

Wolfgang Benedek\*

## DIGITAL HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

### 1. INTRODUCTION

According to the Freedom on the Net Report 2023 “advances in artificial intelligence (AI) are amplifying a crisis for human rights online.”<sup>1</sup> In view of the ongoing decline of internet freedom and new threats to democracy and human rights by online disinformation and censorship empowered by generative artificial intelligence, the report asks for strong human rights-based standards for both state and nonstate actors when developing and employing AI tools.<sup>2</sup> Freedom House is only the most recent voice added to a chorus warning of the inherent threats in the new technological possibilities, while also recognizing the beneficial uses of AI. Very unusually, several representatives of companies involved in the competition for the development of ever more capable generative AI tools have asked for a moratorium and the regulation of their own activities.<sup>3</sup> This raises the question why they called an alarm, what are the major challenges at stake for digital human rights in this context, and how those could be identified and protected best in view of ongoing regulation efforts at the European and global levels.

### 2. NEW THREATS TO DIGITAL HUMAN RIGHTS

Digital Human Rights are to protect the online dimension of human rights.<sup>4</sup> They mainly relate to existing human and fundamental rights,

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1 Freedom House, 2023, *The Repressive Power of Artificial Intelligence*, Freedom on the Net 2023, (<https://freedomhouse.org/report/freedom-net/2023/repressive-power-artificial-intelligence>, 23. 10. 2023).

2 *Ibid.*

3 See Future of Life Institute, 2023, *Pause Giant AI Experiments: An Open Letter*, (<https://futureoflife.org/open-letter/pause-giant-ai-experiments/>, 23. 10. 2023).

4 Benedek, W., International Organizations and Digital Human Rights, in: Wagner, B., Kettemann, M.C., Veith, K., (eds.), 2019, *Research Handbook on Human Rights*

such as the freedom of expression and information and its limitations in order to protect people from disinformation, discrimination and hate speech.<sup>5</sup> Equally important is the right to privacy and data protection regulated in international conventions and the Generalized Data Protection Regulation (GDPR) of the EU, in force since 2018. Freedom from surveillance is an issue that has produced several judgments of the European Court of Human Rights in recent years.<sup>6</sup> There is also a debate on the need for new digital rights to better protect the digital self-determination of the individual, which has gained momentum with the recent developments of artificial intelligence.

The fears about new threats emanating from the development of ever more capable artificial intelligence tools do not come only from the human rights community but have been nourished by warnings from the technical community, including some developers themselves, who have alerted the public to the fact that they could no longer control the technological development. At the same time, they have been warning against any over-regulation that might slow down the creative potential of AI or produce competitive disadvantages. The concerns relate mainly to generative AI or foundational models of AI that can be used for unlimited purposes, while other systems with limited applications are not in the foreground. The hype around ChatGPT, which reached one million users within five days, alerted civil society and political communities. As a matter of fact, developers admit that they cannot fully understand the learning processes of AI, which appears like a black box, sometimes producing unexpected skills and sometimes totally wrong results known as “hallucination”.<sup>7</sup> Even Sam Altman, the head of OpenAI, which produced ChatGPT 3 and 4, called for the establishment of a new agency to license AI companies.<sup>8</sup> This nourishes dystopian fears and undermines the trust in AI systems. Accordingly, trustworthiness is a major condition before an AI system might be launched. Trust could also be promoted by open source-approaches, but this remains the exception as the codes utilized are generally not publicly available.

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*and Digital Technology, Global Politics, Law and International Relations*, Cheltenham, Edward Elgar, pp. 364 ff.

5 Benedek, W., Kettemann, M.C., 2020, *Freedom of Expression and the Internet*, 2<sup>nd</sup> ed., Strasbourg, Council of Europe Publishing.

6 See, in particular ECtHR, *Big Brother Watch v. United Kingdom*, no. 58170/13 and others, Decision of 25 May 2021 [GC].

7 See Weise, K., Metz, C., 2023, When A.I. Chatbots Hallucinate, *New York Times*, 9 May.

8 Clayton, J., 2023, Sam Altman: CEO of OpenAI Calls on US to Regulate Artificial Intelligence, *BBC*, 16 May (<https://www.bbc.com/news/world-us-canada-65616866>, 23. 10. 2023).

Unfortunately, not all developers have accepted a need to protect users against disinformation or bias. Based on the First Amendment to the US Constitution they argue that the right to freedom of expression also justifies the development of uncensored chatbots. They see the main responsibility with the users. For example, WizzardLM-Uncensored is capable of describing violent scenes. Furthermore, AI chatbots could also be trained to serve particular communities, reflecting their bias.<sup>9</sup>

This raises the question what are the major issues at stake in terms of digital human rights and artificial intelligence. The latter has the potential of benefitting society in many ways (beneficial AI), but also produces new risks of interfering with several basic human rights, such as the freedom from discrimination. If the AI systems are trained with any data available, they also reflect the bias existing in the society when it comes to jobs, credit lines, renting apartments, biases against women or the disabled, migrants, etc. AI systems mirror the society as it is, if care is not taken to eliminate discriminatory biases. Besides discrimination, AI can be easily misused for the amplification of disinformation and hate speech, for example through deep fakes, it can provide new powerful tools that undermine democracy by manipulating large groups of the population and feeding disinformation to voters.<sup>10</sup> Thus a few actors can do great damage to societies. The example of the Cambridge Analytica scandal, which manipulated people in the last US elections, provides a glimpse of what could become possible.<sup>11</sup> AI can be a major threat to election integrity, but it could also be used for fact-checking.

The main fear is of “disruption” of societal processes brought about by AI, as it may have a major impact on societal cohesion. This raises ethical issues that can hardly be addressed by the systems themselves, such as by an “ethical design” of AI systems. The challenge is to ensure that the new capabilities serve society at large and not only certain limited business or political interests.

The objective therefore is the development and deployment of a “responsible AI”, which would meet ethical, human rights and safety criteria, to eliminate as much as possible the negative effects, which is also

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9 See Thompson, S. A., 2023, Uncensored Chatbots Provoke a Fracas over Free Speech, *New York Times*, 2 July, (<https://www.nytimes.com/2023/07/02/technology/ai-chatbots-misinformation-free-speech.html>, 23. 10. 2023).

10 See Schaake, M., 2023, When It Comes to AI and Democracy, We Cannot Be Careful Enough, *The Guardian*, 2 October, (<https://www.ft.com/content/39b89be7-398a-4167-9eeb-58af97b764f3>, 23. 10. 2023).

11 See Kozłowska, I., 2023, Facebook and Data Privacy in Cambridge Analytica, *The Guardian*, (<https://www.theguardian.com/news/series/cambridge-analytica-files>, 23. 10. 2023).

important in order to gain the trust of the users. As new developments by tech companies usually are ahead of regulation in standard-setting and enforcement, their responsibility is called upon to voluntarily take emerging standards into account. For example, Microsoft published its responsibility standard consisting of accountability, transparency, fairness, reliability and safety, privacy and security, as well as inclusiveness goals for public comments and committed itself to impact assessments to identify significant adverse impacts.<sup>12</sup>

### 3. REGULATORY COMPETITION?

However, the issue of regulation of the development and application of AI did not emerge when the developers called alarm, it had already been taken up for some time by various actors, such as civil society and international organizations.<sup>13</sup> This followed from regulatory activities related to the Internet, online platforms or gatekeepers in different international and national forums. With regard to AI in particular, UNESCO and OECD have elaborated recommendations of (ethical) principles. Thus, UNESCO has quasi-unanimously adopted a recommendation on the ethics of artificial intelligence in 2021,<sup>14</sup> while OECD adopted its recommendation on principles of AI already in 2019.<sup>15</sup> Within the Council of Europe, in 2019 the European Commission for the Efficiency of the Justice (CEPEJ) published the European Ethical Charter on the use of artificial intelligence in judicial systems and their environment.<sup>16</sup>

After having studied the human rights issues in much detail, the Council of Europe engaged in the drafting of a convention on human rights and artificial intelligence, and the European Union (EU) has produced a

12 See, for example, Microsoft, 2022, *Microsoft, Responsible AI Standard v2*, June, (<https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE5cmFl>, 23. 10. 2023).

13 Benedek, W., International Organizations and Digital Human Rights, in: Wagner, B., Kettemann, M. C., Veith K. (eds.), 2024, *Research Handbook on Human Rights and Digital Technology: Global Politics, Law and International Relations*, 2<sup>nd</sup> ed., Cheltenham, Edward Elgar, pp. 364 ff.

14 See UNESCO, 2022, *Recommendations on the Ethics of Artificial Intelligence*, Paris, UNESCO, (<https://unesdoc.unesco.org/ark:/48223/pf0000381137>, 23. 10. 2023); see also Kirchschaeger, P. G., 2021, *Digital Transformation and Ethics*, Baden-Baden, Nomos.

15 See OECD, 2019, *Recommendation of the Council on Artificial Intelligence*, (<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>, 23. 10. 2023).

16 See European Commission for the Efficiency of the Justice (CEPEJ), 2019, *European Ethical Charter on the use of artificial intelligence in judicial systems and their environment*, Strasbourg, CEPEJ (<https://book.coe.int/en/computers-and-law/7842-european-ethical-charter-on-the-use-of-artificial-intelligence-in-judicial-systems-and-their-environment.html>).

proposal for an Artificial Intelligence Act (AIA), which is presently being finalized between its main institutions. There is some regulatory competition between international organizations, which calls for closer cooperation. As regional and state regulation takes a lead, issues of regulatory fragmentation may arise, requiring the interoperability of the created legal standards.

There are the questions of whether international oversight should be institutionalized, which form it may take, and what is the role of digital human rights. The World Summit on the Information Society of 2003 and 2005 did only establish the Internet Governance Forum (IGF) with a small secretariat based at the United Nations in Geneva. Since 2006 the IGF has been meeting on an annual basis in a multistakeholder format in varying regions of the world, to discuss all matters of Internet governance.<sup>17</sup> It does not take any decisions nor can it make recommendations, but rather it acts as an open consultation space for everyone interested. Since 2012 the Human Rights Council on a biannual basis adopted a resolution according to which “the same rights people have offline must also be protected online.”<sup>18</sup> Since 2021 another biannual resolution of the Human Rights Council deals with “new and emerging digital technologies and human rights”. It focuses on the protection of human rights with regard to artificial intelligence systems.<sup>19</sup>

Since about 2018 the United Nations has become more active regarding Internet governance. The Secretary-General established a High-Level Panel on Digital Cooperation<sup>20</sup> and in 2022 a Leadership Panel for the annual Internet Governance Forum (IGF).<sup>21</sup> To improve global digital cooperation he also introduced the Office of the Secretary General’s Envoy on Technology in 2022 and presently is preparing a Global Digital Compact, identifying “shared principles for an open, fair and secure digital future for all,” to be adopted by UN Global Summit on the Future in 2024. The draft contains many references to human rights.<sup>22</sup> In 2023 the Secretary-General

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17 Benedek, W., Bauer, V., Kettemann, M.C., (eds.), 2008, *Internet Governance and the Information Society*, The Hague, Eleven International Publishing.

18 See for the last resolution Human Rights Council, Resolution 47/16 of 13 July 2021 on the promotion, protection and enjoyment of human rights on the Internet.

19 See Human Rights Council Resolution 53/29 of 14 July 2023.

20 See for the Digital Cooperation Panel (<https://www.un.org/en/sg-digital-cooperation-panel>, 23. 10. 2023).

21 On the establishment of the Leadership Panel of the Internet Governance Forum see UN Secretary-General, 2022, Internet Governance Forum Leadership Panel, (<https://www.un.org/sg/en/content/sg/personnel-appointments/2022-08-16/internet-governance-forum-leadership-panel%C2%A0>, 23. 10. 2023).

22 United Nations, Office of the Secretary General’s Envoy on Technology, Global Digital Compact, (<https://www.un.org/techenvoy/global-digital-compact>, 23. 10. 2023).

established a multistakeholder High-Level Advisory Body for Artificial Intelligence which is to report back on options for global AI governance. This includes the possibility of a new UN agency being created.<sup>23</sup> At the IGF 2023 in Kyoto the Secretary-General repeated his calls for reinforcing human rights and a human-centered approach to digital cooperation.<sup>24</sup>

What the debate has added is a sense of urgency, as the training of ever more powerful AI tools is moving ahead quickly in a context of fierce competition, which leaves little space for considerations of digital human rights. In general, social media platforms have shown that they give priority to business over user rights. X (formerly Twitter), under the new leadership of Elon Musk, has fired most of its trust and safety teams and now has to explain to the European Commission, acting under the Digital Services Act, why it did not remove illegal content and disinformation spreading terrorism and violent content and hate speech, in order to avoid high fines.<sup>25</sup> YouTube has declared that it is no longer prepared to remove false claims about past elections.<sup>26</sup> This explains why a soft law approach would not be enough to cope with the forces of competition and fundamentalist free speech ideas. Accordingly, the Council of Europe and the EU have set out a hard law approach. But looking at the first drafts of the future convention of the Council of Europe it becomes clear that the enshrined principles need further elaboration in domestic legislation in order to produce an impact. In addition, general hard law regulations will have to be complemented by more specific soft law recommendations.

Therefore, the AIA of the EU, which contains specific obligations and standards, appears better suited to achieve tangible results. The United States, where most of the companies that are part of the race for the future dominance of the market are based, is also working on a regulation, which started with the elaboration of an AI Charter of Fundamental Rights, which is to contain universal guidelines for AI. However, this legislation expressly is to serve the American people first, while having a universal

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23 Henshall, W., 2023, How the UN Plans the Future of AI, *Time*, 21 September, (<https://time.com/6316503/un-ai-governance-plan-gill/>, 23. 10. 2023).

24 See the address of the UN Secretary-General, 2023, Secretary-General's video message to the Internet Governance Forum, 9 October, (<https://www.un.org/sg/en/content/sg/statement/2023-10-09/secretary-generals-video-message-the-internet-governance-forum>, 23. 10. 2023).

25 See European Commission, 2023, The Commission sends request for information to X under the Digital Services Act, 12 October, ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4953](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4953), 23. 10. 2023).

26 See Reuters, 2023, YouTube to stop removing content making false claims on past elections, *Reuters*, 2 June, (<https://www.reuters.com/technology/youtube-stop-removing-content-making-false-claims-past-elections-2023-06-02/>, 23. 10. 2023).

appeal.<sup>27</sup> The European Union too is hoping for a “Brussels effect” of its AIA once adopted, which is expected in 2024 at the earliest. This has at least partly been achieved in the case of the GDPR. Like in the case of data protection, it can be expected that the EU will try to impose higher protection standards, while both the US and the EU emphasize that any regulation should not curb the creative and beneficial potential of artificial intelligence. Actually, the call for regulation from the developers themselves shows that regulation is not per se considered as limiting technological progress. But there are also other actors, such as China, which has already adopted its own regulation emphasizing that its content should reflect basic values of socialism and must not interfere with the social and economic order.<sup>28</sup>

#### 4. THE CONTENTS AND DEVELOPMENT OF DIGITAL HUMAN RIGHTS

What then is the role of digital human rights and how can they be achieved? And is there a need for new digital human rights? There have been numerous proposals by various actors, civil society and international organizations, but also states such as Spain, which adopted a Charter on Digital Rights.<sup>29</sup> Previously, in the context of the Internet Governance Forum, the Association for Progressive Communications (APC) already produced the Internet Rights Charter in 2006, on the basis of which the Dynamic Coalition on Internet Rights and Principles, established at the IGF in Rio in 2007, engaged into the elaboration of the Charter of Human Rights and Principles for the Internet, drafted in a broad process mainly by civil society and academia and presented in 2011. The Charter is based on the Universal Declaration of Human Rights, in order to interpret it and other key UN human rights documents.

In 2016, several proposals for new digital human rights were launched, such as the Charter of Digital Fundamental Rights of the European Union, elaborated by a group of mainly German experts and

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27 White House Office for Science and Technology, 2022, *Blueprint for an AI Bill of Rights, Making Automated Systems Work for the American People*, October, (<https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>, 23. 10. 2023).

28 See the text of the draft law, Cyberspace Administration of China, 2023, *Measures for the Management of Services of Generative AI*, April, ([http://www.cac.gov.cn/2023-04/11/c\\_1682854275475410.htm](http://www.cac.gov.cn/2023-04/11/c_1682854275475410.htm), 23. 10. 2023).

29 See Ministry of Economic Affairs and Digital Transformation, *Charter of Digital Rights*, (<https://derechodigital.pre.red.es/>, 23. 10. 2023).

updated in 2018.<sup>30</sup> The idea was to complement the EU Charter on Fundamental Rights, which became binding as part of the Treaty of Lisbon in 2009. For example, it requires that the criteria for automated decisions, such as on digital profiling, must be transparent and taken by natural or legal persons. Every person must have a right to independent review of such decisions by a human being. The rights should apply to the EU, state and non-state actors, such as Internet platforms.

In December 2022 a European Declaration on Digital Rights and Principles for the Digital Decade, which also contains rights related to the use of artificial intelligence, was jointly adopted by the European Commission, the European Parliament, and the Council.<sup>31</sup> It focuses on principles and contains a commitment to access for everyone to high-quality connectivity, the protection of an open and neutral Internet, and to fostering participation in the digital public space.

One basic right is the right to informational self-determination, which puts the human person in command of its interaction with new technology. Accordingly, there should be a digital right to be informed whether a text or picture has been produced by AI and whether one is interacting with a human person or not. In the case of interaction with AI, there should be a right to have the final decision made or at least controlled by a human person (“humans in the loop”). There has to be a right to a remedy against decisions taken with the involvement of AI. Also, the right to be forgotten has gained recognition in academia and, having been recognized by the European Court of Justice, was also included in Article 17 GDPR.<sup>32</sup> A recent Grand Chamber decision of the European Court of Human Rights shows that the right to be forgotten is also recognized by this court.<sup>33</sup>

Regarding the progressive development of digital human rights, in most cases an evolutive interpretation of existing human rights, enlarging them to the online environment, will suffice. For example, the freedom of expression, which also knows certain limitations, can be applied to hate speech and fake news on the Internet; the right to privacy can also cover the right to anonymity on the Internet; the right to data protection can be interpreted to also cover personal data on the Internet, but both the

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30 See Charter of Digital Fundamental Rights of the European Union, (<https://digital-charta.eu/wp-content/uploads/DigitalCharter-English-2019-Final.pdf>, 23. 10. 2023).

31 See at European Commission, 2022, Declaration on European Digital Rights and Principles, 25 January (<https://digital-strategy.ec.europa.eu/en/library/declaration-european-digital-rights-and-principles>, 23. 10. 2023).

32 See Pucinelli, O., The Right to Be Forgotten 2.0, in: Arnauld, A. von, Decken, K. von der, Susi, M., (eds.), 2020, *The Cambridge Handbook on New Human Rights, Recognition, Novelty, Rhetoric*, Cambridge, Cambridge University Press, pp. 300 ff.

33 ECtHR, *Hurbain v. Belgium*, no. 57292/16, Decision of 4 July 2023 [GC].

Council of Europe by its modernized Convention 108+ and the EU by the GDPR have found it necessary to draft new binding provisions.<sup>34</sup>

There are a few needs for protection that could be better addressed by new digital rights, although the distinction between existing and new rights is not always clear. For example, the right of access to the Internet has gained much support at the national and international level.<sup>35</sup> For some, digital human rights might be seen as interpretations of existing rights, while others might already recognize new rights. In any case, for states it will always be easier to accept them as interpretations of existing rights as it is nearly impossible to reach general acceptance of new rights in the international community as it stands, the exception being the right to a clean and healthy environment, adopted in a non-binding resolution of the General Assembly in 2022.<sup>36</sup> Their development through subsequent practice and customary law might be easier to achieve, which requires pertinent state practice.

With regard to the protection or provision of human rights in the context of artificial intelligence, after much preparation the Council of Europe decided to elaborate a convention on the regulation of artificial intelligence and human rights, drafted by its Committee on Artificial Intelligence (CAI) as a common legal instrument which will have a global appeal. A first version has already been made public,<sup>37</sup> mainly containing obligations and principles to respect existing human rights, as applied to the online environment, but it does not formulate new digital human rights.

The draft AIA of the European Union responds to the threats identified by a risk-based approach. Accordingly, unacceptable risks in the development and application are addressed by prohibitions, high-risks by extensive risk management requirements, transparency and the principle of human oversight, while no restrictions apply to low or minimal risks.<sup>38</sup> Violations of fundamental rights, vulnerabilities of specific groups

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34 See Pajuste, T., The Protection of Personal Data in the Digital Society: The Role of the GDPR, in: Susi, M., (ed.), 2019, *Human Rights, Digital Society and the Law, A Research Companion*, Abingdon, Routledge, p. 303.

35 See Cali, B., The Right to Meaningful Access to the Internet, in: Arnould, A. von, Decken, K. von der, Susi, M., (eds.), 2020, *The Cambridge Handbook on New Human Rights, Recognition, Novelty, Rhetoric*, Cambridge, Cambridge University Press 2020, p. 276.

36 See UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).

37 See Council of Europe, Committee on Artificial Intelligence, 2023, Revised Zero Draft (Framework) Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, 6 January, (<https://rm.coe.int/cai-2023-01-revised-zero-draft-framework-convention-public/1680aa193f>, 23. 10. 2023).

38 European Commission, Proposal for an Artificial Intelligence Act (AIA) of 21 April 2021, COM (2021) 206 final.

and the manipulative or exploitative potential of AI are to be taken into account. This resembles the “precautionary principle” in international law, according to which high risks are best addressed by a prohibition or moratorium on the new technology.<sup>39</sup> Social and human rights impact assessments are suggested, in addition to risk management.<sup>40</sup> For example, the Ministerial Committee of the Council of Europe has recommended human rights-impact assessments and produced a set of guidelines.<sup>41</sup> The AIA also provides for new oversight bodies, such as the European Artificial Intelligence Board.

However, Civil Society Organizations (CSOs) have also called for a number of amendments to the AIA, to strengthen its impact on fundamental rights.<sup>42</sup> In addition, some 180 CSOs and experts also requested governments to stop facial recognition by law enforcement and private companies, which also may use AI.<sup>43</sup>

In June 2023, the European Parliament adopted its final position on the draft AIA.<sup>44</sup> While unacceptable risks, such as social scoring, real time and remote biometric systems and cognitive behavioral manipulation of people, should be prohibited, all AI systems that negatively affect safety and fundamental rights are considered as high-risk, for which purpose eight specific areas – ranging from biometric identification to asylum, migration and border management – are identified, which have to be registered in an EU database.<sup>45</sup> Presently, the trialogue between the EU institutions is taking place, with the aim of producing a final draft that could

39 See Botes, M., 2023, Regulating Scientific and Technological Uncertainty: The Precautionary Principle in the Context of Human Genomics and AI, *South African Journal of Science*, Vol. 119, No. 5/6, pp. 81–86.

40 Mantelero, A., 2022, *Beyond Data. Human Rights, Ethical and Social Impact Assessment in AI*, Berlin, Springer.

41 Recommendation CM/Rec(2020)1 of the Committee of Ministers to Member States on the human rights impacts of algorithmic systems of 8 April 2020, ([https://search.coe.int/cm/pages/result\\_details.aspx?objectId=09000016809e1154](https://search.coe.int/cm/pages/result_details.aspx?objectId=09000016809e1154), 23. 10. 2023).

42 See An EU Artificial Intelligence Act for Fundamental Human Rights: A Civil Society Statement, (23. 10. 2023).

43 See Edri, 2023, Global civil society and experts statement: Stop facial recognition surveillance now, 26 September, (<https://edri.org/our-work/global-civil-society-and-experts-statement-stop-facial-recognition-surveillance-now/>, 23. 10. 2023).

44 European Parliament, 2023, AI Act: a step closer to the first rules on Artificial Intelligence, 11 May, (<https://www.europarl.europa.eu/news/en/press-room/20230505IPR84904/ai-act-a-step-closer-to-the-first-rules-on-artificial-intelligence>, 23. 10. 2023); see also the Amendments adopted by the European Parliament of 14 June 2023, ([https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.html), 23. 10. 2023).

45 See European Parliament, 2023, EU AI Act: first regulation on artificial intelligence, 14 June, (<https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>, 23. 10. 2023).

enter into force in 2024 or 2025, which is somewhat late in view of the urgency of the matter.

## 5. CONCLUSION

In conclusion, there is no point in refusing further development of generative artificial intelligence, just like there was no point in stopping the Internet. However, given the level of potential threats, there is a need for robust action to protect the digital human rights of users subjected to AI. In this effort the digital human rights might be further specified mainly through the interpretation of existing human rights, but new digital human rights may also evolve in the process. Regarding the digital transformation that we are facing, the questions is whether it will follow a business rationale or the human needs rationale to be protected by digital human rights. Recent debates have increased public and political awareness and confirmed that a soft-law approach or self-regulation by companies is insufficient to regulate the dynamics of the development and application of ever more powerful generative AI systems. Accordingly, hard law approaches are presently prevailing, while soft law approaches, such as codes of ethics, remain relevant. However, there is danger of the fragmentation of international regulation as a situation may evolve in which different competing regulations are claiming to apply globally. However, only the Council of Europe convention allows for outside participation in its development. This raises the question of international cooperation in the otherwise competitive regulation efforts.

In this context, digital human rights can serve as a common standard as much as they are derived from universal human rights or the result of universal cooperation. Alternatively, the European region may go ahead as it has done in the past and hope for a “Brussels effect” of its approach. However, with regard to artificial intelligence systems, this is rather unlikely as major developments take place outside Europe, in the private sphere, which is anyway difficult to control. Therefore, the efforts of the United Nations merit more attention and support as it appears to be the only forum where the international community can meet and seek agreements on common principles and standards of regulation based on digital human rights.

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