The Digital Rights Movement in Latin America

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Abstract

This study presents a brief and partial history of the Latin American digital rights movement. It seeks to tell its story, as situated within a broader frame of normative commitments regarding Internet freedom threatened by regulation. This phenomenon—that we call "regulatory threats"—is hypothesized (H1) as the main explanation for the rise of the movement in Latin America, something that is both consistent with theory and the history of the movement elsewhere. The paper also introduces the concept of "regulatory displacement" to describe both the challenging nature of Internet governance and the fact that the power of regulating the Internet lies—to a relevant extent—outside the narrow scope of nation states. We consider this phenomenon to be particularly acute in Latin America, and we pose that this must have affected the way the Latin American movement developed (H2). We test both hypotheses against two datasets, one formed by coded interviews with ten activists conducted towards the end of 2021 and a database of projects and publications built from the websites of seven Latin American organizations, covering the period 2000-2021. We produce a descriptive account based on traditional concerns and concepts in social movements research, such as political opportunities, access to resources, organizational modes, repertoires of action, and so on. We consider that our data strongly supports the first hypothesis and partially supports the second one, although further research is needed. Some of the challenges identified within the movement in terms of influencing the political process are consistent with "regulatory displacement", a fact that shapes the way the movement has developed until now and will likely affect its future.

Keywords social movements, digital rights, Latin America, NGOs, freedom of expression, privacy

The emergence and expansion of the Internet in the late twentieth century radically changed how we communicate with others.[1] The avenues through which the information we produce flows became more open, more accessible, more efficient, and more chaotic. The consequences on human history of this single technological change are not easy to fathom, and perhaps it is too soon to entertain an hypothesis. But change did happen, and several lines of inquiry opened up in its aftermath. In this paper we contribute to the one that studied the social movements that emerged around the Internet *itself*. As a technology that deeply affected vital human experiences and social processes, the Internet became a locus of political contention around regulatory initiatives that sought to shape a technology apparently designed to repel control.[2] Several individuals fought to resist those regulations. A social movement, or many social movements, were thus born. This paper looks at how what we call the digital rights movement (DRM, hereinafter) emerged in Latin America. It proceeds in the following way.

The first section presents our first hypothesis and reviews the literature on social movements that is specially concerned with explaining them. A sense of injustice based on some normative commitment has often been proposed as a necessary condition for the involvement of individuals in activities of contention.[3] But it has never been proposed as sufficient: access to resources and taking advantage of political opportunities are usually seen as necessary for collective action to emerge. The first iteration of the DRM was indeed born around a perception of risk: regulatory and technological proposals threatened core normative values attached to the Internet. This part of the story is mainly about the United States, the country where the Internet was created and from where it expanded. Through a review of secondary literature, we discuss the early moments of movements organized

1 M. Castells, *Networks of Outrage And Hope: Social Movements in the Internet Age*, Second edition, Polity Press, Cambridge, UK ; Malden, MA, 2015, p. 6 ("sharing meaning through the exchange of information").

2 L. Lessig, *Code*, Version 2.0, Basic Books, New York, 2006; E. Morozov, *The Net Delusion: The Dark Side of Internet Freedom*, 1st ed, Public Affairs, New York, 2011; T. Wu, *The Master Switch: The Rise and Fall of Information Empires*, 1st, Vintage Books, New York, 2011; J. Zittrain, *The Future of the Internet and How to Stop It*, Yale University Press, New Haven [Conn.], 2008.

3 D. McAdam; S. Tarrow; C. Tilly, *Dynamics of Contention*, Cambridge University Press, Cambridge ; New York, 2001; C. Tilly; S. Tarrow, *Contentious Politics*, 2nd edition, Oxford University Press, New York, NY, 2015.

around the Internet, such as the free and open source, the free culture, the civil libertarians, and the privacy advocates, to describe a handful of movements that have been researched in the last few years,[4] from where multiple initiatives, organizations, and individuals, came from.

Our first hypothesis then is that *regulatory threats* are an important milestone in the emergence of an Internet-centered social movement. They provide legal and political opportunities for mobilization and organization, including access to resources, the perceived worthiness of a cause, some degree of people who join around it, and so on. This perceived injustice creates the necessary, but not sufficient, conditions for mobilization.[5] This seems to be the case both in the United States and in Latin America. Proposed changes in the legal landscape introduced to regulate how the Internet operates—to allocate rights, duties, and responsibilities among different actors—seem to have played an important part in the social processes that led to the emergence of activists, organizations, and—with time—movements. They mobilized to protect the technology from regulatory changes that would have impaired or falsify the promises involved in its decentralized nature.

However, with the passing of time, regulatory threats *receded*. This assessment is based on the literature that has explored how the "sites of norm articulation"[6] where Internet regulation takes place have multiplied in the last few years: they have become more diffuse and distant. To an extent, they have moved away from the paradigm of the nation state as the primary locus of norms production. In the second section we present this phenomenon as a challenge to one of the conditions that usually favors the emergence of social movements: access to decision makers. The dislocation of regulatory power deprived activists of the access that is much needed to mobilize effectively. This phenomenon is somewhat more intense in Latin America (and other peripheral regions of the world), for a myriad of reasons, includ-

4 C. J. Bennett, *The Privacy Advocates: Resisting the Spread of Surveillance*, MIT Press, Cambridge, MA, 2008; H. Postigo, *The Digital Rights Movement: The Role of Technology in Subverting Digital Copyright*, The MIT Press, Cambridge, Mass, 2012; J. Söderberg, *Hacking Capitalism: The Free and Open Source Software Movement*, 1st edition, Routledge, New York, 2012.

5 C. Tilly; L. J. Wood, *Social Movements, 1768-2012*, Paradigm Publishers, 2008.

6 R. Siegel, "The Jurisgenerative Role of Social Movements in US Constitutional Law," Seminario en Latinoamérica de Teoria Constitucional y Politica, Oaxaca, Mexico, July 7, 2004.

ing the relative small size of markets, limited revenues sprouting from the region, jurisdictional challenges, enforceability problems and the dynamics of scale economics. Time made it more and more apparent that the power of these peripheral states to impose duties and obligations—that is, to *effectively* regulate the Internet—was limited, at best. Our second hypothesis (H2) is thus based on this premise: if regulatory threats *receded* social movements organizations (SMOs) must have adapted to the scenario in a myriad of ways. We predict three specific effects: the broadening of agendas, new repertoires of action, and innovative strategies that seek to adapt to the displacement of Internet regulation. We do not claim that these effects are the consequence of the displacement of regulatory threats, but—more humbly—that they are consistent with it.

We test both hypothesis against two sets of data, that we introduce in the third section along a brief description of our method. The first dataset is comprised by coded interviews we conducted in late 2021 with individuals we identified as central to the Latin American digital rights movement. The second one is a database of projects, documents and outputs compiled on organizations that form the movement. These databases allowed us to inquire into the framing strategies and agendas of Latin American SMOs, and to track changes through time. We analyze the data in the fourth section.

We conclude—in the fifth and final section—that the data we gathered strongly supports the first hypothesis and partially supports the second one. In our research, the presence of a regulatory threat was significant in launching the careers of many of the activists involved, and they were instrumental in generating the conditions for the creation of SMOs around Internet freedom. With the passing of time, however, we see organizations "branching out" in different directions: from narrow legislative debates they moved towards producing research, engaging in advocacy aimed at the general public, doing strategic litigation, and so on. We argue that the the partial displacement of regulation to the private and international spheres may explain at least some of these shifts. These findings seem important for a better understanding of the strategies and approaches of Latin American organizations, the specific challenges they face in promoting an open and free Internet, and the dilemmas posed to them by a set of factors, including—

significantly—geographical and social distance from many places of regulatory decision-making. We introduce limits to our inquiry and introduce questions that merit further research in the conclusion.

The Emergence of the Digital Rights Movement

A social movement is "a distinctive form of contentious politics—contentious in the sense that social movements involve collective making of claims that, if realized, would conflict with someone else's interests, politics in the sense that governments of one sort or another figure somehow in the claim making, whether as claimants, objects of claims, allies of the objects, or monitors of the contention."[7] This approach, that we take as a point of departure, is useful to describe the way the digital rights movement emerged around the Internet, and in particular in the form of claim-makers who advanced a specific normative vision about how the Internet should be regulated.[8]

This movement is—as almost everything related to the Internet—a moving target.[9] Under the chosen label, many different individuals and organizations can be included for categorization purposes. To an extent, how broader or narrowly the movement is defined depends on the discretion of the researcher and how much she is willing to accept the existence of "digital rights" in and of themselves [10]. In this paper, we consider the digital rights movement (DRM) to be first and foremost about Internet regulation, broadly understood as the way laws interact with the code that defines how

7 C. Tilly; L. J. Wood, *Social Movements, 1768-2012*, cit., p. 3.

8 R. Cover, "Foreword: Nomos And Narrative," Harvard Law Review, vol. 97, 1983.

9 M. Mueller, *Networks and States: the Global Politics of Internet Governance*, MIT Press, Cambridge, Mass, 2010, p. 12 ("Despite this, the scholarly literature on global governance and social movements has all but failed to notice this sector…One reason for this oversight is the tendency to think of the Internet as a tool that enables policy advocacy rather than as an object or target of political action"); H. Postigo, *The Digital Rights Movement*, cit., pp. 5 ("When I first started writing about it in 2006, it seemed very much a movement about consumer rights in digital content, concerned primarily with the technological impediments to digital media consumption and the laws that abetted them. But today the movement is more than that").

10 C. J. Bennett, *The Privacy Advocates*, cit, 48 ("That there is a separate set of 'digital rights,' which are an extension of more fundamental civil rights and liberties, is controversial. The belief, however, frames the work of a number of national and international organizations…"). *See* also M. Mueller, *Networks and States*, cit, 152-154 (discussing the *Access to Knowledge Movement*, one of the ways in wich the DRM can be analyzed or subdivided).

Internet services operate (what they do, what they do not, and so on).[11] Several issues can be easily included within this broad definition: securing that the Internet's users base expands (access); the possibility of sharing content freely and within a copyright regime that facilitates access rather than hindering it (copyright); what kinds of incentives are created on intermediaries for moderating third-party content (intermediary liability); how software can and should be developed (free software); how speech should be controlled, regulated, or punished (freedom of expression); how privacy can be protected online and in front of increasingly invasive technologies (privacy); how encryption can be used to secure private communications (security); and so on.

All these issues can be seen from a regulatory standpoint, and in different countries of the world—in different times, moved by different causes and contexts—intentions to regulate the Internet emerged and true social movements organized to resist those attempts. For instance, Héctor Postigo considers that the United States's DRM emerged around the drafting process of the Digital Millennium Copyright Act, a 1998 statute that sought to restrict the development of technology aimed at circumventing copyright-protection technologies.[12] For Postigo, the fact that citizens' concerns were basically ignored explained the rise of the organizations and individuals that would form the first cadre of the movement.[13] In France, Patrick Pétina and Félix Tréguer considered that the local DRM emerged in response to a series of suits brought against the small but pioneering *altern.org* hosting service, for failure to control what their users published online.[14] Johan Söderberg pinpoints the birth of the Free Software movement in the legal suit brought against free-software pioneer Richard Stallman by Uni-

11 On this, *see* L. Lessig, *Code*, cit., ch. 3.

12 Digital Millenium Copyright Act, Oct. 28, 1998, Pub. L. No. 105-304. Available at: https://www.congress.gov/bill/105th-congress/house-bill/2281.

13 H. Postigo, *The Digital Rights Movement*, cit., p. 55 (discussing the initial resistance to the DMCA by the Electronic Frontiers Foundation and—generally—a "a small circle of elite legal scholars and technologists").

14 P. Pétin; F. Tréguer, "Building And Defending The Alternative Internet: The Birth Of The Digital Rights Movement In France," Internet Histories, vol. 2, 3-4, 2018, p. 3, Available at https://www.tandfonline.com/doi/full/10.1080/24701475.2018.1521059 ("The 'Altern Affair' thus became a symbol of Internet censorship in France, mobilising a small digital rights activist milieu that had been in formation in the previous years…").

Press, for code used to build GNU-Emacs.[15] Colin Bennett considers—for instance—that the Electronic Frontiers Foundation emerged at the outrage on the part of Mitch Kapor, John Perry Barlow and John Gilmore at the case of Steve Jackson, who was arrested and his computers seized by the Secret Service for he had allegedly "illegally copied a document describing the operation of the E-911 emergency response system."[16]

These are just a handful of early stories of the movement. All of them share a pattern: a certain practice related to the Internet (how it is used, how it grows, what users do, how computer programs are written) was the subject of either a regulatory attempt or regulatory enforcement that threatened some core normative value. This is what pushes activists into action, moved by a shared belief which is "the principal 'glue' of politics."[17] In the case of the DRM, that *core belief* was closely related to a strand of thought developed by Internet pioneers that saw in the Internet a communicative technology based on a decentralized architecture capable of fostering normatively attractive values of community, self-determination, and freedom.[18]

This line of thought has received several labels: *cyber* utopianism and libertarianism and Internet exceptionalism are some of the most popular. It revealed itself in the mid 1990s in some key, foundational documents produced by Internet pioneers[19] and by Internet policy-makers working in the Clinton administration.[20] This view was both a profoundly idiosyncratic

15 J. Söderberg, *Hacking Capitalism*, cit., p. 20.

16 C. J. Bennett, *The Privacy Advocates*, cit., p. 48.

17 P. A. Sabatier, "An Advocacy Coalition Framework Of Policy Change And The Role Of Policy-Oriented Learning Therein," Policy Sciences, vol. 21, 2/3, 1988, p. 141, Available at http://www.jstor.org/stable/4532139.

18 E. Morozov, *The Net Delusion*, cit., xiii ("…former hippies, by this time ensconced in some of the most prestigious universities in the world, went on an argumentative spree to prove that the Internet could deliver what the 1960s couldn't: boost democratic participation, trigger a renaissance of moribund communities, strengthen associational life, and serve as a bridge from bowling alone to blogging together").

19 J. P. Barlow, *"Declaration of the Independence of Cybserspace"*, John Perry Barlow; V. Cerf, *"The Internet is for Everyone"*, Vincent Cerf; N. Negroponte, *Being digital*, 1. publ, Hodder & Stoughton, London, 1995.

20 E. Dyson; G. Gilder; G. Keyword; A. Toffler, "Cyberspace and the American Dream: A Magna Carta for the Knowledge Age." The Progress & Freedom Foundation, Washington D.C. No. Release 1.2. August 1994; I. C. Magaziner, "Creating a Framework for Global Electronic Commerce." The Progress & Freedom Foundation, Washington D.C. No. Release 6.1. July 1999.

American phenomenon and—at the same time—part of the United States foreign policy. For these pioneers the Internet was first and foremost an "American invention that, in its very code, seemed to embody the American values of free speech and resistance to regulation."[21]

At the turn of the century, this view was everywhere. The Supreme Court in the leading case of American Civil Liberties Union v. Reno stated that "…it is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country-and indeed the world-has yet seen…."[22] Nicholas Negroponte prophesied the ultimate triumph of the Internet for its "four very powerful qualities … decentralizing, globalizing, harmonizing, and empowering."[23] Vincent Cerf argued that the Internet "is proving to be one of the most powerful amplifiers of speech ever invented. It offers a global megaphone for voices that might otherwise be heard only feebly, if at all."[24] The Internet emerged in these discourses as a realm of freedom and community where the "weary giants of flesh and steel" were not welcomed.[25]

These takes offered not only a positive normative assessment of the Internet, but what William F. Bridsall called the "Ideology of Information Technology", that "extolled the virtues of the free market, gave priority to technological developments furthering greater economic productivity over social welfare issues, called for greater efficiency in all spheres of public and private enterprise, and claimed that science and technology were the most effective means of achieving these ends."[26] The vision, genuinely held by activists and pioneers was also embraced by the Clinton administration and became

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21 J. Goldsmith, "The Failure of Internet Freedom." Knight First Amendment Institute at Columbia University, New York, NY. 2018. P. 4.

22 SCOTUS, *Janet Reno v. American Civil Liberties Union*, elDial AA1748. (Jun. 26, 1997). P. 852.

23 N. Negroponte, *Being digital*, cit., p. 229.

24 V. Cerf, "The Internet is for Everyone", cit.

25 J. P. Barlow, "Declaration of the Independence of Cybserspace", cit.

26 W. F. Birdsall, "The Internet and the Ideology of Information Technology," The Internet: Transforming Our Society Now. INET '96, Montreal, Canada, January 1996, Available at: https://web.archive.org/web/20160103053905/http://www.isoc.org/inet96/proceedings/e3/e3_2.htm; *see* also M. Mueller, *Ruling The Root: Internet Governance and the Taming of Cyberspace*, MIT Press, Cambridge, Mass, 2002, p. 265 ("…the Internet acquired its status as a reference point for public discourse about utopia").

a powerful focus of the United States' foreign policy ever since.[27] Critics quickly realized that the optimistic take was at least exaggerated.[28] Efforts to control and to regulate the Internet became more and more prominent around the world, and the paradigm of the sovereign state proved resilient.[29] But these extended beliefs amidst Internet pioneers and enthusiasts played a fundamental role in launching a true social movement around Internet regulation.[30] These early, optimistic and somewhat naive ideas over the Internet provided the movement with a set of normative commitments that were useful to appraise regulatory proposals and to resist them when found threatening. This story, here summarized, offers us then a first hypothesis regarding what drives the emergence of the DRM.

> *H1 - Regulatory threats provide legal and political opportunities for the emergence of SMOs in the field of digital rights.*

This hypothesis calls for some definitions. First, we define the concept of *threats* broadly, following Emilio Lehoucq's approach—legal threats "are changes in the legal rules that are perceived to increase the costs of mobilization or the expected costs of not taking action."[31] We call them *regulatory threats*, to cover statutes, judicial decisions, and international treaties. But by assuming a broader view on regulation that also includes the code upon which Internet services run[32] and the decisions made by powerful intermediaries, we can cast a broader net to include threats that come from private actors who hold power in the Internet's architecture and that—thus—

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27 H. Clinton, *"Remarks on Internet Freedom"*, Hillary Clinton; J. Goldsmith, "The Failure of Internet Freedom", cit.; I. C. Magaziner, "Creating a Framework for Global Electronic Commerce", cit.; A. Ross, "Internet Freedom: Historic Roots And The Road Forward," SAIS Review of International Affairs, vol. 30, 2, 2010, Available at http://muse.jhu.edu/article/403433.

28 D. Freedman, "Outsourcing Internet Regulation," on James Curran, Natalie Fenton, Des Freedman (eds.) *Misunderstanding the Internet*, 1st, Routledge, London & New York, 2012, p. 102; E. Morozov, *The Net Delusion*, cit., ch. 1; M. Mueller, *Ruling The Root*, cit., ch. 13.

29 On this, *see* J. L. Goldsmith; T. Wu, *Who Controls The Internet? Illusions of a Borderless World*, Oxford University Press, New York, 2006.

30 Milton Müeller calls it a "transnational policy network." *See* M. Mueller, *Networks and States*, cit., p. 88. Generally, his approach in chapters 3-6 are illuminating of the way something akin to a global digital rights movement emerged.

31 E. Lehoucq, "Legal Threats And The Emergence Of Legal Mobilization: Conservative Mobilization In Colombia," Law & Social Inquiry, vol. 46, 2, 2021.

32 L. Lessig, *Code*, cit.

may also endanger the DRM's normative commitments. These threats must be understood within the broader framework of political opportunity (and threat) structures,[33] in dialogue with the approaches that zoom in on "legal" opportunities[34] but with the broader scope that Lehoucq's adopts, in order not to be limited by the repertoires of action that movements use.[35] As we will show in upcoming sections, our hypothesis holds with regard to the Latin American DRM.

Regulatory Threats (And Their Displacement)

Internet regulation is the main locus of claims made by the DRM in the context of contentious Internet politics.[36] As we saw in the previous section, regulatory initiatives that are perceived as a threat to the DRMs normative commitments regarding how the Internet should be regulated are what launch activists into action, or to put it in Doug McAdam's terms, how collective action emerges.[37]

Internet regulation is—however—a very special kind of threat when compared to regulation elsewhere. This has to do with what some people have

33 P. Almeida, *Waves of protest: Popular Struggle in El Salvador, 1925-2005*, University of Minnesota Press, Minneapolis, 2008; P. Ayoub, *When States Come Out: Europe's Sexual Minorities And The Politics Of Visibility*, Cambridge University Press, New York, NY, 2016; P. M. Ayoub, "With Arms Wide Shut: Threat Perception, Norm Reception, And Mobilized Resistance To LGBT Rights," Journal of Human Rights, vol. 13, 3, 2014, Available at https://doi.org/10.1080/14754835.2014.919213; J. A. Goldstone (ed.), *States, Parties, and Social Movements*, Illustrated edition, Cambridge University Press, 2003.

34 E. A. Andersen, *Out of the Closets And Into The Courts: Legal Opportunity Structure And Gay Rights Litigation*, University of Michigan Press, Ann Arbor, 2005; *See* e.g. C. Hilson, "New Social Movements: The Role Of Legal Opportunity," Journal of European Public Policy, vol. 9, 2, 2002, Available at http://www.tandfonline.com/doi/abs/10.1080/13501760110120246.

35 E. Lehoucq, "Legal Threats And The Emergence Of Legal Mobilization", cit., p. 302 (where he distinguishes between the "legal rules that can lead to political mobilization (and are thus political threats)" from the "legal rules that lead to legal mobilization (and are thus legal threats)"); C. Hilson, "New Social Movements", cit., p. 251 ("Legal opportunity structure (LOS) has become a key theoretical concept used to help explain why social movements choose litigation as a strategy.").

36 D. McAdam and others, *Dynamics of Contention*, cit., p. 5 ("By contentious politics we mean: episodic, public, collective interaction among makers of claims and their objects when (a) at least one government is a claimant, an object of claims, or a party to the claims and (b) the claims would, if realized, affect the interests of at least one of the claimants").

37 D. McAdam, *Political Process and the Development of Black Insurgency 1930-1970*, 1st, The University of Chicago Press, Chicago, 1982, pp. 36–38.

called Internet exceptionalism. This idea stands—among other things—for the proposition that sovereign states cannot regulate the Internet. This assertion comes in two forms. From a normative standpoint, it can mean both that states *should* not regulate the Internet and that, if they chose to, they lack the necessary *political legitimacy* to do so. But the assertion can also be descriptive: it could stand for the idea that states *cannot* regulate the Internet in the sense of being incapable of adopting an effective regulation, because of the Internet's decentralized architecture.[38]

The most earnest statements of the descriptive variant have been more or less debunked.[39] The idea that trying to regulate the Internet was as futile as trying to nail Jello-O to the wall has proven factually wrong.[40] But regulation presents substantial challenges related to its architecture. Milton Müeller's take on the matter seems correct: the Internet is difficult to regulate for reasons of scale, scope, and distributed control. As a decentralized network, the Internet makes "borderless communication the default" and "any attempt to impose a jurisdictional overlay on it requires additional (costly) interventions."[41] It has also fundamentally changed the scale of communicative activity: "massively enlarges our capacity for message generation, duplication, and storage" and this alone "overwhelms the capacity of traditional governmental processes to respond."[42] And, finally control is distributed: the decentralized architecture makes that "decision-making units over network operations are no longer closely aligned with

38 D. R. Johnson; D. Post, "Law And Borders: The Rise Of Law In Cyberspace," Stanford Law Review, vol. 48, 5, 1996, p. 1372, Available at http://www.jstor.org/stable/1229390 ("…efforts to control the flow of electronic information across physic borders … are likely to prove futile, at least in countries that hope to participate in globa commerce").

39 J. L. Goldsmith, "Against Cyberanarchy," The University of Chicago Law Review, vol. 65, 4, 1998, Available at http://www.jstor.org/stable/1600262; T. Wu, *The Master Switch: The Rise and Fall of Information Empires*, cit; M. L. Mueller, "Against Sovereignty In Cyberspace," International Studies Review, vol. 22, 4, 2020, Available at https://doi.org/10.1093/isr/viz044, 1 ("In 1997 we asked, can the Net be governed?1 By 2008, that question had lost its force. The question now driving discussions of Internet politics is not whether the Net can be governed, but whether there is (or should be) something new and different about the way we do so…") but *see* also D. G. Post, "Against 'Against Cyberanarchy'," Berkeley Technology Law Journal, vol. 17, 4, 2002, Available at http://www.jstor.org/stable/24116746.

40 B. Szoka; A. Marcus, *The Next Digital Decade: Essays on the Future Of the Internet*, TechFreedom, Washington D.C, 2010, p. 8.

41 M. Mueller, *Networks and States*, cit., p. 4.

42 *Ibid.*

political units."[43] This turns into a kind of governance that denotes "the coordination and regulation of interdependent actors in the absence of an overarching political authority."[44]

These challenges were also deeply affected by a handful of decisions made at a crucial moment by the United States government with regard to the distribution of critical Internet resources, including empowering private corporations and hybrid governance structures.[45] These decisions engendered institutions of governance that are different (although related to) the nation state as a regulatory unit, such as ICANN or the Internet Engineering Task Force (IETF). Efforts to bring these institutions under the umbrella of the United Nations have more or less failed, at least from the standpoint of amassing policy-making authority. Regulation remains distributed among hybrid institutions, private actors, and states—but not equally.[46]

In this scheme, some states have more regulatory power than others. As Des Freedman put it, while "there will be different inflections of regulatory intervention in different countries, state coordination of the internet is increasingly significant."[47] The classic account of this development is Jack Goldsmith and Timothy Wu's,[48] where they highlight how governments exert control: by threatening "local Internet intermediaries: the people, equipment, and services within national borders that enable local Internet users to consume the offending Internet communication."[49] This leads to radical inequality in how states' regulatory power is distributed. To put the point bluntly and simple: only those countries that can exert some degree of effective pressure over the intermediaries who function as regulatory levers can exercise a kind of regulatory power that resembles our image of traditional regulation within the nation state. For other countries, without that kind of pressuring power, attempting to regulate the Internet in the traditional form may lead to enforcement challenges that render traditional

43 *Ibid.*

44 *Ibid.*, p. 8.

45 On this process, *see* generally *Ibid.*, ch. 3.

46 As Des Freedman put it, the simultaneous non-governmentalization and governmentalization of Internet regulation. *See* D. Freedman, "Outsourcing Internet Regulation", cit., pp. 98–107.

47 *Ibid.*, p. 102.

48 J. L. Goldsmith; T. Wu, *Who Controls The Internet?*, cit.

49 *Ibid.*, p. 68.

regulation ineffective. Which, ironically and at the same time, may lead to no regulation attempts whatsoever.

Consider, for instance, the issue of intermediary liability. In 1996, the US Congress passed the *Communication Decency Act*. Section 230 offered intermediaries a safe harbor to reject claims of liability for content produced by third party users. The statute is one of the building blocks of global Internet regulation, and is grounded on the regulatory challenge implied by the *scope* and *scale* previously mentioned. In particular, section 230 came out to deal with the *Prodigy* case decided in May 1995 by the New York Supreme Court, that considered that an ISP was liable for failing to moderate content found offensive.[50] The decision, if taken as a rule to regulate rights and duties on the Internet, presented ISPs with a false choice: either choose not to moderate anything whatsoever and escape liability or moderate what your users do and face liability if your content-moderation activity is found lacking by a court of law. This, from a public policy perspective, was widely undesirable: policy-makers needed the assistance of ISPs to e.g. fight child pornography, and—at the same time—wanted the industry to develop free from the constraints imposed by that sort of broad liability, that would have encouraged traditional media actors to enter the game and hinder the rise of Internet start-ups.[51] Hence section 230 was born.

The rule emerged, then, in a country with a lot of regulatory power: most Internet intermediaries had been created in the United States, were incorporated there and where undoubtedly under the jurisdiction of its government. The rule, however, traveled across borders for it made sense from a public policy perspective. With differences and nuances, it was adopted by legislative bodies and courts around the world [52]. For instance, the Section 230 model was more or less followed in Europe, that adopted similar safe

50 H. B. Holland, "Section 230 of the CDA: Internet Exceptionalism as a Statutory Construct," on Berin Szoka, Adam Marcus (eds.) *The Next Digital Decade: Essays on the Future of the Internet*, TechFreedom, Washington D.C, 2010; N.Y. Sup. Ct., *Stratton Oakmont, Inc. v. Prodigy Services Co.*, Media L. Rep. 23:1794. Docket No. 31063/94 (May 24, 1995). Available at: https://h2o.law.harvard.edu/cases/4540.

51 J. Kosseff, *The Twenty-six Words That Created The Internet*, Cornell University Press, Ithaca [New York], 2019, p. 7.

52 For a brief tour on how the issue is regulated in different countries, see the Stanford World Intermediary Liability Map, available at: https://wilmap.stanford.edu/.

harbor provisions but allowed for a broader, less categorical and more procedural approach to reproachable content.[53] Even in China, its early heavy regulation on what is acceptable and not rested—to an extent—in delegating "internet monitoring to private actors and the business sector."[54]

The case of how intermediary liability is regulated around the world shows at least two features of Internet governance. First, that pioneer regulators with clear jurisdictional power over key Internet intermediaries may impose effective regulation, in the traditional, nation-state connected sense of the word. Second, that these regulations travel and are adopted by others. Something similar happened with Net Neutrality guarantees, that first emerged in the form of administrative police power issues by the US Federal Communications Commission (FCC) and was later adopted as a rule in others countries.[55] On other issues, regulation happened less clearly—for instance, through the "hotline" mechanisms used to coordinate actions between intermediaries and law enforcement to combat child pornography.[56] In the last few years, the regulations coming out from European institutions are leveraged on the relative importance of the European market, and—to an extent—in its extraterritorial reach.[57] Similarly, the command-and-control model of regulation in China flowed effortlessly down stream with regard to local companies, and less effortlessly but similarly efficiently with regard to American or European transnational corporations. Intermediaries are effective "points of control" that states can pressure to get the Internet they want, either through regulation, through threats of regulation, or through other—less transparent and more problematic—means.

A final point on regulatory threats. With the creation of the Global Network Initiative (GNI), several Internet "points of control" attempted to cre-

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53 B. Frydman; L. Hennebel; G. Lewkowicz, "Co-regulation and the Rule of Law," on Eric Brousseau, Meryem Marzouki, Cécile Méadel (eds.) *Governance, Regulation and Powers on the Internet*, Illustrated edition, Cambridge University Press, 2012, pp. 140–141.

54 *Ibid.*, p. 147.

55 *See* e.g., O. Castro; S. Pereira da Silva; P. Viollier, "Neutralidad de red en América Latina: Reglamentación, aplicación de la ley y perspectivas. Los casos de Chile, Colombia, Brasil y México." Derechos Digitales & Intervozes, Santiago; San Paulo. 2017 (for a brief take on how Net Neutrality principles were adopted in Latin America).

56 On this, *see* B. Frydman and others, "Co-regulation and the Rule of Law", cit.

57 A. Bradford, *The Brussels Effect. How the European Union Rules the World*, Oxford University Press, 2020.

ate somewhat of a shield against the most abusive requests of leverage coming in their direction, specially from authoritarian governments that clearly violated human rights. GNI appears to be an industry-wide model for the creation of standards, that imply another institutional innovation worthy of mentioning and following closely.[58]

This state of affairs is extremely consequential from a Latin American standpoint, a region which has generally found itself lagging in regulatory developments when compared to regulations made elsewhere. As Carlos Affonso de Souza put it, laws and rules made elsewhere often inspired laws and rules created in the region, and—predictably—laws and rules are created for big intermediaries.[59] Furthermore, many of the most important intermediaries in the region are transnational corporations, which are not obviously under the jurisdiction of Latin American countries.[60] What this state of affairs presents is a challenge to the Latin American DRM, for if local authorities do not have strong regulatory power over the Internet, then the threats on their normative commitments come from other sources, often less accessible through the traditional means offered by democratic politics and social movements' repertoires of action. To an extent, the challenge has to do with globalization. John Guidry, Micheal Kennedy, and Mayer Zald presents the challenge clearly.

> "On the one hand, to the extent that globalization appears to reduce the ability of states to act within their own territories, social movements are dislocated from their usual position of petitioning states to redress grievances. The supposed weakness of states vis-à-vis globalization means that social movements must direct resources toward international linkages and partnerships that can diminish movement autonomy in the home country. On the other hand, globalization has provided social

[58] On this, *see* generally C. Mardsen; T. Meyer; I. Brown, "Platform Values And Democratic Elections: How Can The Law Regulate Digital Disinformation?" Computer Law & Security Review, vol. 36, 2020.

[59] C. A. de Souza, "Red de políticas de Internet y jurisdicción y Comisión Económica para América Latina y el Caribe (CEPAL): Informe sobre la situación regional." CEPAL, Santiago, Chile. No. LC/TS.2020/141. 2021. Pp. 36–41.

[60] But many have established actual presence. This point deserves further research.

> movements with new, possibly significant opportunities and resources for influencing both state and nonstate actors."[61]

We develop our second hypothesis from this insight and the complex regulatory scenario previously described.

> *H2 - If regulatory threats on the Internet do not come exclusively from the nation state, SMOs must have adapted their strategies to meet the challenge.*

In particular, we predict three specific effects of the "regulatory displacement" that exists with regard to Internet regulation.

First, a broadening of agendas is to be expected. If regulatory threats can come from many different places, the opportunities for them to rise expand at roughly the same rate. For instance, if the European Union sets itself to draft new legislation covering intermediary platforms' duties with regard to disinformation, the issue becomes relevant for an organization based in Latin America for the transnational influence that such a piece of legislation may have, even before it is adopted. Second, new repertoires of action must have emerged to meet the challenge. Indeed, if regulatory power is more distributed, local authorities are not the only subjects of social movement claim-making. In particular, transnational and international advocacy may become an arena that must be "engaged", by new repertoires of action designed to reach those decision-makers. Finally, the displacement of regulatory threats likely produced new strategies. In particular, if the story told so far holds, transnational activism and coordination across countries within the region and beyond must have become part of Latin American organizations strategies, for it would be useful for meeting the burden of dealing with the complex regulatory scenario previously described. All of these possible "effects" of regulatory displacement are also sustained by another, fundamental feature of the development of the Latin American DRM: the availability of resources. This is a complex story and more research is needed to thoroughly understand it, but Latin American DRM organizations are mostly funded by foreign funders. How the digital rights agenda grew and

[61] J. Guidry; M. D. Kennedy; M. Zald (eds.), *Globalizations and Social Movements: Culture, Power, and the Transnational Public Sphere*, University of Michigan Press, 2009, p. 1.

developed within major funders across the globe also influenced the way the agenda was developed in Latin America, as elsewhere, for access to resources is a fundamental precondition for successful collective action.[62]

We should note that we do not claim a causal link between the effects discussed in the previous paragraph and the displacement of regulatory threats, but—more humbly—simply highlight that these developments are consistent with that general trend. Furthermore, other possible effects—that we fail to link clearly to the conditions from where we craft H2—should be explored by further research.

Methodology

As we claimed before, we test these hypotheses against two sets of data: a database on projects and documents produced by a handful of Latin American digital rights organizations between 2000 and 2021 and ten interviews produced with regional activists in late 2021.

The interviews were coded freely, using our own intuitions and taking as a point of departure a structured questionnaire we used to guide our interview process [63]. These included seasoned Latin American activists, some of whom can be counted among the "founding generation" of the Latin American DRM, and a younger generation of practitioners working on local or regional NGOs.

The questionnaire focused on personal stories related to how they personally got interested on digital rights issues, on agendas and conceptual frameworks used to address the issues they worked on, on capacity-building strategies and access to resources and repertoires of action. We also asked subjects about their experience in different fora, on how they think others "see" them, on what initiatives were—form their perspective—successful and which were not, and so on (Annex I).

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62 J. C. Jenkins, "Resource Mobilization Theory And The Study Of Social Movements," Annual Review of Sociology, vol. 9, 1983, Available at http://www.jstor.org/stable/2946077.

63 The coding was made by Ramiro Álvarez Ugarte and Sofía Torres. The structured questionnaire was made by them and with the assistance of Tomás Gold. The interviews were conducted by Álvarez Ugarte and Torres. The database was built by Torres.

For the database, we surveyed the websites of seven Latin American digital rights organizations. [64] We tagged their programs and documents based on general categories, that we took mainly from our coding exercise. This survey is somewhat limited in at least two senses. First, it is not necessarily a "representative" survey, the study could be obviously expanded to include other organizations. Second, relying on websites can be—ironically—somewhat unreliable, for not all organizations are equally committed to their institutional history. So when interpreting our analysis based on this database, the reader should kept these caveats in mind.

Analysis

To recall, in the previous sections we presented two hypotheses that we want to test against the datasets previously mentioned. These hypotheses are related to the process of emergence of the digital rights movement and to the specific challenges it faces in order to succeed in shaping the normative world of the Internet according to their own normative commitments.[65] These challenges are closely connected to the difficulties that Internet regulation poses generally and to the particular obstacles that can be found in Latin America. These two hypotheses are the following:

> *H1 - Regulatory threats provide legal and political opportunities for the emergence of SMOs in the field of digital rights.*
>
> *H2 - If regulatory threats on the Internet do not come from the nation state, SMOs must have adapted their strategies to meet the challenge.*

Hence, we are first interested on how the DRM movement emerged in Latin America. Second, and assuming the challenge of regulatory displacement as a prior, we are interested in learning about how activists think they are perceived by public officials, the strategies used to gain influence on the policy-making process, the kinds of frames and narratives they used or re-

64 These are ADC (Argentina), Derechos Digitales (Chile and regional), Fundación Karisma (Colombia), ITS (Brazil), R3D (México), TEDIC (Paraguay) and Fundación Vía Libre (Argentina).

65 R. Cover, "Foreword: Nomos and Narrative", cit.

lied on, the scope of their agendas, the venues in which they choose to act, the strategies used, how they managed to mobilize resources for their cause and the kind of "repertoires of action" they employ. If our second hypothesis is correct, then the regulatory challenge must reveal itself in answers to these questions.

Emergence

We find strong support for our first hypothesis in our data. The presence of "regulatory threats" that emerge more or less suddenly was a constant variable in the stories told by the subjects we interviewed, specially those who have been part of the movement for a long time and who are true pioneers of the DRM in Latin America. In the cases of Claudio Ruiz, Katitza Rodríguez and Carolina Botero, the regulatory threat that presented the biggest opportunity for action in their personal stories—translated, by them, into the creation of organizations—was the one posed by free trade (FTA) or economic integration treaties (such as the Trans-Pacific Partnership or TPP) discussed in Chile, Perú and Colombia at the turn of the century. These trade agreements often implied substantive commitments on protection of trademarks and copyright, which are often held by central countries and that could heavily restrict access to knowledge in the global South. These FTAs presented pioneering activists with the "political opportunity" to act. When the FTAs or the TPP were discussed, they were ready to contribute to the debate with unique perspectives gained by becoming interested on issues that the FTAs—if signed and ratified—would impact deeply.

For instance, in the case of Chile a draft bill to change the Chilean law on Intellectual Property in order to adapt it to the FTA that was being negotiated with the United States presented local activists with the political opportunity to act, fueled—as well—by chance.[66] In the case of Colombia, the *Ley Lleras* offered Fundación Karisma an opportunity to take a leading voice in a debate that was initially framed as an effort on the part of the government to support local artists, but that quickly shifted when activists

[66] Interview with Claudio Ruiz, founder of Derechos Digitales, October 22, 2021, on Zoom (recalling how one of the founders of Derechos Digitales went to work as an advisor to the Ministry of Culture, in charge of developing the IP draft legislation).

managed to present the proposed legislation as a threat to core normative values of the Internet, such as access to knowledge and the free flow of information.[67] In Perú and other countries, the TLC also offered the local chapter of the Computer Professionals for Social Responsibility (CSPR) a chance to take a voice in debates around intellectual property.[68] Finally, in Mexico the experience of R3D was heavily influenced by the Ley de Telecomunicaciones, which allowed the newly created NGO an opportunity to "fill a void" within Mexico's civil society.[69]

These stories share a certain pattern. A person becomes interested on a specific issue, often by chance—reading the right book at the right time, enjoying the unparalleled access to music allowed by P2P networks at the turn of the century, becoming interested in computers and the hacker culture out of novel legal questions when a law student, thinking somewhat *avant la lettre* on remote work and technology, and so on. That initial interest pushes them to get in touch with others with similar interests, and either create local organizations, organize local chapters of global organizations or take part on organizations that already existed [70]. After that, an opportunity emerges that positions them and the organizations they created or belong to in an ideal position of influence. They frame the issue in a way that advances their normative commitments to Internet core values and they become a valued voice in public debate, becoming experts whose knowledge is sought for by policy-makers[71]and often representing others who share their normative commitments.[72] At the same time, these

67 Interview with Carolina Botero, executive director of Fundación Karisma, November 24, 2021, on Zoom (recalling how the Ley Lleras offered Fundación Karisma and herself an opportunity to take a leading voice questioning the proposal, by being a lawyer).

68 Interview with Katitza Rodríguez, from the Electronic Frontiers Foundation, October 28, 2021, on Zoom (recalling her experience in that early stage of her career).

69 Interview with Luis Fernando García, executive director of R3D, October 29, 2021, on Zoom.

70 Claudio Ruiz, for instance, created an organization out from scratch with close friends and collegues, and was also involved in the Creative Commons community. *See* Interview with Claudio Ruiz, October 22, 2021. Similarly, Katitza Rodríguez encounter the hacker culture "by chance". *See* Interview with Katitza Rodríguez, October 28, 2021. And Carolina Botero became involved in the free software movement following her father footsteps and when considering the legal dimensions of free software in her bachelor's thesis. *See* Interview with Carolina Botero, November 24, 2021.

71 Interview with Claudio Ruiz, October 22, 2021 (recalling how Derechos Digitales' expertise was valued by Chilean officials negotiating the TPP).

72 Interview with Carolina Botero, November 24, 2021 (recalling how Fundación Karisma in general and

early successes often change organizations and create new opportunities, specially for visibility tends to attract external funding.[73]

Perceptions & Influence

The entry point of most organizations and activists into the DRM was the issue of copyright and intellectual property, which regulation threatened to hinder the free flow of information on the Internet. Many of the pioneer organizations—such as Fundación Karisma in Colombia and Fundación Vía Libre in Argentina—were linked to the free software movement, that is obviously linked to intellectual property as a legal concern. These issues—along with a broad category of projects related to social technology—appear as specially relevant in the first few years of the movement (Figure 1). But with the passing of time, new issues emerged. In a way, the agendas of organizations branched out to cover new areas of Internet regulation. [74]

This pattern of emergence and development that takes advantage of a political opportunity positioned activists and organizations as experts, who could—from a civil society standpoint—influence the policy-making process. This is generally important for successful social movement mobilization: activists who engage in this kind of politics seek to persuade policy makers to act one way or the other [75]. By definition, activists working from

herself, as a speaker, came to represent the free software movement in Colombia during the Ley Lleras debate).

73 *Ibid.* (recalling the aftermath of the Ley Lleras debate and the impact it had on Fundación Karisma); Interview with Luis Fernando García, October 29, 2021 (recalling the early period of R3D).

74 Juan Carlos Lara offered an insightful take on what drives the expansion of the digital rights agenda: "…el ámbito de los derechos digitales era, al menos hasta el momento en que yo me acerqué, un ámbito muy vinculado al derecho sobre las tecnologías y una de las cosas que se ha ido expresando, que antes parecía no ser tan obvia, era la relacionada a las tecnologías como simplemente una parte más de una configuración socioeconómica crecientemente globalizada en que la tecnología es apenas un elemento más, es decir, que ya no se trata tanto del derecho sobre la tecnología o sobre los contratos digitales sino sobre una serie de otros temas … y eso también va moldeando la agenda, me parece que la presión sobre nuevos temas y sobre nuevas expresiones de lo digital es en realidad nuevas formas de conectarse con esas realidades históricas más antiguas o más amplias de una forma tal que incluso puede llegar hoy a ampliar la agenda de una forma extraordinariamente desmedida en que se integra básicamente cualquier área en la que pudiéramos haber pensado alguna vez que estaba fuera de nuestro ámbito de acción…". *See* Interview with Juan Carlos Lara, executive director of Derechos Digitales, November 8, 2021, on Zoom.

75 On the issue of "influence" in the political process, the classic account is Robert Dahl's. *See* R. A. Dahl,

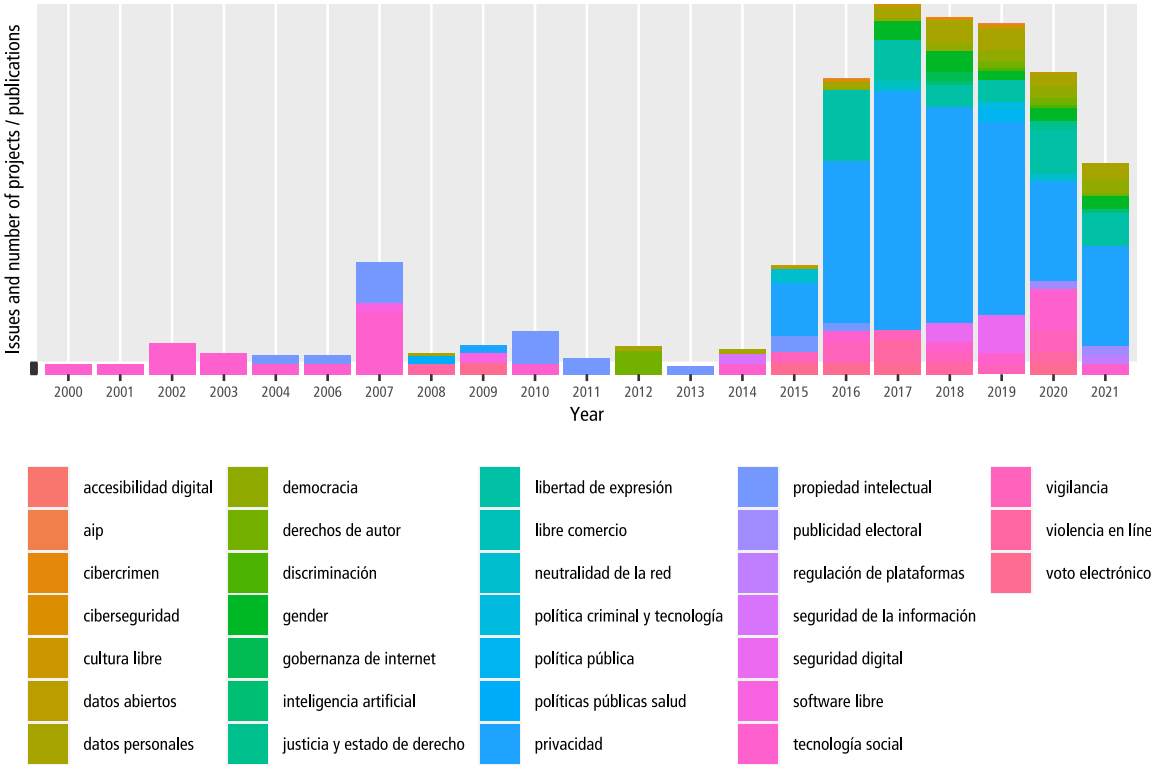

Figure 1. Projects and issues through the years

civil society never seek to present their demands through electoral politics: they seek to persuade public officials of the soundness of their claims.[76] Hence, assuming the role of an expert on a given issue can be instrumental in persuading others, specially if they value expertise. The issue of how activists and organizations are perceived—specially by public officials—is then a crucial question that seemed important to us, for it is closely connected to the regulatory challenges discussed in previous sections. Internet regulation may present peculiar obstacles, but local officials might not be aware of them.

Indeed, in the case of the Latin American DRM, many activists perceived themselves as channeling knowledge that was simply not available to public officials. For instance, Claudio Ruiz recalled that assuming a civil society standpoint in Chile at the turn of the century was not enough to achieve the status of an expert: presenting themselves as professional lawyers, through

Who Governs?: Democracy and Power in an American City, First edition, Yale University Press, New Haven, Conn. London, 1961.

76 R. Siegel, "The Jurisgenerative Role of Social Movements in US constitutional law," 2004.

adopting the modes and rituals of the profession, including the use of suits and ties, was necessary to achieve the desired influence in the policy-making process [77]. Similarly, the need for juridical knowledge was leveraged by Fundación Karisma in order to assume a leading role in questioning the *Ley Lleras*, supported by a technical community committed to Internet's normative values but without the lawyerly knowledge needed to intervene in the public sphere [78]. In this case, Fundación Karisma was able to assume the role that Austin Sarat and Stuart Scheingold have famously called of "cause lawyers", that is, the lawyers that work for and are embedded within a broader social movement.[79]

Hence, the *expertise* accumulated by activists and organization provide a rather obvious entry point to the political process.

> "We quickly won the trust of public officials in charge [of the TPP negotiations]. To an extent, because the technical knowledge we brought to the table was useful to them, when they had to negotiate with the representatives from the United States, who came with lots of technical knowledge and lobbysts, technical knowledge has a hugely important and strategic value in that room."[80]

But—of course—simply being an expert is not enough to be influential:

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77 Interview with Claudio Ruiz, October 22, 2021 ("…hay que ver los primeros cursos que hicimos, las primeras alocuciones publicas las vendíamos todos disfrazados de abogados, muy serios… yo creo que fue una de las últimas veces que usé corbata en mi vida … y hablamos en el lenguaje de los abogados, un poco a efectos de hacer un punto … de hacer el punto de que no éramos solamente un grupo, un puñado de hippies … antiglobalización que veníamos a echar abajo los tratados con Estados Unidos sino que teníamos algo para decir. Y en una sociedad como la chilena de los dosmiles, la apariencia era una cosa muy importante. Súmale a esto que ni Alberto, ni Daniel ni yo venimos de la elite chilena…").

78 Interview with Carolina Botero, November 24, 2021 ("Cuando llega la Ley Lleras, el problema fue un problema de contexto … al mismo tiempo estaba la ley Sinde en España … era un tema y yo leía sobre eso y demás y sobre todo, llegó la ley SOPA justo durante el proceso, que nuevamente generaba ruidos en Internet. Eso hizo que la gente que estaba en internet, que en su mayoría eran entusiastas o tecnófilos, sobre todo muchos libertarios de internet y las comunidades técnicas decían 'esto es lo mismo que está pasando, pero no entendemos' … Yo trabaja mucho con las comunidades de software libre a raíz del trabajo con la Fundación y con Creative Commons y también con hackers, tenía conexiones con las comunidades técnicas, entonces como que empezaron todos a decir 'la abogada acá es usted, no hay más abogados aquí en Colombia que estén pensando tecnología con una incidencia social' ").

79 S. Scheingold; A. Sarat, *Cause Lawyering, Political Commitments and Professional Responsibilities*, Oxford University Press, New York, 1998, ch. 1.

80 Interview with Claudio Ruiz, October 22, 2021.

a dose of luck is also necessary For instance, Bea Busaniche recalled how during the 2008 debate on the *Ley de Delitos Informáticos* Fundación Vía Libre prepared a technical report they personally delivered to the offices of representatives. When one of them picked up their arguments during a committee meeting, they were sitting in the back and were invited to join the discussion.[81] Technical knowledge then works as a way of—literally—gaining a seat at the table. Positioning oneself and your organization as "serious" in the eyes of policy-makers and other stakeholders seem to be an essential part of the job that fills a "knowledge gap" that exists on Internet regulation among policy-makers.[82]

Framings & Agenda

We turn now to the issue of how the Latin American DRM has framed their demands. On this issue we also identify common patterns and two main framings that come out from the activists we interviewed: on the one hand, an approach that address Internet regulation issues from the standpoint of human rights; on the other, an approach more directly linked to the normative values that stem from Internet's architecture. The differences between the two are not perhaps practically important: a commitment to the free flow of information or the respect of privacy over the Internet can easily be framed as a commitment to human rights and Internet's core design values. Furthermore, the human rights approach can be a strategic move in order to gain a strong footing from where to make arguments in the public interest. But while connected, these two framings appear as distinct and it makes sense to consider them separately.

For instance, the human rights framing seem important in the case of Derechos Digitales and R3D. For instance, Ruiz recalled that the juridical, human rights narratives developed when discussing the Intellectual Prop-

81 Interview with Beatriz Busaniche, from Fundación Vía Libre, October 22, 2021, on Zoom.

82 *Ibid.* (recalling how she thinks Vía Libre is perceived as a serious organization, that develops positions that are carefully thought); Interview with Juan Carlos Lara, November 8, 2021 (highlighting his initial experience working in Derechos Digitales and pointing that on many issues, adequate researech was a prerequisite for action); Interview with Eduardo Ferreyra, lawyer for the Asociación por los Derechos Civiles, November 4, 2021, on Zoom (highlighting how even though public officials are becoming incerasingly knowledgeable, the gap still exists).

erty bill that was being discussed in Chile provided a comparative advantage vis-à-vis copyright collectives, for it presented new arguments that were hard to contradict.[83] Similarly, in the case of R3D the human rights approach was part of the initial interest of its founders and the comparative advantage that the organization sought to bring to Mexico's civil society.[84] Other organizations seem to have approached digital rights from a different standpoint, more connected to the hacker culture and the free software movement. These are the cases of Fundación Karisma in Colombia and Vía Libre in Argentina.

In terms of agenda, most organizations experienced a process of "branching out", to address new issues and emerging threats. We did not find many common patterns in terms of what drives these processes, but the analysis of the project and publication database confirms this insight (*See* Figure 1, above). For some, getting to work on a new issue was mainly driven by concerns that were raised and discussed internally. This is the case in Vía Libre, an organization that—as Fundación Karisma—relies a lot on a broad network of collaborators who work *pro bono* and who are personally interested and committed to the issues. For instance, Beatríz Busaniche recalled how the organization decided to get involved in electronic voting.

> "One of the issues we discussed was whether we were going to get involved or not on electronic voting, early on around 2003, because the first experiment was made in Ushuaia … The people from the free software community there raised the issue and … the community in general began to discuss it. We decided to get involved … and faced a controversy within the community itself, for many people within the free software movement considered that it was a lost battle, and that we should settle for securing that if electronic voting was going to happen, it would be based on free software. We talked to Richard Stallman at the

83 Interview with Claudio Ruiz, October 22, 2021.

84 Interview with Luis Fernando García, October 29, 2021 (recalling how he first tried—unsuccessfully—to "sell" the idea of a digital rights advocacy practice in other organizations. It is also worthy to note that, before creating R3D, García was a Google fellow at the Asociación por los Derechos Civiles in Buenos Aires, Argentina, a traditional human rights and civil liberties NGO that was developing—at the time—an important digital rights practice).

> time, and I recall he saying that that was indispensable but not enough…."[85]

Since then, Vía Libre was the organization that pioneered opposition to the use of electronic ballots in Argentina. In other cases, issues simply seem to "emerge" out of specific regulatory threats that "force" local organizations to become experts on issues in a short period of time. The experience of Access Now in the region is interesting in that regard: the organization seeks to develop local partnerships with organizations, and these seem to emerge always around regulatory threats, whether it is the debate over an intermediary liability bill in Argentina, a data retention proposal in Paraguay, a data protection bill in Brazil or Ecuador, and so on.[86]

Carolina Botero, for instance, highlighted how processes of branching out are often driven by a feature of most Latin American digital rights organizations: they do their work at wholesale rather than retail. Indeed, in our own mapping of organizations we failed to find more than a handful of organizations per country. This means that organizations are somewhat pressed to have a say on everything that comes up, whether it is a specific regulatory threat as the ones discussed in the previous paragraph or broader issues and trends, such as feminism and technology, access to knowledge, and so on.

> "… organizations such as Karisma have to cover lots of diverse issues, specially in small countries … But we have to do everything, and that is challening even from a communication perspective, for you must speak to the general public but also to issues that are more narrow, and you end up boring everybody. So a lot of people get engaged and say 'cool, they are feminists, I want to read them' but when they see you talking about other issues they find that weird…."[87]

Newer organizations can expect and predict the need to branch out based on previous experiences by pioneer organizations. For instance, Luis Fer-

[85] Interview with Beatriz Busaniche, October 22, 2021.

[86] Interview with Gaspar Pisanú, Latin American public policy lead on Access Now, December 16, 2021, on Zoom, Interview with Javier Pallero, Policy and International Program Director on Access Now, November 2, 2021, on Zoom.

[87] Interview with Carolina Botero, November 24, 2021.

nando García recalled how they started out by mapping the issues they thought could emerge in Mexico, a list that was "very ambitious although not very realistic."[88] Slowly but steadily, the issues they had listed began to emerge: surveillance, net neutrality, free expression online, Internet blockages, copyright, and so on. "But we saw that we were going to eventually need to get involved on other issues, such as personal data, artificial intelligence and its impact on other rights, online violence, content moderation…."[89] Our intuition is that agendas are inspired mainly by local threats, but that outside influence also plays a role. Several subjects mentioned the existence of trends or issues that become *en vogue* , often enticed by the sudden availability of funding that may respond to global developments such as e.g. the Edward Snowden revelations in 2013.[90] On occasions, the funding opportunity is useful to support an agenda that already exists [91] but it may also yield organizations and activists into working in new areas.[92]

Strategies and Repertoires of Action

Identifying an issue as relevant is useless if an influence strategy tied to specific repertoires of action is lacking. This seems to be a key concern for most of the subjects we interviewed: most find themselves reacting to outside events rather than developing a proactive strategy to influence the policy-making process.[93] This, to an extent, is to be expected: if regulatory threats function as political opportunities for mobilization, then reacting to them is the name of the game at least in an early stage. It is also consistent with Charles Tilly's account of occasions for action.[94]

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88 Interview with Luis Fernando García, October 29, 2021.

89 *Ibid.*

90 Interview with Juan Carlos Lara, November 8, 2021 (highlighting how privacy and surveillance became an issue after that).

91 Consider e.g. the case of ADC and its surveillance project, that predated the Snowden revelations and was concerned not so much with digital surveillance but with the oversight of intelligence services

92 Interview with Javier Pallero, November 2, 2021 (highlighting challenges with regard to fields and buzzwords that lack enough empirical backing); Interview with Juan Carlos Lara, November 8, 2021.

93 Interview with Javier Pallero, November 2, 2021.

94 C. Tilly, "Getting It Together In Burgundy, 1675-1975," Theory and Society, vol. 4, 4, 1977, p. 495, Available at http://www.jstor.org/stable/656865 ("…it is remarkable how much the defense of threatened interests outweighed the pursuit of hopes for a happier future").

But the need for a more *strategic* approach was highlighted as a shortcoming of the Latin American movement.

> "To put it bluntly, I think that in the digital rights civil society in Latin America we know nothing about influence strategies; we act on an ad hoc basis … without thinking strategically about our decisions and choices … I think there is homework there to be done, it is like a jacket that no longer suits you. We should be able to rethink … how as our arguments became more sophisticated, your influence strategy should have followed suit and be as—let put it this way—more disruptive … There is still a lot to do with regard to influence and repertoires of action … I think most institutions do not think strategically."[95]

What *is* a strategic shortcoming? Let us propose a working definition. If a strategy is "a plan of action or policy designed to achieve a major or overall aim" [96], a shortcoming in terms of strategy is a lack of sufficient knowledge, understanding, or reflection regarding the best means to achieve a desired end. When confronted with questions regarding strategy, most subjects highlighted that the prevalent approach was one of inclusiveness: "we do it all."[97] Many of the answers, however, seem more related to repertoires of action rather than strategies, which may—we highlight the speculative dimension of our claim here—point towards the lack of strategic thinking. Nevertheless, strategy is a concern for most organizations, and many of them have developed special procedures to develop long-term institutional strategies.[98] But there seems to be a certain urgency as issues and threats

95 Interview with Claudio Ruiz, October 22, 2021.

96 New Oxford American Dictionary (Second Edition).

97 Interview with Carolina Botero, November 24, 2021 ("…our strategy is that of a guerilla, we do all forms of struggle … we do research, we present papers; we pick papers from others, we go to speak to Congress, comment wherever we can on the issues that interest us, and we act quickly…"); Interview with Eduardo Ferreyra, November 4, 2021 ("…we developed a multi-tool strategy, we need to reach the general public first, hence we developed a landing web … with the intention of passing a clear, didactic and simple message; we developed flyers and … we also launched a litigation campaign … and we undertook advocacy actions targeted to policymakers…"); Interview with Valeria Milanes, executive director of the Asociación por los Derechos Civiles, November 2, 2021, on Zoom (discussing how certain projects develop strategies based on a "trial and error" approach); Interview with Javier Pallero, November 2, 2021 (discussing strategic communication, research, case studies, and lobbying).

98 Interview with Beatriz Busaniche, October 22, 2021, Interview with Carolina Botero, November 24,

come up, which may bring tactical considerations to the front while pushing strategic considerations to the back.

There is a remarkable overlap between the organizations surveyed in terms of repertoires of action, which is consistent with theory.[99] The tools available for social movements to make claims are the product of history and circumstance.[100] The DRM in Latin America in our study shows a limited set of repertoires of action, that is closely linked to the prevalent organizational form preferred within the movement: the professionalized NGO. Simplified, these repertoires are research, communication, lobbying, litigation, and networking.

Research seems to be the necessary starting point for the DRM SMOs in Latin America. This is consistent with the role activists find themselves playing: that of experts, who need to fill knowledge gaps in the public and—specially—within public officials who are considering regulations or public policies that threaten their normative commitments.[101] All of our subjects highlighted that research is part of their tool-box.

Communication also comes up as specially valued, a repertoire towards which activists show awareness and concern, something revealed by the fact that the adjective "strategic" is often attached to the concept. We sense a certain evolution within the movement with regard to communication: many of our subjects highlighted how they moved from producing policy papers aimed at policy makers to more ambitious forms of communication aimed at the public at large.[102] This awareness often includes careful think-

2021, Interview with Claudio Ruiz, October 22, 2021, Interview with Juan Carlos Lara, November 8, 2021, Interview with Luis Fernando García, October 29, 2021.

99 C. Tilly, "Contentious Repertoires in Great Britan, 1758-1834," on Mark Traugott (ed.) *Repertoires and Cycles of Collective Action*, Duke University Press Books, Durham, 1995, p. 30 ("…action takes its meaning and effectiveness from shared understandings, memories, and agreements…").

100 C. Tilly, *From Mobilization to Revolution*, Random House, New York, NY, 1978, p. 151 ("At any point in time, the repertoire of collective actions available to a population is surprisingly limited").

101 Interview with Juan Carlos Lara, November 8, 2021 (recalling how the approach to funders often started by proposing to produce papers on issues that were not sufficiently understood); Interview with Katitza Rodríguez, October 28, 2021 (recalling the need to "educate" those who "do not understand"); Interview with Luis Fernando García, October 29, 2021 ("…our process of influence starts always with research"); Interview with Valeria Milanes, November 2, 2021 ("…we try to write a lot of papers and to do research to understand the phenomenon").

102 Interview with Claudio Ruiz, October 22, 2021, Interview with Eduardo Ferreyra, November 4, 2021, Interview with Juan Carlos Lara, November 8, 2021.

ing about all the different stakeholders who are relevant from an Internet regulation standpoint.

> "… decision-makers or power holders became a broader category, that include companies and international organizations … at the same time, the general public became a much more complex audience, that includes those who follow us regularly and those who may follow us circumstantially and may join our actions of support or rejection of a given measure or public policy … External communications become more complex and difficult to analyze … With the media you need communication strategies that are different from the ones you need to engage with funders, which are different as well from the ones you need to engage with networks of like-minded organizations… This is perhaps one of the biggest challenges besides funding, to see communications as a central part of our strategies, that allow us to reach the necessary visibility we need to be successful and that helps activism, financing, and future work."[103]

Ruiz recalled one of the first communication campaigns launched by Derechos Digitales, that meant abandoning the "20 page paper" for something else, something that could gather supporters in the context of the Intellectual Property bill debate that often pitted—in the public arena—this professionalized NGO against popular artists who spoke on behalf of copyright collectives.[104] As he put it, "we knew the Internet language because we knew the Internet; we understood thing that those groups did not."[105] This approach—that Derechos Digitales pioneered in the region—has moved to other organizations, who also rely on engaging a broader audience on the Internet through hashtag activism and pressure exerted on public officials via social networks.[106]

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103 Interview with Juan Carlos Lara, November 8, 2021.

104 Interview with Claudio Ruiz, October 22, 2021 (recalling the campaign "No soy delincuente").

105 *Ibid.*

106 Interview with Carolina Botero, November 24, 2021, Interview with Juan Carlos Lara, November 8, 2021; Interview with Luis Fernando García, October 29, 2021 ("…we really trust on informing the general public…").

Lobbying public officials is also a preferred form of gaining influence in the political process. Access to policy makers is always challenging, but the expert standpoint that Latin American DRM activists assume often works to get a "seat at the table" [107]. To be effective at lobbying, however, is a difficult game that demands from activists and organizations nuanced approaches and fragile political balances. On some occasions, their expertise became useful for public officials and access was—thus—secured, in specific contexts.[108] On other occasions, lobbying means tapping on specific political cleavages, which may be a perilous but perhaps necessary step to take in specific contexts. For instance, Fundación Vía Libre campaign against electronic voting show how it is necessary to be aware of political alliances when dealing with a complex issue, that is somewhat *en vogue* within politicians of different political parties.

> "We really had to discuss in public, and with lots of politicians. Because even though nowadays electronic voting is seen as an issue that belongs to Macrism [the political strand that supports former president Mauricio Macri], in the early days it was not exclusively in that side; in 2003 other parties supported it and then Macri took office in the City of Buenos Aires and picked it up himself, and it became a campaign issue … By that time, Randazzo [former Ministry of Interior of the peronist national administration between 2007 and 2015] was also committed, as well as Massa [currently Minister of Economy in the peronist national administration] … Hence, it was not an easy issue and you had to question a very dominant public discourse, a very dominant common sense, and you had to argue with politics at large…."[109]

Generally speaking, most of the organizations interviewed highlighted that access was not particularly difficult. But, of course, access may guarantee that you will be listened, but not that you will succeed in persuading

[107] Recall Beatriz Busaniche experience in the Argentina Congress mentioned before, at pages 23-24.

[108] Interview with Claudio Ruiz, October 22, 2021 (recalling how their knowledge was useful for Chilean officials negotiating the TPP with the United States).

[109] Interview with Beatriz Busaniche, October 22, 2021.

the person you are talking to.

Litigation—that often and perhaps grandiosely is also attached to the adjective "strategic"—is a repertoire of action in which some degree of disagremeent emerged among our subjects. Not all organizations do litigation by themselves, even though in most of them lawyers are indeed available. For Ruiz, this has to do with identifying the proper nature of the problem, which he often finds in the regulation itself rather in how existing regulations are enforced or applied by public officials or courts.[110] This approach may be informed by differences in national judiciaries as political players. For instance, in Chile the judiciary has been identified as an outlier in Latin America, as a bureaucracy that failed to join the regional "rights revolution" of the 1990s.[111] That may explain why—for other organizations, in other countries—courts are perceived as a useful venue where to present claims and issue demands. In that sense, the ADC in Argentina has traditionally relied on litigation as a preferred repertoire of action, either taking cases by themselves in representation of clients or by taking part in *amicus curiae* strategies.[112] Similarly, in Mexico Luis Fernando García of R3D highlighted how lobbying is often done thinking in how litigation may play out afterwards.[113] And while Fundación Karisma do not engage in "strategic litigation", they have taken part in *amicus curiae* strategies and have been involved in the case of Diego Gómez, a researcher who had been criminally prosecuted for sharing an academic paper online. [114]

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110 Interview with Claudio Ruiz, October 22, 2021 ("…it is a long, and you know, tortuous road, of very difficult success … that is unlikely … We thought that regulation was so weak that the problem was not that there were no cases reaching courts, but that the problem lied within regulation itself").

111 J. Couso, "The Judicialization of Chilean Politics: The Rights Revolution That Never Was," on Rachel Sieder, Line Schjolden, Alan Angell (eds.) *The Judicialization of Politics in Latin America*, Palgrave Macmillan, New York, 2005, (Studies of the Americas), "The Role of Chile's Constitutional Court in the Consolidation of Democracy (1990-2011)," on *Representation and Effectiveness in Latin American Democracies*, Routledge, New York, 2013.

112 Interview with Valeria Milanes, November 2, 2021 (highlighting how identifying potential "clients" is difficult, and often do not pay off); Interview with Eduardo Ferreyra, November 4, 2021.

113 Interview with Luis Fernando García, October 29, 2021 ("…we try to influence, but when we know that they will not pick up on all of our recommendations, we at least try to have some of them adopted that will work in future ligitation…").

114 Interview with Carolina Botero, November 24, 2021. On the Gómez case, *see* T. Vollmer, *Colombian appellate court affirms: Diego Gómez not guilty for sharing research paper online*, Creative Commons, 12/05/2017, available at https://creativecommons.org/2017/12/05/colombian-appellate-court-

All of the activists we interviewed highlighted the importance of working in alliance with others. Working "in networks" serves several purposes: it often means a more efficient use of scarce resources, for organizations pull together and divide the work ahead; it also increases legitimacy and visibility; it facilitates the exchange of knowledge and information, and so on. Alliances and networks come in different forms. Some are circumstantial and issue-specific—that was the case of the loosely aligned coalition of people and organizations behind the *Red para Todos* campaign against the *Ley Lleras* in Colombia [115]. Some organizations—such as Fundación Karisma and Vía Libre—seem to have embraced networked forms of governance, for they are closely intertwined with broader technical communities, working on infosec and software development.[116] Finally, on some occasions, alliances are formed after persuading potential partners, something specially likely when alliances are built with non-digital rights organizations.[117] This seems particularly important when reaching out to traditional human rights organizations, that—in the last few years—have become increasingly concerned about issues that fall within the field of "digital rights."[118]

Finally, international alliances may pose challenges. For instance, Ruiz recalls how difficult it may be to establish working relationships with organizations from the global North, for—among other reasons—differences in resources and approaches.

> "It has to do with resources and differences in power as well as positions … but it also has to do with approaches that our organizations have to issues … In Latin America … for a long time we have been content with not doing much in the end, it

affirms-diego-gomez-not-guilty-sharing-research-paper-online/.Accessed: august/14/2022.

115 Interview with Carolina Botero, November 24, 2021. Similarly, *see* Interview with Luis Fernando García, October 29, 2021 (recalling usual alliances in Mexico with Article 19 and Social TIC).

116 Interview with Beatriz Busaniche, October 22, 2021, Interview with Carolina Botero, November 24, 2021.

117 Interview with Beatriz Busaniche, October 22, 2021 (recalling how important it was, for Vía Libre's campaign against electronic voting, to convince Delia Ferreira Rubio of traditional NGO Poder Ciudadano to join the campaign); Interview with Claudio Ruiz, October 22, 2021 (pointing towards alliances with e.g. librarians associaitons).

118 E.g., *see* Interview with Luis Fernando García, October 29, 2021 (recalling how "we feel part of the human rights movement").

> is easier to complaint because it rains, because nobody takes you into account, … because he agenda is set by the organizations in the North, than to think strategically from your own standpoint, with your resources and the reality you are getting involved in… That these issues that worry you and are not being reflected in the discussion can be reflected. The former is way easier; the latter nobody knows how to do it, but I think it is the right approach. Sadly, you have a funding ecosystem and global organizations with lots of power and—furthermore—a regional funding ecosystem that is incredibly precarious. Everything linked together creates more tensions than cooperative spaces…."[119]

This seems like a good point to jump into the tricky issue of resources.

Resources

In social movement theory, the capacity of individuals and organizations to effectively mobilize resources is often seen as a necessary condition for meaningful collective action.[120] Access to resources is—then—a major concern for all the activists involved, and is a fundamental piece of the puzzle, specially because of the organizational model—the professionalized NGO—that most organizations have chosen to follow. To put the point bluntly: without access to resources, most of the organizations we surveyed would cease to exist. (Perhaps the only exceptions would be those organizations that are embedded within broader activists communities of hackers, infosec professionals and software developers).

Generally, resources came only after some initial success. In our inquiry, most activists started working on the issues that mattered to them in their free time, either managing to do the work outside of their daily working

[119] Interview with Claudio Ruiz, October 22, 2021.

[120] J. C. Jenkins, "Resource Mobilization Theory and the Study of Social Movements", cit., p. 529 (explaining that the resource mobilization model sees collective action as "rational actions oriented towards clearly defined, fixed goals with centralized organizational control over resources and clearly demarcated outcomes that can be evaluated in terms of tangible gains").

schedule[121] or living out of savings.[122] Claudio Ruiz recalls, for instance, how his salary as executive director of Derechos Digitales was at the beginning a portion of Chile's minimum wage.[123] But the story told by the activists we interviewed is one in which—eventually—resources came in and certain degree of professionalization, not the same across the board, was achieved. In that sense, the organizations interviewed did not reveal lack of adequate resources to do their job, even though many acknowledged having gone through periods of stress in which e.g. payments to providers were late or their financial horizon was extremely short.

However, resources are scarce by definition, and their insufficiency poses challenges and restrictions. For instance, many of the subjects interviewed highlighted how it was difficult to hire technologists, a position that in the last few years has been increasingly perceived as necessary to effectivly advocate on technological regulation.[124] Others have highlighted how they wished for positions they could not afford at the moment, whether it was e.g. economists or persons specialized in strategic communication. In any case, competition for scarce resources may transform itself into obvious obstacles for collaboration.[125] Scarce resources may also compromise an organization's agenda and may imply a substantial risk for its future subsistence.[126]

Finally, Ruiz highlighted a fundamental side of resource scarcity, that has to do with the regulatory challenges mentioned in previous sections. It is worth quoting it extensively.

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121 Interview with Beatriz Busaniche, October 22, 2021, Interview with Katitza Rodríguez, October 28, 2021.

122 Interview with Luis Fernando García, October 29, 2021.

123 Interview with Claudio Ruiz, October 22, 2021.

124 Interview with Carolina Botero, November 24, 2021 (highlighting how the learning curve to work on these issues is steep); Interview with Luis Fernando García, October 29, 2021 (highlighting how in order to deal with the learning curve, he chose to work with human rights experts who then become knowledgeable about technology working within the organization); E.g., Interview with Valeria Milanes, November 2, 2021.

125 *See* Interview with Claudio Ruiz, October 22, 2021 (quote above); Interview with Beatriz Busaniche, October 22, 2021 ("…we are all friends, but resources are scarce and we are all chasing the same opportunities…").

126 E.g. Interview with Claudio Ruiz, October 22, 2021 (recalling a rough rule that kept at 30% the maximum cap a given funder could meet in Derechos Digitales' budget during his tenure as executive director).

> "The last ten years of digital regulation has shown increasing sophistication, and civil society organization do not have the resource to keep up in that accelerated environment. Companies do: hence Facebook or Google comes in and hire us, but Latin American organizations do not have the necessary muscle to jump in that ring. I mention this because I believe there is a relationship between that … tension and the strategic development of organizations, for it turns out that is much more comfortable to stay within your comfort zone that you have inhabited for 20 years as an organization, on the issues where you have expertise and you are seen as relevant by others, where you an authorized voice… But we should look at the global ecosystem, look at what different players are doing at the global scale and do a regular reassessment, because if you fail to do so you may be overwhelmed by events…."[127]

A key consequence, then, of lack of access to adequate resources is the difficulty of gaining traction in the regulatory spaces that are beyond the reach of the "nation state", a diagnosis that has been supported by recent research produced by Carlos Cortés and Luisa Isaza on Latin American digital rights organizations and their presence in international fora. [128]

Conclusion

We have approached the digital rights movement (DRM) in Latin America empirically. Our inquiry is limited, in the many ways mentioned before. But we departed from a set of generally accepted theories regarding what social movements are and what kinds of questions make sense to ask regarding them. In that sense, we have sought to understand where activism came from for the people we interviewed, and to dwell in matters of resources, repertoires of action, strategies and agendas. We also framed our inquiry within what we think is a sound theory of how many social movements emerge (in response to regulatory proposals that threaten their nor-

127 *Ibid.*

128 Manuscript in archive with the author.

mative commitments). That was our first hypothesis, and we consider we have proven it right.

We also framed our inquiry within the broader issue of what we called "regulatory displacement". We sought to capture through that concept the difficulties and challenges involved in Internet regulation, which come down to the limited scope nation states have to effectively regulate the Internet, and with the differential distribution of that regulatory power, between central and peripheral countries. (Latin American countries, by any measure, are hardly "central"). The scenario is made even more complex by the fact that a lot of the regulatory power, broadly understood in Lessig's terms, lies in the hands of international organizations, hybrid transnational institutions, and powerful private companies. From that diagnosis we developed our second hypothesis, to recall: that if regulatory threats on the Internet do not come exclusively from the nation state, SMOs must have adapted their strategies to meet the challenge. We find some support for this second hypothesis, but—at the same time—one of the main findings is the noteworthy persistence of the nation state among our subject's stories. The rest of this conclusion discusses what this might mean.

To an extent, the nation state—with all its difficulties and shortcomings to actually govern the Internet—is pervasive. It is constantly present in our subjects' projects, narratives, and minds. Even those who highlighted the importance of working in transnational venues highlighted its importance partially because of the legitimacy that it projects at home.[129] Then nation state was there, crucially, when most of the organizations we studied were born. So, for instance, FTAs negotiations provided a clear focus for action, which allowed activists to identify public officials as targets who should receive their claims. Other regulatory threats also emerged in the stories we used to tell the broader story of the Latin American DRM—whether it was a regulation on net neutrality, intermediary liability, cyber-crimes, data retention, data protection, surveillance and so on: the "regulatory threat" seem to mainly come from local governments.

Local activists are, however, aware of the challenge of regulatory displace-

[129] Interview with Valeria Milanes, November 2, 2021.

ment, but it does not seem to be a central concern for most of them, with a few notable exceptions. For instance, the broader definition of decision-makers used by Derechos Digitales' current leadership suggest an acute awareness of the problem.[130] Similarly, Ruiz's concern about the impact of companies in the work of organizations.[131] In that sense, platforms are an object of study and analysis, and—perhaps—also a subject of claim-making.

Global fora are relevant and most of our subjects have attended some of them, belong to international networks, and generally take part in regional and global discussions, although the question of how much influence they manage to attain in fora that hardly produces actual decisions[132] is still an open question, outside the scope of this inquiry. But perhaps, and ironically and—-believe us—not condescendingly, the existence of "regulatory displacement" is made evident by its relative absence in our subject's stories: because our capacity of influence is limited to the states in which we live in and we have no say in what the United States or the European Union do, we work trying to shape the regulation that our governments do. The regulation that happens elsewhere is beyond our reach. This is not an entirely unreasonable way of justifying the centrality of the nation state that emerges from our inquiry.

It is useful to close our study with questions that remain open. One of our intuitions regarding the effects of regulatory displacement is that regulations flow downstream, that is, regulation that emerges in the North travels through the means of comparative law and legal borrowings to peripheral countries. To an extent, that is what happened with the principle of intermediary non-liability of section 230 of the CDA. It is likely that legal reforms of Latin American data protection laws will be inspired by the European GDPR. We mention this likely phenomenon simply as an open question, that merits further research we intend to do in a different project. Another question that remains open is the extent to which the Latin American movement abides by the *cyberlibertarianism* that we discussed in the first section. While certain normative commitments do come out from the

130 Interview with Juan Carlos Lara, November 8, 2021 (see quote above, at page 30).

131 Interview with Claudio Ruiz, October 22, 2021 (see quota above, at page 36).

132 *See* M. Mueller, *Networks and States*, cit., p. 110 (discussing e.g. how the IGF is a fora to sublimate conflicts rather than solve them).

interview process and can be seen in the public actions of the organizations we issued, an interesting question to explore by further research is how Latin Americans interpret (or re-interpret) those core normative values related to Internet's architecture. As we mentioned before, we did find two framings among the subjects we interviewed: one connected to human rights and another one connected to the hacker and free software cultures. It would be interesting to explore further how these framings influence each other and whether they sometimes clash. For instance, the Latin American response to the European "right to be forgotten" was deeply affected by the human rights framework, that invoked the region's history with regard to human rights abuses to reject the idea that forgetting is a good idea.[133] It would be interesting to see how that framing affects positions by DRMs SMOs in other topics. Finally, among the challenges ahead one that seems worthy of exploring has to do with increasing effectiveness of Latin America advocacy, which lead us back to the issue of strategy. As discussed previously, many of our subjects identified strategic thinking and planning as a shortcoming within the region's SMOs. Two questions may inspire interesting conversations in that regard: (a) how to develop more proactive—as opposed to reactive—advocacy and (b) how to develop a Latin American voice, along with gathering the necessary resources, to influence sites of norm articulation that are far and generally beyond of our reach.

[133] E. Bertoni, *El Derecho al Olvido: un insulto a la historia latinoamericana*, E-BERTONI, 09/24/2014, available at http://ebertoni.blogspot.com.ar/2014/09/el-derecho-al-olvido-un-insulto-la.html.

Annex I - The Questionnaire (in Spanish)

1 Preguntas generales

1. ¿Cuándo y cómo empezaste a trabajar en "derechos digitales"?
2. ¿Qué ves distintivo de tu organización en relación a la aproximación de los temas en que trabajan, en particular en relación a otras organizaciones?

2 Agendas, marcos conceptuales, y framing

1. ¿Sobre qué áreas y temas trabaja tu organización? ¿Cómo definen los temas a trabajar?
2. ¿Qué percepción tienes sobre cómo el público en general percibe los temas en los que trabajas (elegir uno o dos)?
3. ¿Qué percepción tienes sobre cómo el Estado percibe los temas en los que trabajas (elegir uno o dos)?
4. ¿Qué percepción tienes sobre cómo otras organizaciones de la sociedad civil que no trabajan en temas de "derechos digitales" percibe los temas en los que trabajas (elegir uno o dos)?
5. ¿Qué desafíos encuentran al planificar la estrategia de abordaje de estos temas?
6. ¿Recuerdas instancias en las que hayan revisado sus estrategias? ¿Por qué?

3 Capacidades y recursos

1. ¿Qué tipo de financiamiento tiene? ¿Puede dar una aproximación en porcentajes? ¿Cuál es el horizonte temporal de ese financiamiento
2. ¿Les hace alguna diferencia práctica recibir financiamiento público o privado? ¿Cuáles son las prioridades en cada caso?
3. ¿Con qué recursos le gustaría contar y no tiene? (p.ej., ciertas capacidades profesionales, administración, etcétera)
4. ¿Están integrados a alguna red regional?

4 Repertorios de acción

1. ¿Con qué actores se relacionan más a la hora de establecer proyectos?
    a. ¿Cómo deciden con quién relacionarse y con quién no?
    b. ¿Qué estrategias utilizan para relacionarse con distintos actores? ¿Hay mucha diferencia entre relacionarse con actores estatales vs actores de la sociedad civil?
2. ¿Hay estrategias que hayan utilizado y abandonado? ¿Por qué?
3. ¿Compartes alguna iniciativas que percibas como especialmente exitosa que hayan tenido?
4. ¿Compartes alguna iniciativa que percibas como no totalmente exitosa que hayan tenido?
5. ¿Han procurado intervenir en discusiones regionales o globales? En su caso, ¿qué experiencia han tenido?

5 Pregunta final

1. ¿Qué otras organizaciones deberíamos entrevistar? ¿Qué otras organizaciones hacen un trabajo que te guste especialmente?
2. ¿Cómo ves al movimiento de DD hoy, en tu país y en América Latina?