

Open Society Information Program
Portfolio Review Document:
Fealty to Information & Digital Rights

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1. Our Ambitions

The Fealty to Information & Digital Rights portfolio is made up of grantees advocating for rights and freedoms – free expression, privacy, due process and freedom from discrimination – in the digital, networked environment. The portfolio currently comprises 16 grantees, primarily located in Europe (eight) and Latin America (five), receiving core support. We also provide core support to two international groups as well as a group in Kyrgyzstan.¹ We complement our core support grants with a limited number of project grants. The disbursed budget in 2013 was \$1,360,000 and remained stable in 2014 and 2015, but was complemented by a reserve fund allocation of \$890,000 approved in 2014 and spent by the end of 2015 on surveillance reform in Europe.

The ultimate changes we want to see are stronger legal and corporate standards that will force both governments and companies to respect basic freedoms in the digital environment. The following is our theory of change: (1) A strong digital rights field will be able to shape the development and implementation of human rights compliant standards. (2) In light of the dysfunctional global rule-making system for the internet, this field will be most effective in robust or formative democracies. (3) Standards created in Europe and Latin America, where we have focused, are likely to have spill-over effects elsewhere. We selected these regions to focus on because (a) OSF US Programs supports the digital rights field in the United States, and (b) a professional digital rights field has only started to emerge in these regions and we expected to have a disproportionate impact on the overall field. An important question our theory of change raises is whether legal standards in Europe and Latin America will influence the behaviour of mostly US corporations dominating in the digital environment.

Given this theory of change, the ambition of this portfolio is to build a professional, diversely funded field for digital rights advocacy and litigation in Europe and Latin America. The Program had first defined this ambition in 2009, abandoning an earlier approach of funding rights advocacy globally via mostly US-based intermediaries such as the Center for Democracy and Technology, the Electronic Privacy Information Center and the American Civil Liberties Union. We reiterated the ambition to build and strengthen the field in Europe and Latin America in the 2014-2017 Information Program strategy: “To counter new threats [exacerbated by digital technologies] to basic freedoms, we are building a field [in Europe and Latin America] which combines mastery of these technologies with a commitment to human rights”.

The tool used in this portfolio is grant-making. We felt that a mix of core support (with a focus on organizational development) and project support (to address particular weaknesses of the field) would be most effective in building and strengthening the field advocating for rights in our networked environment. We have so far not awarded individual grants, mainly because our efforts are focussed on transitioning a field of often charismatic individual leaders to a field with strong institutions.

¹ Please consult the Annex for a list of our core grantees.

2. Our Place

2.1 Environmental trends relevant to our aims

The Snowden revelations

The Snowden revelations were an important political event for digital rights advocacy. They have forced a debate about the appropriate limits of mass surveillance in a democratic society, led to the creation of a UN Rapporteur on the Right to Privacy, and resulted in intergovernmental bodies, including the Council of Europe, to declare mass surveillance a violation of human rights. The revelations created the possibility to litigate surveillance by intelligence agencies with cases currently ongoing in the US, UK and several other European countries; and they were instrumental in important court rulings such as the Court of Justice of the European Union's invalidation of Safe Harbour agreement, which allows more than 3,000 US companies, including Google, Facebook, and Apple, to repatriate European personal data. Progress on the policy front in relation to surveillance has been more nuanced. Besides the US, Germany is the only country that has seriously considered the reform of surveillance by intelligence agencies. Additionally, the revelations have also created political pressure that has benefitted the digital rights community more generally. For example, it was only when Snowden revealed that the US had been spying on Brazil that President Rousseff signed into law the Marco Civil, the Brazilian civil rights framework for the internet. Finally, the Snowden revelations have had a profound impact on the engineering community which, left angered, redoubled its efforts to make encryption work for the average person. We've since seen Apple and WhatsApp adopt end-to-end encryption for some of their products and services, which – in light of recent terrorist attacks – has inspired a major debate about governments' access to encrypted communication.

Terrorism

The recent terrorist attacks in Europe have dampened the impact of the Snowden revelations and created a more hostile climate for rights advocacy. Several governments, confronting their citizens with a choice between freedom and security, are expanding government surveillance powers, particularly in the digital realm, by rushing emergency legislation through parliaments. Examples include France and Belgium, but also the UK, which is pressing ahead with its Investigatory Powers Bill. Similarly, while President Rousseff had adopted Marco Civil in the aftermath of the Snowden revelations, Brazil is currently discussing a regressive cybercrime law, which would violate Marco Civil principles.

Market developments

The political events are accompanied by market developments that, over the past years, have created new points of control in an originally decentralized network.² While the re-concentration of power in the hands of corporations can have positive impacts on users – for example, WhatsApp rolling out end-to-end encryption to its \$1 billion users – these developments mostly result in a loss of control for users, and often, by extension, increased control by governments. Examples of this trend include the rise of cloud computing – NSA's project MUSCULAR had compromised both Google and Yahoo cloud storage facilities to enable the NSA to collect millions of user records including email – and the shift to mobile and smartphones, which means a shift to proprietary, controlled devices, software and networks. Finally, the rise of big data and its uses in behavioural control, combined with ubiquitous sensing and connectivity, create powerful insights on mass populations available to relatively few entities. This phenomenon forms the foundation for what management scholar Shoshana Zuboff has called "surveillance capitalism".³

² http://benkler.org/Degrees_of_Freedom_Dimensions_of_Power_Final.pdf

³ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2594754

2.2 Most significant players and our role

From volunteer to professional, leading digital rights players

Initially, the digital rights field in Europe and Latin America was a largely volunteer-driven community. Starting in 2009 in Europe, and in 2011 Latin America, we identified individuals and groups of volunteers and supported them to hire professional staff and develop their organizations. Over the past three years – which is the focus of this portfolio review – our grantees have grown stronger as organisations and have established themselves as leading advocacy voices in their countries or regions on digital rights issues. Some now receive as much as 50% of their operating costs from the public, which we believe is a good indication of their strength. They have celebrated important wins on the policy and litigation front, and while we are the first institutional funder of most of them, several of them are now supported by other donors.

In addition to building up national and regional digital rights groups in Europe and Latin America, we are funding Privacy International (PI), which we supported in 2011 to turn from a struggling group with two part-time staff into a professional NGO with 18 staff. Today, PI is providing intellectual leadership on privacy issues globally. A new core grantee is Toronto-based Citizen Lab, which we decided to fund to boost the access of the global digital rights community (including our grantees) to technical research and documentation about censorship and surveillance. For a list of core grantees, see Annex and discussion in section 3.

We have been complementing our core grants with a number of project grants to address particular weaknesses of the field. Examples include a grant to the Brazil-based Center for Technology and Society at Fundacao Getulio Vargas (FGV) aimed at fostering collaboration between Latin American digital rights groups, and campaign grants, for instance to support CAUSE, the campaign against unlawful surveillance exports, and the UK Don't Spy on Us campaign.

Throughout the OSF network, we are collaborating with US Programs, OSIFE, LAP and OSJI. Collaboration with US Programs involves sharing of intelligence, joint strategizing and co-funding. We have for example co-funded transatlantic coordination efforts aimed at reforming surveillance by intelligence agencies. With OSIFE we have co-funded an effort to integrate the digital rights and civil liberties movements in Europe. We have collaborated on grants with the Latin America Program's portfolio on Effective Democracies in the 21st century. OSJI is providing invaluable technical assistance to both the Information Program and our grantees.

Who we are not funding

We are not funding international NGOs including Access Now, WebWeWant and the Association for Progressive Communication. This is for a mix of reasons including that some of these groups are well funded including by industry or may have a focus we don't consider particularly relevant such as the Internet Governance Forum. We are also not funding human rights groups such as Human Rights Watch and Amnesty International or free expression groups such as Article 19 even though they are playing an increasingly important role in digital rights debates. Rather, we rely on other parts of OSF to fund those organizations. We had funded consumer groups including Consumers International and IDEC, the consumer rights group in Brazil, in the past, but have not always been satisfied with their performance. Finally, we are not funding the Global Network Initiative, the main social corporate responsibility initiative of the field, mainly because we felt our niche is more aggressive rights advocacy. We rely on OSF US Programs to fund Ranking Digital Rights, which is producing a global corporate responsibility index for the field as well as US-based groups with an international mandate like the Electronic Frontier Foundation.

2.3 Funding environment

Europe: A particularly pressing issue in relation to our core aim of helping to build the field is growing the resources for digital rights work in Europe, given Europe's underfunded digital rights field. Two recent developments are noteworthy: First, a new set of European digital funders⁴ is gradually emerging that is actively seeking guidance from OSF on its grant-making to the field. Second, US foundations, including the Ford Foundation and the Media and Democracy Fund, which used to fund exclusively in the US and the global South, are turning their attention to Europe, mainly because they recognize the influence of European standards beyond its borders, and Ford has turned to OSF for guidance and funding recommendations. To bring this community to life, we brought 15 funder representatives together in Berlin in February 2016. Our goal was, and continues to be, to build a community of peers that will share insights and learnings and collaborate on strategic initiatives such as a European digital rights litigation fund (which we are leading on). We are also exploring whether and how to plug European funders into Netgain, a collaboration of US foundations. OSF is co-leading the 2017 Netgain initiative with the MacArthur Foundation.

Latin America: We have played a unique role in identifying nascent organizations with expertise specifically in digital rights, and helping them develop organizational capacity. This has allowed them to become more effective organizations, and ultimately attract support from other funders. For example, our grantees R3D in Mexico and Karisma in Colombia have recently become grantees of the Ford Foundation. Other funders in this space include the US State Department, the Canadian International Development Research Council, the Swedish International Development Agency and Google. Some of these funders channel their project funds through larger NGOs, including US-based Internews and the Electronic Frontier Foundation as well as WebWeWant and Privacy International.

3. Our Work

3.1 Our work in Europe

3.1.1 Building the field

While we have seeded several of the European digital rights groups in the years following 2009, over the past three years we have worked to strengthen them as organisations. We have awarded core grants, provided support for organizational development consultants, and awarded projects grants to address particular weaknesses, including public communications. Our grantees have established themselves as leading digital rights groups in their countries or region and are successfully influencing policy standards. We are particularly proud of LaQuadrature du Net, which has weathered the departure of its charismatic founder, substantially grown its income (from citizens), and, as Jordi Vaquer, Executive Director of OSIFE confirms, is playing a central role not only on digital rights but in leading France's civil liberties coalition during France's state of emergency. Another noteworthy grantee is European Digital Rights, which has grown its membership and established itself as the leading European digital rights voice in Brussels. Finally, Berlin-based Digitale Gesellschaft, whose first staff member we supported in 2013, has successfully transitioned from a volunteer-driven group to a professionally staffed NGO and is today the leading digital rights group in the country. To be clear, while we feel that our grantees have clearly established themselves as leaders over the past three years, we also think that both individual groups as well as the field as a whole still need to grow in size and maturation.

⁴ Adessium Foundation, Stichting Democratie en Media, SIDN Foundation, Renewable Freedom Foundation, Bertha Foundation

3.1.2 The field's impact

Our assumption that a field with professionally staffed NGOs will impact policy standards has been borne out in Europe. For example, our grantee European Digital Rights and its members (the strongest of which are also our grantees) succeeded in enshrining strong privacy rules in the new globally influential EU General Data Protection Regulation (2012-2016), even though they were up against US corporations and the US government in the most lobbied dossier in the history of the EU. The same group of grantees has succeeded in achieving a workable final agreement on net neutrality, despite the opposition of both the European Commission and the Council of the European Union (2015), and bringing about an end to “voluntary” internet blocking as a privatised law enforcement measure (2015).

Results are more mixed on policy advocacy in relation to surveillance by intelligence agencies, particularly since the recent terrorist attacks in Europe. The one bright exception is Germany, where our grantee Stiftung Neue Verantwortung has worked with the governing coalition to draft a reform proposal for limitations on spying by the German intelligence agency. Litigation efforts on this issue have been more promising. In a case brought by grantee Digital Rights Ireland, the CJEU declared invalid the EU Directive on Data Retention, which had been used as a basis for surveillance by smaller intelligence agencies in Europe. The invalidation of a Directive was a first, and was called by some “a constitutional moment for the EU”. National data retention laws were subsequently invalidated in national courts, including by our grantee Open Rights Group. The CJEU ruling was widely quoted in advocacy efforts including by our Mexican grantee R3D in their legal challenge of the data retention provisions in a telecommunications bill. Yet another of our grantees, Privacy International, has taken on the British intelligence agency GCHQ, the most powerful agency after the NSA with even less oversight and fewer legal constraints. Their cases have challenged bulk collection, hacking, intelligence sharing, the use of thematic and general warrants, and direct access provided by telecommunications companies. They are now taking these cases to the UK Supreme Court and the European Court of Human Rights. Their cases forced the UK government to acknowledge their powers and introduce the Investigatory Powers Bill, for the first time enabling a public debate about the limits and controls of British intelligence capacities.

3.1.3 Reflections on decisions we made in implementing our strategy

Growing the resources for the field

With our focus on organizational development, many of our grantees have made tremendous progress in transforming from fully volunteer-based to having some paid and dedicated staff. Yet, we believe that several of our grantees have not yet reached the size and organizational maturity that they will need to achieve in order to decisively respond to the rapidly growing threats to digital rights. We concluded that in order to lift our grantees to the next level, we needed to mobilize additional resources for the field.

Accordingly, starting in 2015, we prioritized outreach to European and US foundations interested in digital rights in Europe, which, in hindsight, we should have done earlier. After a series of conference calls over the course of 2015, we convened 15 foundation representatives in Berlin this year, and we also brought them together with the European digital rights advocacy community and facilitated an intensive conversation between these groups. After the Berlin meetings, the Dutch Adessium Foundation called to tell us that the meetings provided them with invaluable insights into the needs of the digital rights field in Europe and that they are now interested in funding both German and French digital rights groups (as opposed to Dutch and pan-European groups only). The Ford Foundation also solicited several proposals from our European grantees after the Berlin meetings.

The longer-term pay-off, we hope, is that this influx of resources will further strengthen the field, and will lead to a situation where we no longer have to step in to convene it. As more funding will start flowing, our focus on organizational development (which not all funders have) will be even more important as it will enable these organizations to better absorb the new money. Aside from the impact on our grantees, the funders we convened tell us that they are keen to have an ongoing conversation, which we will facilitate, to exchange information and jointly address the field's challenges. We will consider this funders' conversation a success if concrete collaborations emerge.

Upgrading policy work on surveillance reform

One of the biggest disappointments for us was the fact that civil society has found it difficult to advance meaningful policy reforms in the aftermath of the Snowden revelations. We made a reserve fund request, and spent some on litigation (which we think yielded promising results) and some on public communications (which we think was less successful). However, we had failed to recognize an important structural weakness of the field: Surveillance programs were being debated with an asymmetrical understanding of how such programs work, making an equal and informed debate difficult. We have a principled advocacy community in Europe with very limited insights into intelligence services' culture and operations on the one hand, and defense and security think tanks such as the UK Royal United Services Institute, which are much more informed on these issues but captured by the security and intelligence establishment, on the other hand. This means that we are lacking a credible and critical voice that can (1) argue that recent terrorist attacks were an intelligence failure that can't be fixed with more mass surveillance, (2) propose an effective policy response, and (3) meaningfully engage the corporate sector as a group of allies willing to push back against pervasive surveillance for business reasons. To respond, we have now tasked an expert group, consisting of representatives from the intelligence and law enforcement communities, oversight bodies, business and civil society, to develop a set of scenarios – including the creation of a new institution – for resourcing the voice and messaging that we currently lack.

Strengthening litigation capacity

As detailed above, it is worth highlighting the successful cases brought by our grantees in which European courts are upholding fundamental rights in the digital space. These cases are particularly important in a climate where policy makers tend to ignore those rights. We have funded litigation through both core and project support. However, we have concluded that the field's lack of capacity to strategically litigate in a coordinated way needs a bolder response, in particular because we see much potential in further exploiting the European fundamental rights framework and building on the early promising results. Accordingly, we are now leading an effort to build a multi-donor litigation fund for digital rights in Europe. We envisage that this fund will work with the field to develop a litigation strategy for particular priority areas (such as intelligence surveillance, and commercial data exploitation), and will provide both case and core support. The hope is that this fund will build the field's capacity to conduct strategic litigation, and will ultimately be replaced by core support to the field's leading litigating organizations.

3.2 Our work in Latin America

3.2.1 Building the field

As a result of core support grants, support for work with an organizational consultant, and some strategic project grants to foster collaboration, most of the Latin American groups we have funded – for example Derechos Digitales in Chile, Karisma in Columbia and R3D in Mexico – have become well-networked and prominent digital rights organizations in the region. They are well-respected by the authorities within their countries and have successfully advocated for public policy changes. The exception to this is Brazil, where the field is diverse, but weak and political turmoil in recent years

has made successful rights advocacy difficult. As our grantees have become stronger organizations they have attracted attention from other funders, as described above. It is also noteworthy that our grantees have been identified by leading international digital rights groups as key partners. For example, in 2015, Privacy International, which looks for strong, effective groups to become their global partners, has included R3D, Derechos Digitales, Karisma and Instituto de Tecnología e Sociedad (ITS) in their network.⁵

3.2.2 The field's impact

In recent years, the region has seen a wave of regressive cybercrime policies introduced in the legislatures of many countries. While the field is still young, our grantees have demonstrated that they can effectively fight those proposals. For example, our Colombian and Mexican grantees have already successfully mitigated these threats (for the time being) – in the Colombian example, Karisma led advocacy to significantly shift the scope and consultation process, and in the case of Mexico, R3D was able to launch a campaign that resulted in the bill being thrown out within two weeks. We are particularly glad to see our grantees support each other by sharing resources and expertise when one country is facing regressive legislation that has successfully been fended off in another.

However, an ongoing problem in these young, fragile democracies is ensuring that public interest laws are enforced once they are signed into law. For example, Marco Civil has been heralded as a triumph for digital rights advocates. However, two years after the bill was signed into law, it still has not been implemented let alone enforced. We believe that increased litigation capacity and greater public awareness of digital rights issues will help to hold administrations accountable for upholding the legislation they enact.

Unlike in Europe, Latin America has no central, overarching policy or legal framework. For this reason, as well as the fact that the Latin American digital rights field is several years younger than its European counterpart,⁶ we have yet to see this field achieve strong successes at the regional level, despite some early successes at the national level.

3.2.3 Reflections on decisions we made in implementing our strategy

Regional coordination

We believe the field could benefit from better regional coordination, for example to develop strategies for participation at regional or international fora or to support work in countries without their own professional digital rights groups. Derechos Digitales was keen to play the role of a regional leader and we have backed it to do so in 2013. In hindsight, we should have let this young field grow organically before funding a self-identified leader. Derechos Digitales has found the role more difficult than anticipated, and is struggling to garner respect as a regional intellectual leader. We are now thinking that there may not be one lead, but instead a division of labour that reflects the varying and complementary skillsets of the actors in the field.⁷ We also believe that stronger coordination throughout the field on regional issues will help to address one of the field's weaknesses: the fact that the field's work to date has been primarily to mitigate threats of regressive

⁵ As we expanded our portfolio, we prioritized countries with an environment open to civil society input and smart, committed activists. We are not yet funding some of the volunteer-based groups such as Hiperderecho in Peru, Fundación Datos Protegidos in Chile and Tedic in Paraguay, and are not currently funding Argentinian Asociación por los Derechos Civiles (ADC) and Via Libre because of institutional concerns.

⁶ We gave our first dedicated digital rights grant to CTS and IDEC in 2009 to begin public consultations on Marco Civil, and subsequently started building the field more generally in 2011.

⁷ For example, Pablo Palazzi, an Argentinian lawyer and academic has proposed bringing coordinated lawsuits challenging data retention laws in several Latin American countries, with the expectation of ultimately appealing to the Inter-American court system to create a strong ruling that would affect the whole region.

legislation, as opposed to shifting debate among the public and policymakers to advance policies that will protect digital rights.

Integration of digital and human rights community

One welcome development has been that, unlike in Europe, digital rights and human rights groups have organically started to collaborate in the region. As older human rights activists are replaced by younger ones, there is an increased understanding and interest in digital rights issues. Also, the digital rights groups often have deep technical expertise that traditional human rights groups are only slowly starting to acquire and they are seeking the newer groups out as partners. For example, Mexican journalists and human rights groups regularly turn to R3D for digital rights expertise. Additionally, Karisma is working with indigenous groups and organizations representing the victims of Colombia's conflict (DeJusticia, Colombiana de Juristas) in the context of surveillance reform efforts.

Brazil: Working in a volatile political environment

Our biggest disappointment is that our investments in Brazil have failed to grow a strong digital rights field in country. Our grantee ITS is increasingly international-facing; the consumer group IDEC is struggling with organizational capacity issues and is trying to remain relevant to its constituency; Coding Rights is still developing its mandate and focus (including how much it will engage on national issues); Intervoces is a media policy group, albeit with increasing interest in digital rights issues, that is primarily volunteer driven. There are several other promising new groups in the field as well (Internet Lab, Media Lab), but they are still establishing themselves. A weak field operating in a country facing a protracted political crisis has meant that the hopes we had pinned on Marco Civil have not been realized. We don't think that we necessarily backed the wrong players, but rather that the field is in transition and we are yet to find strong digital rights advocacy voices as we have done in other countries.

3.3 Cross-cutting themes

Countering dominant narratives

We think that the digital rights movement is facing a major challenge in communicating its concerns – in particular with regards to surveillance – more effectively, to decision-makers, other civil society fields, and the public at large. As part of the surveillance reserve fund request, we made some early attempts to address this problem: We awarded a grant to BritDoc for the impact distribution of Citizen Four, and we funded the Tactical Technology Collective for their exhibition on “The Quantified Life and the Social Question”. Recognizing that those individual grants won't move the needle, however, we have decided that we need to tackle this problem more systematically and have included a new concept in the Information Program's 2016-2019 strategy that will focus on strengthening civil society's ability to shape narratives and as a result more effectively mobilize the public and influence decision-makers.

Enlarging the forces

Even if we succeed in growing the core digital rights groups considerably, this community will never grow to the point that it will be able to confront the threats to digital rights by itself. Also, the issues are growing in complexity by the day, and are increasingly affecting society across different domains—the rise of the quantified society and how it will impact anything from law enforcement to economic justice is a good example. We have started responding to this challenge by funding new players such as the think tank Data and Society to start addressing the implications of quantified society issues. We have also funded collaborations across civil society fields. For example, together with OSIFE, we are funding Privacy International to work with members of the European Civil

Liberties Network to legally challenge surveillance by intelligence agencies in selected European countries.

3.4 Reflections on our theory of change

Does the digital rights movement we helped to build shape human rights compliant standards?

We have some evidence that this is happening. Civil society is celebrating wins including the adoption of a strong EU Data Protection Directive and the defeat of regressive cybercrime bills in Latin America. However, our overall feeling is that while our grantees are winning important battles, they may still be losing the war. Our proposition is that by addressing some of the structural weaknesses of the field as identified above – including lack of resources and capacity to effectively communicate, litigate and regionally coordinate as well as failure to mobilize other civil society fields – we may see a stronger movement emerge that will more decisively shape legal standards, corporate behaviour and the public’s attitudes on digital rights.

Are positive standards created in Europe and Latin America having spill-over effects elsewhere?

We believe there is some international reach and influence of European digital rights policy standards in certain areas such as data protection. For example, the EU Data Protection Directive has been emulated in more than 100 countries around the world.⁸ This is largely due to the fact that the EU makes adoption of its data privacy framework a condition for trade relations with other countries. The existence of Safe Harbour is evidence that there is at least the expectation that the US will respect European standards. Also, in areas where the U.S. approach is considered extreme (such as on intermediary liability), Europe is having influence both positively (or negatively as the Right to be Forgotten example shows).

We had hoped for a similar effect with the Brazilian Marco Civil. However, we have not seen significant ripple effects in this case. Instead, we see Hispanic laws being copied throughout the region – right now this is the case with a cybercrime legislation, which has been introduced in several countries including Mexico, Peru, Colombia and Brazil, among others, and was originally copied on Spain’s similar bill.

These insights lead us to amend our theory of change. While we observe global influence of European standards (driven by trade rules), Latin American standards are generally speaking not copied beyond the region. However, our proposition is that it is worth investing in Latin America in its own right, particularly because it is a region where we see rapid uptake of new technologies, the laws governing these technologies are still being formed, there is an incipient yet intelligent and active field of actors working to influence those laws, and policymakers who are willing to engage with civil society to improve legislation.

Are European and Latin American legal standards able to shape the behaviour of the powerful U.S. technology companies?

In light of the re-concentration of corporate power discussed above, we felt it is worth looking at this question. Our answer is yes, to some extent. The main evidence for this is the so-called “Brussels effect”, i.e. rules and regulations promulgated in the European Union have penetrated many aspects of economic life within and outside of Europe through the process of “unilateral regulatory globalization”. As Anu Bradford argues,⁹ “Because the EU has the world’s largest internal market, companies that want to trade with the union must decide whether to adopt one set of standards for Europe and another or multiple other sets of standards for the rest of the world. In most cases, they choose to adopt one standard—that of the EU. Therefore, despite its financial and political shortcomings, the EU is a major force in the global economy.” Data protection,

⁸ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2603529

⁹ https://www.law.columbia.edu/media_inquiries/news_events/2013/january2013/brussels-effect

as indicated above, and anti-trust are but two fitting examples for the “Brussels effect’s” impact on corporate behaviour.

That said, we are concerned about the rise of corporate power in the digital environment and have created two new concepts in the 2016-2019 Information Program strategy to address this challenge. The first will address the power of platforms like Google and Facebook; the second will aim to protect basic rights of citizens in light of the power of companies and governments to data-profile, nudge and control populations. Both concepts have a strong focus on the US in addition to the EU, and we are collaborating closely with U.S. Programs in implementing these elements of our new strategy.

3.5 Remaining questions

1. While our grantees are to some extent focused on engagement with international policy debates and we have, for example, just renewed our support to CSISAC, the body representing civil society at the OECD, we have not taken a specific focus on standards developed by international bodies. This is mostly because we believe global rule making for the internet is largely broken. However, we believe the technical standard setting bodies such as the Internet Engineering Task Force and the World Wide Web Consortium are important exceptions. We had proposed work on this to our advisory board in 2012, but the decision was not to pursue this as we did not have the necessary resources to make a difference. Is it worth revisiting this issue?

2. Our work and the players we fund are heavily focussed on shaping government laws and policy, which in turn impact corporate standards. This focus raises the question whether there are other routes we could consider to influence corporate behaviour, such as corporate social responsibility (CSR). We had experimented with CSR by being one of the founders of the Global Network Initiative, the first major CSR initiative in the digital rights field. Yet, after a few years of funding GNI we decided to discontinue support, mainly because we felt that our niche was to take a more aggressive approach to defending rights. Is CSR an approach we should revisit?

3. The Fealty to Information & Digital Rights portfolio is currently largely focussed on Europe and Latin America, because this is where, outside the US, we expect the field to most effectively influence standards. However, we are witnessing a wave of closing online space in less democratic regions of the world, with governments resorting to increasingly aggressive control tactics. Is there a role for us in those regions that we should explore? In particular, should we be doing more work in the Asia-Pacific region, as was proposed in last year’s strategy review meeting?

ANNEX

Our core grantees and examples of their successes

- **European Digital Rights**, the leading European digital rights voice in Brussels, succeeded in enshrining strong privacy standards in the new EU Data Protection Regulation, achieved a workable final agreement on “net neutrality”, and brought about an end to “voluntary” internet blocking (as a privatised law enforcement measure); EDRi could not succeed without its members, the strongest of which are our grantees and listed below;
- **Bits of Freedom**, the only professional Dutch digital rights group, led the country to be the first in the EU with net neutrality legislation in 2012, which in turn served as an influential example for the EU Directive adopted in 2015;
- **La Quadrature du Net**, the leading French digital rights group, is playing a central role not only on digital rights, but in France’s coalition defending fundamental rights, which it first brought together in the campaign “Presumes Terroristes” against the French anti-terrorism law in 2014;
- **Open Rights Group**, the UK digital rights group, which helped to establish transparency requirements for web blocking in UK copyright cases, secured the rights to parody and format shifting in UK copyright law, and plays a leading role in UK’s Don’t Spy on Us campaign, which succeeded in defeating the first Snoopers’ Charter;
- **Panoptikon Foundation**, a prominent Polish digital rights group, which successfully advocated for the removal of CCTV in primary schools and for smart metre data to be protected as personal data;
- **Digitale Gesellschaft**, the leading, professional German digital rights advocacy group, which played a leading role in the campaign for export controls of invasive surveillance technologies, and led a campaign for liability-exempt wifi networks, which motivated the German government to table a bill in 2015;
- **Stiftung Neue Verantwortung**, a Berlin-based think tank working with the governing coalition to draft a bill that will reform surveillance by the German surveillance agency BND;
- **Digital Rights Ireland** successfully sued the Minister for Communications resulting in the historic ruling of the Court of Justice of the European Union invalidating the European Data Retention Directive;
- **Karisma**, the leading Colombian digital rights group, which successfully advocated for digital rights protections in the cybercrime, copyright, and right to be forgotten bills;
- **Red en la Defensa de los Derechos Digitales**, a young and very talented Mexican digital rights group, defeated a regressive cybersecurity bill, and has legally challenged the data retention provisions in a 2014 telecommunications bill; the case has reached the Supreme Court;
- **Derechos Digitales**, based in Chile, worked with other NGOs to ban the use of surveillance balloons in two districts of Santiago and assisted in the acquittal of Rodrigo Ferrari, who was charged with identity theft after creating parody Twitter accounts;
- **IDEC**, the Brazilian consumer group, contributed to public consultations on the implementation of Marco Civil and the Data Protection Bill and launched a successful campaign to limit caps on data use on mobile and internet devices;
- **Instituto de Tecnologia e Sociedad (ITS)**, a Brazil-based think tank, that played a leading role in the campaign for Marco Civil and has successfully advocated to keep 40 vulnerable million smart phones connected;
- **Privacy International**, the leading international privacy NGO, conducted legal, technical and investigative research into the use of surveillance technologies worldwide, raised the level of the privacy debate at the United Nations and succeeded, along with others, in establishing a

UN Special Rapporteur on Privacy, and built a global network of NGOs capable and resourced to conduct advocacy and research to advance privacy;

- **Citizen Lab**, the global technical research center, has discovered FinFisher surveillance software installed on the computers of US and Ethiopian citizens, which led to lawsuits challenging unlawful government surveillance, and documented the Syrian government's use of internet filtering and surveillance devices made by Blue Coat Systems, which led the company to discontinue sales to Syria;
- **Civil Initiative on Internet Policy**, the leading digital rights NGO in Central Asia, negotiated with the Kyrgyz General Prosecutor's Office to prevent the blocking of YouTube and mail.ru (a Russian internet company), successfully advocated against legislation that would have required all websites to register with the Ministry of Justice, and worked to stop the government initiative to create a single register of the population.