Series Editor's Introduction

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One can sign away one's constitutional rights by contract, though historically that has been allowed only when there were plenty of other options. One could choose, for example, to sign a contract forbidding engaging in public political speech, even on one's personal time, in order to work for a telephone company concerned about being welcome in every home in the community—in the past, though, under conditions in which if that were not acceptable there were plenty of other jobs available on a par in terms of skills required, pay, a visible career path, and so on. You had a choice.

In contrast, already by the turn of the century, comparative analysis of the terms of service and acceptable use agreements, the contracts we sign with Internet service providers (ISPs) and platforms by clicking through on them, found the terms of these contracts across providers were converging. And they were doing so in ways destructive of the human rights that are core to most constitutions and constitution-like foundations of national law in protections for civil liberties (see "Advantage ISP"). US constitutional law, for example, forbids the use of language in laws or regulations that is vague (reasonable adults may not agree on its meaning) or overbroad (covering far more activity and types of communication than is the intended target of a particular law or regulation). Both types of language are not only rife in, but characteristic of, terms of service agreements. This convergence of the provisions of terms of service means that, on the Internet, there has been nowhere else, effectively, to go, if offered a contract you considered abusive of human rights. The subject addressed by this book, on threats to human rights from private sector entities in the online environment, could not be more important.

Theories of free speech typically focus on one problem: how to maximize the possibilities for rich and diverse public discourse about shared matters of public concern under conditions in which there may be threats to those rights from governments. As Edwin C. Baker and others have pointed out, though, with the commercial broadcasting that has dominated the globe ever since the liberalization waves of the late twentieth century, a second problem has to be solved at the same time: in economists' terms, a second market had to be served—advertisers. Thinking about free speech in a two-sided market rather than an environment conceived to serve only one "market," comprised of the needs of citizens and citizenship, makes analyses more complex. And, importantly, it inverts the relationship of the problem to policy making. Historically, thinking and practice with respect to protecting free speech have been focused on preventing the government from inappropriately affecting the speech environment in what we might think of as a single market problem. When the problem involves a two-sided market, though, the question becomes how the government can best intervene, using laws and policy, to support the public speech environment and help it thrive.

What we have now, as is pointed out in *Human Rights in the Age of Platforms*, is a third class of problem—those created by multisided market markets. With this, the challenge for policy makers of all types (whether public sector or private, organizational or individual) is that the problem becomes yet more complex again by another order of magnitude. There is a second challenge to human rights in cyberspace when framed in economic terms, as well. The information economy in which we now live is, so to speak, an expanding universe. The economic domain is itself growing by commodifying types of information and informational interactions that had not previously been treated as something that can be bought and sold. This way of conceptualizing the information economy was introduced by political economists in the 1970s as the second of the four ways of conceptualizing "the information economy" that have appeared since the 1960s, all simultaneously in use today theoretically, rhetorically, and operationally. (The first to appear was an approach that understood the information economy as one in which everything operates as it always had, but industries in the information sector had become proportionately more important than those in other economic sectors. Later, approaches appeared that focused on transformations in the nature of economic

processes themselves—emphasizing cooperation and coordination for long-term economic success in addition to competition—[often referred to as *the network economy*] and, in the twenty-first century, appreciation of the ways in which representation has replaced empirical data as the foundation of economic decision-making [an approach in which the information economy is called a *representational economy*].)

By the 1990s, there were consulting firms and business schools with advice about just how to take advantage of informational opportunities to make profit from this expansion of the economic universe. The intellectual capital movement of that era developed alternative accounting schemes for these new forms of value, and the industrial classification codes so fundamental to the accounting systems of importance for regulation as well as financial purposes were revised in that era as well for the same reasons; in the US this meant replacing the Standard Industrial Classification (SIC) codes with the North American Industry Classification System (NAICS), while internationally these were transformations that took place within the International Standard Industrial Classification (ISIC) code system. This same insight into what makes the information economy different from the industrial economy was also a driving force behind the formation of the World Trade Organization (WTO) and the development of associated treaties, such as the General Agreement on Trade in Services (GATS), which for the first time incorporated trade in services into international trade agreements. (The prize for the best definition of "services" for this purpose still goes to *The Economist*, which defined it in 1984 as "anything that can be bought and sold that cannot be dropped on your foot.")

What all of this means for human rights is that the proportion of our lifeworlds, of what we all do on a daily basis with our friends, colleagues, neighbors, allies, and fellow citizens, for which human rights abuses presents threats, is growing. The emphasis here is not on the egregious examples of extraordinary situations, but on the "normal," whether that is the normal as we are coming to accept it or the normal as we would prefer it to be. We live, that is, in an expanding universe of possible human rights issues that might arise in association with our ordinary use of digital technologies or because these technologies are embedded in our habitual or expected contexts.

Spending several days at a meeting of the Internet Engineering Task Force in November 2017 was humbling in this regard. A growing number

of those involved in this group, which is responsible for the always ongoing effort of Internet design, are working on the problem of inserting explicit attention to human rights issues formally into the processes through which a proposed protocol for the Internet becomes the official protocol. Spending several days in sessions under the guidance of members of this group who were sophisticated both regarding the technologies involved and the processes of the organization made clear that the problem of privacy was a whack-a-mole problem, appearing in a high percentage of conversations, each devoted to a specific technical issue, each within its own working group and topical problem track. With every new technological development, new privacy problems appear. From the human rights side, the problem may be a lack of comprehension of the technical possibilities and constraints of the systems to which critiques and demands for protection are being addressed.

Human Rights in the Age of Platforms can serve as a primer for all of us. In the gifted intellectual and editorial hands of Rikke Frank Jørgensen, these authors make visible the human rights problems specific to those environments controlled by the private sector (essentially all of them) rather than in the geopolitical and legal terms that have dominated the human rights discourses of the past. The book provides, in essence, an environmental approach in that the cases addressed range across the various facets of our lives. They bring to bear theories and insights from multiple disciplines and, for many, life experience working on human rights issues on the ground.

It is not an encouraging time to be thinking about human rights, whether in the offline or online environment. But it *is* encouraging to have such thoughtful scholars, thinkers, and practitioners to help us understand the fundamental human rights issues of our era as we seek to develop the means to address them offered by this foundational work.