

## **Defending rights and freedoms in the digital environment**

### **Connect.Reflect.Act Talk by Katarzyna Szymielewicz, President of Panoptikon Foundation and Vice-President of European Digital Rights**

#### **Abstract**

*One cannot take digital rights for granted and additionally assume that all people feel the same way about protecting data. This would be problematic. The issues faced in the digital world of rights are complex and fighting for better laws is one thing but what the Panoptikon Foundation does is offer individuals practical solutions for people's lives. Before creating solutions, the reality is that if people feel that their rights are not harmed, they then might not be concerned about data issues like Facebook suggesting relevant news. This narrative of having a trade-off of fundamental rights undermines the essence of fundamental rights. But it is more than that and this narrative creates the very real problem that in every political debate about digital rights we see a balancing of values: either security of freedom. This balancing is a false dilemma and the difficult part is explaining this to the wider public. The proposition is to use a "radical application of the proportionality test". Hard questions need to be proposed like, what kind of limitations are proportionate? Further, is it transparent information? The discussion needs to transcend beyond abstraction and use the data available to show the real impact of the measures that deserve criticism. Posing hard questions, providing access to public information, and legitimating our own access for data are among the beginning steps to become more than a "vulnerable consumer citizen".*

#### **Defending what?**

We are not only fighting for better laws but we offer people practical solution for people's lives. We also hear a disturbing distinction about my rights I care about and the rights of others I care about less. If people feel it does not harm them then they might not be concerned that Facebook might be only suggesting relevant news. That narrative brings up important and

troubling questions: Can we do trade-offs with fundamental rights? Can we imagine the state where some people have rights and others are deprived of these rights?

We need to reflect about the practical meaning of these abstract values and look at them in the context in which they function in people's normal lives. This is complex. People don't just want freedom of expression, access to info, privacy etc. We don't only find about better laws we also offer people practical solutions that they can use in their lives. This is when we hear about other values (comfort, accessibility) and a distinction about my rights vs other rights (which I care less about). That's why people may care less about privacy surveillance because it does not affect them personally.

However, can we as individuals do any trade off we like about our fundamental rights? Can we say we care more about browsing comfort than privacy? No. This approach undermines the essence of fundamental rights and freedoms. This is dangerous because it would mean only some have rights – which would make rights not universal. Snowden: "Your rights matter because you never know when you are going to need them."

## **Radical application of the proportionality test**

Our real problem is that in every political debate about digital rights we see balancing values – either security or freedom. Or it is either data autonomy or internet browsing. However, this is a false dilemma. But how do we explain this to the broader public? Her proposition is the radical application of the proportionality test. We need to question what kind of limitations is proportionate? We have to go beyond abstraction and use the data we have to show people the real impact of the measure we are criticising. Once we show the cost of the benefits we can become more convincing.

Another task is fighting for more transparency. For example, as long as search engine algorithms remain black boxes that we don't understand, we don't have a way to explain to others why these tools are intrusive. Thus, we need to start looking inside of these hidden machinery. The right direction is moving towards actions that will increase transparency and apply surveillance practices.

## What can we do?

She believes there is a lot we can do. We can ask questions. We can keep sending access to public information. We can litigate for our own access to data. We need to find the data and visualise it for others. And this is just the beginning. Once we increase transparency then we can come to the main point that there is no reason that anyone should sacrifice their freedom of expression just for a good quality internet experience. We may feel we are vulnerable consumer citizens compared to powerful states, but if we start acting together the balance of this relationship might shift.

Remember that this is just the beginning; once transparency is improved and we have the data and facts necessary to convince people that there is no real trade-off, and break out of the false dilemma.

If we can convince not only policy makers, but also users themselves, we can start for example a whole movement against Facebook. This could result in a shift of the power balance, giving citizens and users more power than big corporations and states.