



Digital Justice definition

Report - Smart City PDX

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Smart City PDX
Office of Equity and Human Rights

'Being anti racist means following the lead of Black, Indigenous, Latinx and Asian communities as they identify the needs of their communities.

Being anti racist means that understanding, through the use of root cause analysis, that the history of surveillance in this country is rooted in slavery, with the earliest examples of controlling the movement of enslaved people being the "slave pass".

Being anti racist means assuring the safety of BIPOC communities FIRST.

There are now and will continue to be "solutions" using technology that purport to address safety and advance well being and opportunity and we encourage the use of technology for these purposes WHEN it is clear that the technology will serve all of the people in our community and that means centering the safety and well being of BIPOC communities first.'

- OEHR Director Markisha Smith
Portland City Council public testimony of the
face recognition technologies ordinances
September 9, 2020

Scope

This report is intended to present a proposed definition of *Digital Justice* with the purpose of promoting public participation to enrich this concept. This report describes the process that the City of Portland followed to develop this definition and the general context supporting it.

Preamble

In September 2020, the City of Portland moved to ban the use of face recognition technologies. These actions responded to concerns of racial and gender bias creating discrimination and negatively impacting the way people move and interact with each other in public places. The City of Portland is a place where all Portlanders and visitors are welcome, safe and enjoy fair access to public services, including those in the digital world.

The implementation of the ban of face recognition technologies by private entities required the creation of a new City Code Title on 'Digital Justice'. This new title is an opportunity to build a





common framework for deployment, use and oversight of technological and information solutions. Particularly those that are clearly identified as surveillance technologies or use or derive personal and social behavior from residents and visitors.

The Smart City PDX program and the Office of Equity and Human Rights are committed to develop a comprehensive and accessible Digital Justice framework, including universal digital rights and meaningful public participation in policy and City projects. Our goal is to have an inclusive process that allows Portlanders to decide their Digital Rights in the context of Digital Justice.

The City of Portland has recently adopted *anti-racism*¹ as one of its core values². The development of the definition of Digital Justice is intentionally embedding anti-racism in all the discussions that have led to this working definition.

Introduction

Professor Simone Browne, from the Department of African and African Diaspora Studies at the University of Texas at Austin, demonstrates in her book *Dark Matters: On the Surveillance of Blackness*³, the emergence of surveillance technologies and practices can be traced back to the trans-Atlantic slave trade.

Browne studies how surveillance technologies have objectified, categorized, and repressed Black people, from the panoptic slave ships of the Middle Passage to modern policing tools deployed against protesters.

Technology is being used to survey the movements of the Black population. In March 1713, the Common Council of the City of New York, approved "A Law for Regulating Negro & Indian Slaves in the Night Time", also called "The Lantern Law".

The Lantern Law demanded that any enslaved person over the age of 14 carry a lantern at night so they could be easily seen by White people. At the time New York City legislators associated Black people with crime. This use of lanterns, which were the cutting-edge technology of the day.⁴

¹ Antiracist: A conscious decision to make frequent, consistent, equitable choices daily. These choices require ongoing self-awareness and self-reflection as we move through life. In the absence of making antiracist choices, we (un)consciously uphold aspects of white supremacy, white-dominant culture, and unequal institutions and society. Being racist or antiracist is not about who you are; it is about what you do.

² <https://www.portlandoregon.gov/bhr/article/763427>

³ Simone Browne. *Dark Matters: On the Surveillance of Blackness*. October 2, 2015.

⁴ Mutale Nkonde. *Automated Anti-Blackness: Facial Recognition in Brooklyn, New York. Anti-Blackness in Policy Making: Learning from the Past to Create a Better Future. 2019-20 Volume. Harvard Kennedy School. Journal Of African American Policy*





Information and surveillance have been historically used as tools for social forecast and control. Local governments can obtain great benefits by having timely and accurate information that allows them to provide social services effectively and efficiently.

However, surveillance has been also used as a tool for control and preemption that multiplies disparities. In one end, we recognize that it is more likely that a mostly black community will be over surveilled on the assumption of high crime rates. While, on the other end, many native⁵ and houseless⁶ communities demand specific data strategies and local governments do not have enough and accurate information to serve these communities accordingly.

These realities get compounded by the emergent data and information markets that commodify people's digital interactions, including social, economic, medical, labor and educational needs. The commodification of data has speculated with the creation of products and services based on people's digital life.

In many cases, people may not be aware that third parties are using their digital transactions and interactions with other people. People can be exposed to privacy risks even if those interactions are anonymized or aggregated.

A Portland definition of Digital Justice has been developed by a collective effort by the City of Portland equity practitioners network, including bureau equity managers, and local privacy and open data champions. These contributors provided input, language and comments that were included in this definition.

⁵ Changing the narrative about Native Americans. A guide for native peoples and organizations. Reclaiming Native Truth. Report 2019.

<https://www.firstnations.org/wp-content/uploads/2018/12/MessageGuide-Native-screen.pdf>

⁶ Gilman, Michele E. and Green, Rebecca, The Surveillance Gap: The Harms of Extreme Privacy and Data Marginalization (May 3, 2018). 42 NYU Review of Law and Social Change 253 (2018). Available at SSRN: <https://ssrn.com/abstract=3172948>





Working definition of Digital Justice

Digital Justice is the equitable treatment of all people in technology and information, regardless of race, abilities, gender, age, personal circumstances or social context. Digital justice ensures that people have the digital rights and resources they need to thrive—including access to digital infrastructure, shared ownership of digital resources, data protection, and open and accountable digital governance.

All data collected from digital interactions of individuals must be subjected to laws and governance structures that assure personal self-sovereignty that allows individuals to create and have full control of their data. Individuals are entitled to demand control and consent on how their data and information is stored, protected, shared, who has access to it, and how it is processed.

Data is better understood when it is accessible in the native language of the individual, when the descriptive language matches the individual level of understanding on the issue that data intends to represent, and when it is ready for assistive technology through the whole life cycle including, collection, processing, access, visualizations, and reporting.

Digital Justice must be an instrument of individual and collective empowerment, as well as the conduct for building equitable wealth, inclusion and governance relationships with transparency and accountability, and do not marginalize or increase disparities impacting BIPOC communities and people with disabilities.

Development of this definition

This definition is intended to be used as a concept in policies, administrative rules, projects and activities in City Government. This concept can also be adapted for communications and in public events.

This definition has been developed under the coordination of the Smart City PDX team and the Office of Equity and Human Rights at the City of Portland. This work was done from September to November 2020 and several internal networks in the city have been involved in providing input, comments and discussions that were compiled into the current discussion. Those groups are the City Equity Managers and City Equity Practitioners Network, the Open Data Practitioners Network and the Privacy Work Group.





This definition also takes inspiration from the work of the many researchers and advocates of digital rights. Particularly, from the Detroit Digital Justice Coalition's Digital Justice framework⁷ and the former data research⁸ in Oakland, CA.

The City of Portland has recently created a new city code title (34) on Digital Justice. This new code is intended to become a space for policy making that protects Portlanders and visitors digital rights and promotes equitable use and deployment of digital resources and literacy in communities, local businesses, entrepreneurs, community advocates and organizations, academic organizations, and different social and economic development entities.

At the time of the publication of this report, this definition is still considered a 'working definition', meaning that it is not final and more public feedback is expected to enrich it.

Any comment or questions about this working definition of Digital Justice can be submitted to the Smart City PDX team at smartcitypdx@portlandoregon.gov

Glossary of terms

Automated decision system - An automated decision system is a process which significantly affects a person or group of people and which is based solely on automated processing of personal data to evaluate this person or group. This includes advanced methods like Artificial intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.

Assistive technology - Any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities⁹. Technology used by individuals with disabilities in order to perform functions that might otherwise be difficult or impossible.

Common ownership of digital resources - The creation of knowledge, tools and technologies that are free and shared openly with the public. Digital justice promotes diverse business models for the control and distribution of information, including: cooperative business models and municipal ownership.

Consent - Any freely given, specific, informed and unambiguous indication of the data individual's wishes by which the individual, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to the individual¹⁰. Consent is not

⁷ Detroit Digital Justice Coalition's Digital Justice framework: <http://detroitdjc.org/principles/>

⁸ http://www.datacenter.org/wp-content/uploads/Intro_Research_Justice_Toolkit_FINAL1.pdf

⁹ <https://www.access-board.gov/ict/#E103.4>

¹⁰ <https://gdpr.eu/article-4-definitions/>





considered freely given if the individual has no genuine or free choice or is unable to refuse or “withdraw consent without detriment.”. Consent may be represented in contract form.

Data - Statistical, factual, quantitative, or qualitative representation of a natural or social phenomenon that is regularly maintained or created by or on behalf of a public or private entity and is in a form that can be digitally transmitted or processed.

Digital Equity - Digital Equity is a condition in which all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy. Digital Equity is necessary for civic and cultural participation, employment, lifelong learning, and access to essential services.

Digital Inclusion - Digital Inclusion refers to the activities necessary to ensure that all individuals and communities, including the most disadvantaged, have access to and use of Information and Communication Technologies (ICTs). This includes 5 elements: 1) affordable, robust broadband internet service; 2) internet-enabled devices that meet the needs of the user; 3) access to digital literacy training; 4) quality technical support; and 5) applications and online content designed to enable and encourage self-sufficiency, participation and collaboration. Digital Inclusion must evolve as technology advances. Digital Inclusion requires intentional strategies and investments to reduce and eliminate historical, institutional and structural barriers to access and use technology.

Digital interaction - The exchange of digital information between a person and a machine, or a machine on behalf of a person with another machine.

Digital Resource - A component or group of technology or information in digital form, including technological infrastructure, policies, governance structures, educational and training materials, media, laws and regulations, that define or support the use of computing power.

Digital Rights - Human rights that allow individuals to access, use, create, and publish digital media or to access and use computers, other electronic devices, and telecommunications networks allowing them to thrive and live a social interconnected life safely and securely.

Information - Information is the result of data being processed, organized, structured or presented in a given context, allowing it to be utilized by people.

Personal self-sovereignty - This is the concept of property in one's own person, expressed as the moral or natural right of a person to have bodily integrity and be the exclusive controller of one's own body, identity and life.

