

# CHARTER OF DIGITAL RIGHTS

## RIGHTS TO FREEDOM

### I

#### Rights and freedoms in the digital environment

1. The fundamental rights and freedoms recognized in the Spanish Constitution, in the Universal Declaration of Human Rights, in the Charter of Fundamental Rights of the European Union and in the international treaties and covenants on the same matters ratified by Spain are guaranteed in the digital environment or space<sup>1</sup>.
2. All persons have identical rights in both the digital and analogical environments, without prejudice to the limitations that might be established pursuant to the Constitution and the laws, taking into account the peculiarities of each sphere.
3. The laws shall specify, as far as necessary, the specific nature of rights in the digital environment and shall regulate the implementation and effectiveness thereof, establishing guarantees and promoting equality in the digital ecosystem.
4. Digital transformation processes, the development and use of digital technology, as well as any process of scientific and technical research related thereto or making instrumental use thereof, shall take into account the need to guarantee human dignity, fundamental rights, the free development of personality and shall be aimed at the attainment of the common good.
5. The principle of compliance by design shall be applied in full to scientific and technological development and to the results thereof. Scientific and technological developments shall include in the determination of their requirements an analysis of compliance with this principle.

### II

#### Right to data protection

1. Every person has the right to the protection of the personal data concerning them.
2. Such data shall be processed fairly, for specific purposes, and on the basis of the consent of the data subject or with some other legitimate basis laid down by law. Data subjects have the right of access to data that has been collected concerning them, and the right to have such data corrected.
3. Compliance with these rules shall be subject to control by an independent authority.

---

<sup>1</sup> For the purposes of this Charter, the digital environment is understood to be the set of systems, apparatuses, devices, platforms and infrastructures that open up spaces of relations, communication, interaction, trade, negotiation, entertainment and creation that enable natural or legal persons, bilaterally or multilaterally, to engage in relationships similar to those existing in the traditional physical world. Digital space refers to the digital places opened up in the digital environments in which communication, interaction, trade, negotiation, entertainment and creation are possible in a way that mirrors the traditional physical world. Digital citizenship refers to the status of rights and obligations of the individual, regardless of their legal status as a citizen.

### **III**

#### **Right to identity in the digital environment**

1. The right to one's own identity in the digital environment is recognized, pursuant to both the Spanish and the European legal system.
2. One's identity may not be altered, controlled or manipulated by third parties against one's will.
3. Guarantees shall be established to enable the preservation and control of one's identity in the digital environment.

### **IV**

#### **Right to pseudonymity**

1. In accordance with the technical possibilities available, digital environments shall allow access under conditions of pseudonymity.
2. The design of the pseudonymity referred to in the previous paragraph shall ensure the possibility of re-identifying persons in the cases and with the guarantees provided by the legal system.

### **V**

#### **Right not to be traced and profiled**

1. The right to free individual self-determination and the guarantee of freedoms implies the right not to be traced nor to be subjected to personality or behavioural analyses involving the profiling of a person.
2. Such processing of personal information shall only be possible with the consent of the data subject or in the cases and with the guarantees provided by law.

### **VI**

#### **The right to digital security**

1. Every person has the right to security in the digital environment.
2. The public authorities shall adopt and promote the necessary measures to guarantee such security, always in collaboration with technological enterprises and users.

### **VII**

#### **Right to digital heritage**

1. The right to the digital inheritance of all assets and rights owned by a deceased person in the digital environment is recognized.
2. Access to digital contents and services owned by a deceased person shall be conducted pursuant to the general provisions of the Spanish Civil Code, to the laws of the Autonomous

Communities having their own regional or special Civil Law, and to Title X of Organic Law 3/2018 of 5 December, on Personal Data Protection and Digital Rights.

## **EQUALITY RIGHTS**

### **VIII**

#### **Right to equality and to non-discrimination in the digital environment**

1. The rights to equality in digital environments, to non-discrimination and to non-exclusion are recognized. In particular, the right to effective equality of women and men in digital environments is recognized. Digital transformation processes shall apply the gender perspective.
2. The public authorities shall promote policies aimed at guaranteeing effective access by all persons to the services and opportunities offered by the digital environment in any of its dimensions, shall guarantee the right to digital non-exclusion, and shall combat digital divides in all the manifestations thereof, paying special attention to the territorial divide and ensuring the right to universal, affordable, quality and non-discriminatory access to the internet for the entire population.

### **IX**

#### **Child protection in the digital environment**

1. Parents, guardians, caregivers, and legal representatives shall ensure that children use devices, digital environments, and information society services in a balanced and responsible manner in order to guarantee the adequate development of their personality and preserve their dignity and fundamental rights.
2. Educational centres and any legal or natural persons engaging in activities in digital environments in which children participate shall guarantee the protection of the higher interest of the child and their fundamental rights, especially the right to personal data protection, in the publication or dissemination of their personal data through information society services.
3. With the exceptions provided for in law, the processing of children's personal information to set up personality profiles in digital environments is prohibited.
4. Profiling practices which may be used to psychologically manipulate or disturb children shall be considered illicit activities; in particular, advertising based on such techniques.
5. Research shall be promoted to study the impact on children's personality development deriving from their access to digital environments, as well as to harmful or dangerous content. In such studies, particular attention shall be paid to the impact on their affective and sexual education, dependent behaviour, and gender equality, as well as on anti-democratic, racist, and violent conduct.

### **X**

#### **Protection of persons with disabilities in the digital environment**

1. The accessibility of digital environments shall be guaranteed for persons with disabilities, both from a technological standpoint and with regard to their content. In particular, information regarding terms of service and conditions of use must be accessible and understandable.
2. Digital environments, and particularly those with the purpose of digital political participation, shall ensure the effective participation of persons with disabilities or functional diversity.
3. The right to digital education of persons with disabilities shall be guaranteed.

## **XI**

### **Protection of older persons in the digital environment**

1. The right of older persons to access to digital environments is recognized.
2. The accessibility of digital environments for persons from this group shall be guaranteed.

## **RIGHTS TO PARTICIPATION IN AND CONFORMATION OF PUBLIC SPACES**

## **XII**

### **Right to net neutrality**

Public authorities shall guarantee users' right to net neutrality. Internet service providers shall offer their services transparently and without discrimination for technical or economic reasons, under the terms set forth in Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access, and Organic Law 3/2018 of 5 December, on Personal Data Protection and Digital Rights.

## **XIII**

### **Freedom of expression and freedom of information**

1. Everyone has the right to freedom of expression and of information in digital environments under the conditions set forth in the Spanish Constitution. Constitutional principles regarding accuracy, information pluralism, and the diversity of opinions and information shall be guaranteed.
2. Those responsible for communications media or for digital environments that either have as their purpose the exercise by their holders of the freedoms stated in the previous paragraph or which provide such services to their users shall adopt the appropriate protocols to guarantee the right of all persons to:
  - a) Know when information is produced without human intervention through automated processes.
  - b) Know when information has been classified or prioritized by the provider through profiling techniques or similar methods. When such information is sponsored by a third party, its advertising nature must be specifically stated.

c) Request that providers not use analytical techniques which make it possible to offer information that affects ideological or religious freedom, or freedom of thought or belief.

d) Exercise the right to correction, whether regarding the communications media or those users who disseminate content that impinges upon the right to honour, or to personal or family privacy on the internet, or the right to freely communicate or receive accurate information, in accordance with the requirements and procedures set forth in Organic Law 2/1984 of 26 March, regulating the right to correction.

When digital communications media respond to a demand for correction made against them, they must proceed to the publication in their digital files of a notice which makes it very clear that the original news item did not reflect the actual situation of the individual. This correction notice must appear in a visible place next to the original information.

e) Make a reasoned request for digital communications media to include an update, sufficiently visible next to the news that concern them, when the information contained in the original news item does not reflect their current situation as a result of circumstances which may have occurred after its publication, damaging them in some way.

In particular, the inclusion of such a notice shall be appropriate when the original information refers to police or legal actions that have been resolved in favour of the interested party as a consequence of subsequent court decisions. In this case, the notice shall refer to the subsequent decision.

3. The processes for the verification and removal of content shall be limited to those which in digital environments are limited by the ban on prior censorship. In those cases where the law supports removal of the content, the providers must notify the user of this, and have a procedure in place for appealing these decisions. Transparent self-regulation mechanisms shall be promoted which include the criteria and procedures determining providers' actions in this environment and incorporate procedures for appeal and review with regard to content removal decisions.

#### **XIV**

##### **Right to public participation by digital means**

1. In accordance with the law, procedures for individuals to participate in public life shall be promoted.

To this end, digital environments shall be fostered that contribute to the right to effective access to public information, transparency, and accountability, as well as to individuals' right to propose and participate in actions of the public administrations in their respective scopes of authority, in accordance with the Constitution.

2. The procedures for public participation shall guarantee conditions of equality, without discrimination against or exclusion of anyone, subject to the law.

#### **XV**

##### **Right to digital education**

1. The educational system shall guarantee students' full integration into digital society, and their learning to use digital media in a manner that is secure and respectful of human dignity,

constitutional values, fundamental rights, and particularly which respects and guarantees personal and family privacy and personal data protection.

2. Teachers shall receive training to acquire digital skills and the necessary training to teach and transmit the values and rights stated in the previous paragraph.

3. In particular, public authorities with responsibilities in this area shall promote:

a) Vocational training plans aimed at the integration of workers into digital transformation processes.

b) Adult education, with particular attention to older persons.

c) Audiovisual education in the digital environment, so as to promote critical skills and the ability to confront disinformation practices.

4. The right to freedom of access to education and freedom to create centres that provide their services in digital environments is recognized, without prejudice to the legal provisions regarding compliance with educational regulations and the obligation to provide in-person teaching in compulsory education.

5. The subject Education for Digital Citizenship shall be promoted, because an essential part of the strategy for the digitalization of education involves developing skills making it possible for the use of these technologies to be beneficial for each individual and for society as a whole. This dimension involves such issues as:

a) Teaching students to use digital tools ethically with regard to such matters as data use and respecting others' privacy, and to identify online information and behaviours that could be harmful to their own health or well-being and that of others.

b) Strengthening the development of critical thinking to assist them in distinguishing objective facts from mere opinions not backed by evidence, which will enable them to reject discriminatory stereotypes, hate speech, and cyberbullying.

c) Fostering the ability to participate in generating information in a manner that is active, creative, and above all, responsible.

d) Addressing the diversity of talents and learning speeds, particularly with regard to those who have specific educational support needs.

## **XVI**

### **Citizens' digital rights in their relations with the public administration**

1. The right to equality in access to public services and in digital relations with the public administration is recognized. To this end, active public policies shall be promoted which guarantee access to systems and procedures.

2. Public authorities that create an activity in a digital environment must identify the bodies responsible for it.

3. The principle of transparency and of reuse of public administration data shall be the guiding principle of actions with regard to digital administration, pursuant to sector-based regulation. In

particular, the right to access public information shall be guaranteed; active advertising and accountability shall be promoted; and data portability and the interoperability of formats, systems, and applications shall be safeguarded.

4. Whenever possible, the universality and neutrality of the technologies used by the public administration shall be promoted, as well as their design and use in accordance with the ethical principles included with this Charter. Moreover, the necessary measures shall be adopted to guarantee that service providers which collaborate with them by digital means do so pursuant to the provisions of this Charter.

5. Alternatives shall be offered in the physical world that safeguard the rights of those persons who opt out of using digital resources.

6. Damage caused by digital activities or decisions may give rise to entitlement to compensation for any harm that natural or legal persons may suffer with regard to their goods or rights, pursuant to the laws in force.

7. Citizens' rights regarding artificial intelligence (AI) recognized in this Charter shall also be applicable within the context of administrative actions, in particular those aspects referring to the design and use of algorithms. In all cases, the following rights are recognized:

- a) Decisions and actions in the digital environment that respect the principles of good governance and the right to good digital administration.
- b) Decision-making procedures with due guarantees.
- c) Provision of understandable reasoning, expressed in natural language, for decisions adopted in the digital environment, backed by legal provisions and application criteria relevant to the case at hand.
- d) Discretionary decision-making being reserved to persons, unless a regulation having the force of law allows for the adoption of automated decisions in that particular area.

When designing algorithms in the case of automated or semi-automated decision-making, a digital rights impact assessment shall be necessary. In all cases, algorithmic systems to be used for decision-making shall be subject to prior approval, defining their specific scope of application and operational structure.

## **LABOUR- AND BUSINESS-RELATED RIGHTS**

### **XVII Labour rights**

1. In the sphere of labour, workers and civil servants have the following rights:

- a) Digital disconnection.
- b) Protection of their privacy in the use of the digital devices made available to them by their employer, as well as protection against the use of video surveillance and audio recording devices at the workplace.
- c) Protection of privacy against the use of geolocation systems.

In all cases, decent working conditions in digital environments shall be guaranteed.

2. When the nature of the position and the capacities of the organization so allow, conditions for enabling telework shall be promoted. In such a case, the organization of working conditions shall be implemented with full respect for workers' dignity, guaranteeing, in particular, their right to privacy and to the privacy of their home, the rights of the persons residing in their home, and their right to work-life balance.

3. In digital transformation processes:

a) Workers shall be provided with proper training to enable them to adapt to the new working conditions.

b) The workers' representatives shall be informed of the technological changes taking place in the company and shall participate in decision-making regarding the digital transformation and the consequences it may have for work.

4. Without prejudice to the right not to be subject to a decision based solely on automated decision-making processes, except in the cases provided for by law, workers' representatives and the persons directly affected shall be informed of the use of data analytics or AI systems in management, monitoring and decision-making processes relating to human resources and labour relations. This duty of information shall include, at the very least, knowledge of the data used as input for algorithms, their operating logic, and the assessment of outcomes.

## **XVIII**

### **Companies in the digital environment**

1. Free enterprise is recognized in digital environments in the framework of the market economy. Companies' technological development and digital transformation shall respect people's digital rights.

2. The public authorities shall promote research, technological development and innovation aimed at the digital transformation of companies, digital entrepreneurship, and society's capacity-building, in order to generate national science and technology.

3. Conditions enabling the creation of sandboxes to develop new technology-based business models, applications, processes or products shall be implemented.

## **DIGITAL RIGHTS IN SPECIFIC ENVIRONMENTS**

## **XIX**

### **Right of access to data for scientific research, innovation and development purposes**

1. The use of public- and private-sector data for the common good is considered to be in the general interest.

2. In the framework defined by law, conditions shall be promoted to guarantee the reuse of information and the use of data to foster research, innovation and development.

3. In the case of personal data:



- a) Data may be processed, after anonymization, for scientific research, innovation and development.
- b) The processing of personal or pseudonymized data shall only be admissible when the nature of the activity so requires, and there is consent or an express authorization provided for by law.
- c) Data donor programmes for research purposes shall be promoted.

The applicable provisions shall be Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; Organic Law 3/2018 of 5 December, on Personal Data Protection and Digital Rights; and the corresponding sector-based legislation.

4. The development of scientific and technological research that could have an impact on human beings shall respect their dignity, and guarantee all persons, without any discrimination, respect for their integrity and all other fundamental rights and freedoms with regard to the applications of biology and medicine.

5. Research in areas such as neuroscience, genomics or bionics, among others, shall apply the provisions of the above paragraphs and, in particular, shall guarantee respect for persons' dignity, free individual self-determination, privacy and integrity.

## **XX**

### **Right to sustainable technological development and to a sustainable digital environment**

1. The development of technology and digital environments shall seek environmental sustainability and commitment to future generations.
2. The public authorities shall promote policies aimed at achieving such goals, paying particular attention to the sustainability, durability, reparability and backward compatibility of devices and systems, preventing policies that involve complete replacement and planned obsolescence.
3. The public authorities shall promote energy efficiency in the digital environment, fostering the minimization of energy consumption and the use of clean and renewable energy.

## **XXI**

### **Right to health protection in the digital environment**

1. All persons' right of access to digital health services under conditions that guarantee equality, accessibility and universality is recognized.
2. The public authorities shall promote the contribution of research and technology to the achievement of preventive, predictive, personalized, participatory and population medicine.
3. The health system shall guarantee the development of information systems that ensure the standardization, interoperability, access to and portability of patients' information.
4. The use of digital diagnostic assistance systems, and in particular of AI-based processes, shall not limit medical professionals' right to diagnostic freedom.
5. Digital health environments shall guarantee full respect for patients' fundamental rights, and in particular for their right to receive information and give consent with regard to the processing of their personal data for research purposes and to the transfer to third parties of said data when consent is required.

6. The public authorities shall promote the population's universal access to technological devices developed for therapeutic or caregiving purposes.

## **XXII**

### **Creative freedom and right of access to culture in the digital environment**

1. The right to creative freedom in the digital environment is recognized, training programmes in the educational system shall be promoted, and creative staff's right to remuneration shall be guaranteed.

2. Access to culture in the digital environment shall be guaranteed, pursuant to articles 44.1 and 149.2 of the Spanish Constitution, as well as to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005. In all cases, provisions governing intellectual property and rights deriving therefrom shall be taken into account.

3. In particular, the public authorities shall facilitate digital access to the different artistic and cultural expressions in spaces owned by them or by third parties with which they collaborate directly or indirectly. In particular, digital access to public domain works shall be promoted.

## **XXIII**

### **Rights as regards artificial intelligence**

1. In the development and life cycle of AI systems:

- a) The right to algorithmic non-discrimination shall be guaranteed, regardless of the origin, cause or nature of the bias, with regard to decisions and processes based on algorithms.
- b) Transparency, auditability, explainability and traceability shall be ensured.
- c) Accessibility, usability and reliability shall be guaranteed.

2. Persons have the right not to be subject to a decision based solely on automated decision-making processes, including those that use AI procedures, produce legal effects, or significantly affect them in a similar manner, except in the cases provided for by law. In such cases, the following rights are recognized:

- a) The right to request human supervision and intervention.
- b) The right to challenge automated or algorithmic decisions.

3. Persons shall be informed of the use of AI systems that communicate with human beings using natural language in all its forms. In all cases, assistance from a human being at the request of the interested party shall be guaranteed.

4. The use of AI systems aimed at psychologically manipulating or disturbing persons, in any aspect affecting fundamental rights, is prohibited.

## **XXIV**

### **Digital rights in the use of neurotechnologies**

1. The conditions, limits and safeguards for the implantation and use in humans of neurotechnologies shall be regulated by law, for the purpose of:

- a) Preserving individual identity as a person's sense of self.

- b) Guaranteeing individual self-determination, sovereignty, and freedom in decision-making.
  - c) Safeguarding the confidentiality and security of data obtained or regarding their brain processes, and full control over them.
  - d) Regulating the use of human-machine interfaces which could affect physical or psychological integrity.
  - e) Ensuring that decisions and processes based on neurotechnologies are not conditioned by the provision of data, programs, or information that are incomplete, undesired, unknown, or biased, or by interference with neuronal connections.
2. To guarantee the dignity of the person, equality, and non-discrimination, in accordance, when appropriate, with international treaties and conventions, the law shall regulate those situations and conditions for the use of neurotechnologies which, beyond their therapeutic application, are aimed at mental augmentation or the stimulation or enhancement of human capabilities.

## **XXV**

### **Guarantee of rights in digital environments**

1. Without prejudice to the provisions of the specific sector-based legislation, all persons have the right to administrative and judicial redress with regard to their rights in digital environments.
2. When the violation of such rights, or the damage caused, produces effects in Spanish territory, the guarantee of such rights by the competent administrative authority or jurisdictional body in Spain may be invoked.
3. Regulated self-regulation mechanisms and alternative dispute resolution procedures shall be promoted.
4. The public authorities shall assess the prevailing administrative and procedural law to examine its adaptation to the digital environment and shall propose, if appropriate, the necessary amendments to guarantee digital rights.