

CHARTER OF BARCELONA FOR THE RIGHT OF CITIZENS IN THE DIGITAL ERA

CHARTER OF BARCELONA FOR THE RIGHTS OF CITIZENS IN THE DIGITAL ERA

THE BARCELONA BAR ASSOCIATION - ICAB

The Barcelona Bar Association (ICAB) is a Public Law Corporation of a professional nature, founded on January 17, 1833, and has its own legal personality and full capacity for the fulfillment of its public and private purposes, in accordance with the professional and collegial regulations.

Its mission can be summarized in guaranteeing the proper exercise of the legal profession, ensuring the citizens' rights and offering high-value solutions for its collegiate members.

The Barcelona Bar Association has always placed itself at the forefront of society's legal claims.

This desire to improve the quality of the legal life for all citizens impels us to now promote the Barcelona Charter for Citizens Rights in the Digital Era.

M^a Eugènia Gay, President of Barcelona Bar Association

Rodolfo Tesone, Council member of Barcelona Bar Association

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PRESENTATION

WHY A CHARTER OF CITIZENS' RIGHTS IN THE DIGITAL ERA?

The evolution of technologies in recent years has had an undeniable impact on our society.

Their application in production processes, research, acquisition of goods and services, means of communication, receiving information and interacting with people and institutions show that the impact of the technological revolution has a global scope and draws a new scenario in which the current legal systems may provide insufficient answers.

On the other hand, the improvements that technological developments can contribute to the quality of people's lives justify their promotion. However, such promotion must take place within a framework of respect of essential human rights and the democratic

principles that societies have achieved during their evolution.

The need for a new generation of personal rights, that addresses and focuses on this digital reality, so that the human being and its essential rights remain at their core, is already a demand shared by broad social sectors.

WHY BARCELONA?

The importance of the city of Barcelona, its undeniable legal tradition, its capacity to innovate, create and provide a response to global challenges, its consideration as a European hub of technological innovation and a digital technology business cluster of world renown, and which has a history of defence of personal rights, justify the name of this document: BARCELONA CHARTER OF CITIZENS' RIGHTS IN THE DIGITAL ERA.

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WHY THE ICAB?

Because the Illustrious Bar of Barcelona (ICAB) has historically led the legal demands of society to achieve advances and has been able to gather the will of universities, scientific centres, business-related institutions and experts in digital law to start this process.

AND NOW? WHAT ELSE?

This is not a closed document:

- We want more people to join it.
- We want to keep receiving contributions to its wording.
- We want to join initiatives in this same line.

CALENDAR

19 July 2018: First seminar to start the project.

July to November 2018: Studies and analyses of rights to be considered.

26 November 2018: Second seminar for the analysis of work materials.

December 2018: Drawing up of the first draft.

January 2019: Dispatch of the first document to the participating entities for suggestions and contributions.

February 2019: Study of the contributions and suggestions received.

21 February 2019: Public presentation of the Barcelona Charter of Citizens' Rights in the Digital Era.

March to October 2019: Dispatch of the document to international entities, inviting them to join the project and to take part in the construction of a text by sending their suggestions to the ICAB.

November and December 2019: Analysis of the contributions and drawing up of a consensual document.



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PREAMBLE

We have witnessed a true revolution favoured by globalisation and we are now living in a new digital era.

The development of society and economy in a globalised world depends, to a large extent, on a proper, fair and proportionate deployment of the information and knowledge society.

The information and knowledge society, as well as access to information and communications technologies (ICTs), is an essential part of the free development of personality.

ICTs are already a part of reality, and in order to guarantee a free exercise of fundamental rights and civil liberties, they must be legally and technically secure.

All people must be guaranteed a basic and inalienable access to information and communications technologies, including the internet, in order to minimise the effects of digital exclusion.

On the other hand, there is a high degree of disinformation about the implications of the use of information and communications technologies.

It is also noted that current legal systems have a complex challenge, difficult to address, in relation to the solution of digital conflicts and controversies.

For this reason, we need a new generation of personal rights, that address and focus on this digital reality and put human beings and their essential rights at the centre, that is, a new advance like the others that humanity has been achieving to this date in relation to human rights.

It is for this reason that we must recognise the following personal rights in the digital era:

1.- human rights and freedoms currently in force.

The human rights and freedoms contemplated in the international treaties and conven-

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tions in force are fully applicable to the information society and must be respected by all persons and public and private entities.

2.- right to digital identity .

All people have the right to free development of their personality in digital environments and to have their digital identity guaranteed as part of their personality.

In this regard, all people have the right to have their digital identity always active and interoperable in the digital environment.

3.- right to digital citizenship .

All persons have a right to digital citizenship, understood as a set of rights and obligations

as subjects interacting in digital environments and generating legal relations and obligations, especially as regards the responsible use of information and communications technologies.

4.- right to dignity and the free development of personality in the context of technological developments.

Digital technologies must be at the service of humanity to guarantee personal dignity and the free development of personality.

All people have the right to protection of their rights and legal interests in the context of new technological advances.

Consideration must also be given to every person's right to a decent life and not to be



discriminated in their access to essential services due to a lack of digital training.

5.- right to freedom and equality in the access to the digital environment.

All persons have the right to access digital and communications technologies without any discrimination by reason of birth, race, gender, religion, origin, opinion or any other personal or social circumstance. Also as an expression of personal freedom, all people have the right to voluntary digital connection.

6.- right to security of technological developments.

All people have the right to a technological infrastructure that is reliable, open and free, and whose use does not negatively affect or damage people or their rights.

The autonomy of technologically developed systems must be ultimately under the control of people, especially if personal rights and freedoms can be affected.

7.- right to intimacy and confidentiality in the digital environment.

All people have a right to intimacy, private life and the secrecy of their communications.

These rights must be also and especially guaranteed in the digital environment.

The confidentiality and privacy of personal communications must be guaranteed, as well as the right to use technology to ensure it and the prohibition of mass surveillance, without prejudice to the restrictions established by law to guarantee other rights and public security, with full respect, in this case, of individual rights and freedoms and with the appropriate judicial intervention.

The right to authenticate authorship and the integrity of contents must also be guaranteed.

8.- right to be forgotten and to digital memory.

As a consequence and as a development of the right to intimacy, to one's own image and to honour and personal reputation, all people have the right to be forgotten and to their digital memory. Mechanisms must be implemented for their effectiveness.

The right to be forgotten must ensure the removal of personal data recorded on digital media, provided that they are inappropriate and outdated, in accordance with and without prejudice to the due respect to freedom of expression and freedom of information.

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The right to digital memory shall allow persons to manage, maintain and preserve any contents under their property rights, as well as to establish guidelines for their digital inheritance or legacy, in case of death. It shall also include obligations for internet service providers and providers of other interconnected communication networks regarding the protection of the said contents and rights.

9.- right to protection of personal data.

All people have a right to control and manage their personal data and to their protection, as a development of the right to personal intimacy and privacy.

It is individuals who have to decide, out of their free will, about the assignment, use, processing and destination intended for their personal data.

Mechanisms must be established which allow to control the use of personal data in order to avoid abuse, illegal processing or use against their personal rights.

A right must also be recognised to transparency regarding the use of algorithms and criteria on which autonomous decisions are based.

The fundamental right to protection of personal data must guarantee the dignity of the person against any abuse arising from the economic exploitation of their data. Economic exploitation rights of personal data shall never prevail over

any personality right in the processing of natural persons' data.

10.- right to freedom of thought , expression and information in the digital environment.

As an expression of the freedom of thought, expression and information, all people are entitled to have the principles of transparency, proportionality and non-discrimination guaranteed, expressly forbidding any practice of blocking, restricting, filtering, slowing or prioritising contents available to users or any practice that is against the use of the network as an open space where all can participate with equal opportunities and with the guarantee of a free and transparent access to contents.

This right shall be exercised subject to the observance of the other personal rights, therefore guaranteeing the right to rectify and update any contents relating to people that are not of general interest.

Conditions must be established and necessary action taken in digital environments to facilitate and promote critical thinking as a guarantee of the freedom of opinion and the free exercise of people's political rights.

11.- right to digital education and professional training.

All people have a right to education and training in the knowledge and responsible



use of new technologies, as well as professional training in new technological means. Public administrations, in cooperation with technology businesses, must promote policies to remove the obstacles that hinder the use and access to new technologies, eliminating digital gaps, and to explain and promote the new rights and freedoms of citizens in the digital era.

12.- right to freedom of enterprise and technological developments.

The right to entrepreneurial freedom and business initiatives and the ability to economic exploitation of technology must be recognised, although with the limits imposed by the necessary respect of human rights and the principles of business ethics and corporate responsibility.

The business activity and R&D investment of the technology sector must take

into account national and supranational policies and appropriately contribute to the development of local and national innovation capacity, with a commitment to the transfer and spread of technologies and knowledge, bearing in mind the protection of intellectual property rights and commercial and business secrets, which must also be preserved in the digital environment.

Business activity must also take into account the technological development of the territories where it operates or from which it derives profits and promote local scientific and technological development.

The exploitation of intellectual and industrial property rights or the transfer of technologies must contribute to the long-term perspectives of the countries' sustainable development.

All technology must guarantee the respect of human rights by default and be designed

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with the purpose of observing the principles, rights and freedoms contemplated in this charter. The entities that create or develop any new technology are obliged to prove its respect for people's rights and freedoms.

Any business model must provide proof, before and during its exercise, of the fact that its form of production, exploitation and the economic, social and political effects on the society and the environment where it takes place, do not infringe the human rights and freedoms of people.

13.- right to intellectual property and technological environments.

Every person has the right to freely take part in the cultural life of the community, to enjoy the arts and to participate and

benefit from scientific progress through the digital environments.

Every person has the right to freely express and spread thoughts, ideas and opinions, to literary creation and to freely communicate or receive truthful information by any means.

Every person has the right to access information and cultural, artistic, scientific institutional and political contents, which shall not be prevented or altered by natural or legal third persons, including technological operators and states or national or supranational bodies, which must guarantee pluralism and cultural diversity.

Every person has a right to the protection of the moral and material interests and rights arising from the scientific, literary or artistic productions of which they are the authors.



The limits and exceptions to such rights shall only apply in certain special cases determined by law and so that they do not affect the normal exploitation of the work and do not unfairly impair the legitimate interests of the holders of such rights.

Creators have the right to the integrity of their work, to be identified, to decide about the work's exploitation and to obtain a remuneration according to the value it generates.

Every creator has the right to the opportunity of a larger distribution of their work in the digital environment under conditions of respect and with fairness, equity and transparency.

The states, technological operators and digital platforms shall strive to avoid any misappropriation of rights by third parties, as well as the dissemination of false contents, products or services, all of which without prejudice to the necessary respect to other rights.

14.- right to equality and prohibition of discrimination in the use of technologies.

Every person has the right to equal treatment and prohibition of discrimination in their access and use of technologies.

Attention must be paid to the removal of the different digital gaps and the prohibition of discrimination of any kind, based on an analysis of the information and behaviour in the network or in the use of technologies.

15.- right to protection of minors, persons with disabilities and other vulnerable groups.

Minors, persons with disabilities and other groups have the right to equal opportunities in the information and communication society. Universal access to digital tools and applications must be guaranteed through the use of standards that facilitate access under conditions of transparency, security and adaptation to special needs. They also have the right to:

- The promotion of the use of ICTs as a tool for education and integration.
- Special protection against the psychological impact that ICTs may cause.
- The creation of channels for complaints, protection and defence of rights and freedoms such as privacy, which are accessible and adapted to their needs.

16.- right to the protection of workers in technological environments.

With regard to labour relations and economic dependence, every person has the right to protection of their intimacy and privacy, to transparency in the use of algorithms that may affect their performance, to digital disconnection, to reconcile family and professional life, to the protection of health and to equal opportunities in the context of the use of different technological devices and developments.

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Public authorities and administrations shall pay special attention to groups that may have difficulties or be unable to access employment due to their lack of digital training, in order to ensure a decent life to all people.

17.- right to sustainable technological development.

Every technological development must also take into account the protection of the environment and a sustainable development. Businesses and user communities that promote technological developments with an excessive and disproportionate power consumption must promote the means to reduce such consumption as soon as possible.

18.- right to the protection of consumers and users in digital environments.

The development of technological products must be accompanied by guarantees as to the security of the people, who are entitled to know, through transparent formulas, the specific risks to rights and freedoms that the use of the different technological developments can involve and the measures that can be taken for a secure use of same.

Transparency and non-existence of backdoors must be guaranteed, as well as the right to know what a programme or technology does, the parameters on which

an autonomous system has relied to make a decision and the consequences of such decision on the rights and freedoms of users.

It must also be clearly and transparently specified the liability regime applicable to the decisions adopted by autonomous decision-making systems.

19.- right to digital asylum

In order to guarantee the free exercise of personality rights and personal freedoms in the digital environment, digital asylum shall be granted to those applicants who request it in the cases recognised by international conventions.

The right to digital asylum shall consist in removing the barriers or limitations that one or more states establish to prevent the free exercise of the rights and freedoms of the interested person, thus guaranteeing the dissemination of information, opinion and knowledge generated by such person.

20.- right to participate in public affairs.

All people have the right to take advantage of the possibilities provided by technological developments in relation to their participation in public life.

They also have the right to transparency and good public governance.



The right of access to public information must be protected, and observance of the provisions of good governance shall be guaranteed.

Citizens have the right to access and use the knowledge generated through their participation, understood as all the knowledge that has been directly or indirectly generated with mandatory financing obtained through taxation, with any data mandatorily provided or with the actions carried out as a consequence of an unavoidable obligation.

Public organisations are obliged to provide citizens with this knowledge in an accessible and easy manner, allowing open communities and recognising the right to open data and the use, as extensive as possible, of free, open-source and open-access software.

21.- right to effective protection in digital conflicts.

Public authorities must establish mechanisms to protect citizens' rights in the use of technological developments, guaranteeing all people an effective access to systems and mechanisms for conflict resolution that are effective, efficient, easily accessible, free and with rapid response, to compensate the economic, geographical and logistical differences among consumers and users of technological developments against developers and technology corporations.

Technological operators and digital platforms shall provide users and third parties with agile and accessible reporting and complaints channels and systems for conflict resolution, with full submission to the applicable jurisdiction.

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Legal systems must provide proportional answers and repair any damages caused.

Different countries must also establish protocols for international cooperation so that the current territorial system does not pose any difficulty to the exercise of people's rights in relation to the use of technological developments, and promote the creation of international courts and instances for the resolution of digital conflicts

This document is the first version dated in the month of January of 2019 and is subject to changes as a consequence of the contributions and suggestions provided by the entities cooperating in its wording with the ICAB.

For updated information or to take part in the process and adhere to the document, please see:

<http://digitalrightsbarcelona.org>



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