Kyle Langvardt, *Regulating Online Content Moderation*, 106 GEO. L.J. 1353, 1359 (2018) (explaining that online platforms “are starkly limited in the amount and character of the communications that they can carry before they become overloaded and their usability deteriorates” and comparing limitations on platforms’ “bandwidth” to broadcast scarcity and the physically limited nature of places where speech occurs in the real world, such as town halls and public parks).

for civil rights to be reflected in information policy. In fact, the first iteration of the public interest information policy advocacy field, from the 1950s to the 1980s, was a direct offshoot of the civil rights movement, responding to civil rights leaders' recognition that they must leverage information media to grow and gain support for the movement. Civil rights-oriented public interest information policy advocacy sprang up in the 1950s and 1960s as two things happened simultaneously: televisions quickly proliferated in homes across the country, and the civil rights movement made massive strides. In 1946 there were only a few thousand television sets in use in the United States, but by 1955, half of all U.S. homes had one,<sup>47</sup> and by 1957, eighty percent of homes had one.<sup>48</sup> Meanwhile, in 1954, the Supreme Court issued its landmark opinion in *Brown v. Board of Education* declaring racial segregation in public schools unconstitutional;<sup>49</sup> the Montgomery bus boycott, sparked by Rosa Parks' arrest, took place in 1955–56;<sup>50</sup> and in 1957, the Little Rock Nine bravely entered the previously all-white Little Rock Central High as the school's first Black students.<sup>51</sup>

The presence of televisions in homes enabled people all over the country to view these, and other, critical moments in the struggle for civil rights.<sup>52</sup> When a mob gathered outside Little Rock Central High School to intimidate Black children attempting to enter the school in 1957, television crews were on the scene.<sup>53</sup> When, in 1963, Martin Luther King, Jr. delivered "I Have A Dream" from the steps of the Lincoln Memorial, the pivotal speech was carried live by television stations across the country.<sup>54</sup> On March 7, 1965—"Bloody Sunday"—when the first Selma-to-Montgomery march culminated in a brutal attack by

---

47. Mitchell Stephens, *History of Television*, GROLIER ENCYCLOPEDIA, <https://mitchellstephens.com/History%20of%20Television%20page.html> [<https://perma.cc/RJU4-39RZ>].

48. See Michael Bowman, *TV, Cell Phones and Social Justice*, 24 RACE, GENDER & CLASS 16, 17 (2017).

49. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

50. See Robert Jerome Glennon, *The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955–1957*, 9 LAW & HIST. REV. 59, 86–87 (1991).

51. See John A. Kirk, *Little Rock and the History of the Civil Rights Movement*, 9 HISTORICALLY SPEAKING 28, 28 (2007).

52. See ALLISSA V. RICHARDSON, BEARING WITNESS WHILE BLACK: AFRICAN AMERICANS, SMARTPHONES, AND THE NEW PROTEST #JOURNALISM 36 (2020) (noting that, as televisions became more commonplace, "everyday people could become witnesses through visual media. The paradigm forever shifted.").

53. See Bowman, *supra* note 48, at 18; Kirk, *supra* note 51, at 30 (asserting that "[s]o iconic were the images from Little Rock that they instantaneously became a reference point for popular culture").

54. *The 1963 March on Washington*, NAACP, <https://naacp.org/find-resources/history-explained/1963-march-washington> [<https://perma.cc/3282-6LYM>].

Alabama state troopers, ABC television interrupted its evening movie to air a film report displaying the peaceful marchers, the terrifying attack, the jeering crowd, and the fleeing victims.<sup>55</sup> Extensive coverage on the evening news the following night revealed cries of terror, state troopers stumbling over fallen bodies, tear gas, people being beaten over the head with clubs, and unconscious people being carried away on stretchers.<sup>56</sup>

Civil rights leaders were conscious of and intentional about the important role of broadcast communications—and particularly television—in advancing the movement by exposing injustice to the world.<sup>57</sup> During a rally outside the Montgomery County courthouse, Martin Luther King, Jr. stated, “[w]e are here today to say to the white men that we will no longer let them use their clubs on us in dark corners. We are going to make them do it in the glaring light of television.”<sup>58</sup> John Lewis—who led marchers and suffered a fractured skull on Bloody Sunday—later observed that “[t]he civil rights movement would have been like a bird without wings if it hadn’t been for the news media.”<sup>59</sup>

These televised accounts served not only to garner sympathy from viewers nationwide, but also to spur additional people to join the movement, increasing its power. According to one viewer,

We were in our living room in San Francisco watching the 6 P.M. news. I was not aware that at the same moment people all up and down the West Coast were feeling what my wife and I felt; that at various times all over the country . . . hundreds of these people would drop whatever they were doing, [and head for Selma to place] themselves alongside the Negroes they had watched on television.<sup>60</sup>

Television coverage also had a substantial impact on Congress. According to historian David J. Garrow, in a review of congressional comments during the Selma campaign that mentioned news coverage, a number of legislators “seemed to be saying that televised film coverage

---

55. DAVID J. GARROW, *PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965*, at 78 (1978).

56. *Id.* at 84–85.

57. See RICHARDSON, *supra* note 52, at 35 (observing that, “[f]rom 1955, at the beginning of the Montgomery bus boycotts, until Dr. King’s assassination in 1968, black civil rights organizations leveraged the power of television to bear witness to segregation”).

58. GARROW, *supra* note 55, at 111.

59. David Treadwell, *Journalists Discuss Coverage of Movement: Media Role in Civil Rights Era Reviewed*, L.A. TIMES (Apr. 5, 1987, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1987-04-05-mn-380-story.html> [<https://perma.cc/Z3FN-KBJL>].

60. GARROW, *supra* note 55, at 85.

of Selma had had a more intense impact upon them than had still photographs or written reports.”<sup>61</sup>

But in the absence of civil rights-based information policy, the news media that played such a central role in the strategy and success of the movement could not be trusted to deliver critical information to all audiences. News outlets, especially in the South, were known to be at best neglectful of and at worst hostile to viewpoints and interests that did not accord with white dominance. For example, when Reverend George Washington Lee, a Black man who was among only a few since Reconstruction to register to vote in Humphreys County, Alabama, was killed by a shotgun blast to the face from a passing motorist, the regional newspaper headline was “Negro Leader Dies in Odd Accident”—the paper reported the sheriff’s conclusion that there was no foul play involved in Lee’s death.<sup>62</sup> According to journalist Hank Klibanoff, who was a newspaper delivery boy in Alabama at the time, Birmingham newspapers buried their stories about police dogs attacking civil rights protestors in the back pages.<sup>63</sup> Television and radio stations typically presented segregationist views and disparaged civil rights issues.<sup>64</sup> For example, television station WLBT in Jackson, Mississippi suppressed information about civil rights for years,<sup>65</sup> even though approximately forty-five percent of the population within the station’s prime service area was Black.<sup>66</sup> In 1955 the station cut off an NBC program featuring Thurgood Marshall, then the general counsel of the NAACP, speaking on race relations, and instead displayed a “Sorry, Cable Trouble” sign on viewers’ screens.<sup>67</sup> In 1957 the station presented a program discussing desegregation in Little Rock featuring only white people who supported segregation, then refused the NAACP’s requests for airtime to present the opposing viewpoint.<sup>68</sup> And in 1962 the station again broadcast

---

61. *Id.* at 163.

62. JUAN GONZÁLEZ & JOSEPH TORRES, *NEWS FOR ALL THE PEOPLE: THE EPIC STORY OF RACE AND THE AMERICAN MEDIA* 292 (2011).

63. Bowman, *supra* note 48, at 19 (describing Klibanoff’s stories, some of which were told in GENE ROBERTS & HANK KLIBANOFF, *THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION* (2007)).

64. Robert B. Horwitz, *Broadcast Reform Revisited: Reverend Everett C. Parker and the “Standing” Case* (Office of Communication of the United Church of Christ v. Federal Communications Commission), 2 COMM’N REV. 311, 314 (1997).

65. KAY MILLS, *CHANGING CHANNELS: THE CIVIL RIGHTS CASE THAT TRANSFORMED TELEVISION* 3–5 (2004); *Off. of Comm’n of United Church of Christ v. FCC*, 359 F.2d 994, 998 (D.C. Cir. 1966).

66. Horwitz, *supra* note 64, at 319.

67. *Lamar Life Broad. Co.*, 38 F.C.C. 1143, 1144–45 (1965); *Off. of Comm’n of United Church of Christ*, 359 F.2d at 998.

68. *Lamar Life Broad. Co.*, 38 F.C.C. at 1145.

various pieces opposing integration, without presenting any arguments in favor of integration.<sup>69</sup>

This is where information policy advocacy efforts came in. Civil rights leaders recognized the obstacle posed by broadcast operators who leveraged their power to support white supremacy. They realized the need to fight for policies that would advance the availability of the television medium for spreading information about their cause, without which they could not shine light on injustices done against Black people and build their movement.<sup>70</sup> Recognizing this, after WLBT cut off its broadcast during Thurgood Marshall's remarks, the NAACP began filing complaints against that station with the Federal Communications Commission ("FCC") in 1955 and 1957.<sup>71</sup> Martin Luther King, Jr. added fuel to this nascent policy advocacy strategy when, during the Montgomery bus boycott of 1956–57, he called on leaders of the Congregational Christian Board of Home Missions to address challenges posed by radio and television stations in the South.<sup>72</sup>

Following the meeting with Dr. King, Reverend Everett C. Parker, an activist with the Congregational church and founder of the church's Office of Communication, took up civil rights information policy advocacy as his primary cause.<sup>73</sup> Rev. Parker traveled around the South to investigate broadcasters' treatment of civil rights issues.<sup>74</sup> After gathering information about the poor treatment of Black communities by broadcasters in the South, Rev. Parker participated in efforts to get a broadcast industry association, the National Association of Broadcasters, to send a letter asking its members to improve the treatment of and opportunities for Black people on the air.<sup>75</sup> The National Association of Broadcasters' board turned down the proposal.<sup>76</sup>

Rev. Parker and the United Church of Christ then spearheaded a legal effort against WLBT for its blatant racial discrimination. With support of the church's fund for the promotion of racial justice and

---

69. *Id.* at 1146–47.

70. See MILLS, *supra* note 65, at 4–5.

71. See *Lamar Life Broad. Co.*, 38 F.C.C. at 1144–45. In 1959, the FCC took these complaints into consideration when evaluating WLBT's license renewal applications but concluded that the incidents did not justify denial of the renewal and proceeded with renewal. *Id.* at 1145.

72. GONZÁLEZ & TORRES, *supra* note 62, at 293–94; Horwitz, *supra* note 64, at 314.

73. Horwitz, *supra* note 64, at 314; Robert D. McFadden, *Everett C. Parker, Who Won Landmark Fight over Media Race Bias, Dies at 102*, N.Y. TIMES (Sep. 18, 2015), <https://www.nytimes.com/2015/09/19/us/everett-parker-obituary.html> [<https://perma.cc/QK3S-XPZV>].

74. Horwitz, *supra* note 64, at 314.

75. *Id.* at 315.

76. *Id.*

small grants from philanthropic foundations, the United Church of Christ mounted a challenge against WLBT's broadcast license, arguing that by discriminating against Black speakers and audiences, the station was in violation of its obligation under the Communications Act of 1934 to serve the public interest.<sup>77</sup> This effort initially failed with the FCC<sup>78</sup> but ultimately succeeded following judicial review.<sup>79</sup> In 1969, the D.C. Circuit Court vacated the grant of WLBT's broadcast license.<sup>80</sup> The WLBT case sparked a broader uptick of information policy work by other advocates. The 1969 legal victory meant that listeners—not just broadcasters—had a legal stake in communications policy and could make their voices heard. In response, a large number of organizations engaged in media reform work were founded in the 1970–71 period.<sup>81</sup>

The public interest information policy organizations that sprang up around the country during this period were intertwined in broader movements for social change, including—in addition to civil rights—consumer, environmentalist, feminist, and peace movements.<sup>82</sup> Many of the organizations established during this time represented the interests of historically disadvantaged groups that sought to be fairly served by, and have opportunities to participate in, broadcast media, including women, Latinos, gay people, and the elderly.<sup>83</sup> A number also were membership organizations.<sup>84</sup> The burgeoning army of advocates filed a flurry of license challenges against broadcasters—going from two challenges in 1969 to sixty-eight challenges (against 108 stations) in 1972.<sup>85</sup>

Not only were civil rights interests foundational to a number of organizations formed during this time, but leaders of the larger

---

77. *Id.*

78. *Id.* at 330.

79. *Off. of Commc'n of United Church of Christ v. FCC*, 359 F.2d 994, 1006 (D.C. Cir. 1966); *Off. of Commc'n of United Church of Christ v. FCC*, 425 F.2d 543, 550 (D.C. Cir. 1969); see also Horwitz, *supra* note 64, at 333–43.

80. *Off. of Commc'n of United Church of Christ*, 425 F.2d at 550.

81. See Milton Mueller, Christiane Pagé & Brenden Kuerbis, *Civil Society and the Shaping of Communication–Information Policy: Four Decades of Advocacy*, 20 INFO. Soc'y 169, 177 (2004); Tina Won Sherman, *Champions of the Public or Purveyors of Elite Perspectives? Interest Group Activity in Information and Communications Policy 74–75* (2004) (Ph.D. dissertation, University of Maryland) (ProQuest) (stating that media public interest groups “formed in response to the landmark decision” in the United Church of Christ case, leading to “a surge of media public interest groups during the following decade that focused on broadcast and related policy issues”).

82. MUELLER ET AL., *supra* note 24, at 35.

83. KATHRYN C. MONTGOMERY, *TARGET: PRIME TIME: ADVOCACY GROUPS AND THE STRUGGLE OVER ENTERTAINMENT TELEVISION 24* (1989); Mueller, Pagé & Kuerbis, *supra* note 81, at 179.

84. See Sherman, *supra* note 81, at 108, 147.

85. MONTGOMERY, *supra* note 83, at 25.

movement from which they sprang and to which they were accountable engaged in direct dialogue with policymakers on information-related issues. According to research by a team led by communication scholar Milton Mueller, in the 1970s, among the top ten public interest organizations that testified on communications and information policy issues were the aforementioned United Church of Christ, as well as civil rights organizations like the National Black Media Coalition, National Organization for Women, and NAACP.<sup>86</sup>

In the late 1970s into the 1980s, however, the growth of public interest information policy advocacy tapered off.<sup>87</sup> Writing in 1984 after conducting interviews with a number of individuals involved in the field, Peter Broderick, a telecommunications consultant for foundations and other nonprofits, described four major changes that were creating challenges for organizations in the field.<sup>88</sup> First, a number of key funders in the field, including the Ford Foundation, stopped supporting the work.<sup>89</sup> Second, businesses and business organizations ramped up their lobbying efforts.<sup>90</sup> Third, communications policy began to be deregulated, diminishing opportunities for advocates that operated in a regulatory context.<sup>91</sup> During the presidency of Ronald Reagan, the FCC

---

86. MUELLER ET AL., *supra* note 24, at 39.

87. Philip M. Napoli, *Public Interest Media Advocacy and Activism as a Social Movement*, 33 ANNALS INT'L COMM'N ASS'N 385, 397 (2009); Mueller, Pagé & Kuerbis, *supra* note 81, at 177.

88. Peter Broderick, *The New Electronic Technologies and the Public Interest: Does the "Revolution" Need a Movement?*, in POLICY RESEARCH IN TELECOMMUNICATIONS: PROCEEDINGS FROM THE ELEVENTH ANNUAL TELECOMMUNICATIONS POLICY RESEARCH CONFERENCE 313, 315 (Vincent Mosco ed., 1984).

89. *Id.*; see also Katharina Kopp, *The Role of Private Philanthropic Foundations in Communications Policy Making. Defining the 'Public Interest': The Ford and Markle Foundations' Influence on Policy Making at the Federal Communications Commission* 252–60 (1997) (Ph.D. dissertation, University of Pennsylvania) (ProQuest) (exploring whether and how “the emphasis on values as expressed in foundation activities moved from an emphasis on equality, fairness, community, diversity and participation to one on freedom and efficiency”).

90. Broderick, *supra* note 88, at 315; see generally Timothy R. Haight, *The "S. 1" of Communications*, in TELECOMMUNICATIONS POLICY AND THE CITIZEN: PUBLIC INTEREST PERSPECTIVES ON THE COMMUNICATIONS ACT REWRITE 241, 241–63 (Timothy R. Haight ed., 1979) (describing a largely successful campaign by the telecommunications industry to persuade policymakers that heavy-handed regulation would chill the investment, research, and innovation integral to technology's advancement).

91. Broderick, *supra* note 88, at 315. Mueller et al. have argued that deregulation was just one part of a broader effort to liberalize telecommunications. MUELLER ET AL., *supra* note 24, at 56 (arguing that “liberalization” is “the most appropriate label for this process” because “deregulation of prices, exit and entry is typically only one part of the process” of liberalization). According to Mueller et al., liberalization “had its roots in a scholarly critique of business regulation that had been building for two decades.” *Id.* Critics were concerned that regulatory agencies were captured by businesses, which often themselves created the political demand for more regulation because regulation

made a number of deregulatory moves under the chairmanship of Mark Fowler.<sup>92</sup> Fourth, the technology of communications media changed with the proliferation of computers.<sup>93</sup>

The plateauing of the public interest information advocacy field also may have been a reaction, in part, to a growth in conservative groups' engagement in information content-related advocacy in the 1980s.<sup>94</sup> These organizations mobilized to combat perceived liberal media bias and immoral or anti-Christian values.<sup>95</sup> And as Mueller et al. have observed, “[w]hen groups attempt to resist content-oriented advocacy’s reinforcement of dominant norms, they adopt the advocacy mode of individual rights. Defenses of content that threatens dominant norms will take the form of anti-censorship campaigns or promotion of individual rights to free and diverse expression.”<sup>96</sup>

For a variety of reasons, in the 1980s the public interest information advocacy field lost the momentum it had carried forward from the civil rights era. This left the door open for a new model of organization to rise to dominance with the launch of the commercial internet in the 1990s.

### B. 1990s–2013: *The Internet and the Dominance of Cyberlibertarianism*

The World Wide Web had its public launch in 1993,<sup>97</sup> and the internet era dawned. Unlike the first crop of public interest information advocacy organizations, which had grown directly out of the civil rights movement and other movements for social change, new organizations that sprouted up for the purpose of conducting advocacy specifically focused on the internet were not tethered to broader social movements. Rather, these organizations were interested in promoting the growth of digital technology and harnessing its power for individual flourishing. They articulated civil libertarian missions and advanced policies to promote civil liberties.

---

protected incumbents from competition. *Id.*; see also Napoli, *supra* note 87, at 397 (noting “specific alterations in the policy process that both diminished existing political opportunities and reduced the likelihood of new opportunities becoming available”).

92. See GONZÁLEZ & TORRES, *supra* note 62, at 333–35 (describing Fowler’s agency priorities).

93. Broderick, *supra* note 88, at 315.

94. See Mueller, Pagé & Kuerbis, *supra* note 81, at 179; MUELLER ET AL., *supra* note 24, at 54.

95. See Mueller, Pagé & Kuerbis, *supra* note 81, at 179.

96. MUELLER ET AL., *supra* note 24, at 55.

97. JAMES GILLIES & ROBERT CAILLIAU, *HOW THE WEB WAS BORN: THE STORY OF THE WORLD WIDE WEB* 236 (2000).

Less than a year after the World Wide Web launched, and before most internet policy organizations had even been founded, a coalition of more than seventy public interest organizations called the “Telecommunications Policy Roundtable” formed to advise the federal government on its approach to the emerging digital information infrastructure.<sup>98</sup> Because it met so early after launch of the World Wide Web, only a small number of internet-focused organizations participated. The Roundtable included media reform organizations, library organizations, consumer organizations, and disability rights organizations. The group issued a statement and principles in January 1994 with an introduction urging government action to advance public goals, ensure new technology would serve “the democratic and social needs of our country,” and establish policies “ensuring that all segments of our pluralistic society have meaningful access to the telecommunications system.”<sup>99</sup> Somewhat in contrast to the statement, however, the principles outlined by the Roundtable reflected a civil libertarian optimism and placed an emphasis on unrestricted speech and privacy.<sup>100</sup>

Over the next few years, a significant number of public interest organizations that had been engaged in information policy—mostly media reform organizations—were disbanded, and a number of new information policy organizations were founded.<sup>101</sup> According to analysis by Mueller et al., the organizations disbanded in that period were “predominantly content oriented,” and the new organizations were “more often rights-oriented advocates associated with the Internet.”<sup>102</sup> This trend intensified in the 2000s, which resulted in information policy organizations devoted to individual rights-oriented advocacy growing to their highest level since the 1960s, while content-oriented advocacy fell to its lowest level ever.<sup>103</sup>

As public interest information policy was reorganizing itself around the internet, many online spaces where tech experts lurked were dominated by libertarian discourse. In 1994, Mike Godwin of the Electronic Frontier Foundation wrote in *Wired* that “[l]ibertarianism (pro, con, and internal faction fights) [was] the primordial . . . discussion topic” in online newsgroups, and that “[a]ny time the debate shift[ed]

---

98. Telecommunications Policy Roundtable, *Renewing the Commitment to a Public Interest Telecommunications Policy*, 37 COMM’NS ACM 106, 106 (1994).

99. *Id.*

100. *See id.* at 107–08 (emphasizing, among other principles, a freedom to communicate, a diverse and competitive marketplace, and privacy).

101. Mueller, Pagé & Kuerbis, *supra* note 81, at 179.

102. *Id.*

103. *Id.*

somewhere else, it must eventually return to this fuel source.”<sup>104</sup> Political theorist Langdon Winner coined the phrase “cyberlibertarianism” to refer to this philosophy, defined as “a collection of ideas that links ecstatic enthusiasm for electronically mediated forms of living with radical, right wing libertarian ideas about the proper definition of freedom, social life, economics, and politics in the years to come.”<sup>105</sup> Winner perceived cyberlibertarianism to be the underlying philosophy of the San Francisco-based *Wired* in general, observing that the online magazine’s patrons envisioned “a realm of boundless creativity, self-indulgence, profit seeking, and free-floating ego.”<sup>106</sup> Writing in 1996, journalist Paulina Borsook agreed with the dominance of cyberlibertarianism, reporting that in her experience, Silicon Valley technologists tended to be “ravingly anti-government, and tremendously opposed to regulation.”<sup>107</sup>

The cyberlibertarian perspective received a tremendous boost in 1996 in response to the passage of the Communications Decency Act (“CDA”), which contained provisions designed to ban the transmission of “obscene or indecent” internet content to minors.<sup>108</sup> According to Mueller et al., passage of the CDA “galvanized the Net activist community like no other issue has before or since.”<sup>109</sup> Opponents of the law pointed out that even though content regulation was common in the broadcast era, the regulation of online content would have to be different because it would require the construction of institutional mechanisms such as age verification.<sup>110</sup> Those who had supported the law argued that gender and class divisions fed into internet activists’ strong opposition to the law.<sup>111</sup>

---

104. Mike Godwin, *Meme, Counter-Meme*, WIRED (Oct. 1, 1994, 12:00 PM), <https://www.wired.com/1994/10/godwin-if-2/> [<https://perma.cc/G8UH-C7H4>].

105. Langdon Winner, *Cyberlibertarian Myths and the Prospects for Community*, 1997 COMPUTS. & SOC’Y 14, 14 (1997).

106. Langdon Winner, *Peter Pan in Cyberspace: Wired Magazine’s Political Vision*, 30 EDUCOM REV. 18, 18 (1995).

107. Paulina Borsook, *Cyberselfish*, MOTHER JONES, July/Aug. 1996, <https://www.motherjones.com/politics/1996/07/cyberselfish/> [<https://perma.cc/WD7C-BRNG>].

108. Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 133 (1996 (codified at 47 U.S.C. § 230)).

109. MUELLER ET AL., *supra* note 24, at 73.

110. *Id.*

111. Art Kramer, *Coalition Cheers Court Victory over Decency Act*, STANDARD TIMES (June 18, 1996), <https://www.southcoasttoday.com/story/lifestyle/1996/06/18/coalition-cheers-court-victory-over/50638663007/> [<https://perma.cc/T26H-SHLZ>] (quoting Cathleen Cleaver of the Family Research Council, arguing, “only 10 percent of the country is online and they’re mostly male and mostly upper-class. . . . They’ve had complete freedom online and they just don’t want to burden themselves by changing their ways to protect children.”); MUELLER ET AL., *supra* note 24, at 74.

Information policy organizations rooted in the cyberlibertarian philosophy promoted policies to advance liberties—policies that would, with minimal government interference beyond the guarantee of individual rights, shape the internet as an open medium for speech, information sharing, service distribution, and political and economic participation.<sup>112</sup> In his influential *Declaration of Independence of Cyberspace* penned in 1996, John Perry Barlow, former Grateful Dead lyricist and co-founder of the Electronic Frontier Foundation, wrote, “Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.”<sup>113</sup> Barlow and others envisioned and actively worked toward a utopian future in which denizens of the digital world would be free of the oppressive power dynamics of the physical world.<sup>114</sup>

Accordingly, tech advocacy and policy organizations founded in the 1990s and 2000s articulated missions focused on civil liberties. For example, the archived websites of four of the five organizations named by Mueller et al. as internet-oriented organizations founded in the 1990s emphasize civil liberties.<sup>115</sup> The Electronic Frontier Foundation’s

---

112. See Mitchell Kapor, *Where Is the Digital Highway Really Heading? The Case for a Jeffersonian Information Policy*, WIRED (Mar. 1, 1993, 12:00 PM), <https://www.wired.com/1993/03/kapor-on-nii/> [<https://perma.cc/8PSY-78UH>] (co-founder of Electronic Frontier Foundation arguing, “[w]here necessary, government intervention should be minimal. It should not take the form of heavy-duty regulation of operations, which is self-defeating, but in the adoption, oversight, and if necessary, enforcement, of certain principles.”); Richard Barbrook & Andy Cameron, *The Californian Ideology*, 6 SCI. AS CULTURE 44, 45 (1996) (describing information age West Coast ideologues as “passionate advocates of what appears to be an impeccably libertarian form of politics—they want information technologies to be used to create a new ‘Jeffersonian Democracy’ where all individuals will be able to express themselves freely within cyberspace.”).

113. John Perry Barlow, *A Declaration of Independence of Cyberspace*, ELEC. FRONTIER FOUND. (Feb. 8, 1996), <https://www.eff.org/cyberspace-independence> [<https://perma.cc/QMS7-5YG8>].

114. Barlow reportedly said, “I knew it’s also true that a good way to invent the future is to predict it. So I predicted Utopia, hoping to give Liberty a running start before the laws of Moore and Metcalfe delivered up what Ed Snowden now correctly calls ‘turn-key totalitarianism.’” Cindy Cohn, *John Perry Barlow, Internet Pioneer, 1947-2018*, ELEC. FRONTIER FOUND. (Feb. 7, 2018), <https://www.eff.org/deeplinks/2018/02/john-perry-barlow-internet-pioneer-1947-2018> [<https://perma.cc/AK6V-LWZ2>]; see also Cindy Cohn, *Inventing the Future: Barlow and Beyond*, 18 DUKE L. & TECH. REV. 69, 71 (2019) (explaining that Barlow “gave a big voice to the dream that the digital world could be a chance for a fresh start against the incumbents—governments, telecommunications companies, movie and record cartels and more.”).

115. See Mueller, Pagé & Kuerbis, *supra* note 81, at 179 (naming organizations founded in the 1990s that were liberty-oriented advocates associated with the internet:

website stated in 1996 that it worked “to protect privacy, free expression, and access to public resources and information online, as well as to promote responsibility in new media.”<sup>116</sup> The website of the Electronic Privacy Information Center explained that it was founded “to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.”<sup>117</sup> The Center for Democracy & Technology’s website stated in 1997 that its mission was “to develop public policies that preserve and advance democratic values and constitutional civil liberties on the internet and other interactive communications media.”<sup>118</sup> The Internet Free Expression Alliance’s mission didn’t mention “civil liberties” explicitly but did articulate a focus on defending free expression and opposing government efforts to regulate content.<sup>119</sup>

Not only was cyberlibertarianism a dominant philosophy among organizations founded specifically to work on internet-related issues, but a number of factors paved the way for these organizations to shape conversations about information policy in the digital age. The first was the decline of information policy organizations formed to work on media reform issues during the broadcast era.<sup>120</sup>

Another important factor supporting the dominance of emerging public interest information policy advocates was that the internet medium arguably lent itself more easily to discourse and advocacy through a national lens than did traditional information media. Public interest information policy advocates in the civil rights era were largely focused on traditional news media based in specific geographic markets and thus engaged in advocacy responsive and tailored to those markets.

---

Electronic Frontier Foundation (1990), Electronic Privacy Information Center (EPIC) (1994), Center for Democracy & Technology (1995), Internet Free Expression Alliance (1997), and Domain Name Rights Coalition (1996)). Four of these organizations’ articulated missions, according to their archived websites, are described below. The fifth, the Domain Name Rights Coalition, articulated a mission narrowly focused on domain names, with no clear mention of civil liberties or rights. See *Domain Name Rights Coalition*, DOMAIN NAME RTS. COAL. (July 10, 1997) [https://web.archive.org/web/19970710054152/https://www.domain-name.org/].

116. *The Electronic Frontier Foundation*, ELEC. FRONTIER FOUND. (Oct. 20, 1996) [https://web.archive.org/web/19961020024223/http://www.eff.org/].

117. *Electronic Privacy Information Center*, ELEC. PRIV. INFO. CTR. (Dec. 30, 1996) [https://web.archive.org/web/19961230075220/http://epic.org:80/#about].

118. *Democratic Values for a Digital Age: First Annual Report and 1996 Work in Progress*, CTR. FOR DEMOCRACY & TECH. (Feb. 15, 1997) [https://web.archive.org/web/19970215011945/http://www.cdt.org/publications/annuals/96\_report.html#overview].

119. *IFEA Mission*, INTERNET FREE EXPRESSION ALL. (Feb. 3, 1999) [https://web.archive.org/web/19990203091324/http://www.ifea.net/mission.html].

120. See discussion *supra* notes 87–96 and accompanying text.

In contrast, the nature of internet infrastructure made online information available to people worldwide, and thus the internet lent itself more readily to advocacy in the national/federal arena.<sup>121</sup> As communication scholar Philip Napoli explained in 2007:

[A]ctivists at the local grassroots level speak[] different languages to different audiences and employ[] divergent strategies from those used by national advocacy organizations that represent the public interest within the federal policy-making sector.<sup>122</sup>

In addition, specialized internet-oriented organizations had advantages when it came to navigating the new technical complexities of the internet and digital information.<sup>123</sup> This went hand in hand with policy advocates' perception—accurate or not—that information policy issues were complicated and the public generally did not—and perhaps did not want to—understand them.<sup>124</sup>

The issues highlighted on the websites of these organizations throughout the 1990s and early 2000s matched their civil libertarian and individualistic perspective. For example, the navigation bar of the Electronic Frontier Foundation's website in 2000 explicitly named three of the organization's key issue areas, all of which emphasized individualism: "free expression"; "defining digital identity," which was primarily about the defending individuals' online privacy;<sup>125</sup> and "building people in," which was about avoiding a technical future that "locks out individuals, chills open, democratic dialogue, and interferes

---

121. Mueller, Pagé & Kuerbis, *supra* note 81, at 180. Indeed, shortly after the launch of the World Wide Web, the Clinton Administration began advancing a platform to build a "National Information Infrastructure" or "information superhighway," and a major legislative update to the Communications Act of 1934—the beginnings of the Telecommunications Act of 1996—began to be developed. *Id.*

122. Napoli, *supra* note 87, at 404 (citing RON EYERMAN & ANDREW JAMISON, *SOCIAL MOVEMENTS: A COGNITIVE APPROACH* 37 (1991)).

123. See Sherman, *supra* note 81, at 76 (explaining that leaders of information-communications advocacy groups are "technically sophisticated and understand the policy implications of such complex technologies (i.e., these leaders are 'technocrats') [,]" distinguishing from issue areas such as environmentalism and women's rights in which it is "easier for a citizen to comprehend the direct effects of related policies to their lives").

124. *Id.* at 130–32 (discussing the concept of "rational ignorance" and the perception among organizational leaders of rational ignorance among the general public with respect to information policy matters).

125. *Defining Digital Identity: How Do You Define Yourself -- and Protect Your Privacy?*, ELEC. FRONTIER FOUND. (Aug. 15, 2000) [<https://web.archive.org/web/20000815052729/http://www.eff.org/identity.html>].

with future innovation.”<sup>126</sup> The Center for Democracy & Technology’s “Activities” page in 2005 highlighted the organization’s work on free expression, information privacy, and government surveillance.<sup>127</sup>

During this period, some of the public interest organizations founded in the broadband era with a civil rights orientation remained active participants in internet policy discussions and collaborated with the newer civil libertarian-oriented organizations. For example, in 2005, the “Organizations” page of the Center for Democracy & Technology’s website, which listed other organizations working on similar issues, included a link to the website of the Media Access Project.<sup>128</sup> The Media Access Project had existed since 1971—it was one of the many organizations that sprang up following the successful challenge to the Mississippi TV station that had refused to air civil rights perspectives.<sup>129</sup> In contrast to the public communications of newer public interest organizations founded in the internet era, Media Access Project’s 30th anniversary annual report, published in 2002, made no mention of “civil liberties” as such.<sup>130</sup> The organization did define its mission around promoting the First Amendment but articulated a collective, rather than individualistic, perspective, stating that it worked “to ensure that the electronic media and emerging technologies promote the First Amendment goals of open civic discourse and a marketplace of ideas in order to safeguard democracy now and in the future.”<sup>131</sup> Consistent with a civil rights orientation, the organization’s goals included

---

126. *Building People In: Architecture Is Policy*, ELEC. FRONTIER FOUND. (Aug. 15, 2000) [https://web.archive.org/web/20000815052732/http://www.eff.org/buildin.html].

127. *CDT Activities*, CTR. FOR DEMOCRACY & TECH. (Dec. 8, 2005) [https://web.archive.org/web/20051208051230/http://www.cdt.org/mission/activities.php]. The website also highlighted the organization’s work on online democracy, coalition building, advocacy in the regulatory process, and mobilizing grassroots participation—all issue areas where civil rights outreach might be a natural fit. However, descriptions of these categories of activities made clear that outreach was focused on “the Internet community” and “users,” other organizations “fighting for the future of free speech,” and “netizens.” There was no mention of civil rights, equality, or related terms. *See id.*

128. *Resource Library: Organizations*, CTR. FOR DEMOCRACY & TECH. (Nov. 25, 2005) [https://web.archive.org/web/20051125144915/http://www.cdt.org/resourcelibrary/organizations/].

129. Albert H. Kramer, *The Role of Foundations in Broadcasting and Cable Communications Policy Development*, in RESEARCH PAPERS COMMUNICATION PRIVACY PHILANTHROPY & PUBLIC NEEDS 1317, 1323 (U.S. Dep’t. of Treasury ed., 1977). For discussion of organizations founded after the successful challenge to WLBT’s license, see discussion *supra* notes 81–84 and accompanying text.

130. MEDIA ACCESS PROJECT, 2002 ANNUAL REPORT: 30TH ANNIVERSARY EDITION (2002) [https://web.archive.org/web/20060117105318/http://www.mediaaccess.org/about/2002AnnualReport-bw.pdf] [https://perma.cc/U8SG-ULDH].

131. *Id.* at 2.

ensuring “non-discrimination and open access,” using the law to ensure broadcasters would “promote civic discourse and democracy,” and using the law to “promot[e] minority and female ownership and employment in broadcasting, cable TV and telecommunications.”<sup>132</sup>

But organizations founded in the civil rights-oriented phase of information policy advocacy struggled to maintain the support of funders and the attention of policymakers relative to civil liberties-oriented organizations. For example, from 1996 to 2012, an expert witness from Media Access Project testified in a congressional hearing with the word “internet” in the title just one time,<sup>133</sup> compared to eight times for witnesses from the Center for Democracy & Technology.<sup>134</sup> In 2012, Media Access Project shuttered because, according to the organization’s leader, the organization simply could “not raise enough money to maintain operations.”<sup>135</sup>

---

132. *Id.*

133. *ICANN Internet Governance: Is It Working?: Hearing Before the Subcomm. on Com., Trade, & Consumer Prot. and Subcomm. on Telecomms. & the Internet of the House Comm. on Energy & Commerce*, 109th Cong. (2006) (Harold Feld, Senior Vice President, Media Access Project, appearing as witness).

134. *Privacy in the Digital Age: Discussion of Issues Surrounding the Internet: Hearing Before the S. Comm. on the Judiciary*, 106th Cong. (1999) (Jerry Berman, Exec. Dir., Ctr. for Democracy & Tech., appearing as witness); *Internet Denial of Service Attacks and the Federal Response: Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary and Subcomm. on Crim. Just. Oversight of the S. Comm. on the Judiciary*, 106th Cong. (2000) (James X. Dempsey, Senior Staff Couns., Ctr. for Democracy & Tech., appearing as witness); *Fourth Amendment and the Internet: Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 106th Cong. (2000) (James X. Dempsey, Senior Staff Couns., Ctr. for Democracy & Tech., appearing as witness); *Internet Security and Privacy: Hearing Before the S. Comm. on the Judiciary*, 106th Cong. (2000) (James X. Dempsey, Senior Staff Couns., Ctr. for Democracy & Tech., appearing as witness); *Is ICANN’s New Generation of Internet Domain Name Selection Process Thwarting Competition?: Hearing Before the Subcomm. on Telecomms. & the Internet of the H. Comm. on Energy & Commerce*, 107th Cong. (2001) (Alan B. Davidson, Assoc. Dir., Ctr. for Democracy & Tech., appearing as witness); *Internet Corporation for Assigned Names and Numbers (ICANN): Hearing Before the Subcomm. on Commc’ns of the S. Comm. on Commerce, Science, and Transportation*, 108th Cong. (2003) (Alan B. Davidson, Assoc. Dir., Ctr. for Democracy & Tech., appearing as witness); *Internet Terror Recruitment and Tradecraft: How Can We Address an Evolving Tool While Protecting Free Speech?: Hearing Before the Subcomm. on Intel., Info. Sharing, & Terrorism Risk Assessment of the H. Comm. on Homeland Security*, 111th Cong. (2010) (John B. Morris, Jr., Gen. Couns., Ctr. for Democracy & Tech., appearing as witness); *Data Retention as a Tool for Investigating Internet Child Pornography and Other Internet Crimes: Hearing Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H. Comm. on the Judiciary*, 112th Cong. (2011) (John B. Morris, Jr., Gen. Couns., Ctr. for Democracy & Tech., appearing as witness).

135. Tony Romm, *Media Access Project to Fold in May*, POLITICO (Apr. 3, 2012, 11:39 PM), <https://www.politico.com/story/2012/04/media-access-project-to-fold-in-may-074800> [https://perma.cc/R8K6-B56Q].

C. *2013–Present: Confronting and Navigating the Disconnect*

Around 2013, public interest information policy organizations began a vigorous internal and external dialogue about the conflicting interests of civil rights and civil liberties, kicking off a period of attempted reorganization that is still ongoing. During this time, the U.S. experienced a nationwide racial reckoning that reverberated through the information policy community. Coinciding with, galvanized by, and building upon the momentum of the racial reckoning, a series of efforts to re-anchor information policy in civil rights at that time were successful. Alongside these changes, public and academic discourse increasingly drew attention to connections between information policy matters and race. At the same time, a growing chorus of voices, led by the academic community, increased doubts that individualistic approaches could sufficiently address those concerns. For example, it became increasingly apparent that policies requiring companies to be transparent about their online practices, and placing the burden on individuals to try to consent to those practices or control their own online behavior, were ineffective as a practical matter. Meanwhile, multiple parties drew attention to the whiteness of information policy organizations, indicating a growing self-awareness of the community's disconnect from the movements some of its members hoped to serve. Spurred by these converging forces, a number of prominent public interest information policy organizations began working to re-orient their work toward civil rights and other communitarian interests.

1. *A Nationwide Racial Reckoning that Reverberated Through Information Policy Organizations*

Perhaps the most critical thing that happened during this time period to foster a reevaluation of information policy organizations' detachment from civil rights was a racial reckoning that took hold in the American public and reverberated among organizations. Widely publicized killings of Black people, and the protests that followed, triggered a period of rapid change in attitudes about race in the United States. This underscored, for policy advocates long focused on civil liberties, how their work could—and perhaps should—contribute meaningfully to civil rights and other broader social and political movements.

Beginning in 2013, a series of events sparked a racial reckoning in the United States. In 2013, George Zimmerman was acquitted of killing an unarmed Black teenager named Trayvon Martin; in response to Zimmerman's acquittal, Alicia Garza, Patrisse Cullors, and Opal

Tometi started #BlackLivesMatter.<sup>136</sup> In 2014, Eric Garner, Michael Brown, and Tamir Rice—a man, a teenager, and a child, all Black—were killed by police, and video footage of the aftermath and some of their killings was widely disseminated, provoking a series of protests and widespread discussion in the press and on social media.<sup>137</sup> In 2015, another Black man, Walter Scott, was shot in the back by a police officer while running away.<sup>138</sup> Also in 2015, white supremacist Dylann Roof murdered nine people and injured another in a mass shooting at a Black church in Charleston, South Carolina.<sup>139</sup>

These tragic deaths were just part of a seemingly unending series of widely reported—and often video recorded—police killings that fueled support and momentum for America’s racial reckoning. The numerous incidents included, among many others,<sup>140</sup> the 2016 police killings of Alton Sterling and Philando Castile, the 2018 killing of Stephon Clark, the 2020 killings of Breonna Taylor and George Floyd (whose murder sparked massive protests nationwide), the 2021 killing of Daunte Wright, the 2022 killing of Patrick Lyoya, the 2023 killing of Tyre Nichols, and the 2024 killing of Sonya Massey.

As public awareness of racial injustice grew in the United States, so too did support for policies designed to advance racial justice. As summarized by Pew Research in an August 2015 report on trends in surveys about race, 2014–15 saw “a substantial rise in the share of Americans—across racial and ethnic groups—who [said] the country need[ed] to continue making changes to give blacks equal rights with whites, and a growing number of Americans view[ed] racism as a big problem in society.”<sup>141</sup>

The momentum of #BlackLivesMatter also underscored—for both information policy advocates and social movement organizers—the ways in which communications devices and networks could contribute

---

136. *Herstory*, BLACK LIVES MATTER (July 7, 2017), <https://blacklivesmatter.com/herstory/> [<https://perma.cc/CL32-LUGS>].

137. See *George Floyd: Timeline of Black Deaths and Protests*, BBC (Apr. 22, 2021), <https://www.bbc.com/news/world-us-canada-52905408> [<https://perma.cc/DYJ8-X6VT>].

138. *Id.*

139. See Matt Zapotosky, *Charleston Church Shooter: ‘I Would Like to Make It Crystal Clear, I Do Not Regret What I Did*, WASH. POST (Jan. 4, 2017), [https://www.washingtonpost.com/world/national-security/charleston-church-shooter-i-would-like-to-make-it-crystal-clear-i-do-not-regret-what-i-did/2017/01/04/05b0061e-d1da-11e6-a783-cd3fa950f2fd\\_story.html](https://www.washingtonpost.com/world/national-security/charleston-church-shooter-i-would-like-to-make-it-crystal-clear-i-do-not-regret-what-i-did/2017/01/04/05b0061e-d1da-11e6-a783-cd3fa950f2fd_story.html) [<https://perma.cc/44WL-7FB2>].

140. Police killings of unarmed Black people in the United States have been too numerous to provide a comprehensive list here.

141. *Across Racial Lines, More Say Nation Needs to Make Changes to Achieve Racial Equality*, PEW RSCH. CTR. (Aug. 5, 2015), <https://www.pewresearch.org/politics/2015/08/05/across-racial-lines-more-say-nation-needs-to-make-changes-to-achieve-racial-equality/> [<https://perma.cc/YN5V-QBHU>].

concretely to movements.<sup>142</sup> In the words of communication scholar Allissa Richardson, writing about the role of smartphones and social media in producing public evidence of police brutality, “[p]erhaps no other media production device—save for the printing press—has had more impact on the way we create and share news than the smartphone. . . . [S]martphones and social media have allowed black witnesses to connect the historic dots between each high-profile death.”<sup>143</sup> Writing in *The Hill*, Patrisse Cullors, one of the co-creators of Black Lives Matter, said in 2014, “[t]he continued growth of this movement and its capacity to respond nimbly and effectively to the brutal and biased policing of Black communities depends, in part, on access to a non-discriminatory Internet.”<sup>144</sup> As Malkia Devich-Cyril, the founder of the organization now known as MediaJustice, stated in a keynote address at the 2015 Computers, Freedom, and Privacy conference, “[t]he decentralized power of the Internet has made much of this moment possible.”<sup>145</sup>

## 2. *Growing Public and Academic Discourse About Connections Between Information Policy and Civil Rights*

This racial reckoning in the United States coincided with and fueled efforts among academics, advocates, and activists to highlight the connections between information policy and civil rights. Discourse on these connections cut across several issue areas, including government surveillance, data and discrimination, and broadband policy.

A number of parties working to shed light on and rein in government surveillance drew attention to the fact that surveillance fell disproportionately on historically disadvantaged communities.<sup>146</sup> In

---

142. See Bijan Stephen, *How Black Lives Matter Uses Social Media to Fight the Power*, WIRED (Nov. 2015), <https://www.wired.com/2015/10/how-black-lives-matter-uses-social-media-to-fight-the-power/> [https://perma.cc/RE2M-3QS7].

143. RICHARDSON, *supra* note 52, at 43–44; see also DEEN FREELON ET AL., CTR. FOR MEDIA & SOC. IMPACT, *BEYOND THE HASHTAGS: #FERGUSON, #BLACKLIVESMATTER, AND THE ONLINE STRUGGLE FOR OFFLINE JUSTICE* 78 (2016) (explaining that “activists used digital tools to generate alternative narratives about police violence to counter the so-called neutrality of the mainstream press”).

144. Patrisse Cullors, *Black Lives Depend on a Free and Open Internet*, HILL (Dec. 31, 2014, 9:00 AM), <https://thehill.com/blogs/congress-blog/civil-rights/228063-black-lives-depend-on-a-free-and-open-internet/> [https://perma.cc/K4CX-MAV3].

145. Malkia Devich-Cyril, *Targeted Surveillance, Civil Rights, and the Fight for Democracy*, MEDIAJUSTICE (Oct. 13, 2015), <https://mediajustice.org/news/targeted-surveillance-civil-rights-and-the-fight-for-democracy/> [https://perma.cc/JF8L-FBTZ].

146. For example, in the 2013 lawsuit *Raza v. City of New York*, the ACLU, NYCLU, and the CLEAR project at CUNY Law School challenged the New York City Police Department’s targeted surveillance of New York Muslims. *Raza v. City of New York - Legal Challenge to NYPD Muslim Surveillance Program*, ACLU (Aug. 3, 2017), <https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program>

2015, Simone Brown published *Dark Matters: On the Surveillance of Blackness*, a book that traced racialized surveillance technologies and practices from the slavery era through present day.<sup>147</sup>

Activists and academics also worked to expose the connection between big data and discrimination. Long before 2013, there already were a number of notable writings on embedded biases in data and data-driven applications, even in the absence of intent by designers, including on issues of data and discrimination.<sup>148</sup> But 2013 and 2014 were the years when awareness of data bias seemed to reach critical mass among both the academic community and the public interest advocacy community.

In early 2013, computer scientist Latanya Sweeney began circulating the results of a field experiment she performed in which she discovered that an online search for a Black-identifying name was significantly more likely to trigger display of an ad implying the existence of an arrest record than an online search for a white-identifying

---

[<https://perma.cc/L3P5-AHBS>]. Separately, to kick off a large rally against mass surveillance in Washington, D.C., Free Press, the Center for Media Justice, and Voices for Internet Freedom co-hosted an event called “Government Surveillance and Communities of Color,” which examined surveillance of communities of color throughout U.S. history. Joseph Torres, *Panel Discussion Tackles Surveillance of Communities of Color*, VOICES FOR INTERNET FREEDOM (Oct. 24, 2013), <https://www.internetvoices.org/blog/2013/10/24/panel-discussion-tackles-surveillance-communities-color> [<https://perma.cc/B3B6-L4YT>].

147. SIMONE BROWN, *DARK MATTERS: ON THE SURVEILLANCE OF BLACKNESS* (2015).

148. See, e.g., Batya Friedman & Helen Nissenbaum, *Bias in Computer Systems*, 14 ACM TRANSACTIONS INFO. SYS. 330, 333–35 (1996) (writing about bias in computer systems, providing, among others, the example of an automated loan advisor that negatively weights applicants living in low-income or high-crime neighborhoods, because it “embeds the biases of clients or designers who seek to avoid certain applicants on the basis of group stereotypes.”); Danielle Keats Citron, *Technological Due Process*, 85 WASH. U. L. REV. 1249, 1262 (2008) (explaining that “[p]rogrammers can build matching algorithms that have biased assumptions or limitations embedded in them”); *id.* at 1271–72 (explaining that, due to “automation bias,” humans may sometimes trust or rely on computer-automated decisions even when the underlying systems are themselves biased or otherwise flawed); Cynthia Dwork et al., *Fairness Through Awareness*, 12 PROCS. OF THE 3RD INNOVATIONS IN THEORETICAL COMPUT. SCI. CONF. 214, 214 (2012) (explaining that “[n]early all classification tasks face the challenge of achieving utility in classification for some purpose, while at the same time preventing discrimination against protected population subgroups” and introducing “a normative approach to fairness in classification and a framework for achieving it”); Alistair Croll, *Big Data Is Our Generation’s Civil Rights Issue, and We Don’t Know It* (July 31, 2012), <https://alistaircroll.com/2012/07/big-data-is-our-generations-civil-rights-issue-and-we-dont-know-it/> [<https://perma.cc/LG5M-L3QK>] (“If I collect information on the music you listen to . . . I could use it to guess at your racial background. And then I could use that data to deny you a loan.”).

name.<sup>149</sup> Sweeney explained that it was possible for this type of racial bias to occur without the intent or even the knowledge of either the advertiser or the search engine.<sup>150</sup> She cautioned, “[r]acism can result, even if not intentional, and online activity now may be so ubiquitous that computer scientists have to think about societal consequences such as structural racism in the technology they design.”<sup>151</sup> Also in early 2013, Kate Crawford wrote a widely circulated short piece for the *Harvard Business Review* on “The Hidden Biases in Big Data.”<sup>152</sup>

In 2014, a number of workshops and events encouraged further dialogue and research exploring this topic.<sup>153</sup> Awareness of challenges at the intersection of data and discrimination spread like wildfire as writings on the topic also drew attention at other convenings—for example, at the Privacy Law Scholars Conference.<sup>154</sup> During the years of 2013–16, information policy organizations were also drawing connections between broadband policy and civil rights. For example, Black Lives Matter co-creator Patrisse Cullors wrote explicitly about the connection between the movement and net neutrality—the demand that internet service providers not use their power over network access

---

149. Latanya Sweeney, *Discrimination in Online Ad Delivery: Google Ads, Black Names and White Names, Racial Discrimination, and Click Advertising*, 11 ACM QUEUE 1, 4 (2013).

150. *Id.* at 2.

151. *Id.*

152. Kate Crawford, *The Hidden Biases in Big Data*, HARV. BUS. REV. (Apr. 1, 2013), <https://hbr.org/2013/04/the-hidden-biases-in-big-data> [<https://perma.cc/AB4C-RE35>] (providing an accessible explanation of how data analysis could be racially or socioeconomically biased when data inputs were biased to begin with—again, even without the knowledge or intent of the designer).

153. *See, e.g.*, DATA ETHICS KDD WORKSHOP – NYC – AUGUST 24, 2014, <https://dataethics.github.io/> [<https://perma.cc/9D4E-3TCM>] (August 2014 workshop at which computer scientist Solon Barocas presented a paper titled “Data Mining and the Discourse on Discrimination”); OPEN TECH. INST., DATA AND DISCRIMINATION: COLLECTED ESSAYS (Seeta Peña Gangadharan ed., 2014) (essays from a convening on data-based discrimination hosted by New America’s Open Technology Institute in May 2014 as part of the International Communication Association’s annual meeting in Seattle); DATA & CIVIL RIGHTS: WHY “BIG DATA” IS A CIVIL RIGHTS ISSUE, <https://www.datacivilrights.org/2014/> [<https://perma.cc/F2X9-5YPX>] (conference on “Data & Civil Rights” held in Washington, D.C. in October 2014); FAT/ML: 2014 SCHEDULE, <https://www.fatml.org/schedule/2014> [<https://perma.cc/6S48-4HVU>] (the first annual FAT/ML—“Fairness, Accountability, and Transparency in Machine Learning”—event, held in Montreal in December 2014). Of note, this was the same year that the Civil Rights Principles for the Era of Big Data were released. *See* discussion *infra* Part II.C.3.

154. This is the largest annual academic workshop conference of legal scholarship focused on privacy- and data-related matters in the United States and perhaps the world. In 2014, Solon Barocas and Andrew D. Selbst workshoped a draft of an article that, when published, became a widely cited work on this topic. Solon Barocas & Andrew D. Selbst, *Big Data’s Disparate Impact*, 104 CAL. L. REV. 671, 671 n.\*\* (2016).

to promote some content and connections while suppressing others.<sup>155</sup> Activist and organizer Malkia Devich-Cyril called net neutrality a “Civil Rights Act for the internet,”<sup>156</sup> explaining, “[t]he Black Lives Matter movement, the fight against mass deportation, and the struggle for a fair wage—these fights are happening online and inspiring offline action.”<sup>157</sup>

Public discourse regarding connections between information policy matters and civil rights reached a particular intensity between 2016 and 2019. Those years saw groundbreaking research and widely read reports and books on issues such as racial bias in sentencing algorithms used by courts,<sup>158</sup> racial bias baked into predictive policing algorithms,<sup>159</sup> racial bias in the application and functionality of automated facial recognition and analysis algorithms used by law enforcement and commercial entities,<sup>160</sup> racial bias in search engines,<sup>161</sup> disproportionate government surveillance and automated decision-making in the lives of people of low-income,<sup>162</sup> institutional racism built into internet-based technologies,<sup>163</sup> and racial and gender bias in algorithms determining who receives ads for important life opportunities such as jobs.<sup>164</sup>

---

155. Cullors, *supra* note 144.

156. Mike Ludwig, *Malkia Cyril: Net Neutrality Is the Civil Rights Act for the Internet*, TRUTHOUT (Feb. 24, 2015), <https://truthout.org/articles/malkia-cyril-net-neutrality-is-the-civil-rights-act-for-the-internet/> [<https://perma.cc/6FQ5-6P9U>].

157. Sarah Lazare, *Net Neutrality Activists Take Civil Rights Fight to Doorsteps of Telecom Giants*, COMMON DREAMS (Feb. 24, 2015), <https://www.commondreams.org/news/2015/02/24/net-neutrality-activists-take-civil-rights-fight-doorsteps-telecom-giants> [<https://perma.cc/FPD3-PGRN>].

158. Julia Angwin et al., *Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And It’s Biased Against Blacks*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [<https://perma.cc/QPQ3-LP8P>].

159. Kristian Lum & William Isaac, *To Predict and Serve?*, 13 SIGNIFICANCE 14 (2016).

160. Joy Buolamwini & Timnit Gebru, *Gender Shades*, 81 PROC. MACHINE LEARNING RSCH. 1, 3, 11 (2018); CLARE GARVIE ET AL., GEO. L. CTR. PRIV. & TECH., THE PERPETUAL LINE-UP: UNREGULATED POLICE FACE RECOGNITION IN AMERICA (2016), <https://www.perpetuallineup.org/sites/default/files/2016-12/The%20Perpetual%20Line-Up%20-%20Center%20on%20Privacy%20and%20Technology%20at%20Georgetown%20Law%20-%20121616.pdf> [<https://perma.cc/RP2P-TDYW>].

161. SAFIYA UMOJA NOBLE, ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM (2018).

162. KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS (2017); VIRGINIA EUBANKS, AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR (2018).

163. RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE (2019).

164. Muhammad Ali et al., *Discrimination Through Optimization: How Facebook’s Ad Delivery Can Lead to Skewed Outcomes*, 3 PROC. ACM ON HUMAN-COMPUT. INTERACTION (2019).

### 3. *The Civil Rights Principles for the Era of Big Data*

A particularly important milestone in the effort to inject civil rights into information policy discourse came on February 27, 2014, when a coalition of fourteen organizations co-signed and launched the “Civil Rights Principles for the Era of Big Data.”<sup>165</sup> The introductory statement for the Principles asserted, “as new technologies allow companies and government to gain greater insight into our lives, it is vitally important that these technologies be designed and used in ways that respect the values of equal opportunity and equal justice.”<sup>166</sup> The Principles called for 1) an end to high-tech profiling, 2) fairness in automated decisions, 3) preservation of constitutional principles, 4) individual control of personal information, and 5) protections against inaccurate data.<sup>167</sup>

Background materials released alongside the Principles highlighted some of the stories that had alarmed public interest advocates and driven the formation of the Principles—many of which had been initially exposed by academics. Those included:

- An FBI racial and ethnic mapping program that relied on racial and ethnic stereotypes;
- A New York City program to record all cars visiting certain mosques;
- A car insurance program that charged late night drivers—including night shift workers—higher premiums;
- The No Fly List, which denied certain people the ability to fly without a fair process for reviewing those determinations;
- Digital marketing techniques that targeted cancer patients, Alzheimer’s patients, and people with bipolar disorder; and
- Government employment verification systems such as E-Verify that demonstrated a persistently higher error rate for people in several minority groups than for other legal workers.<sup>168</sup>

The Principles represented the coalescing of organizations of different types and missions around a shared civil rights commitment. Signatories

---

165. *Civil Rights Principles for the Era of Big Data*, THE LEADERSHIP CONF. ON CIV. & HUM. RTS. (Feb. 27, 2014), <https://civilrights.org/2014/02/27/civil-rights-principles-era-big-data/> [<https://perma.cc/8L47-B9Q4>].

166. *Id.*

167. *Id.*

168. *Civil Rights and Big Data: Background Material*, THE LEADERSHIP CONF. ON CIV. & HUM. RTS. (Feb. 27, 2014), <https://civilrights.org/2014/02/27/civil-rights-big-data-background-material/> [<https://perma.cc/H78B-2VM2>].

to the Principles included traditional civil rights organizations,<sup>169</sup> media justice organizations,<sup>170</sup> and two digital-era information policy organizations with civil libertarian roots<sup>171</sup>—a diverse group representing a substantial coalition-building achievement. Notably missing from the Principles, however, were three prominent organizations devoted to the civil libertarian model of information policy advocacy: the Center for Democracy & Technology, Electronic Frontier Foundation, and Electronic Privacy Information Center.<sup>172</sup>

The release of the Principles was perfectly timed to influence a big data and privacy review spearheaded by the White House as part of its response to the 2013 Snowden revelations.<sup>173</sup> In the aftermath of the Snowden revelations, the White House had acknowledged and validated widespread concerns about data and surveillance, and President Barack Obama had formed a “Review Group on Intelligence and Communications Technologies” tasked with developing recommendations to help the country continue to protect national security while still “respecting our commitment to privacy and civil liberties, recognizing our need to maintain the public trust, and reducing the risk of unauthorized disclosure.”<sup>174</sup> Following this group’s report and recommendations, then-President Obama launched “a comprehensive review of big data and privacy.”<sup>175</sup> The Civil Rights Principles came out the following month.

Before the Principles were released, White House rhetoric around privacy and surveillance had—in the dominant model for internet-related

---

169. Asian Americans Advancing Justice, ColorOfChange, The Leadership Conference on Civil and Human Rights, NAACP, National Council of La Raza, National Urban League, and NOW Foundation.

170. Center for Media Justice, Free Press, and National Hispanic Media Coalition.

171. New America’s Open Technology Institute and Public Knowledge.

172. *Civil Rights Principles for the Era of Big Data*, *supra* note 165.

173. Former NSA analyst Edward Snowden began releasing detailed information about the troves of data that NSA was collecting and what it was doing with it in 2013, which focused a massive amount of public attention on big data. See Paul Szoldra, *This Is Everything Edward Snowden Revealed in One Year of Unprecedented Top-Secret Leaks*, BUS. INSIDER (Sep. 16, 2016), <https://www.businessinsider.com/snowden-leaks-timeline-2016-9> [https://perma.cc/X3TY-QBHY].

174. Press Release, Nat’l Counterintelligence & Sec. Ctr., Off. of the Dir. of Nat’l Intel., Review Group on Intelligence and Communications Technologies Releases Public Comments (Nov. 1, 2013), <https://www.dni.gov/index.php/ncsc-how-we-work/239-about/organization/review-group/960-review-group-on-intelligence-collection-and-communications-technologies-releases-public-comments> [https://perma.cc/83TY-AASM].

175. *Transcript: Obama’s Speech on N.S.A. Phone Surveillance*, N.Y. TIMES (Jan. 17, 2014), <https://www.nytimes.com/2014/01/18/us/politics/obamas-speech-on-nsa-phone-surveillance.html> [https://perma.cc/P47W-JW6E]. The review was led by John Podesta, counselor to Obama and former chief of staff to President Clinton. *Id.*

information policy advocacy—focused on individual rights and civil liberties, with little to no mention of civil rights and equity. In fact, civil rights organizations had not even been consulted by the White House on matters related to privacy and surveillance.<sup>176</sup>

Following the release of the Principles, signatories of the Principles met with leaders across government to discuss both the specific Principles and the more general need for information policy matters to explicitly consider intersections with civil rights and racial justice.<sup>177</sup> The coalition met with leaders and staff working on the White House’s big data review, commissioners and staff of the Federal Trade Commission (“FTC”), and Erika Brown Lee, then the Chief Privacy and Civil Liberties Officer of the U.S. Department of Justice.<sup>178</sup> In meetings to highlight the Principles, members of the coalition provided examples to illustrate how data practices can reinforce existing inequities.<sup>179</sup> The advocates also asked that federal agencies be reinforced with greater expertise at the intersection of civil rights and technology so that these issues could be identified and addressed in an ongoing, proactive manner.<sup>180</sup>

#### 4. *Policymakers’ Recognition of the Connection Between Information Policy and Civil Rights*

Conversations about data, discrimination, and civil rights—including the Civil Rights Principles for the Era of Big Data—had a substantial impact on the White House’s privacy and big data review. In May of 2014, just two months after meeting with the civil rights coalition to discuss the Principles, the Executive Office of the President issued a report called *Big Data: Seizing Opportunities, Preserving Values*.<sup>181</sup> A “significant finding” of the report was “that big data analytics have the potential to eclipse longstanding civil rights protections in how personal information is used in housing, credit, employment, health, education,

---

176. Color Of Change noted this in its press release announcing the Principles, stating, “[r]elease of the Principles is particularly timely given the White House’s upcoming report on Big Data and the Future of Privacy. The Obama administration has actively sought input from the tech industry and civil liberties group—but not civil rights advocates—in shaping the report.” Press Release, ColorOfChange, Civil Rights Coalition Releases Core Principles on Civil Rights and Privacy Online (Feb. 27, 2014), [https://colorofchange.org/press\\_release/civil-rights-coalition-releases-core-principles-ci/](https://colorofchange.org/press_release/civil-rights-coalition-releases-core-principles-ci/) [<https://perma.cc/89TE-JZFB>].

177. Personal knowledge of author (I was present at these meetings).

178. *Id.*

179. *Id.*

180. *Id.*

181. EXEC. OFF. OF THE PRESIDENT, *BIG DATA: SEIZING OPPORTUNITIES, PRESERVING VALUES* (2014), [https://obamawhitehouse.archives.gov/sites/default/files/docs/big\\_data\\_privacy\\_report\\_may\\_1\\_2014.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf) [<https://perma.cc/CEB6-WTGM>].

and the marketplace.”<sup>182</sup> The report included a section exploring how “big data technologies can cause societal harms beyond damages to privacy, such as discrimination against individuals and groups.”<sup>183</sup>

To begin addressing data and discrimination concerns, the White House report recommended that “[t]he federal government’s lead civil rights and consumer protection agencies . . . expand their technical expertise to be able to identify practices and outcomes facilitated by big data analytics that have a discriminatory impact on protected classes, and develop a plan for investigating and resolving violations of law in such cases.”<sup>184</sup>

The FTC also began expressing interest in examining information policy through a civil rights lens. In a speech at the Aspen Institute in August 2013, Chairwoman Edith Ramirez argued that companies developing products and services needed to perform risk assessments with tough questions, including whether the “contemplated uses [could] cause harm to individuals, such as financial loss, injury to reputation, or unlawful discrimination.”<sup>185</sup> In April 2014, shortly after civil rights advocates met with FTC commissioners and staff and shortly before the White House issued its report, the FTC announced that it would host a workshop called “Big Data: A Tool for Inclusion or Exclusion?”<sup>186</sup> The workshop would focus on the impact of big data on “low income and underserved consumers.”<sup>187</sup>

Following the workshop, the FTC issued a report synthesizing the workshop discussion as well as comments submitted by members of the public.<sup>188</sup> As part of its report, the FTC recommended that companies engaged in data analytics familiarize themselves with applicable

---

182. *Id.*

183. *Id.* at 51.

184. *Id.* at 65.

185. Edith Ramirez, Chairwoman, Fed. Trade Comm’n, Keynote Address at the Technology Policy Institute Aspen Forum: The Privacy Challenges of Big Data: A View from the Lifeguard’s Chair (Aug. 19, 2013), <https://www.ftc.gov/news-events/news/speeches/privacy-challenges-big-data-view-lifeguards-chair> [<https://perma.cc/MGN7-2NPY>].

186. Press Release, Fed. Trade Comm’n, FTC to Examine Effects of Big Data on Low Income and Underserved Consumers at September Workshop (Apr. 11, 2014), <https://www.ftc.gov/news-events/press-releases/2014/04/ftc-examine-effects-big-data-low-income-underserved-consumers> [<https://perma.cc/ZMZ9-9MEC>].

187. *Id.*

188. FED. TRADE COMM’N, BIG DATA: A TOOL FOR INCLUSION OR EXCLUSION? UNDERSTANDING THE ISSUES (2016), <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf> [<https://perma.cc/2LNH-4CKK>].

antidiscrimination laws and incorporate questions designed to ferret out potential bias and unfairness.<sup>189</sup>

5. *Attempts to Use Existing Law to Rein in Information-Related Civil Rights Violations*

The same time period also saw a flurry of high-profile data-related incidents exposed, complaints filed, and cases initiated that further highlighted the relationship between emerging technology and racial inequity. In 2013, Eric Loomis, a man in Wisconsin, pleaded guilty to two criminal charges and, after the trial court used an algorithmic risk assessment during the sentencing process, challenged the use of the algorithm on due process grounds.<sup>190</sup> Loomis argued that use of the algorithm violated the state constitution both because of the algorithm's proprietary and opaque nature and because of its consideration of gender as a relevant factor.<sup>191</sup> Mr. Loomis lost his appeal before the Supreme Court of Wisconsin in 2016,<sup>192</sup> and the U.S. Supreme Court denied his petition for certiorari in 2017.<sup>193</sup>

In 2016, the Center for Media Justice, Color Of Change, and New America's Open Technology Institute filed a complaint with the FCC against the Baltimore Police Department ("BPD") for its use of cell site simulators—fake cell phone towers that could track people's cell phones without their knowledge or consent by masquerading as legitimate nodes on the cell phone network.<sup>194</sup> The complaint alleged that the BPD's use of these devices disproportionately harmed Black residents of Baltimore, in whose neighborhoods BPD used the devices more frequently, both invading residents' privacy and interfering with the normal operation of the cell network.<sup>195</sup>

A large number of complaints involved Facebook, which both possessed rich information about its users and permitted advertisers on its platform to advertise employment, housing, and other opportunities with little or no scrutiny, at times in ways that were plainly discriminatory. Investigative journalists at *ProPublica* published a piece in 2016 demonstrating how advertisers on the platform could exclude users by

---

189. *Id.* at ii–v.

190. *State v. Loomis*, 881 N.W.2d 749, 754–56 (Wis. 2016).

191. *Id.* at 757.

192. *Id.* at 772.

193. *Loomis v. Wisconsin*, 582 U.S. 933 (2017).

194. Complaint for Relief Against Unauthorized Radio Operation and Willful Interference with Cellular Communications, Balt. City Police Dep't, Balt., Md. (F.C.C. Aug. 16, 2016). I (the author) wrote and filed this complaint.

195. *Id.* at 20–27.

race from housing and employment ads, complete with screenshots.<sup>196</sup> The following month, two complaints were filed against Facebook in state and federal courts in California challenging such discrimination on the basis of several protected classes, including race and national origin, in employment, housing, and credit ads.<sup>197</sup> Additional complaints were filed against Facebook before the Equal Employment Opportunity Commission in 2018, alleging that employment ads on the platform exhibited both age and sex discrimination.<sup>198</sup> That year, another complaint was brought against Facebook in the Southern District of New York for discrimination in housing ads based on race, national origin, sex, familial status, and disability.<sup>199</sup> Facebook settled with the complainants of all of these cases in 2019.<sup>200</sup>

Additional cases around this time alleged bias and opacity in algorithms used by various parties to evaluate potential tenants,<sup>201</sup> potential employees,<sup>202</sup> teachers,<sup>203</sup> and test takers.<sup>204</sup>

---

196. Julia Angwin & Terry Parris Jr., *Facebook Lets Advertisers Exclude Users by Race*, PROPUBLICA (Oct. 28, 2016, 1:00 PM), <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race> [<https://perma.cc/YT7L-YJ6W>].

197. Complaint, *Mobley v. Facebook, Inc.*, No. 3:16-cv-06440 (N.D. Cal. Nov. 3, 2016); Complaint, *Riddick v. Facebook, Inc.*, 16-Civ-02526 (Cal. Super. Ct. Nov. 23, 2016).

198. Complaint, *Comm'n Workers of Am. v. Facebook, Inc.* (EEOC Jan. 2018); Complaint, *Spees et al. v. Facebook, Inc.* (EEOC Sep. 18, 2018).

199. First Amended Complaint, *Nat'l Fair Hous. All. v. Facebook, Inc.*, No. 1:18-cv-02689 (S.D.N.Y. June 25, 2018).

200. *Summary of Settlements Between Civil Rights Advocates and Facebook: Housing, Employment, and Credit Advertising Reforms*, ACLU (Mar. 18, 2019), [https://www.aclu.org/wp-content/uploads/document/3.18.2019\\_Joint\\_Statement\\_FINAL.pdf](https://www.aclu.org/wp-content/uploads/document/3.18.2019_Joint_Statement_FINAL.pdf) [<https://perma.cc/B94S-RWE4>].

201. *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., L.L.C.* No. 3:18-00705 (D. Conn. Apr. 24, 2018).

202. The Electronic Privacy Information Center filed a complaint with the Federal Trade Commission arguing that HireVue violated Section 5 of the Federal Trade Commission Act by its use of automated facial analysis technology. *Consumer Cases: In re HireVue*, ELEC. PRIV. INFO. CTR., <https://epic.org/documents/in-re-hirevue/> [<https://perma.cc/R833-ZXWT>]; see also Alex Engler, Commentary, *For Some Employment Algorithms, Disability Discrimination by Default*, BROOKINGS (Oct. 31, 2019), <https://www.brookings.edu/articles/for-some-employment-algorithms-disability-discrimination-by-default/> [<https://perma.cc/DU54-ZZ9C>].

203. Press Release, Am. Fed'n of Teachers, *Federal Suit Settlement: End of Value-Added Measures for Teacher Termination in Houston* (Oct. 10, 2017), <https://www.aft.org/press-release/federal-suit-settlement-end-value-added-measures-teacher-termination-houston> [<https://perma.cc/89RG-7R6N>].

204. *Consumer Cases: In re Online Test Proctoring Companies*, ELEC. PRIV. INFO. CTR., <https://epic.org/documents/in-re-online-test-proctoring-companies/> [<https://perma.cc/6M6V-Y75C>]; see also Lydia X. Z. Brown, *How Automated Test Proctoring Software Discriminates Against Disabled Students*, CTR. FOR DEMOCRACY & TECH. (Nov. 16, 2020), <https://cdt.org/insights/how-automated-test-proctoring-software-discriminates-against-disabled-students/> [<https://perma.cc/92JE-S857>].

6. *Mounting Concerns About the Inadequacy of Policy Approaches Widely Supported by Information Policy Organizations*

Information policy organizations also began to come to terms with some of the shortcomings of policy approaches rooted in civil liberties. For example, there was a growing consensus that privacy laws built on the individualistic notice-and-consent model were not sufficient to address problems associated with big data and the burgeoning information economy.<sup>205</sup>

One major challenge was that notice-and-choice simply wasn't scalable—as people used more online services, their ability to read, understand, and meaningfully weigh the provisions of specific privacy policies waned.<sup>206</sup> For years, academics had been picking apart consent and control as effective mechanisms for protecting privacy. Before 2013, there were already numerous writings illuminating the inadequacies of the consent model and suggesting theories of privacy that did not rely on individual control.<sup>207</sup> The Snowden disclosures of 2013 may have helped these and other reflections on the inadequacies of an individualistic approach to big data to gain traction.<sup>208</sup>

---

205. See Laura Moy, *Unavoidability in U.S. Privacy Law*, 25 COLUM. SCI. & TECH. L. REV. 56, 96–105 (2023) (explaining the problem as “precipitous unavoidability” of information sharing in the digital era).

206. See Aleecia M. McDonald & Lorrie Faith Cranor, *The Cost of Reading Privacy Policies*, 4 I/S: J.L. & POL'Y INFO. SOC'Y 543, 562–64 (2008) (computer scientist authors estimating that it would take an internet user approximately 244 hours each year—the equivalent of six weeks of full-time work—to read the privacy policy of every new site visited, with a national opportunity cost for this time of approximately \$781 billion); Joel R. Reidenberg et al., *Disagreeable Privacy Policies: Mismatches Between Meaning and Users' Understanding*, 30 BERKELEY TECH. L.J. 39, 83–87 (2013) (demonstrating the failure of privacy policies to effectively communicate data practices to online users).

207. See, e.g., HELEN NISSENBAUM, *PRIVACY IN CONTEXT: TECHNOLOGY, POLICY, AND THE INTEGRITY OF SOCIAL LIFE* (2009) (arguing that privacy is not about ownership or control of one's personal data, but rather about whether the flow of information is consistent or inconsistent with social norms in particular contexts); ANITA ALLEN, *UNPOPULAR PRIVACY: WHAT MUST WE HIDE?* (2011) (arguing that even when individuals do not seek privacy or even like it, privacy is necessary to advance dignity, trust, and reputation); JULIE E. COHEN, *CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE* (2012) (intentionally departing from the tradition of liberal individualism to argue that information is a key factor shaping individual and collective identity in a networked society, and arguing that to optimize information for identity and society, we must both increase restrictions on some information flows and reduce restrictions on others).

208. For example, in one widely cited article about the Snowden disclosures, David Lyon argued, “it is vital that an ethics of Big Data practices be found that deals with the problem of the increasing gap between data and individuals.” David Lyon, *Surveillance, Snowden, and Big Data: Capacities, Consequences, Critique*, 2014 BIG DATA & SOC'Y 1, 10 (2014).

Legal scholars Daniel Solove and Julie Cohen both published pieces in 2013 discussing various aspects of the shortcomings of consent. Solove wrote about the inadequacies of privacy self-management and consent, observing that “individuals cannot adequately self-manage their privacy, and consent is not meaningful in many contexts involving privacy.”<sup>209</sup> In discussing the argument that privacy stands in the way of innovation, Julie Cohen called regulators’ pushback—“that privacy harms result from ‘unexpected’ disclosures of personal information and that more robust guarantees of notice and choice therefore may be needed to ‘build[] consumer trust in the marketplace,’”—“timid[,]” “simplistic,” and “wrong.”<sup>210</sup>

Also in 2013, academics were drawing attention to the inability of the consent-based privacy approach to address the issue of data and discrimination specifically. Cynthia Dwork and Deirdre Mulligan published a piece called “It’s Not Privacy, and It’s Not Fair.”<sup>211</sup>

Relatedly, there was growing recognition in this time period that formulating appropriate commercial privacy rules was not a separate exercise from formulating proper boundaries for government surveillance because so much data consumed by NSA and other law enforcement agencies was known to have come from commercial sources. As David Lyon wrote in 2014, “Big Data is currently dominated by commercial and governmental criteria . . . . But a key reason why those commercial and governmental criteria are so imbricated with Big Data is the strong affinity between the two, particularly in relation to surveillance.”<sup>212</sup>

---

209. Daniel J. Solove, *Introduction: Privacy Self-Management and the Consent Dilemma*, 126 HARV. L. REV. 1880, 1894 (2013).

210. Julie E. Cohen, *What Privacy Is For*, 126 HARV. L. REV. 1904, 1919 (2013); see also Solon Barocas & Helen Nissenbaum, *Big Data’s End Run Around Anonymity and Consent*, in PRIVACY, BIG DATA, AND THE PUBLIC GOOD: FRAMEWORKS FOR ENGAGEMENT 44, 45–46 (Julia Lane et al. eds., 2014) (describing the “ultimate inefficacy of consent as a matter of individual choice and the absurdity of believing that notice and consent can fully specify the terms of interaction between data collector and data subject,” and concluding “that procedural approaches cannot replace policies based on substantive moral and political principles that serve specific contextual goals and values.”).

211. Cynthia Dwork & Deirdre K. Mulligan, *It’s Not Privacy, and It’s Not Fair*, 66 STAN. L. REV. ONLINE 35 (2013). On the subject of data-driven discrimination and bias, they observed, “the discussion and proposed solutions often loop back to privacy and transparency—specifically, establishing individual control over personal information, and requiring entities to provide some transparency into personal profiles and algorithms.” *Id.* at 36. The problem with this approach was straightforward: “Whether the information used for classification is obtained with or without permission is unrelated to the production of disadvantage or discrimination.” *Id.* at 37.

212. Lyon, *supra* note 208, at 9.

### 7. *Growing Self-Awareness of the Field's Whiteness*

With the benefit of a racial reckoning, many individual advocates and information policy organizations also began to develop a greater awareness of their own privileges and areas of weakness around this time.<sup>213</sup> More specifically, some individuals and organizations began speaking openly about the field's overwhelming whiteness and how that could be a problem.<sup>214</sup> The field's whiteness had been described before, notably in the PhD dissertation of Tina Won Sherman, who asked twenty-five leaders of information and communications policy organizations to characterize the demographics of their policy community and comment on anything that came to mind about it, and she reported in 2004, "[m]ore than one-half of the leaders reported that the info-comm policy community is comprised primarily of whites."<sup>215</sup>

Writing in 2019, Alisa Valentin, then a fellow at the advocacy organization Public Knowledge, explained how the field's whiteness causes harm:<sup>216</sup> "The lack of diversity in tech policy means that regulators and lawmakers make policy decisions that impact marginalized groups from a perspective that is not inclusive of the viewpoints of these communities."<sup>217</sup> Organizations in the field realized that if they hoped to work toward a vision in which technology served all communities, they must exercise care not to speak over or for the communities underserved by information policy. As one commenter on the topic reportedly said to researchers examining the lack of diversity in the field, "[j]ust because

---

213. This growth in awareness was accelerated and supported by intentional efforts to increase relationships across organizations that previously had not communicated often or well with each other. See *Lessons from Ford's Efforts to Strengthen Collaboration in Civil Rights, Technology, and Privacy*, FORD FOUND., <https://www.fordfoundation.org/work/learning/program-evaluations/lessons-from-fords-efforts-to-strengthen-collaboration-in-civil-rights-technology-and-privacy/> [<https://perma.cc/3TFC-KP39>] ("Investing in creating trusting relationships between previously opposing factions yielded rich dividends.").

214. See Alisa Valentin, *#TechPolicySoWhite*, PUB. KNOWLEDGE (Feb. 1, 2019), <https://publicknowledge.org/techpolicysowhite/> [<https://perma.cc/9H3R-3LWD>]; GABRIELLE REJOUS & ALISA VALENTIN, GEO. L. CTR. PRIV. & TECH., *A SEAT AT THE TABLE: CREATING INCLUSIVE TECH POLICY ORGANIZATIONS* (2020), <https://inclusivespaces.tech/> [<https://perma.cc/N3BS-BZXJ>]; TSION TESFAYE, PUB. KNOWLEDGE, *DIVERSITY IN EARLY-CAREER TECH POLICY ROLES: CHALLENGES AND OPPORTUNITIES* (2021), [https://publicknowledge.org/wp-content/uploads/2021/11/Diversity-in-Early-Career-Tech-Policy-Roles\\_Public-Knowledge.pdf](https://publicknowledge.org/wp-content/uploads/2021/11/Diversity-in-Early-Career-Tech-Policy-Roles_Public-Knowledge.pdf) [<https://perma.cc/L52W-4D56>].

215. Sherman, *supra* note 81, at 104.

216. Valentin, *supra* note 214.

217. *Id.* Valentin went on, "no matter how much James Baldwin one has read or how many times they visited the Blacksonian (National Museum of African American History and Culture), if someone is not a person of color, they are likely to lack the experience to find policy solutions that positively impact communities of color." *Id.*

you care about people of color doesn't mean that you know what's best for people of color."<sup>218</sup>

*D. Emerging Attempts to Re-Anchor Information Policy Organizations to Civil Rights*

In this context of a nationwide racial reckoning, public and academic discourse drawing connections between information policy and civil rights, injection of civil rights into public interest policy principles, mounting concerns about the inadequacy of individualistic policy approaches, and rising self-awareness of the lack of diversity among organizations' staff, some information policy organizations began attempting to re-anchor themselves in civil rights. A growing number of organizations joined the call for law and policy in the field to integrate racial justice considerations.

Information policy organizations' shift toward civil rights can be glimpsed in changes to the mission statements and leadership of various organizations in the ecosystem. For example, consider changes—between 2014 and today—in the mission statements of some of the organizations that were founded in the 1990s and 2000s and that commonly participate publicly in regulatory and legislative fora on privacy and data issues:

- Center for Democracy & Technology:<sup>219</sup> In January 2014, the mission statement made no mention of civil rights.<sup>220</sup> The mission statement now begins with, “The Center for Democracy & Technology (CDT) is the leading nonpartisan, nonprofit organization fighting to advance civil rights and civil liberties in the digital age.”<sup>221</sup>
- Electronic Privacy Information Center:<sup>222</sup> Since January 2014,<sup>223</sup> the organization's mission page has been expanded to include a “we believe” section that was not previously there. It says, in part, “All people deserve protection from abusive data practices like mass surveillance, browser tracking,

---

218. TESFAYE, *supra* note 214, at 7.

219. The Center for Democracy & Technology was founded in 1994. *Who We Are*, CTR. FOR DEMOCRACY & TECH., <https://cdt.org/who-we-are/> [<https://perma.cc/5XFN-6RXD>].

220. *Center for Democracy & Technology*, CTR. FOR DEMOCRACY & TECH. (Jan. 25, 2014) [<https://web.archive.org/web/20140125164558/https://www.cdt.org/about/>].

221. *Who We Are*, *supra* note 219.

222. The Electronic Privacy Information Center was founded in 1994. *About Us*, ELEC. PRIV. INFO. CTR., <https://epic.org/about/> [<https://perma.cc/B8QH-78KU>].

223. *Electronic Privacy Information Center*, ELEC. PRIV. INFO. CTR. (Jan. 25, 2014) [<https://web.archive.org/web/20140125105852/http://epic.org/epic/about.html>].

demographic profiling, and data discrimination.” It also says users of technology should be “protected from abuse, exploitation, discrimination, and invasive surveillance.”<sup>224</sup>

- **New America’s Open Technology Institute:** In September 2014, the organization’s mission statement made a claim to “strengthen[ing] communities” but contained no mention of justice or equity.<sup>225</sup> It now states that the organization works “to ensure that every community has equitable access to digital technology and its benefits.”<sup>226</sup> It also contains a list of principles that guide the organization, including one under the heading “Justice” that states, “We believe in the equality of all individuals. We do not empower the communities we work with; they are already empowered, or they empower themselves. We support their work by providing trainings, tools, and resources.”<sup>227</sup>
- **Public Knowledge:** In March 2014, the organization’s mission statement made no mention of structural inequities.<sup>228</sup> It now contains a list of values, and under the heading “People-Centered,” states, “In order to act in the public interest, we advocate for policies that disrupt structural inequities and challenge the powerful.”<sup>229</sup> The mission also now links to a separate page on “funding sources” that says, “there are some values that are core to Public Knowledge’s work but not mentioned in our mission, such as equity for traditionally marginalized individuals and groups, and the importance of democratic institutions that preserve free expression and equal justice. Public Knowledge factors these values into its decisions on accepting support.”<sup>230</sup>

Information policy advocates appearing as witnesses in privacy-related congressional hearings also began to argue for privacy legislation

---

224. *About Us*, *supra* note 222.

225. *Open Technology Institute*, NEW AM.’S OPEN TECH. INST. (Sep. 13, 2014) [<https://web.archive.org/web/20140913131106/http://www.newamerica.org/oti/>].

226. *About*, NEW AM.’S OPEN TECH. INST., <https://www.newamerica.org/oti/about/> [<https://perma.cc/J386-M7RA>].

227. *Id.*

228. *About Public Knowledge: Our Work*, PUB. KNOWLEDGE (Feb. 9, 2014) [<https://web.archive.org/web/20140209013546/http://publicknowledge.org/about/>].

229. *About Us*, PUB. KNOWLEDGE, <https://publicknowledge.org/about-us/> [<https://perma.cc/U2JM-59CL>].

230. *Funding Sources*, PUB. KNOWLEDGE, <https://publicknowledge.org/sources-of-funding-for-public-knowledge/> [<https://perma.cc/4MBS-748F>].

to include civil rights provisions. In fact, this became a common refrain.<sup>231</sup>

In another indication that the call to protect against data-driven discrimination had become a widespread position among information policy organizations, growing numbers began to support coalition documents containing civil rights arguments. In 2018, a coalition of thirty-four organizations released “public interest privacy principles,” one of which focused on civil rights and anti-discrimination.<sup>232</sup> In early

---

231. In a November 2017 hearing, Professor Frank Pasquale and I both testified before the House Committee on Energy and Commerce about the fact that information collected from and about consumers is used to power algorithmic decision-making that can be discriminatory. *See Algorithms: How Companies' Decisions About Data and Content Impact Consumers: Hearing Before the Subcomm. on Comm'n's & Tech. and Subcomm. on Digital Com. & Tech. of the H. Comm. on Energy & Com.*, 115th Cong. (2017) (statements of Frank Pasquale, Professor of L., Univ. of Md., and Laura Moy, Deputy Dir., Ctr. on Priv. & Tech. at Georgetown L.). In October 2018, my testimony called for Congress to “move beyond a privacy framework built on the concept of notice and choice” and recommended that privacy legislation prevent harmful uses of consumer data, including discrimination. *See Consumer Data Privacy: Examining Lessons from the European Union's General Data Protection Regulation and the California Consumer Privacy Act: Hearing Before the S. Comm. on Com., Sci., & Transp.*, 115th Cong. (2018) (statement of Laura Moy, Exec. Dir., Ctr. on Priv. & Tech. at Georgetown L.). Nuala O'Connor of the Center for Democracy & Technology also called for privacy legislation to “articulate a non-discrimination standard.” *See id.* (statement of Nuala O'Connor, President and CEO, Ctr. for Democracy & Tech.). In February 2019, Brandi Collins-Dexter of Color Of Change called for privacy legislation to support civil rights and submitted into the record two coalition documents demonstrating broad support for this position. *See Protecting Consumer Privacy in the Era of Big Data: Hearing Before the Subcomm. on Consumer Prot. & Com. of the H. Comm. on Energy & Com.*, 116th Cong. (2019) (testimony of Brandi Collins-Dexter, Senior Campaign Dir., Color Of Change). Nuala O'Connor of the Center for Democracy & Technology said privacy legislation must “prevent data-driven discrimination and civil rights abuses.” *See id.* (statement of Nuala O'Connor, President and CEO, Ctr. for Democracy & Tech.). My testimony before the Senate Commerce Committee in December 2019 urged Congress to reject legislation without civil rights protections and called for legislation to “prohibit uses of data that selectively deny access to—or awareness of—opportunities in housing, education, finance, employment, and healthcare.” *See Examining Legislative Proposals to Protect Consumer Data Privacy: Hearing Before the S. Comm. on Com., Sci., & Transp.*, 116th Cong. (2019) (statement of Laura Moy, Assoc. Professor of L., Georgetown Univ. L. Ctr., Assoc. Dir., Ctr. on Priv. & Tech. at Georgetown L.). Michelle Richardson of the Center for Democracy & Technology also supported civil rights protections. *See id.* (statement of Michelle Richardson, Dir., Priv. & Data, Ctr. for Democracy & Tech.). And in a signal that these arguments were gaining broader traction, Julie Brill of Microsoft (a former commissioner of the Federal Trade Commission) also argued that “companies should have affirmative duties to reasonably secure personal information from unauthorized access and to avoid unlawful discrimination in violation of federal and state laws.” *Id.* (statement of Julie Brill, Corp. Vice President, Deputy Gen. Couns., & Chief Priv. Officer, Microsoft Corp.).

232. Press Release, New Am.'s Open Tech. Inst., Principles for Privacy Legislation (Nov. 13, 2018), <https://www.newamerica.org/oti/press-releases/principles-privacy-legislation/> [<https://perma.cc/X9Y3-G9JZ>]; NEW AM.'S OPEN TECH. INST., PUBLIC

2019, a large coalition sent a letter to House and Senate leadership resurfacing the Civil Rights Principles for the Era of Big Data and calling for the principles to be reflected in any new legislation.<sup>233</sup> Around the same time, another coalition of organizations released its own “Framework for Comprehensive Privacy Protection and Digital Rights in the United States,” which focused on traditional rights-based Fair Information Practices but also urged Congress to take steps to ensure fairness in automated decision-making and combat bias and discrimination.<sup>234</sup> A memo based on the framework prepared for the Biden-Harris Transition Team in 2020 used even stronger civil rights language.<sup>235</sup> And in 2021, the framework itself was updated to call explicitly for privacy legislation to “prohibit discriminatory uses of data.”<sup>236</sup>

Two points in particular about the coalition shift toward civil rights are worth highlighting. First, in total, dozens of organizations signed documents calling for civil rights protections in information policy.

---

INTEREST PRIVACY LEGISLATION PRINCIPLES (2018), [https://newamericadotorg.s3.amazonaws.com/documents/Public\\_Interest\\_Privacy\\_Principles.pdf](https://newamericadotorg.s3.amazonaws.com/documents/Public_Interest_Privacy_Principles.pdf) [<https://perma.cc/2KWH-67M3>].

233. Letter from “Members of the Civil Rights and Racial Justice Community” to Sen. Roger Wicker, Sen. Lindsey Graham, Rep. Frank Pallone, Jr., Rep. Jerrold Nadler, Sen. Maria Cantwell, Sen. Dianne Feinstein, Rep. Greg Walden, Rep. Doug Collins, Chairs and Ranking Members of the Senate Committee on Commerce, Science, & Transportation, Senate Committee on the Judiciary, House Committee on Energy and Commerce, House Committee on the Judiciary (Feb. 13, 2019), <https://civilrightsdocs.info/pdf/policy/letters/2019/Roundtable-Letter-on-CRBig-Data-Privacy.pdf> [<https://perma.cc/K3R8-WFLE>] [hereinafter Feb. 2019 Coalition Letter to Senate and House Leaders].

234. See *The Time Is Now for Comprehensive Consumer Data Privacy Legislation*, CONSUMER ACTION (Jan. 2019), <https://www.consumer-action.org/coalition/articles/the-time-is-now-for-comprehensive-consumer-data-privacy-legislation> [<https://perma.cc/Y95G-9B8D>] (announcing release of the framework in January 2019); *Protecting Consumer Privacy in the Era of Big Data: Hearing*, *supra* note 231 (testimony of Brandi Collins-Dexter, Senior Campaign Dir., Color Of Change) (providing a full copy of the framework).

235. PRIVACY AND DIGITAL RIGHTS FOR ALL: A BLUEPRINT FOR THE NEXT ADMINISTRATION (2020), <https://epic.org/wp-content/uploads/privacy/policy/Privacy-And-Digital-Rights-For-All-A-blueprint-for-the-next-Administration.pdf> [<https://perma.cc/SW4W-ZM4F>] (stating in opening paragraph, “[w]e are particularly concerned about protecting the most vulnerable segments in our society, including Black and Brown communities, children, and low-income populations. We are advocating for federal baseline privacy legislation and action by government agencies to protect individuals from discriminatory data processing practices and to ensure their privacy rights.”).

236. THE TIME IS NOW: A FRAMEWORK FOR COMPREHENSIVE PRIVACY PROTECTION AND DIGITAL JUSTICE IN THE UNITED STATES (2021), <https://epic.org/wp-content/uploads/2022/01/Privacy-and-Digital-Rights-For-All-Framework.pdf> [<https://perma.cc/YNW9-AJ2D>].

Second, as discussed below, among these were organizations founded in the cyberlibertarian model, including prominent organizations that had not signed on to the Civil Rights Principles for the Era of Big Data when the Principles were released in 2014.<sup>237</sup> Indeed, when the Principles were released in 2014, some advocacy organizations that are generally active and prominent on data-related policy issues declined to endorse them.<sup>238</sup> Over the course of the next five years, however, this largely changed, and the idea that civil rights goals should inform privacy legislation gained critical mass among a broader coalition. Upon release, the Principles had only fourteen signatories, but in early 2019, some forty-three organizations publicly endorsed the Principles.<sup>239</sup> At least on certain issues, a large number of organizations had shifted to embrace the civil rights perspective.

### III. THE CONSEQUENCES OF THE CIVIL RIGHTS-CIVIL LIBERTIES DISCONNECT

Despite information policy organizations' ongoing attempts to reconcile the civil rights-civil liberties disconnect, the disconnect persists and has tangible consequences. It threatens to seed disagreement and disarray among allies on issues of great importance, resulting in watered-down, lowest common denominator policies or, in some cases, no policy at all. Two separate issue areas illustrate different ways that this disconnect can play out in the context of real advocacy campaigns. First, in policy discussions regarding privacy, information policy organizations have made a concerted effort to address the civil rights-civil liberties disconnect. The result is a front of relative unity on issues of data governance. Second, in policy discussions regarding online hate speech, the civil rights-civil liberties disconnect is visible and unresolved, and the result is a lack of consensus regarding how to address the problem, even as it intensifies.

---

237. Both the Center for Democracy & Technology and the Electronic Privacy Information Center, though they did not sign on to the Principles in 2014, later signed on to coalition documents articulating civil rights interests. Both also seemed eventually to endorse the Principles, as both signed the 2019 letter to House and Senate leadership resurfacing the Principles. *Id.* The Electronic Frontier Foundation, however—another one of the oldest internet-focused information policy organizations—did not sign any of these coalition documents.

238. *Civil Rights Principles for the Era of Big Data*, *supra* note 165.

239. Feb. 2019 Coalition Letter to Senate and House Leaders, *supra* note 233.

A. *Disconnect, Disagreement, and Tentative Reconciliation About “Privacy”*

Disagreement flowing from the civil rights-civil liberties disconnect has been particularly visible in advocacy regarding comprehensive privacy legislation over the past several years. On this issue, information policy organizations have successfully tackled the disconnect and managed to reconcile once-disparate positions. As explained above, at the end of the 2013–15 time period, a significant number of information policy advocacy organizations were committed to focusing on the development and promotion of policies to advance the Civil Rights Principles for the Era of Big Data. Other organizations in the field, however, were not yet convinced that this was the path forward. Even for those that had signed on to the Civil Rights Principles, there was no consensus on specifically what concrete policies were needed to advance the Principles.

To better understand the initial division on this issue among the public interest advocacy community, consider the composition of the coalition that initially signed the Principles. The effort was spearheaded by the Leadership Conference on Civil and Human Rights, and the signatories were primarily civil rights and racial justice organizations, including the NAACP, National Council of La Raza, Asian Americans Advancing Justice, and Color Of Change.<sup>240</sup> The coalition also included a handful of public interest information policy advocacy organizations, including the ACLU, Free Press, New America’s Open Technology Institute, and Public Knowledge.<sup>241</sup> Of note was the *absence* of some of the most prominent advocacy organizations that routinely worked on issues pertaining to data, surveillance, and privacy, including the Center for Democracy & Technology, Electronic Frontier Foundation, and Electronic Privacy Information Center.<sup>242</sup>

Those organizations missing from the Principles—and many more—were still committed to a privacy model grounded in individual rights. Just a few days before the Principles were released, on the second anniversary of the White House’s Consumer Privacy Bill of Rights, a large group of these organizations wrote to the White House. The coalition letter urged the White House to put forward legislation encoding the

---

240. *Civil Rights Principles for the Era of Big Data*, *supra* note 165.

241. *Id.*

242. *Id.* The Center for Democracy & Technology and the Electronic Privacy Information Center are among the organizations that declined to sign initially but eventually did endorse the Principles. *See supra* Part II.D.

Consumer Privacy Bill of Rights.<sup>243</sup> Invoking the civil libertarian frame by its use of “Bill of Rights” in its title, the White House’s Consumer Privacy Bill of Rights was individualistic through and through—indeed, the very first right that it called for was “individual control.”<sup>244</sup> Neither the Consumer Privacy Bill of Rights nor the coalition letter supporting it made any mention of civil rights.<sup>245</sup>

Even among those organizations that supported both the Principles and the Consumer Privacy Bill of Rights, there was an open question at this time whether data-driven harms such as discrimination should be taken up by policymakers separately from privacy legislation or as a part of it. Advocates were still refining their calls for action on the matter. For example, in August 2014, several months after release of the Civil Rights Principles, the Leadership Conference on Civil and Human Rights, which had spearheaded the Principles, and the ACLU, one of the Principles’ founding signatories, filed joint comments with the National Telecommunications and Information Administration calling on the White House to “include language [in privacy legislation] addressing the risks of discrimination that stem from new uses of data,” but the recommendations on that point were modest, nonspecific, and mostly procedural.<sup>246</sup>

The uncertainty about whether and how concerns about discrimination and other data-driven civil rights harms should change legislative models was also illustrated by public interest advocacy organizations’ response, in 2015, to the White House’s long-awaited release of a discussion draft comprehensive privacy bill. The draft bill was not well received; a letter from a coalition of civil society organizations to the President the week after the release expressed disappointment with the

---

243. Letter from Coalition to President Barack Obama Regarding the Two-Year Anniversary of the Consumer Privacy Bill of Rights (Feb. 24, 2014), <https://epic.org/wp-content/uploads/privacy/Obama-CPBR.pdf> [<https://perma.cc/X47C-JNPK>].

244. THE WHITE HOUSE, CONSUMER DATA PRIVACY IN A NETWORKED WORLD: A FRAMEWORK FOR PROTECTING PRIVACY AND PROMOTING INNOVATION IN THE GLOBAL DIGITAL ECONOMY 1 (2012), <https://obamawhitehouse.archives.gov/sites/default/files/privacy-final.pdf> [<https://perma.cc/A77C-9JCW>].

245. *See id.*; Letter from Coalition to President Barack Obama, *supra* note 243.

246. *See* Email from the Leadership Conf. on Civ. & Hum. Rts. and ACLU to John Morris, Nat’l Telecomms. & Info. Admin. (Aug. 5, 2014), [https://www.aclu.org/wp-content/uploads/document/2014-8-5\\_joint\\_ntia\\_big\\_data\\_comments\\_aclu\\_leadership\\_conference.pdf](https://www.aclu.org/wp-content/uploads/document/2014-8-5_joint_ntia_big_data_comments_aclu_leadership_conference.pdf) [<https://perma.cc/WDX2-S3QH>] (urging NTIA to support policies to “(1) refine the multi-stakeholder process to address power differentials and the incentive for stalemate and delay; (2) revise the administration’s Consumer Privacy Bill of Rights to address information beyond personally identifiable information; and (3) build technical competence in government.”).

draft.<sup>247</sup> But although the coalition letter enumerated a number of shortcomings with the draft bill, it did not mention civil rights or the Civil Rights Principles for the Era of Big Data.<sup>248</sup> And although some of the organizations that signed on to the letter had also signed on to the Civil Rights Principles, none of the signatories to the 2015 letter were organizations with a mission focused on civil rights.<sup>249</sup> In 2015, there simply was not yet consensus among the public interest advocacy community that privacy legislation should go further than simply giving control to individual data subjects.<sup>250</sup>

Eventually, however, the idea that protections against data-driven discrimination were essential to privacy gained consensus support among both civil rights organizations and public interest information policy organizations. The Principles were released with only fourteen signatories in 2014,<sup>251</sup> but five years later, a broad coalition of forty-three organizations endorsed the Principles in a letter to congressional leaders asserting that “[p]rotecting privacy in the era of big data means protecting against uses of consumer information that concentrate harms on marginalized communities while concentrating profits elsewhere.”<sup>252</sup>

The hard work to reconcile civil rights and civil liberties in privacy policy paid off—in the 2020s, although no comprehensive privacy bill has yet passed at the federal level, those that have come close have included both classically libertarian individual rights and antidiscrimination language that never existed before the Civil Rights Principles. As privacy law scholar Ari Waldman found in a recent study of public interest organizations’ involvement in the development of the American Data Privacy and Protection Act (“ADPPA”),<sup>253</sup> a comprehensive privacy bill with significant momentum in 2022, “[t]he lawyers working on ADPPA, steeped in the liberal tradition, remain committed to the idea of individual rights as governance.”<sup>254</sup> Consistent

---

247. Letter from Coalition to President Barack Obama Regarding the Consumer Privacy Bill of Rights Discussion Draft (Mar. 3, 2015), <https://consumerwatchdog.org/resources/ltrobamagroups030315.pdf> [<https://perma.cc/X29S-RHMU>].

248. *Id.*

249. *Id.*

250. *Id.* (asserting that “[t]he bill should provide individuals with more meaningful and enforceable control over the collection, use and sharing of their personal information”). As one of the authors of the 2015 coalition letter, I can confirm that the main goal for many privacy-oriented organizations and advocates at the time was still very much to maximize individual control over information.

251. *Civil Rights Principles for the Era of Big Data*, *supra* note 165.

252. Feb. 2019 Coalition Letter to Senate and House Leaders, *supra* note 233.

253. American Data Privacy and Protection Act, H.R. 8152, 117th Cong. (2022).

254. Ari Ezra Waldman, *Civil Society and the Crisis of Privacy Law*, 74 EMORY L.J. 1079, 1101 (2025).

with the Civil Rights Principles, however, the language of ADPPA did include provisions requiring data minimization and prohibiting data-driven discrimination.<sup>255</sup> Representing a successful civil rights-civil liberties collaboration, ADPPA ultimately received broad support from organizations of both types. In August of 2022, nearly fifty organizations sent a letter to House Speaker Nancy Pelosi urging her to advance the bill forward.<sup>256</sup> Among the signatories were civil libertarian-oriented information policy organizations, as well as prominent civil rights organizations, including Asian Americans Advancing Justice, Lawyers' Committee for Civil Rights Under Law, Muslim Advocates, NAACP, National Urban League, and UnidosUS.<sup>257</sup> The bill did not pass, but it came close—it was passed out of committee in the House of Representatives, but eventually expired without being advanced to the floor for a vote by the full chamber.<sup>258</sup>

*B. Disconnect and Disagreement About Online Hate Speech*

In contrast to the tentative agreement that has been forged in the area of privacy, the civil rights-civil liberties disconnect drives persistent disagreement in what to do about harmful online content, including hate speech. A civil liberties perspective would argue that individual freedom interests require permitting online users to post and communicate any

---

255. H.R. 8152 §§ 101(a), 207(c)(1)–(2) (limiting companies to collecting only data that is “reasonably necessary and proportionate” to collection purposes; prohibiting the “collect[ion], process[ing], or transfer [of] covered data in a manner that discriminates in or otherwise makes unavailable the equal enjoyment of goods or services on the basis of race, color, religion, national origin, sex, or disability”; and mandating impact assessments of automated decision-making in certain contexts).

256. Letter from Coalition to House Speaker Nancy Pelosi Urging Vote on the American Data Privacy and Protection Act (Aug. 25, 2022), <https://civilrights.org/resource/letter-to-speaker-pelosi-urging-vote-on-the-american-data-privacy-and-protection-act/> [<https://perma.cc/U8DA-L7KF>].

257. *Id.*

258. See Cameron F. Kerry, Commentary, *Is There Hope for Privacy Legislation in this Congress?*, BROOKINGS (Mar. 27, 2024), <https://www.brookings.edu/articles/is-there-hope-for-privacy-legislation-in-this-congress/> [<https://perma.cc/PK68-57R4>]. Of note, in the absence of a comprehensive federal privacy law, a number of states have passed privacy laws. State laws almost categorically have not included antidiscrimination provisions, but public interest advocacy organizations have continued to push for them. See ELEC. PRIV. INFO. CTR. & U.S. PIRG EDUC. FUND, THE STATE OF PRIVACY: HOW STATE “PRIVACY” LAWS FAIL TO PROTECT PRIVACY AND WHAT THEY CAN DO BETTER 16, 22 (2024), <https://epic.org/wp-content/uploads/2024/01/EPIC-USPIRG-State-of-Privacy.pdf> [<https://perma.cc/W9XY-32K4>] (arguing that to be considered strong, state-level privacy regulations “should establish strong civil rights safeguards online and rein in harmful profiling of consumers”; giving every state law reviewed a failing score on the question of whether or not they include civil rights protections).

viewpoint or information they desire, while a civil rights perspective might argue that equality interests require reining in harmful content.<sup>259</sup>

There has always been a great deal of disconnect between the civil rights and civil liberties perspectives when it comes to hate speech. For example, in 2004, writing about debates regarding hate speech on university campuses, critical race theorist Richard Delgado described the free speech absolutist position as one which recognizes some amount of hate speech as inherent to democracy and believes “[c]ivil rights and minority interests are . . . worthy of protection but only insofar as they do not limit speech.”<sup>260</sup> In contrast, the critical race theory position “holds that hate speech silences its victims, contributes to a climate of disrespect for women and minorities, and undermines the very democracy that free speech is said to undergird.”<sup>261</sup>

This disconnect has been brought into stark relief today by discussions about what to do about hate speech on the internet. For a variety of reasons, social media and other internet applications seem to exacerbate hate speech.<sup>262</sup> Moreover, although the degree of harm caused by hate speech is a subject of some debate, a large body of research suggests that hate speech causes a variety of harms to its

---

259. See Delgado, *About Your Masthead*, *supra* note 30, at 5–8 (describing the contrasting perspectives of free speech absolutists and critical race theorists on issues concerning hate speech).

260. *Id.* at 5.

261. *Id.*

262. See Richard Delgado & Jean Stefancic, *Hate Speech in Cyberspace*, 49 WAKE FOREST L. REV. 319, 324–25 (2014) (describing hate speech online, noting that “agencies that monitor hate speech and crime report an upsurge in hate messages and sites on the Internet”); Sergio Andrés Castaño-Pulgarín et al., *Internet, Social Media and Online Hate Speech: Systematic Review*, 58 AGGRESSION & VIOLENT BEHAV. 1, 5 (2021) (in systematic review of online hate speech, observing that “cyberhate in general, seems to be amplified by the use of the Internet and social networks, resulting in the proliferation of stereotypes and worse damage.”); Alexander Tsesis, *Hate in Cyberspace: Regulating Hate Speech on the Internet*, 38 SAN DIEGO L. REV. 817, 832–35 (2001) (explaining that “[h]ate groups take advantage of this relatively inexpensive medium for ideological distribution;” describing proliferation of hate speech on the internet); Danielle K. Citron & Helen Norton, *Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age*, 91 B.U. L. REV. 1435, 1436–38 (2011) (describing hateful speech online).

targets, including psychological harm,<sup>263</sup> harm to relationships,<sup>264</sup> and harm to expression.<sup>265</sup> In addition, hate speech can exacerbate societal biases and prejudices<sup>266</sup> and may pave the way for hate crimes and harmful social movements.<sup>267</sup>

Information policy organizations—including those devoted to internet-related advocacy and founded on the civil libertarian model—generally acknowledge online hate speech as a serious problem. For example, the Center for Democracy & Technology has issued numerous reports about online hate speech, including its disproportionate impact on historically disadvantaged communities<sup>268</sup> and the shortcomings of platforms’ efforts to address it.<sup>269</sup> Filings and comments from the Electronic Privacy Information Center have articulated harms and

263. Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133, 137 (1982) [hereinafter Delgado, *Words that Wound*] (“The psychological responses to such stigmatization consist of feelings of humiliation, isolation, and self-hatred. Consequently, it is neither unusual nor abnormal for stigmatized individuals to feel ambivalent about their self-worth and identity.”); Katharine Gelber & Luke J. McNamara, *Evidencing the Harms of Hate Speech*, 22 SOC. IDENTITIES 324, 336–37 (2016) (summarizing analysis of interviews with members of target communities).

264. Delgado, *Words that Wound*, *supra* note 263, at 137 (“[R]acial stigmatization injures its victims’ relationships with others.”).

265. Gelber & McNamara, *supra* note 263, at 333–34 (describing how hate speech could disempower targets from expressing themselves); Caitlin R. Carlson, *Misogynistic Hate Speech and its Chilling Effect on Women’s Free Expression During the 2016 U.S. Presidential Campaign*, 14 J. HATE STUD. 97, 104 (2017) (arguing that “women of all political parties were dissuaded from certain expressive activities . . . for fear that the same misogynistic hate speech that was directed at Democratic candidate Hillary Clinton and the reporters covering the campaign would also be used against them.”); Citron & Norton, *supra* note 262, at 1448–50 (describing how “online calls for violence and threats can silence members of targeted groups.”).

266. Citron & Norton, *supra* note 262, at 1451; Delgado, *Words that Wound*, *supra* note 263, at 140.

267. See generally ALEXANDER TESIS, *DESTRUCTIVE MESSAGES: HOW HATE SPEECH PAVES THE WAY FOR HARMFUL SOCIAL MOVEMENTS* (2002); see also Citron & Norton, *supra* note 262, at 1447–48 (stating that “[h]istory and social science confirm that hate speech may facilitate acts of violence against members of targeted groups.”).

268. CTR. FOR DEMOCRACY & TECH., *AN UNREPRESENTATIVE DEMOCRACY: HOW DISINFORMATION AND ONLINE ABUSE HINDER WOMEN OF COLOR POLITICAL CANDIDATES IN THE UNITED STATES* (Dhanaraj Thakur & DeVan L. Hankerson eds., 2022), <https://cdt.org/wp-content/uploads/2022/10/update-anunrepresentative-democracy-11y-102622-1710.pdf> [<https://perma.cc/3DJ6-A6SK>]; DHANARAJ THAKUR & MÜGE FINKEL, CTR. FOR DEMOCRACY & TECH., *HATED MORE: ONLINE VIOLENCE TARGETING WOMEN OF COLOR CANDIDATES IN THE 2024 US ELECTION* (2024), <https://cdt.org/wp-content/uploads/2024/10/2024-10-02-CDT-Research-Hated-More-brief.pdf> [<https://perma.cc/5KPR-RGQ7>].

269. NATASHA DUARTE, EMMA LLANSO & ANNA LOUP, CTR. FOR DEMOCRACY & TECH., *MIXED MESSAGES? THE LIMITS OF AUTOMATED SOCIAL MEDIA CONTENT ANALYSIS* (2017), <https://cdt.org/wp-content/uploads/2017/11/Mixed-Messages-Paper.pdf> [<https://perma.cc/3EAK-Q4XD>].

problems involving hate speech.<sup>270</sup> And Public Knowledge’s 2024 policy primer on free expression and content moderation argues that online harassment and hate speech have compromised “the democratic promise of the Open Internet.”<sup>271</sup>

There is, however, well documented disagreement in how to address online hate speech. Arguing in 2009 that the efforts of abusive online mobs to marginalize women and people of color constitute civil rights abuses, Professor Danielle Keats Citron observed that “[p]erpetrators of cyber civil rights abuses commonly hide behind powerful free speech norms.”<sup>272</sup> She argued in favor of a pro-regulatory cyber civil rights agenda but noted that “[a] regulatory approach clashes with libertarian ideology that pervades online communities.”<sup>273</sup>

This disagreement can be observed today in the divergent views of two different coalition positions on the issue: that of the “Santa Clara Principles” coalition<sup>274</sup> and that of the “Change the Terms” coalition.<sup>275</sup> Both coalitions offer sets of recommendations for platforms engaging in moderation of harmful content, and both were launched in 2018. The approaches of these coalitions’ principles, however, are quite different.

The Santa Clara Principles, consistent with a civil libertarian approach, focus on the rights of individual internet users and are designed to help “obtain meaningful transparency and accountability around Internet platforms’ increasingly aggressive moderation of user-generated content.”<sup>276</sup> The Santa Clara Principles call on companies to

---

270. Brief of the Elec. Priv. Info. Ctr. as Amicus Curiae Supporting Defendant-Appellee at 10, *X Corp. v. Bonta*, 116 F.4th 888 (9th Cir. 2024) (No. 24-271) (noting that “[s]ome of the most significant harms to the public [of platforms’ policies and algorithmic design choices] derive from social media’s potential to amplify misinformation and hate speech,” and noting that when platforms display content based on viewers’ predicted engagement, “[t]he unfortunate result is that platform algorithms tend to spread misinformation, hate speech, and other harmful content.”); Elec. Priv. Info. Ctr., Comments on the Draft FTC Strategic Plan for FY 2022–2026, at 7 (Nov. 30, 2021), <https://epic.org/documents/epic-comments-to-ftc-2022-26-draft-strategic-plan/> [<https://perma.cc/Q8JC-NEGP>] (citing research showing that Facebook’s content moderation algorithms “expos[ed] people of color to hate speech while removing ‘anti-white’ content at a much higher rate”).

271. Lisa Macpherson & Morgan Wilsmann, *A Policy Primer for Free Expression and Content Moderation, Part I: Centering Public Interest Values*, PUB. KNOWLEDGE (Dec. 9, 2024), <https://publicknowledge.org/centering-public-interest-values/> [<https://perma.cc/9N2P-ZAAQ>].

272. Citron, *supra* note 37, at 67.

273. *Id.* at 66.

274. THE SANTA CLARA PRINCIPLES, <https://santaclaraprinciples.org> [<https://perma.cc/D3R7-UCTA>].

275. CHANGE THE TERMS, <https://www.changethetterms.com> [<https://perma.cc/KAL7-S7KL>].

276. THE SANTA CLARA PRINCIPLES, *supra* note 274.

commit to “due process” for users, understandable rules and policies regarding content moderation, cultural competence in decision-making regarding content moderation, a recognition that government involvement in content moderation creates “risks to users’ rights,” and reliability and explainability in content moderation systems.<sup>277</sup> They further call on companies to publish detailed data about moderation decisions, to provide notice to each individual user whose content or account is subject to moderation action, and to provide users the opportunity to appeal moderation actions.<sup>278</sup> In addition, they call on governments to remove barriers that prevent company transparency and to themselves be transparent about their involvement in content moderation.<sup>279</sup>

The Change the Terms recommendations are also directed to companies but are quite different in that they weigh in affirmatively on what companies’ content policies should be. The Change the Terms recommendations urge companies to adopt measures to curb use of their online services “to engage in hateful activities,<sup>280</sup> spread disinformation and chill free expression through targeted harassment, the encouragement of violence, and the threats and intimidation at a large scale.”<sup>281</sup> While the Santa Clara Principles are silent as to the substance of companies’ content moderation policies, the Change the Terms recommendations focus on this substance.<sup>282</sup> The Change the Terms recommendations call on online service providers to prohibit use of their services for hateful activities (and to make clear that violation is grounds for termination of service for a user), to enable users and outside organizations to flag hateful activities on the service for review, to provide users the opportunity to appeal moderation actions, to be transparent about moderation activities, to ensure that programmers and other staff developing and implementing moderation policies receive proper training, to develop ways to address inauthentic behavior such as deepfakes, to root out algorithmic bias on their services, and to implement governance

---

277. *Id.*

278. *Id.*

279. *Id.*

280. Change the Terms defines “hateful activities” as “activities that incite or engage in violence, intimidation, harassment, threats, or defamation targeting an individual or group based on their actual or perceived race, color, religion, national origin, ethnicity, immigration status, caste, gender, gender identity, sexual orientation or disability.” *The Terms*, CHANGE THE TERMS, <https://www.changethetterms.com/the-terms> [<https://perma.cc/6XPW-FTRS>].

281. *Id.*

282. *Id.*

structures responsible and accountable for ensuring that the other recommendations are carried out effectively.<sup>283</sup>

Although the Santa Clara Principles focus primarily on process and Change the Terms recommendations focus largely on substance, they are, in many respects, similar and overlapping. Both are directed to companies, not government actors; both include recommendations related to content moderation transparency; both include recommendations related to the training and treatment of human moderators; and both express at least some caution where government actors might be involved. Not only do these two sets of recommendations contain similarities and areas of overlap, they are compatible with each other. Neither contains any recommendations that, if adopted, would preclude a company from adopting the other set of recommendations as well.

But despite their technical compatibility, these sets of recommendations are endorsed by completely separate organizations. Among the signatories of the substance-neutral Santa Clara Principles are information policy organizations focused on internet policy and founded on the cyberlibertarian model, including the Center for Democracy & Technology, Electronic Frontier Foundation, and New America's Open Technology Institute.<sup>284</sup> Among the signatories of the substance-focused Change the Terms recommendations are a number of civil rights and racial justice organizations, including Color Of Change, Muslim Advocates, National Hispanic Media Coalition, MediaJustice, GLAAD, and Southern Poverty Law Center.<sup>285</sup>

### C. *Consequences of the Disconnect*

Whether and to what extent public interest organizations manage to resolve the civil rights-civil liberties disconnect can be an important factor determining the success or failure of their advocacy campaigns. In the area of privacy, organizations managed to reconcile the civil rights-civil liberties disconnect over the course of several years and eventually landed on a model they could unite behind, but they have not managed a similar outcome in the area of hate speech.

Unfortunately, the ongoing disagreement among information policy organizations regarding the best approach to address hate speech continues amid a notable backslide of major online service providers' protections against hate speech on their platforms. Multiple companies

---

283. *Id.*

284. THE SANTA CLARA PRINCIPLES, *supra* note 274.

285. CHANGE THE TERMS, *supra* note 275. These civil rights and racial justice organizations are included in the list of original drafters, but there are many more on the full list of signatories.

have made major cutbacks to their Trust & Safety (“T&S”) teams, which help tech companies understand how products can be used for abuse and misuse and help develop and apply community standards.<sup>286</sup> Starting in 2021, T&S teams faced widespread layoffs across the tech industry.<sup>287</sup> Meta, Amazon, Alphabet, and Twitter/X all drastically reduced the size of their T&S teams.<sup>288</sup> In addition, between 2022 and 2023, Meta, Twitter, and YouTube removed seventeen policies to mitigate harm on their platforms.<sup>289</sup> Twitter reinstated thousands of previously suspended accounts, including those that had been suspended for promoting hateful content,<sup>290</sup> and dissolved its “Trust and Safety Council,” an external volunteer council of organizations that received briefings about the company’s new products and policies and advised the company on issues related to trust and safety.<sup>291</sup>

The backsliding of protections against harmful content likely has contributed to an increase in hate speech online. An analysis of Twitter users and content that was presented at the 2023 annual conference of the Association for the Advancement of Artificial Intelligence “show[ed] large increases in hate speech following Musk’s purchase [of the platform], with no sign of hate speech returning to previous levels.”<sup>292</sup> More specifically, the research team found that after Elon Musk bought Twitter in 2022, hateful users increased their hate speech on the platform, and overall hate speech on the platform also increased.<sup>293</sup> Later research by a team including several of the same researchers found that, over the course of Musk’s tenure as CEO of the platform, there were “significant increases in hate speech that targets various protected groups, as well

---

286. Rachel Elizabeth Moran et al., *The End of Trust and Safety?: Examining the Future of Content Moderation and Upeavals in Professional Online Safety Efforts*, in PROCEEDINGS OF THE 2025 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS (ACM ed., 2025).

287. *Id.*

288. Hayden Field & Jonathan Vanian, *Tech Layoffs Ravage the Teams that Fight Online Misinformation and Hate Speech*, CNBC (May 27, 2023, 7:02 AM), <https://www.cnbc.com/2023/05/26/tech-companies-are-laying-off-their-ethics-and-safety-teams-.html> [<https://perma.cc/V68Z-PRTU>].

289. NORA BENAVIDEZ, FREE PRESS, *BIG TECH BACKSLIDE: HOW SOCIAL-MEDIA ROLLBACKS ENDANGER DEMOCRACY AHEAD OF THE 2024 ELECTIONS 9* (2023), [https://www.freepress.net/sites/default/files/2023-12/big\\_tech\\_backslide\\_free\\_press\\_report\\_final.pdf](https://www.freepress.net/sites/default/files/2023-12/big_tech_backslide_free_press_report_final.pdf) [<https://perma.cc/33XV-5UT3>].

290. *Id.*

291. Cat Zakrzewski et al., *Twitter Dissolves Trust and Safety Council*, WASH. POST (Dec. 12, 2022), <https://www.washingtonpost.com/technology/2022/12/12/musk-twitter-harass-yoel-roth/> [<https://perma.cc/FR5G-PMP4>].

292. Daniel Hickey et al., *Auditing Elon Musk’s Impact on Hate Speech and Bots*, in PROCEEDINGS OF THE SEVENTEENTH INTERNATIONAL AAAI CONFERENCE ON WEB AND SOCIAL MEDIA 1133, 1135 (2023).

293. *Id.*

as increases in the visibility of hate speech.”<sup>294</sup> They also found that “coordinated account activity associated with information campaigns increased more than non-coordinated activity.”<sup>295</sup>

Rollbacks of protections have been decried by public interest information policy organizations, including some that signed onto the Santa Clara Principles, which call for procedural protections related to content moderation decisions but generally are silent with respect to the substance of companies’ content and community standards. For example, when Elon Musk abruptly disbanded Twitter’s Trust and Safety Council, the Center for Democracy & Technology—which had sat on the Council<sup>296</sup>—published a statement on its website on behalf of sixteen members of the Council “condemn[ing] the dramatic changes to, and arbitrary enforcement of, content moderation policies and practices at Twitter, including the abrupt disbanding of the Council . . . .”<sup>297</sup> And when Meta changed its hateful conduct policy in March 2025 to explicitly permit more speech challenging LGBTQ+ rights, the Electronic Frontier Foundation joined a campaign calling on Meta to reverse the policy changes.<sup>298</sup>

Yet despite these and other protests, rollbacks of content moderation policies, including policies intended to rein in hate speech, have continued. For example, in January of 2025, Meta ended a fact-checking program on social media posts.<sup>299</sup> And in June of 2025, the *New York Times* reported that in recent months, YouTube had begun encouraging content moderators not to take down videos that may break the platform’s rules so long as those videos were considered to be in the public interest—including if they were discussions of political, social, and cultural issues.<sup>300</sup>

---

294. Daniel Hickey et al., *X Under Musk’s Leadership: Substantial Hate and No Reduction in Inauthentic Activity*, 20 PLOS ONE 1, 15 (2025).

295. *Id.*

296. *Trust and Safety Council*, TWITTER (Apr. 8, 2022) [https://perma.cc/V9AL-ZPPD].

297. *Joint Statement on the Disbanding of the Twitter Trust and Safety Council*, CTR. FOR DEMOCRACY & TECH. (Dec. 14, 2022), https://cdt.org/insights/joint-statement-on-the-disbanding-of-the-twitter-trust-and-safety-council/ [https://perma.cc/MNJ7-X4V9].

298. Paige Collins, *EFF Joins AllOut’s Campaign Calling for Meta to Stop Hate Speech Against LGBTQ+ Community*, ELEC. FRONTIER FOUND. (Mar. 13, 2025), https://www.eff.org/deeplinks/2025/03/eff-joins-allouts-campaign-calling-meta-stop-hate-speech-against-lgbtq-community [https://perma.cc/593R-5TWE].

299. Mike Isaac & Theodore Schleifer, *Meta Says It Will End Its Fact-Checking Program on Social Media Posts*, N.Y. TIMES (Jan. 7, 2025), https://www.nytimes.com/live/2025/01/07/business/meta-fact-checking [https://perma.cc/A5YY-CVHS].

300. Nico Grant & Tripp Mickle, *YouTube Loosens Rules Guiding the Moderation of Videos*, N.Y. TIMES (June 9, 2025), https://www.nytimes.com/2025/06/09/technology/youtube-videos-content-moderation.html [https://perma.cc/TGL8-DRLW].

## IV. CONSTRUCTIVE CONFLICT

Public interest information policy organizations increasingly acknowledge and work to bridge the civil rights-civil liberties disconnect. As noted above, many organizations with civil libertarian roots have made a conscious turn toward civil rights. There is evidence of this in changes to their mission statements and in aspects of their work, including acknowledging and educating policymakers and the public about information-related inequities, endorsing civil rights principles, and finding common ground on privacy legislation.

These efforts pay off in the formation of broad coalitions, such as the coalition in support of privacy legislation with antidiscrimination provisions. In one recent example, in July of 2025, a cross-cutting coalition of over ninety organizations focused not only on civil rights and civil liberties in information policy, but also on economic justice, labor, environmental justice, and more, launched the “People’s AI Action Plan” to counter, and offer an alternative to, the industry-backed AI agenda advanced by President Trump.<sup>301</sup>

Nevertheless, the disconnect remains and can lead to stubborn failures to achieve cohesion, such as the conflicting perspectives on hate speech. Work is needed to address the disconnect and attempt to reconcile it. In the words of Delgado “[w]e can, occasionally, move each other marginally in a different direction.”<sup>302</sup> To this end, he recommended that those interested in both civil rights and civil liberties “consider, struggle, and reckon with the tension” between the two.<sup>303</sup>

It is especially important for public interest organizations to address the civil rights-civil liberties disconnect to develop as united a front as possible in a context of the alarming democratic backsliding in the United States. At the time of writing this Article, executive and legislative officials alike are increasingly hostile to both civil liberties and civil rights. The White House in particular has taken aggressive action to curtail the speech of those who disagree with President Trump.<sup>304</sup> It also “has worked aggressively to turn back the clock on the nation’s civil and human rights progress,” according to The Leadership Conference on Civil and Human Rights, which has been documenting

---

301. PEOPLE’S AI ACTION PLAN, <https://peoplesaiaction.com> [<https://perma.cc/MZG4-BSKX>].

302. Delgado, *About Your Masthead*, *supra* note 30, at 15 (addressing the *Harvard Civil Rights-Civil Liberties Law Review*).

303. *Id.*

304. See Daniel Hall, *Trump’s Aggressive Actions Against Free Speech Speak a Lot Louder than His Words Defending It*, CONVERSATION (Apr. 24, 2025, 3:56 PM), <https://theconversation.com/trumps-aggressive-actions-against-free-speech-speak-a-lot-louder-than-his-words-defending-it-252706> [<https://perma.cc/SKR2-HLS7>].

the administration's civil and human rights rollbacks.<sup>305</sup> For public interest organizations with an interest in defending civil rights, it is therefore more important than ever to present a united front.

Despite the necessity of a united front, there are gains to be had with more open disagreement. Conflict is a necessary part of good strategy because, without it, coalitions can end up supporting too many different things, with no sharp focus on the most important goals.<sup>306</sup> As activist Evan Greer, deputy director of the organization Fight for the Future, recently wrote, "we need to get more honest with ourselves about our substantive disagreements and past strategic failures."<sup>307</sup>

Indeed, the conflict avoidance problem seems to contribute to the civil rights-civil liberties disconnect in hate speech. If one were to look only at the public communications of public interest organizations, they may not understand there to be any civil rights-civil liberties disconnect at all. Organizations that support the Change the Terms recommendations and those that support the Santa Clara Principles disagree with each other; if they did not, there would be at least some overlapping signatories between the two. Yet, in only a handful of instances do public-facing materials from a signatory of one even mention the other, and almost all are only laudatory, silent on the nature of the disagreement.<sup>308</sup> The unfortunate result is two competing sets of recommendations for content moderation to address hate speech, neither one of which receives full-throated support from a comprehensive coalition of civil rights and information policy organizations.

---

305. *Trump Administration Civil and Human Rights Rollbacks*, *supra* note 13.

306. See Yotam Marom, *Moving Toward Conflict for the Sake of Good Strategy*, MEDIUM (Jan. 13, 2020), <https://medium.com/@YotamMarom/moving-toward-conflict-for-the-sake-of-good-strategy-9ad0aa28b529> [<https://perma.cc/96B6-2HC3>] (explaining that conflict avoidance can cause organizations to say yes to too many things, rather than prioritizing and focusing).

307. Evan Greer, *We've Been Fighting Each Other While Big Tech Gets Away with Murder. To Win Liberatory Tech Policy, We Need a Unified Strategy and a Clear Division of Labor*, FIGHT FOR THE FUTURE (July 1, 2024, 3:59 PM), <https://www.fightforthefuture.org/news/2024-07-01-weve-been-fighting-each-other-while-big-tech-gets-away-with-murder-to-win-liberatory-tech-policy-we-need-a-unified-strategy-and-a-clear-division-of-labor/> [<https://perma.cc/9EJE-UTNQ>].

308. The two exceptions are a quick mention from a staffer at New America's Open Technology Institute of concerns about the breadth of Change the Terms and a lengthy, respectful, and careful discussion of points of disagreement from the Electronic Frontier Foundation's legal director. See Spandana Singh, *Announcing OTI's New Transparency Reporting Toolkit Focused on Content Takedowns*, NEW AM.'S OPEN TECH. INST. (Oct. 26, 2018), <https://www.newamerica.org/oti/blog/announcing-otis-new-transparency-reporting-toolkit-focused-on-content-takedowns/> [<https://perma.cc/C3NW-46ED>]; Corynne McSherry, *Corporate Speech Police Are Not the Answer to Online Hate*, ELEC. FRONTIER FOUND. (Oct. 25, 2018), <https://www.eff.org/deeplinks/2018/10/corporate-speech-police-are-not-answer-online-hate> [<https://perma.cc/8KN7-XFW2>].

Of course, in order for conflict to be productive, organizations must be willing to change their position on issues, to make room for a full embrace of both liberty and equity. Changes may be warranted both in light of the perspectives and experiences learned from one another and in response to changing circumstances. Willingness to change position was successful when, for example, organizations that did not originally endorse Civil Rights Principles for Big Data later came around and not only supported the Principles but also refused to support federal privacy legislation that did not include antidiscrimination provisions. This success must be replicated.

For example, considering again for a moment the hate speech issue area and noting once again that many elements of recommendations from both the Santa Clara Principles and Change the Terms are not incompatible with one another, perhaps members of the two coalitions can collaborate to forge a shared set of principles descriptive of areas of disagreement. As in the context of privacy legislation, perhaps this exercise would spark further dialogue about areas of disagreement that could, over time, persuade some organizations to change position. Following on such discussions, as the two coalitions continue to iterate on their respective sets of policy recommendations, perhaps over time they would draw closer together and gain the ability to conduct united advocacy.

#### CONCLUSION

Civil rights and civil liberties are distinct and sometimes in conflict. Over the past seven decades, the civil rights-civil liberties disconnect has played out in U.S. information policy as something of a back-and-forth, with the civil rights perspective first asserting dominance, then civil liberties. This shifting dynamic can be attributed in part to changes in dominant information technology and in part to vast differences between the fundamentally different visions that accompanied the civil rights movement and the dawning internet age.

In recent years, public interest organizations in this field have made a visible shift back toward civil rights. A nationwide racial reckoning, coupled with mounting public awareness of data-driven discrimination, algorithmic bias, and racialized surveillance, have pushed civil rights concerns to the forefront of information policy debates. A stronger public interest coalition is emerging from this shift, as evidenced by the relative unity with which civil rights organizations and information policy organizations now approach privacy debates.

The disconnect persists, however. As illustrated by civil rights and information policy organizations' struggle to develop shared strategies

on difficult issues such as hate speech, the civil rights-civil liberties disconnect is still very much alive in information policy.

Organizations' approach to addressing—or failing to address—the disconnect has a significant impact on the strength and success of their policy campaigns. When organizations strive to reconcile the disconnect, coalitions grow and campaigns are politically stronger as a result. When the disconnect is left unresolved, it impairs coalition-building, weakens issue framing, and leads to inadequate reform proposals.

In a time of tremendous challenges to both civil rights and civil liberties, the persistent disconnect threatens to frustrate public interest organizations' ability to coalesce around a shared strong and coherent strategy that is urgently needed. Organizations must avert that fate by acknowledging their differences and confronting them head on.