RECLAIMING FREE SPEECH

for Democracy and Human Rights in a Digitally Networked World

EXECUTIVE SUMMARY

by ***Rebecca MacKinnon***

Democracies across the world are struggling with how to counter disinformation and extremism without compromising citizens' freedom of expression and other human rights.

The problem of protecting free speech in relation to other rights is not new to the internet age. For the past century, American universities have grappled with the challenge of protecting free speech while also upholding core values of social justice, inclusion, and tolerance.

Universities and social media platforms are obviously very different. However, **lessons learned by universities about the challenge of protecting free speech while also advancing social justice can help policymakers ensure that U.S. domestic and international policies affecting the internet will strengthen democracy and human rights**. In *Reclaiming Free Speech for Democracy and Human Rights in a Digitally Networked World*, Rebecca MacKinnon, founding director of New America's Ranking Digital Rights and 2019-2020 fellow with the University of California National Center for Free Speech and Civic Engagement, offers a comparative analysis of free speech challenges in these online and offline spaces. The paper analyzes online and campus free speech issues, maps concerns and policy proposals raised by global civil society over the past fifteen years, and concludes with recommendations for U.S. policymakers. **In order to support democracy at home and around the world, the new U.S. administration must commit to working with global allies to ensure that domestic policies align with international human rights standards, and that policies foster a more diverse, decentralized, accessible, and equitable internet for all**.

This research paper is divided into three sections. The first section discusses the relevance of international human rights standards to U.S. internet platforms and universities. The second section identifies three common challenges to universities and internet platforms, with clear policy implications. The third section recommends approaches to internet policy that can better protect human rights and strengthen democracy. The paper concludes with proposals for how universities can contribute to the creation of a more robust digital information ecosystem that protects free speech along with other human rights, and advances social justice.

1. **International human rights standards are an essential complement to the First Amendment.** While the First Amendment does not apply to how privately owned and operated digital platforms set and enforce rules governing their users' speech, international human rights standards set forth a clear framework to which companies any other type of private organization can and should be held accountable. Scholars of international law and freedom of expression point out that Article 19 of the International Covenant on Civil and Political Rights encompasses not only free speech, but also the

right to access information and to formulate opinions without interference. Notably, this aspect of international human rights law is relevant in addressing the harms caused by disinformation campaigns aided by algorithms and targeted profiling. In protecting freedom of expression, private companies and organizations must also protect and respect other human rights, including privacy, non-discrimination, assembly, the right to political participation, and the basic right to security of person.

2. **Three core challenges are common to universities and internet platforms.** These common challenges must be addressed in order to protect free speech alongside other fundamental human rights including non-discrimination:

    - **Challenge 1: The pretense of neutrality amplifies bias in an unjust world. In an inequitable and unjust world**, "neutral" platforms and institutions will perpetuate and even exacerbate inequities and power imbalances unless they understand and adjust for those inequities and imbalances. This fundamental civil rights concept is better understood by the leaders of universities than by those in charge of social media platforms, which have clear impact on public discourse and civic engagement.

    - **Challenge 2: Rules and enforcement are inadequate without strong leadership and cultural norms.** Rules governing speech, and their enforcement, can be ineffective and even counterproductive unless they are accompanied by values-based leadership. Institutional cultures should take into account the context and circumstances of unique situations, individuals, and communities. For rules to have legitimacy, communities that are governed by them must be actively engaged in building a shared culture of responsibility.

    - **Challenge 3: Communities need to be able to shape how and where they enable discourse and conduct learning**. Different types of discourse that serve different purposes require differently designed spaces—be they physical or digital. It is important for communities to be able to set their own rules of engagement, and shape their spaces for different types of discourse. Overdependence upon a small number of corporate-controlled platforms does not serve communities well. Online free speech not only will be better served by policies that foster competition and strengthen antitrust law; policies and resources must also support the development of nonprofit, open source, and community-driven digital public infrastructure.

3. **A clear and consistent policy environment that supports civil rights objectives and is compatible with human rights standards is essential to ensure that the digital public sphere evolves in a way that genuinely protects free speech and advances social justice.** Analysis of twenty different consensus declarations, charters, and principles produced by international coalitions of civil society organizations reveals broad consensus with U.S.-based advocates of civil rights-compatible technology policy. These significant consensus documents include calls to:

    - Protect freedom of expression and privacy online;

- Enable universal access to the internet as a prerequisite for full and equitable participation in the public discourse;
- Hold government as well as companies appropriately accountable to ensure that they make and live up to clear commitments to protect human rights, regardless of frontiers or technology used;
- Require transparency and oversight of how government and companies access and use personal data, and how they shape what people can say or see online;
- Subject government surveillance programs and practices to human rights impact assessment and oversight mechanisms;
- Uphold the right to use encryption and related secure communications technologies that protect political dissent and investigative journalism; and
- Enable, support and incentivize greater diversity of commercial and non-commercial platforms and communication services.

The transition to a new U.S. administration also offers an opportunity for constructive re-evaluation and revision of the Obama administration's global internet freedom policy. While the United States and other major democracies worked together through much of the past decade to advance the common policy goal of a free and open global internet, they failed to make or implement clear commitments to protect other human rights on the internet, including privacy and non-discrimination. They also lacked the political will to integrate domestic and foreign policies into a coherent approach to internet policymaking grounded in universal human rights standards. The emphasis on a global free flow of information without sufficient attention to other human rights helped to maximize U.S. internet platforms' global dominance. There was no credible interrogation of – let alone effort to check – the ways that U.S. commercial social media platforms have exacerbated power imbalances and inequities in many societies, with harmful implications for human rights.

The next U.S. administration must commit to working with global allies not only to ensure that domestic policies align with international human rights standards, but also to foster a more diverse and decentralized information sphere. Different companies and nations hold asymmetric power over online speech and information flows. This asymmetry exacerbates global inequality and impedes internet users' freedom of expression in many countries. Policies that protect online freedom of expression and privacy must also be reinforced by complementary policies that expand the number and types of spaces for online discourse, in order to include more platforms over which communities have control and agency. Universities have a critical role to play in incubating, informing, and supporting the development of digital public infrastructure and spaces for civic discourse and engagement that protect free speech and uphold values of social justice—on campus and beyond.