

Policy Memos

Canadian Commission on Democratic Expression

Learning Session 3: How can we make digital technology more transparent about its impact on, and accountability to, historically marginalized groups?

Thursday, Oct. 28, 2021 | 1:00 p.m. – 2:30 p.m. ET (UTC -4:00)

Virtual event via Zoom

Abstract of session

Countless studies have shown that historically marginalized users and groups are most likely to experience online targeting of hate speech, abuse and violence (both online and off) and are more likely subjected to unlawful surveillance and discriminatory decision-making systems. They are also the same users and communities who are often over-censored by platforms' policies. Lawful speech about racial justice movements for instance, have been over-censored on popular platforms online. And because deleting problematic content and “deplatforming” - banning or demoting users -- have become cost-effective ways for platforms to deal with online harms, and to respond to justified government pressure, we are left with a lack of data about content that can help publics and researchers understand and mitigate against the targeting of specific groups online. At the same time, historically marginalized groups have long been at the front lines of developing public policy and accountability mechanisms for digital technology, but are often exempt from conversations with policymakers and private actors about building more just digital systems.

Policy questions:

Should risk reporting be made mandatory and what should these reporting mechanisms include?
How do we strengthen redress mechanisms for those harmed by discriminatory systems or unlawful surveillance?
Should platform companies be mandated to resource local needs and respond to local communities in which they operate?
Should companies selling, transferring or deploying surveillance technology be subject to independent review?

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Democracy is increasingly an elusive concept with respect to digital technology. Despite being borne from a discourse of freedom, autonomy, liberation, openness, and connection, digital technology is now associated with ideas of distortion, exploitation, coercion. In particular, the increasing demand for new data-intensive digital technologies hurts not only the most marginalized among us, but also public institutions which are meant to ensure democratic safeguards

I have seen the coercive nature of digital technology in my work with Our Data Bodies, as well as the Justice, Equity, and Technology Project.¹ Both initiatives center the voices and perspectives of marginalized groups in debates about how technology governs our lives and intersects our ability to meet basic human needs. With Our Data Bodies, which has spanned several years, and is anchored in Detroit, Charlotte, and Los Angeles, our work in communities has demonstrated the palpable and damaging effects by which individuals struggling to get by are forced to interact with technological systems, and in particular data-driven services, that promise—but ultimately deny—marginalized people safety, health, and belonging. Be it simple database systems to more sophisticated ones that score the worthiness of individuals to receive housing or other forms of social support, people struggling to get by meet with a handful of problems. On the one hand, they are grossly misrepresented in systems. On the other, they are missing or excluded from systems. Often, they lack effective institutional means of support to collectivize concerns or contest decisions. When marginalized people encounter data-driven systems as they search for different forms of support or opportunities (welfare, housing, employment, driver's license—data-driven decisions come down as definitive, scientific, objective.

Indeed, new data-driven technologies are wreaking havoc on institutional processes designed to eliminate authoritarian decision making. Keep in mind that dependence on data-driven services—under which we can group not only those services mentioned above, but more generally services that require agile software development or cloud-based infrastructure—is mushrooming. The estimated size of the global datasphere by 2025 is 175 zettabytes, up from 33 zettabytes in 2018.² (One zettabyte is a trillion gigabytes.) Public institutions are no different. From high-profile and controversial contracts of the United States Department of Defense,³ to lesser-known and local

¹ See <https://www.odbproject.org> and <https://www.lse.ac.uk/justice-equity-technology>.

² Ang, C. (2020, July 13). *Charting the Massive Scale of the Digital Cloud*. Visual Capitalist. <https://www.visualcapitalist.com/massive-scale-of-cloud/>

³ CNN, E. K. and Z. C. (n.d.). *Pentagon cancels \$10 billion cloud contract given to Microsoft over Amazon*. CNN. Retrieved 28 October 2021, from <https://www.cnn.com/2021/07/06/tech/defense-department-cancels-jedi-contract-amazon-microsoft/index.html>

procurement of cloud-based, optimized data-driven services, public institutions who depend on new computational infrastructure are ceding control and expertise over to private entities. Between intellectual property controls, the black box nature of optimized, agile services, and the sheer lobbying power of technology companies,⁴ democratic institutions are hard pressed to stay abreast of, scrutinize, and manage the data-driven services that increasingly dictate people's wellbeing.

Turning our attention to the players which control and coordinate our computational infrastructure is paramount. We cannot afford to only focus on issues of bias—be it in technological design or industry employment, or on distortions or mistakes in technological systems. We cannot afford to only focus on platform companies. Computational infrastructural power is much larger than all of those. What's at stake is people's ability to contest, if not undo, decisions that affect their lives and the foundation of democracy, more broadly.

⁴ Balayne, A., & Gürses, S. (n.d.). *Beyond Debiasing: Regulating AI and its inequalities*. European Digital Rights Institute; Chung, J. (2021). *Big Tech, Big Cash: Washington's New Power Players*. Public Citizen. <https://www.citizen.org/article/big-tech-lobbying-update/>

Laura Murphy⁵

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I have conducted civil rights audit of top US-headquartered technology companies that have global impact. The first audit was of Airbnb in 2016 and the second was a Facebook audit that went from 2018 to 2020. Yesterday, a report that I wrote, entitled "The rationale for and key elements of a business civil rights audit" was released.

This report covers the business case for civil rights audits and outlines how they should be conducted. The report was endorsed by several major US civil rights organizations and is supported by the Ford Foundation.

The reason I wrote the report was precisely to get at the purpose of this session. Businesses and stakeholders need to confront the challenges resulting from systemic racism and other structural forms of discrimination by identifying real problems and implementing thoughtful solutions. Marginalized communities want more than Black Lives Matter on a corporate masthead or a corporation's charitable contributions. They want businesses to stop hurting and discriminating against their customers and communities.

So what is a civil rights audit? A civil rights audit is an independent analysis conducted by firms with civil rights expertise that assess organizations, businesses, policies, practices, products, and services to determine whether those companies have a discriminatory effect on people who have been historically subject to discrimination.

After an initial assessment, auditors work with the company to issue a public report to provide a blueprint for corrective and proactive equitable outcomes. Auditors will also help ensure that structures are in place to implement civil rights changes and prevent future civil rights harms.

Now, in the case of Facebook, of course we didn't come close to solving every civil rights issue on the platform. (There's an article about my report and Facebook's current problems in today's Washington Post.) But we did install a structure at Facebook, which is a department of Civil Rights, which has been staffed up with close to a dozen people, and is following up on the recommendations that I outlined in my audit.

Companies, especially large technology corporations, have tremendous influence on the information and resources we all need to survive and prosper in our democracies and our economies.

Companies are foundational to US society as they are over two thirds of our GDP, and they provide employment and products and services, pay tax dollars, influence the economic and social health of communities, small and large, and they have also an outsized impact on our political discourse.

⁵ Verbal comments have been edited for clarity and length.

They affect how we receive information, where we live, where we work, whether or not we have resources to start businesses, and opportunities to learn. As such, businesses have the responsibility to understand and address their civil rights impact both within the confines of their own operations, as well as in their immediate communities, and in society.

In the US, the most prominent issues from a civil rights perspective are issues of racism. There is a critical need to fight discrimination across intersecting identities. That includes other characteristics such as gender, sexual orientation, gender identity, disability, national origin religion and age, among other characteristics.

By engaging in a civil rights audit, a technology company, for example, would address the following types of concerns. For example, an audit could uncover how companies using artificial intelligence software, that are built on algorithms, are discriminating against Muslims or other religious minorities on social media platforms. Or the marketing of dangerously inaccurate facial recognition products to law enforcement agencies. Another area is the selling of surveillance technology to track racial justice and other political activists.

These are a few examples of policies, products, practices, and services that are not typically covered by diversity and inclusion functions within a company, but that need to be addressed to reduce structural discrimination. Companies need to take more seriously the human impact of their business practices and business products.

Auditors are not a silver bullet for civil rights. They do not fix companies that are built on an exploitative business model, for example, but they will have real world impacts for the people most harmed by those companies. They are an important step toward the transparency demanded by regulators, legislators, and the public.

The Rationale for and Key Elements of a Business Civil Rights Audit



The Rationale for and Key Elements of a Business **Civil Rights Audit**

By Laura W. Murphy



The Leadership Conference
on Civil and Human Rights



FORDFOUNDATION

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Key Report Recommendations:

Civil rights audits should:

- 1 Have the support and active engagement of senior executives, including the CEO and board of directors.
- 2 Be rooted in U.S. civil rights law, focusing on race, gender, and other protected classes.
- 3 Have an established purpose within a company and a shared understanding of why an audit is being conducted.
- 4 Be led by an independent person or firm with deep expertise in civil rights and racial justice as well as adequate resources to complete the audit.
- 5 Identify the various external and internal challenges facing the company.
Be supported by a team of executives and staff who will make sure the auditor has access to the company's policies, practices, products and services throughout the review for their potential discriminatory impact.
- 6 Result in a clear plan of action.
- 7 Publicly state the findings in a report that identifies civil rights concerns and addresses the areas where the company has or will take action.
- 8 Have a clear timeline.
- 9 Involve consultation with stakeholders throughout the process, including civil rights advocates and organizations.

